

**AGENDA
CITY OF BANNING
BANNING, CALIFORNIA**

February 12, 2008
Council Chambers
6:30 p.m.

Banning Civic Center
99 E. Ramsey St.

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. 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.

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

ANNOUNCEMENTS/COUNCIL REPORTS:
(*Upcoming Events/Other Items and Reports if any*) (ORAL)

*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.*

III. 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 13

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 – 01-22-08	1
2. Resolution No. 2008-12, Approving a One-Year Extension of Time for Tentative Tract Map 33013 (TTM 33013) Previously Approved by the City Council on January 11, 2005.....	12
3. Resolution No. 2008-14, Supporting the Display of the POW/MIA Flag	34
4. Resolution No. 2008-17, Approving the Reimbursement Agreement for Transportation Uniform Mitigation Fee (TUMF) Program Funds with the Western Riverside Council of Governments (WRCOG) for Project No. 2006-05, Sunset Avenue Grade Separation and Authorize the Mayor to Execute the Reimbursement Agreement with WRCOG	37
5. Resolution No. 2008-18, Amending Resolution No. 2007-71 to Amend the Classification & Compensation Plan for the City of Banning	54
6. Resolution No. 2008-20, Approving a Memorandum of Understanding Between the International Brotherhood of Electrical Workers General Unit (IBEW-General Unit) and the City of Banning.	63
7. Resolution No. 2008-21, Approving the Projects and Funding Adjustment Requests for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program	101
8. Resolution No. 2008-22, Amending the Agreement with Whitmore Construction, Inc. for Repair Services on an As Needed Basis to Include An Additional \$15,000.00	111
9. Resolution No. 2008-23, Declaring an Emergency Condition Existed Related to Severe Rainstorms, and Awarding an Emergency Repair and Cleanup Contract to Merlin Johnson Construction, Inc. in an Amount Not to Exceed \$167,692.58	115
10. Resolution NO. 2008-24, Approving Amendment No. 2 to the Joint Exercise of Power Agreement (JPA) creating the Western Riverside County Regional Conservation Authority (RCA)	120
11. Notice of Completion for Project No. 2007-10, Demolition of the Former Community Redevelopment Agency Building	175
12. Auditor’s Report for Fiscal Year 2006-2007	188
13. Approval of Accounts Payable and Payroll Warrants for Month of December 2007	189

- **Open for Public Comments**
- **Make Motion**

IV. 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. General Plan Amendment and Zone Change #07-2502: A Request to Change the General Plan Land Use Map and Zoning Map designations from Low Density Residential (0-5 Units/Acre) to Professional Office at 935 E. Williams Street. APN: 541-121-022.

Staff Report 192

Recommended Motions:

- 1) **That the City Council adopt Resolution No. 2008-25, adopting the Negative Declaration of Environmental Impact.**
- 2) **Mayor asks the City Clerk to read the Title of Ordinance No. 1385**
“Ordinance No. 1385, An Ordinance of the City Council of the City of Banning, California, Approving General Plan/Zoning Map Amendment #07-2502 to Change the Zoning Classification from Low Density Residential to Professional Office at 935 E. Williams Street – APN 541-121-002.”

Motion: I move to waive further reading of Ordinance No. 1385.
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1385 pass its first reading.
(A minimum of three votes required)

Alternatives:

Continuance:

- 1) I move the City Council continue the public hearing to its next regularly scheduled meeting.

Denial: I move the City Council deny Ordinance No. 1385 for GPA/ZC #07-2502 on the following basis: (The City Council will need to make its findings.)

V. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 4/08*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*) (*ETA 3/08*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*) (*City Atty.*)
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*) (*ETA 3/08*)
8. Time Frames for Demolition of Buildings (*Franklin – 12/11/07*) (*Orci*) (*ETA 2/08*)
9. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*Orci & Purvis*) (*ETA 3/08*)
10. Performance Review of City Attorney’s Office (*Franklin – 1/22/08*) (*ETA 3/08*)

FUTURE MEETINGS

1. Regular City Council Meeting scheduled for February 26, 2008 has been rescheduled to March 5, 2008 at 6:30 p.m. (*this is due to Council being out of the area and not having a quorum for the February 26th meeting*)
2. Council Meeting Workshop – March 5, 2008 at 4:00 p.m. to discuss feasibility study (Phase I) consultants regarding a possible revenue ballot measure and consider moving Phase II

VI. 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].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/22/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on January 22, 2008 at 6:30 p.m. 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
Ted Yarbrough, Fire Marshal/Fire Prevention Officer
Heidi Meraz, Recreation Director
Kim Clinton, Senior Planner
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 Deborah Franklin.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney - None

PUBLIC COMMENTS – On Items Not on the Agenda

Don Smith – resident of Banning addressed the Council regarding two things: 1) 62nd Annual Riverside County Fair & National Date Festival –Feb. 15th through the 24th and invited the Council on Monday to participate in the President's Day Parade and he left some brochures and some tickets; 2) regarding new rule regarding asphalt and concrete only where paving is required for numerous reasons regarding the aging stock and how people are to afford it and the lack of grants to help them do it and how it interferes with some business not being able to expand because of the additional cost. While we have

City staff sending letters and brochures to everyone telling them they cannot do it and giving tickets that very same staff is parking on gravel in your own parking lot and interesting.

Beverly Rashidd, 905 Twin Hills addressed the Council stating that the Banning Center for the Arts has its first Co-Op Group and the Co-Op Artists are having their first showing with a reception on January 26th from 2-4 p.m. at the Banning Center for the Arts, 130 N. San Gorgonio. The newest project of the Banning Cultural Alliance is the Pass Area Performing Artists (PAPA) and will have a Variety Show to be held on the first and second weekends in February. It will be held at the Banning Women's Club Building. Also "Our Town" will be presented the first weekend in April and they are still auditioning and are looking for older males over 50 to play fathers and young boys. If you are interested, please call the Alliance office at 922-4911.

Matthew Clark, 1036 Charles Street addressed the Council stating that in the past he appeared before Council and staff as early as last October. He made a commitment to staff and the Council that he would review procedures and documentation in a particular construction project. He has completed that review and put in 140 hours since October and based solely on what is available in the public record in accordance with the law and put together a 13-page report for the City Manager. The conditions on which this report was crafted were simply taking for example if you possess a drivers license and by law an application for that drivers license should be on file and by law proof of liability insurance. So using that analogy if any construction takes place then the documentation that supports construction should be on file according to the law. One of the most important documents that he has looked at and used as guidance is the conditions of approval approved by the City Council. From there he was directed to go to the building code and he did this looking at simply what was missing from the project file that does not exist here at the counter and it was also the basis of identifying what was available and what was not available. He did not use any special inside knowledge from the engineering community, he simply said what is the checklist required under the building code that is available at the public library and what does it say you should do.

Christa Baird, 1036 Charles Street addressed the Council stating that also on the back of that report is a two page list of documents that they would like to have from the City. They have been requesting documents since July of 2007 and some documents they have had and some they don't have. Some of the documents that have been provided to them have been insufficient as far as they can tell from the building code. Again, they are asking for assistance and support of the Council to get these documents so that they can move on. Also take to heart what is in the report and how it impacts the community and it is more than just people complaining in Fair Oaks.

Mayor Salas asked legal Counsel and the Planning Director to please keep the Council informed of what it is we get back on this particular issue.

Chief Leonard Purvis recognized the following Police Department personnel to receive an award for outstanding service to the City of Banning while performing their duties:

Staff Sergeant Steve Hobb, Staff Sergeant Greg Harrington, Officer Terry Felizardo, Office Joe Feola, Officer Mike Webber, Dispatcher Wendi Nees and also Officer Allen Eley could not be in attendance because he is in school. This was in regards to a call received and response to a man with a gun call received on January 3, 2008 at 541 Dorothy Anna Drive in Banning. The suspect was prepared to murder a police officer and placed himself in a position to ambush officers. As our officers exited their patrol units the suspect shot one shotgun round directly at them. They all held their fire and were able to take the suspect into custody without additional shots being fired by the suspect. As a result of their excellent officer safety skills and ability to make the suspect comply with verbal commands and surrender, no one was injured in this incident. They all demonstrated courageous calm in the face of danger and exercised outstanding judgment under an extremely stressful situation. They also displayed a tremendous amount of restraint. Their actions brought great credit upon the Banning Police Department and he is very proud of their commitment to protect and serve all members of the community with honor and distinction. He also commended Dispatcher Wendi Nees for her outstanding service while performing her duties. She was on duty that day and dispatched officers to this call. During the incident she maintained her composure and professionalism and coordinated the response of additional officers to the area. As a result of her excellent dispatching skills and ability to maintain her composure no one was injured during this critical incident. Her actions brought great credit upon the Banning Police Department and he is produce of her commitment to protect and serve all members of the community with honor and distinction.

CORRESPONDENCE: None

PRESENTATIONS

1. Presentation by Norman Gibbs of POW/MIA Flag to the City

Mr. Gibbs, 5983 Eagle Trace Lane addressed the Council stating that he would like to present to the City of Banning, a flag that represents more than 200,000 Americans, who since World War One, have been listed as being Prisoners of War or Missing in Action. The POW/MIA flag is an American flag designed as a symbol of the citizens concern about the United States military personnel taken as prisoners of war and missing in action. On August 10, 1990, the 101st Congress passed U. S. Public Law 101-355, which recognized the POW/MIA flag and designated it "as the symbol of our Nation's concern and commitment to resolving as fully as possible the fates of American still prisoner, missing and unaccounted for". The POW/MIA flag is the only flag every displayed in the U. S. Capitol rotunda and the only flag other than the U. S. flag to have flown over the White House. Passage by the 105th Congress of Section 1082 of the 1998 Defense Authorization Act required that the POW/MIA flag fly six days each year. Mr. Gibbs went over the days that this flag must be displayed and stated that many State Capitols and other locations across the country display it daily including our neighboring cities of Redlands, Loma Linda, Highland, Yucaipa, and San Bernardino and have also formally adopted resolutions to fly this flag every day. It is his hope that the City of Banning will accept this flag and adopt a similar resolution. He also went over the protocol for flying the POW/MIA flag.

Mayor Salas asked the City Council that they place this on the next agenda so that they can go ahead and fly this flag in the future.

2. Presentation to City Manager Randy Anstine

Mayor Salas said that our City Manager Randy Anstine is retiring and they would like to take a moment recognize him tonight and also on January 31st. City Attorney Julie Biggs said she wanted to thank Randy for the courtesy and general well-being that he brings to the City and shared with all of us. She presented Randy with a cartoon that highlights his major accomplishments.

Mayor Salas said he has been a great City Manager and it is amazing of what we have been able to accomplish in the time that he has been here and the fabulous staff that he has brought to Banning.

3. Western Riverside Council of Governments (WRCOG) presentation on Clean Cities Membership and Programs and Advancing the Choice Expo Event

This presentation was given by Suzanne Seivright who implements the Clean Cities Programs and gave a brief overview of what they have been working on this past year and what is coming up in 2008.

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Hanna reported:

- on League of California Cities Housing, Community & Economic Development Policy Committee Meeting she attending on Friday, January 18th in Sacramento. The League of California Cities' strategic goals for this year are: 1) Protect funding for community services, 2) Support green and sustainable cities, 3) Expand Infrastructure Investment to ensure the fair and effective implementation of the 2006 infrastructure bonds, and 4) Enact honest and responsible Eminent Domain reform.

Councilmember Machisic reported:

- Jan. 23 – San Gorgonio Memorial Hospital Foundation Dinner at 6:30 p.m. at the Casino Morongo
- Jan. 30 – 10:00 a.m. at the Stagecoach Plaza in Banning celebration of the launch of the Commuter Link 210. That is RTA's newest express route serving the Pass Area, Moreno Valley and Riverside.
- Edward-Dean Museum will have a special exhibit called "Art of the Empires" Creation & Handiworks of Imperial Russia, the Tsars & French Napoleonic Era. Opening Reception on January 27th from 2 – 4 p.m. with free admission and the exhibit will last from January 27th through April 13th.

Mayor Pro Tem Franklin reported:

- Jan. 14 – she participated in a research group that was hosted by Waste Management and they discussed sustainable communities. Each city talked about efforts being made for sustainable cities. She passed information to staff. Also, that evening the Council attended the League of California Cities Meeting in Indio and the guest speaker was the new director for RCTC.
- Jan. 17 – she and Councilmember Hanna attended the Community Action Partnership Meeting and one of the things brought up was free tax preparation services available to people throughout the county. Location closes to Banning is in Beaumont and will start on January 25th through April 15th and is open to people whose income is less than \$40,000 and if interested you can call 1-800-511-1110.
- Jan. 18 – she attending a Policy Meeting also in Sacramento regarding Community Services and they talked about many subjects and had opportunity to have guest speakers come in and one of them had to do with the Governor’s Representative for External Affairs for Prisons and he spoke about the release of prisoners and how that is going to work. She will get information to the Council about this and other plans.
- Jan. 19 – she participated with BPAL in rock climbing at Joshua Tree and this was to build leadership and teamwork and the students were from Nicolet Middle School.
- Jan. 21 – Blood Drive “Blood of the Martyrs” and they had 51 people come out and participate and received approximately 35 pints. She commended Banning High School on their blood drive last week and they had a record 145 pints.
- Jan. 25 – San Geronio Child Care Center Family Night at the Banning Community Center starting at 6:00 p.m. – Spaghetti Dinner hosted by Johnny Russo’s. The focus of the event is a Math/Science Show and hands on and demonstrations. Open to the public and accepting donations and sponsored by the parents of the Child Care Consortium.
- RTA Commuter Link from now until the end of the month the rides are free.

Mayor Salas reported:

- Feb. 19 – Love Your City Day working in conjunction with the Banning Library. It will be held in City Hall from 6:30 to 8:00 p.m. The City Council will be reading books to the kids and will have arts and crafts dealing with civic related art. There will be a few art displays. She extended an invitation to the Morongo Council to come and read also. There will tours of the City Hall and refreshments.

CONSENT ITEMS

Councilmember Hanna pulled Consent Item No. 2 for discussion.

1. Ordinance No. 1381 – 2nd Reading: 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.

Recommendation: That Ordinance No. 1381, pass its second reading and be adopted.

3. Public Improvements Acceptance and Performance/Labor and Material

Bond Release for Tract No. 30906-1.

Recommendation: That the City Council accept the public improvements and release portion of the Faithful Performance/labor and Material Bond for Tract No. 30906-1.

4. Resolution No. 2008-11, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2008/2009.

Recommendation: That Resolution No. 2008-11 be adopted.

5. Approval of Minutes – Regular Meeting – 01/08/08

Recommendation: That the minutes of the Regular Meeting of January 8, 2008 be approved.

Motion Machisic/Franklin to approve Consent Items 1, 3, 4 and 5.

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

Motion carried, all in favor.

2. Ordinance No. 1382 – 2nd Reading: 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.

Councilmember Hanna asked what if there is a problem in that the Mural Committee does not approve for whatever reason a mural. Does the artist or building owner have any recourse or does it end there.

City Attorney said the ordinance as written requires approval by the Mural Committee. It is like a condition of approval on the permit which means that if they have it then all of those considerations could be taken into account by the approving entity which is a staff person in this case. There is no appeal set up from the Chamber group's determination but there would be an appeal from the grant or denial of the permit itself. On the other hand because one of the conditions of approval is approval by that Mural Committee. If it were appealed to the City Council, the Council wouldn't have authority to overturn the decision solely on the basis of lack of approval by the Committee. In other words, if the Committee says no, then you don't have the authority as a Council to overrule that determination. The Council has the authority to make the rules but once you have made them you have to abide by them and in this case the rule you are making is that as a condition of getting the permit the mural applicant must get the approval of the Mural Committee.

Councilmember Machisic said that one of the things that was suggested when we adopted this is that we would review it in six or eight months or a year. So if we encounter this difficulty we certainly can write something in that would be appropriate.

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

Motion Hanna/Botts to approve Consent Item No. 2, that Ordinance No. 1382 pass its second reading and be adopted. Motion carried, all in favor.

PUBLIC HEARINGS

1. Resolution No. 2008-08, Adopting the Airport Master Plan Update for the Banning Municipal Airport
(Staff Report – Duane Burk, Public Works Director)

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

Councilmember Botts said that this just mentions the Airport Master Plan but not the Fixed Based Operator analysis that was done.

Councilmember Machisic said that since the last meeting the Council was in receipt of a letter from the Morongo Band of Mission Indians that they have expressed an interest in the airport but currently they are involved in some other projects and they have asked the Council to postpone the decision until early in February. This decision of holding it up would it affect things that we might be doing at the airport.

Mr. Burk said it wouldn't affect anything that they are doing at the airport but it may affect the public hearing.

City Attorney said that unless you can determine a date certain to continue the public hearing to the public hearing would have to be re-noticed.

Thomas Litton, Morongo Band of Mission Indians Director of Planning and Building Services addressed the Council stating that he was here on behalf of the Tribal Council and the Tribal general membership. As you they are dealing with the ballot measures getting to the election on February 5th and because of that the Tribal Council is extremely busy and have very little time to do anything and they are traveling back and forth to Sacramento. He said that after the airport workshop he spoke with their CAO Michael Milhouser and that shortly thereafter he spoke with the Tribal Chairman and Council and they expressed an interest in speaking with the City about the Airport Master Plan and the potential of bringing an FBO in to operate that facility and look at partnering on the Master Plan because they do have some adjacent land use issues and own a section of land east of the airport and he thinks it would be a benefit of both the City and the Tribe and Council to take a comprehensive look at that and move forward in that effort. And as such he is here to just reiterate that comment from both the Chairman and Tribal Council.

Mayor Salas asked if there were any further public comments. There were none.

There was further Council discussion regarding postponing the decision. There was also Council discussion regarding going dark on February 26th due to the Council being out of

town and postponing that meeting and move it to March 5th and also discussion regarding a Special Community Redevelopment Agency meeting on that date also beginning at 5:30 p.m.

Councilmember Botts said that he and Mayor Pro Tem Franklin were appointed as an Ad Hoc Committee to work with staff and he would really like to work with staff to make sure that things keep going.

Motion Hanna/Machisic to continue the Public Hearing to March 5th and that the Ad Hoc Committee continue to work with staff. Motion carried, all in favor.

2. General Plan Amendment and Zone Change #07-2502: A Request to Change the General Plan Land Use Map and Zoning Map designations from Low Density Residential (0-5 Units/Acre) to Professional Office at 935 E. Williams Street. APN: 541-121-022.
(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton addressed the Council regarding this item and gave a power-point presentation to change the Zoning and General Plan map designation from Low Density Residential to Professional Office. She explained the zoning in the areas surrounding this particular parcel. She said this item was taken to the Planning Commission and they made findings for denial for this project as contained in the staff report.

There was Council discussion regarding this item and asked why staff recommended approval of this zone change. Ms. Clinton explained why she recommended the zone change stating that she felt it was a good transitional use from the office use south of Ramsey to the low density. However, as pointed out by the Planning Commission they felt that some of the outright permitted uses would just a little too much for that neighborhood and wanted to keep it a very low key purely residential neighborhood.

Mayor Salas opened the public hearing and asked the applicant to come forward at this time.

Elena Labastida, 1071 S. 12th Street addressed the Council. She stated that the proposed General Plan Amendment provides for professional office zoning in an area that is need of revitalization. As staff mentioned it is surrounded by commercial, multi-family dwellings and single-family homes. They believe that this zone change will bring jobs and services to the community that is very much needed. As previously mentioned currently the area has a significant amount of blight and a professional office environment would help beautify and revitalize this area. They are intention is to bring offices to that zone. They don't intent to bring in a liquor store or a fitness club or anything else. It would be for shared office space.

Mayor Salas asked if there were any further public comments on this item. There were none.

Councilmember Botts asked how long she has owned this property and other questions regarding the property.

Ms. Labastida said they she has owned it approximately five year and the zoning was multi-family, high density. After a couple of years the new General Plan came into effect and was adopted and it was down-zoned from R3 to R1. They bought the property in hopes of building multi-family homes in which they have experience.

Councilmember Hanna said that this is one of the more blighted areas in the city and she would like to have an answer some

There was Council discussion and exchange with the applicant regarding how long they owned the property and the zoning, spot zoning, blight, control of what kinds of businesses would go in these offices, desire for residential in that area, decisions of the General Plan, suggestion of uses to the applicant, commitment of time to build offices, voice of community/homeowners for residential use in the area, standards and vision for the area, screen and control of incompatible uses.

City Attorney said that one thing that is true in California is that zoning does not give you any right to develop. It gives you a classification at the time that you own the property. And if you move forward with that zoning while the zoning is in place, you have certain rights. But zoning is a legislative determination as is the General Plan and therefore, anyone that has zoning that doesn't have approval for a project has the possibility that he would be able to go forward but no promise from the community. So then when the community rezones unless it totally eliminates use of the property that is just how it is and the rezone takes precedent over the previous zoning. And is within the expectation that any landowner should have that the property can be rezoned until such time that you have your building permit and you start work on your project.

Mayor Salas said that this was made very clear by the consultant that did our rezoning and General Plan but occasionally these things will come up and we address them as we do.

Councilmember Botts said he understand that but there are times when things are just the right thing to do whether it is state law or there is a legal opinion that you don't have to hold to that. He thinks based upon what the applicant just told them and if they could couch their motion on what she said to build what staff gave as a reasonable alternative professional offices and we control that with a conditional use permit so we don't have the kind of uses that could be a problem that he thinks the Council ought to approve this.

Motion Botts/Salas that the City Council continue the public hearing to the next regularly scheduled meeting (Feb. 12th) and direct staff to prepare an Ordinance Approving the General Plan Map Amendment #07-2502 to change the Zoning and General Plan map designation from Low Density Residential to Professional Office on parcel 541-121-022. Motion carried with Councilmembers Franklin and Machisic voting no.

3. General Plan Amendment #07-2503, An Amendment to the General Plan Street System to Delete Porter Street between Sunset Avenue and 22nd Street.
(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton gave the staff report on this item as contained in the agenda packet.

There was some Council discussion regarding this item.

Mayor Salas opened the public hearing on this item. There were none. She closed the public hearing.

Motion Hanna/Machisic to 1) adopt Resolution No. 2008-15, approving the Negative Declaration for General Plan Amendment #07-2503 to delete Porter Street between Sunset Avenue and 22nd Street from the General Plan; and 2) Adopt Resolution No. 2008-16, Approving General Plan Amendment#07-2503 deleting Porter Street from the General Plan Street System between Sunset Avenue and 22nd Street as shown in "Exhibit A" which is attached hereto and incorporated by this reference. Motion carried, all in favor.

ITEMS FOR FUTURE AGENDAS

New Items –

Mayor Pro Tem Franklin would like the Council to have another meeting to wrap up the visioning for our City and talk about where they want to see the RDA funds go. She would like to have a workshop that will take more than just a couple of hours because as a Council this is something that they have talked about for over a year and haven't finished it and have to set the time a side and get it done. Need to consult with the new City Manager for a meeting in February. A date was suggested for March 1st with the 15th as a back up date.

Mayor Salas would like a resolution on the next agenda in regards to the POW/MIA flag.

Councilmember Botts would like a date for the ordinance regarding group homes. Mr. Orci said that there is a draft and it will first be taken to the Planning Commission.

Councilmember Hanna would like a future closed session on the City Attorney. The City Council hires the City Manager and the City Attorney and those are the only two position that and under their domain directly and she would like to set expectations with the City Attorney's office so that in a years time they can do an evaluation compared to their expectations. Mayor Salas said to put this under future closed sessions.

Mayor Pro Tem Franklin said she would like from staff some ETA's on the items.

Pending Items –

1. Review of "Green Plan" in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 2/02*)
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*)

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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*) (*Orci*)
10. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*Orci & Purvis*)

FUTURE MEETINGS

1. Special Council Meeting - February 12, 2008 – to discuss delivery of State Water Project to Banning with the San Gorgonio Pass Water Agency.

City Clerk said that she would check with Jim Earhart on the time of this meeting.

ADJOURNMENT

By common consent the meeting adjourned at 8:55 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.

**CITY COUNCIL
CONSENT ITEM**

DATE: February 12, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Request for Extension of Time TTM 33013 (Martin): The subdivision of a 4.09-acre site into 6 single family residential lots. The proposed project site is generally located at the northeast corner of 22nd Street and Westward Avenue. APN: 538-272-001.

RECOMMENDATION: "That the City Council approves Resolution No. 2008-12, granting a one-year extension of time for Tentative Tract Map No. 33013."

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 33013 on January 11, 2005. Further, a one year extension of time was approved on March 27, 2007. On December 20, 2007, the subdivider submitted an application for an extension of time in accordance with Section 66452.6(e) of the Subdivision Map Act.

BACKGROUND: The applicant is seeking approval to establish a six unit single-family residential subdivision of one parcel totaling approximately 4.09 acres, generally located at the northeast corner of 22nd Street and Westward Avenue. Access to the proposed lots 1 through 4 will occur via 22nd Street. Access to lots 5 and 6 will occur via Westward Avenue. The subject property is located in the City's VLDR (Very Low Density Residential) zone district (formerly RA-Residential Agricultural) and is surrounded by single-family residential development on three sides (north, south, and west). The property to the east is sparsely developed consisting mainly of vacant land. The project is in conformance with the surrounding development. The City's VLDR zoning district requires minimum lot area of 20,000 square feet per lot. The median lot size within the proposed subdivision is 27,454 square feet.

On January 11, 2005, the City Council certified a Mitigated Negative Declaration and approved a Mitigation Monitoring Program in accordance with the California Environmental Quality Act (CEQA). Section 15162 of the California Environmental Quality Act Guidelines states that once a Negative Declaration has been adopted for a project, no subsequent EIR or Mitigated Negative Declaration shall be prepared unless: 1) substantial changes are proposed to the project, 2) substantial changes occur with respect to the circumstances under which the project is undertaken, or 3) new information of substantial importance is presented which was not known and could not have been known at the time the previous Mitigated Negative Declaration was adopted. This request for an extension of time does not propose changes to the approved project, nor is there evidence of the circumstances noted in conditions 2 or 3 above. Therefore, a subsequent/supplemental environmental document is not required.

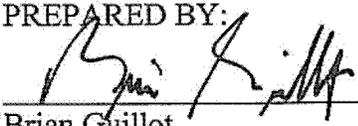
Tentative Tract Map 33013 was originally approved by City Council on January 11, 2005. Subsequent to that approval, a one year extension of time was approved by City Council on March 27, 2007.

A copy of the original Staff Report (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. This was done in order to identify any change in conditions that may have occurred during the period. 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 second 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 January 11, 2009.

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 March 11, 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 second 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.

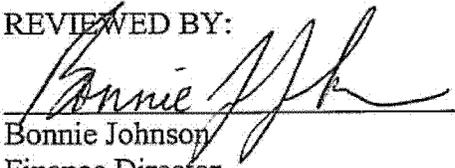
FISCAL DATA: The construction of the proposed subdivision will generate revenues to the City in the form of one-time building permit fees as well as annual property taxes.

PREPARED BY:


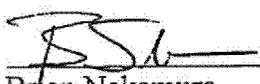
Brian Guillot
Associate Engineer-Planning

RECOMMENDED BY:


Oscar W. Orci
Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

- Exhibits:
1. Resolution No. 2008-12
 2. Copy of Staff Report from City Council Meeting of January 11, 2005
 3. Map TTM 33013

TTM 33013
EXTENSION

RESOLUTION
NO. 2008-12

EXHIBIT “1”

RESOLUTION NO. 2008-12

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING A ONE-YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP 33013 (TTM 33013) PREVIOUSLY APPROVED BY CITY COUNCIL ON JANUARY 11, 2005.

WHEREAS, an application for time extension for Tentative Tract Map No. 33013 has been duly filed by:

Applicant / Owner: **Martin, Salvador and Maria**
Authorized Agent: **Marcos Martin**
Project Location: **Generally located at the northeast corner of 22nd Street and Westward Avenue.**
APN Number: **538-272-001**
Project Area: **4.09-acres**
Application Complete: **December 20, 2007**

WHEREAS, the City Council of the City of Banning, on January 11, 2005, approved Tentative Tract Map 33013, to allow the subdivision of approximately 4.09-acre site into 6 lots for single-family residential use; and,

WHEREAS, the City Council of the City of Banning, on March 27, 2007, further approved a one year extension of time for Tentative Tract Map 33013; and,

WHEREAS, Marco Martin submitted a request for a time extension for Tentative Tract Map 33013 in accordance with Section 66452.6(e) of the Subdivision Map Act; and,

WHEREAS, On January 11, 2005, a Mitigated Negative Declaration and a Mitigation Monitoring Program prepared for the project was certified and approved in accordance with the California Environmental Quality Act (CEQA) when the project was approved by City Council; 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 an additional one-year time extension for Tentative Tract Map No. 33013 in accordance with Government Code Section 66452.6(e). Therefore, said tentative tract map shall expire on January 11, 2009, 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 12th day of February, 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. 2008-12, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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*TTM 33013
EXTENSION*

***COPY OF STAFF
REPORT FROM CITY
COUNCIL MEETING
OF 1/11/05***

EXHIBIT “2”

**CITY COUNCIL AGENDA
PUBLIC HEARING**

Date: January 11, 2005

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Lot Split #04-4508/Tentative Tract Map 33013 – A proposed six lot single-family residential subdivision of approximately 4.09 acres generally located at the northeast corner of 22nd Street and Westward Avenue.
APN: 538-272-001

RECOMMENDATION: That the City Council:

1. Adopt the Mitigated Negative Declaration for Lot Split #04-4508/Tentative Tract Map 33103; and
2. Approve Lot Split #04-4508/Tentative Tract Map 33013 based on the findings and the conditions of approval attached to this staff report.

MOTIONS:

1. "The City Council finds that approval of #04-4508/Tentative Tract Map 33013 will not have a significant effect on the environment and therefore adopts a Mitigated Negative Declaration; the City Council directs staff to file a Notice of Determination in accordance with the City's Environmental Guidelines."
2. "I move the City Council approve Lot Split #04-4508/Tentative Tract Map 33013, a proposal to subdivide approximately 4.09 acres into 6 residential lots, generally located at the northeast corner of 22nd Street and Westward Avenue, based on the findings and conditions of approval".

Alternatives:

Continuance:

"I move the City Council continue the public hearing for Lot Split #04-4508/Tentative Tract Map 33013 to its January 25, 2005 meeting".

Denial:

"I move the City Council deny Lot Split #04-4508/Tentative Tract Map 33013 on the following basis: (the City Council will need to make its findings)."

FINDINGS:

FINDINGS (for approval):

1. The proposed map and its design are consistent with the City's RA Zone Districts because the configuration of the proposed six lots meet and/or exceed the minimum requirements for lot width, lot depth and lot area.
2. The proposed land division conforms to law and Chapter 22 (Subdivision) of the Banning Ordinance Code. The proposed six lots conform to City requirements and will have proper and sufficient access to public streets, water mains, fire hydrants, drainage structures, utilities, and public services.

JUSTIFICATION: The proposed land division is consistent with Zoning and General Plan Land Use designations assigned to the subject property. All development related issues associated with the subject proposal are addressed in the recommended conditions of approval.

BACKGROUND: The applicant is seeking approval to establish a six unit single-family residential subdivision of one parcel totaling approximately 4.09 acres, generally located at the northeast corner of 22nd Street and Westward Avenue (Exhibit "2"). Access to the proposed lots 1 through 4 will occur via 22nd Street. Access to lots 5 and 6 will occur via Westward Avenue.

The subject property is located in the City's RA (Residential Agricultural) Zone District and is surrounded by single-family residential development on three sides (north, south, and west). The property to the east is sparsely developed consisting mainly of vacant land. The RA Zone District permits a density of 0-2 dwelling units per acre. The underlying General Plan Designation is Low Density Residential which permits a density of 2-5 dwelling units per acre. The General Plan and Zoning Designation are consistent insofar as the proposed tract will generate a density of 2 units per acre.

This project was evaluated by the criteria and density outlined in the RA Zone District. The proposed project is consistent with the density of the Zoning designation in that it proposes six units on 4.09 acres. The project is in conformance with the surrounding development.

The City's RA Zoning requires minimum lot area of 20,000 square feet per lot, a minimum lot width of 100 feet, and a minimum lot depth of 150 feet - the design of all proposed lots either meet or exceeds these requirements. The median lot size within the proposed subdivision is 27,454.

In order to address considerations relating to privacy/screening associated with the proposed subdivision, staff is recommending as a condition of approval that a decorative block wall be required along the northern, and eastern perimeter boundaries of lot 1, and along the eastern boundary of lots 2, 3, 4, and 6.

A Hydrology Study may be required and will be reviewed to the satisfaction of the City Engineer prior to the issuance of building permits. The proposed subdivision is straightforward and does not pose any Planning related concerns.

The applicant will be required to complete public improvements including but not limited to sidewalk, curb, and gutter as required by the Engineering Department. The proposed subdivision is located within an area serviced by City water and sewer. Therefore the required lots will be required to connect to City water and sewer.

Development Standard	Zoning Ordinance	Proposed Map
Minimum Lot Width	100'	103' or more
Minimum Lot Depth	150'	196' or more

Environmental Review

The proposed tract map was determined to constitute a "project" under the California Environmental Quality Act (CEQA). An Initial Study was prepared. The Initial Study found that although implementation of the proposed project may have significant impacts on the environment, mitigation measures have been applied which reduce potential impacts to a less than significant level. A Mitigated Negative Declaration is proposed.

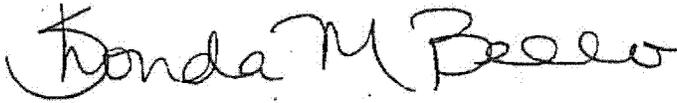
Planning Commission Action

The Planning Commission considered the proposed tract map at its meeting of December 7, 2004. The Planning Commission considered all testimony, and voted to recommend approval of the proposed project by the City Council, based on the findings, and contingent on the Conditions of Approval attached to this staff report.

STRATEGIC PLAN INTEGRATION: The proposed tract map is consistent with the City Council strategic plan relating to "Economic Development" (Strategy 1), in that development of the subdivision is expected to contribute to achieving a stable and diversified economy within the community.

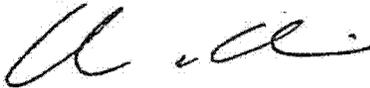
FISCAL DATA: The construction of the proposed tract will generate revenues to the City in the form of property and sales tax, which will help offset the provision of services to the project's residents.

PREPARED BY:



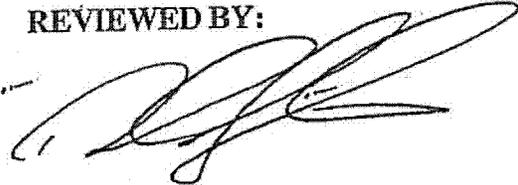
Shonda M. Bello
Contract Planning Technician

RECOMMENDED BY:



Oscar W. Orci
Community Development Director

REVIEWED BY:



Randy Anstine
City Manager

- Attachments: Exhibit "1" – Conditions of Approval
Exhibit "2" – Assessor's Map
Exhibit "3" - TTM 33013
Exhibit "4" - TTM 33013 (Large version under separate cover)
Exhibit "5" – Initial Study and Mitigation Monitoring Program

**CONDITIONS OF APPROVAL
TENTATIVE PARCEL MAP 33013
APN 538-272-001**

PLANNING DEPARTMENT:

1. Approval of Tentative Tract Map 33013 shall be for a period of two (2) years from the date of City Council approval; the expiration date is January 11, 2007. All Conditions of Approval must be met on or before the expiration date, or, the applicant must request an extension of time at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.
2. The development of the property shall provide for no more than 6 lots as illustrated by Tentative Tract Map 33013. The design of all lots within the subdivision shall meet the minimum property development requirements of the RA Zone District outlined in the City's Municipal Code.
3. Prior to the issuance of any building permits associated with the development of any of the parcels comprising TTM 33013, "typical" building elevations shall be submitted to the Planning Department for design review and approval, in accordance with the provisions and requirements of Article 16E of the Banning Ordinance Code.
4. The applicant shall install slate, concrete, tile, clay tile, or equal roofing material approved by the Planning and Fire Department on all units within the subject property.
5. A 6' high decorative boundary wall shall be constructed along the northern and eastern tract boundary (the north and east sides of lot 1, and along the east side of lots 2, 3, 4, and 6.)
6. Prior to the issuance of a Certificate of Occupancy for any single-family residence constructed within TTM# 33013 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):
 - 1) Interior lot – 2 trees; one 24" box, one 15-gallon
 - 2) Corner lot – 3 trees; two 24" box, one 15-gallon

Said 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 Certificate of Occupancy (landscape and irrigation plans should be submitted as soon as possible to allow sufficient time for a Landscape Architect to review same).

7. Applicant shall pay all development fees adopted by the City in effect at the time of issuance of any building permits, which shall include but not be limited to: police and fire safety developer fees, water and sewer fees, park land dedication fees, and electric meter installation fees. Project proponent shall provide written evidence to the City that school mitigation fees have been paid or other arrangements acceptable to the Banning Unified School District have been met.
8. Prior to the issuance of any Building Permits, the project proponent shall submit to the City's Building Department a complete hydrology and seismic study conducted by a registered Engineering Geologist.
9. A six (6)-foot chain link fence must be maintained around the perimeter of the site during all phases of construction.
10. Developer shall meet all requirements of responsible agencies, including but not limited to: Southern California Gas Company, and Southern California Edison Company.

ENGINEERING DIVISION:

A. STREET IMPROVEMENTS

1. Dedicate the necessary right-of-way along the entire Westward Avenue fronting the proposed Subdivision to the City of Banning, making a half-street width of 40' north of the Westward Avenue centerline.
2. Dedicate the necessary right-of-way along the entire frontage of 22nd Street to the City of Banning, making a half-street width of 40' east of the 22nd Street centerline.
3. A 10' wide easement for equestrian trail purposes must be recorded as easements across each individual lot, and shall be shown on the map. The developer shall participate in the Landscape Maintenance District for the maintenance of said equestrian easement.

4. Submit Street Improvement Plans, prepared by a licensed Engineer, to the Engineering Division and construct street improvements along Westward Avenue and 22nd Street, consisting of A.C. pavement, sidewalk (meandering along Westward Avenue), curb, gutter, driveway approaches, handicap access ramps, streetlights, landscaping, striping and all required street signs, per the City of Banning's Public Works Standard Specifications. Construct a 20' wide driveway approach to the alley located east of 22nd Street and north of the proposed project. Westward Avenue and 22nd Street may require a full 1½" A.C. overlay from curb to curb. Curb returns shall have a 35' radius as per the plans approved by the City Engineer.
5. An automatic sprinkler system shall be installed within any landscaped open space areas, including between the sidewalk and the tract boundary at the right-of-way line, along Westward Avenue and 22nd Street.
6. Streetlights along all streets shall be installed offset of the existing streetlights already surrounding the proposed development, per the approved Street Improvement Plans.
7. The Developer shall ensure that the property owners acknowledge the fact that they are responsible for the maintenance of landscape within the public right-of-way and any open space areas within the development's boundary.
8. The Developer shall design and construct the electrical system and contact the City of Banning, Electric Division to obtain comments, and will submit all necessary plans for their approval.

B. WATER

1. There are existing waterlines on 22nd Street and Westward Avenue that the Developer shall connect the water service to. Provide detailed drawings of the water connections to the Engineering Division.
2. Fire hydrants shall be installed as per the approved plans and Fire Department requirements, and at a 300' maximum spacing.

C. SEWER

1. There are existing sewer mains on 22nd Street and Westward Avenue that the Developer shall connect the sewer service to. Provide detailed drawings of the sewer connections to the Engineering Division.
2. 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.

D. DRAINAGE

1. The property's street and lot grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage area, outlet points and outlet conditions; otherwise, a drainage easement shall be obtained from the affected property owners for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the City of Banning and District for review prior to the recordation of the final map.
2. Submit drainage/hydrology study calculations and a hydraulic analysis for both developed and undeveloped (existing) conditions per the Riverside County Flood Control and Water Conservation District Hydrology Manual to the City of Banning for review and approval. All of the drainage from each individual lot shall drain into the public right-of-way and not impact surrounding properties, or a drainage easement acceptance letter from the adjacent landowner must be obtained.
3. The 10-year storm flow shall be contained within the curb and the 100-year storm flow shall be contained within the street right-of-way. When either of these criteria is exceeded, additional drainage facilities shall be installed.
4. File a Notice of Intent, obtain a NPDES Construction Activity General Permit from the State, Regional Water Quality Control Board, prepare a Storm Water Pollution Prevention Plan (SWPPP) and submit a copy of each to the Engineering Division. Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements to reduce storm water runoff during construction and thereafter. Temporary erosion control measures shall be implemented immediately following rough grading to prevent deposition of debris into downstream properties or drainage facilities.

E. BONDINGS

1. Amount of bonding of public improvements shall be as follows:

Faithful Performance Bond	100% of Estimated Cost
Labor and Material Bond	100% of Estimated Cost
Monumentation Bond.....	\$15,000.00

The amounts shall be on file in the City Clerk's Office prior to the Final Tract Map going to City Council for approval.

2. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

F. FEES

1. The Developer shall pay all the required fees to exonerate the liens currently listed against the property.
2. A Plan Check fee for Final Map review and all Improvement plans for the proposed subdivision shall be paid prior to plan checking proceedings in accordance with the Fee Schedule in effect at the time the fees are paid.
3. The Public Works Inspection fee shall be paid prior to the Final Map going to the City Council for approval in accordance with the Fee Schedule in effect at the time the fees are paid. Public Works permits are required prior to construction within the public right-of-way.
4. Water and Sewer Connection fees, Frontage and Water Meter Installation charges shall be paid on a per lot 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 the fees are submitted, prior to plan checking proceedings.
5. A Plan Storage fee shall be paid prior to approval of Final maps and Improvement plans in accordance with the Fee Schedule in effect at the time the fee is paid.
6. A Traffic Signal Mitigation fee and any other applicable fees (TUMF, MSHCP, etc.) shall be paid on a per lot basis, prior to the issuance of building permits, for each lot within this subdivision.

F. IMPROVEMENT PLANS AND FINAL MAP

1. If applicable, Improvement Plans for the proposed subdivision shall be prepared as a separate set of drawings for each of the following categories:
 - a) Rough Grading
 - b) Street
 - c) Drainage/Storm Drain
 - d) Water and Sewer
 - e) Precise Grading and Plot
 - f) Electrical
 - g) Striping
 - h) Landscaping

2. Construct all proposed improvements in accordance with the approved Improvement Plans and the City of Banning Standard Specifications for the proposed tract.
3. Street Improvement Plans for the proposed subdivision shall be supplemented with a soil and geology report prepared by a licensed engineer for street structural section design.
4. Submit a Rough and Precise Grading Plan to the City for review and approval. All of the grading shall conform to the latest edition of the Uniform Building Code (U.B.C.) and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soil analysis report prepared by a licensed engineer, along with a Grading plan.
5. The Developer shall remove and replace any areas of existing improvements that are or may become damaged during any phase of construction, as determined by the City's Public Works Inspector. A Public Works Permit shall be obtained prior to the commencement of any work within the City right-of-way. The contractor working within the right of way must submit proof of a Class "A" State Contractor's License, City of Banning Business License and liability insurance.
6. All street centerline monument ties shall be submitted to the Engineering Division.
7. Submit a copy of the Title Report and recorded easements to the Engineering Division.
8. All plans, including grading plans, shall be drawn on 24" x 36" Mylar, and also provided on an Autocad diskette to the Engineering Division.
9. Closure calculations, vesting deeds and title report and record maps of adjoining properties shall accompany the Final Map.
10. The original drawings shall be revised to reflect As-Built conditions by the Design Engineer prior to final acceptance of the work by the City. Water service lines, water meters, sewer laterals and electric, irrigation lines, etc., within the street right of way and 5' outside of the street right of way shall be shown on the As-Built Water/Sewer Plans. Construction plans for gas, telephone, electric and cable TV etc., shall be submitted to the City for records.
11. A small index map shall be included on the title sheet of each set of plans, showing the overall layout of the public improvements.

12. A map of the proposed subdivision drawn to scale 1" = 200', showing the outline of streets and street names, shall be submitted to the City to update the City wall atlas map.
13. An original Mylar of the Final Map (after it is recorded) shall be provided to the City for the City's map files.
14. Street name signs and traffic control devices shall be relocated or installed as required per the approved plans and City of Banning Standard Specifications.
15. Contact all affected agencies and obtain the necessary approvals with regards to the proposed development. Submit copies of correspondence with the agencies to the Engineering Division.
16. Submit improvement plans to all affected utilities including the Gas Company, Time Warner, Verizon, etc. Provide copies of all such correspondence to the Engineering Division.
17. Prepare all of the necessary environmental documents and checklist form (Appendix "G") to conform with all of the requirements of the California Environmental Quality Act (CEQA). Submit copies of all documents to the Engineering Division, for review and approval.

H. CONSTRUCTION AND MAINTENANCE OF PUBLIC IMPROVEMENTS

1. All required water lines and fire hydrants shall be installed and made operable before any building permits for framing are issued. This may be done in phases, if the construction work is in progress, for emergency vehicles.
2. Vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.
3. All precautions shall be taken to prevent washouts, undermining and subsurface ponding, caused by rain or runoff, to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Developer.
4. All required public improvements for each tract shall be completed, tested and approved by the Engineering Division prior to the issuance of any Certificate of Occupancy for such tract.

5. Sewer laterals shall be maintained by individual property owners in accordance with the existing City policy.
6. A standard agreement for Construction of Public Improvements for the proposed subdivision shall be executed prior to Final Map approval.

FIRE DEPARTMENT:

1. FIRE DEPARTMENT DEVELOPER FEES:

Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.

Residential Dwelling Units - \$543.00 per unit +
\$ 5.00 per unit Disaster Planning

Plan Check & Inspection - \$ 42.00 per unit

2. CITY OF BANNING BUSINESS LICENSE AND PROOF OF INSURANCE:

All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

3. CODE COMPLIANCE:

All Plans, Specifications and Construction shall comply with and conform to the current edition of the Uniform Fire Code (UFC), Uniform Building Code (UBC), and other state and local laws as applicable.

4. FIRE HYDRANTS:

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.

All hydrants must be installed, working and inspected by the Public Works Department before any combustible materials can be placed at the worksite.

Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards (maximum 300 feet between hydrants).

Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.

The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

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.

5. WATER SUPPLY:

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)

6. PREMISES IDENTIFICATION:

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.

Residential - 3-1/2" mm. Size

7. SPARK ARRESTORS:

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.

8. INSPECTIONS:

Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

Fee for each inspection is \$42.00 per hour per person. Exception, residential inspections are \$21.00 per unit per person.

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.

TTM 33013
EXTENSION

MAP TTM 33013

EXHIBIT “3”

RESOLUTION NO. 2008-14

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA, SUPPORTING THE DISPLAY OF THE
POW/MIA FLAG**

WHEREAS, in honor of the nation, and in recognition of state and local government, the City of Banning regularly displays flags on and around City facilities; and

WHEREAS, over two thousand Americans, six hundred fifty from this state, who served in the United States armed forces during the war in Indochina are still listed as prisoners of war or missing in action; and

WHEREAS, this nation is deeply indebted to its servicemen and servicewomen of all wars and conflicts for their courage and sacrifice, and should demonstrate its special commitment to the missing men, women and their families by obtaining the release of those still held prisoner of war and the fullest possible accounting from the responsible governments regarding those Americans listed as missing in action; and

WHEREAS, the Prisoner of War/Missing in Action (POW/MIA) flag is a powerful symbol of the plight of these prisoners of war and missing Americans and reminds the public of the commitment this nation must have in determining the fate of its servicemen and servicewomen.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of the City of Banning has determined it is appropriate that the POW/MIA flag should be displayed at certain public buildings throughout the City to increase public awareness of the issue of prisoners of war and those missing in action and to gain public support for the efforts of the United States government to resolve this matter; and

NOW, THEREFORE BE IT FURTHER RESOLVED that the City Council of the City of Banning adopts the protocol for the display of the POW/MIA flag as described in "Exhibit A" attached hereto.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2008.

Brenda Salas, Mayor

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

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City Council of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-14 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

PROTOCOL FOR DISPLAY OF THE POW/MIA FLAG

In flying the flag from one flag pole, the POW/MIA flag is flown directly below the United States flag and above any state flag.

If flying the United States flag, POW/MIA and State flags from two poles, the POW/MIA flag should be flown from the same pole as the United States flag, with the state flag flying from the pole to the left.

If flying flags from three poles, the National Colors occupy the place of prominence (the right), with the POW/MIA flag immediately to the left of the United States flag, and the state flag to the left of the POW/MIA flag.

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Resolution No. 2008-17, "Approving the Reimbursement Agreement for Transportation Uniform Mitigation Fee (TUMF) Program Funds with the Western Riverside Council of Governments (WRCOG) for Project No. 2006-05, 'Sunset Avenue Grade Separation.'"

RECOMMENDATION:

- I. Adopt Resolution No. 2008-17, "Approving the Reimbursement Agreement for Transportation Uniform Mitigation Fee (TUMF) Program Funds with the Western Riverside Council of Governments (WRCOG) for Project No. 2006-05, 'Sunset Avenue Grade Separation.'"
- II. Authorize the Mayor to execute the Reimbursement Agreement with WRCOG, attached herewith as Attachment "A".

JUSTIFICATION: It is essential for the City Council to authorize the execution of the Reimbursement Agreement from WRCOG in order to obtain and utilize the Transportation Uniform Mitigation Fee funds for Project No. 2006-05, "Sunset Avenue Grade Separation."

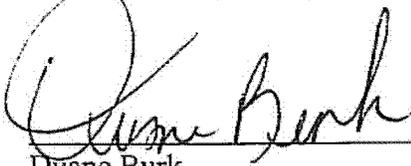
BACKGROUND: The City has initiated the design of the Sunset Avenue grade separation to pass underneath the existing Union Pacific Railroad (UPRR) tracks. In doing so, it will provide the City with a third access route between the north and south sides of the City, which will enhance access for emergency vehicles and residents. Completion of the project will also improve reliability, throughput, and trade access around an area of rapid commercial and residential development.

The TUMF Program is funded by new development fees paid in Western Riverside County, with the purpose of funding infrastructure improvements for regional projects as well as local projects within the city. WRCOG identifies and designates certain infrastructure improvement projects throughout Western Riverside County as projects of regional importance, and approves projects within the city that utilize TUMF funds. WRCOG has recently programmed \$4.2 million in TUMF funding for the Sunset Avenue Grade Separation project, based on the study.

FISCAL DATA: The estimated total cost for this project is \$36.5 million. The proposed TUMF contribution to be provided by WRCOG is \$4.2 million, which was adopted June 22, 2007 as part of the 2008 Pass Cities TUMF Zone Transportation Improvement Program, and the approved programming summary is attached as Attachment "B". The City of Banning has already secured a \$7.5 million grant through the Riverside County Transportation Commission's

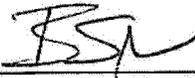
"Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU)" program and has applied for a total of \$25 million in additional funding through the California Transportation Commission, the Riverside County Transportation Commission, and the California Public Utilities Commission. Results of these competitive grant requests have not yet been announced.

RECOMMENDED BY:



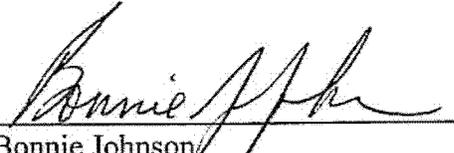
Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

RESOLUTION NO. 2008-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE REIMBURSEMENT AGREEMENT FOR TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM FUNDS WITH THE WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS (WRCOG) FOR PROJECT NO. 2006-05, "SUNSET AVENUE GRADE SEPARATION"

WHEREAS, the City of Banning plans to design and reconstruct Sunset Avenue to pass underneath the existing Union Pacific Railroad (UPRR) tracks, improving access between the north and south sides of the city; and

WHEREAS, the City of Banning is eligible to receive Transportation Uniform Mitigation Fee (TUMF) funding for street infrastructure projects, through the Western Riverside Council of Governments (WRCOG); and

WHEREAS, the City has obtained preliminary approval for \$4.2 million in TUMF funding from the WRCOG for Project No. 2006-05, "Sunset Avenue Grade Separation", per the adopted 2007/2008 Pass Zone Transportation Improvement Program (TIP); and

WHEREAS, it is essential for the City of Banning to enter into a Reimbursement Agreement with WRCOG in order to accept and utilize TUMF programmed funds.

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

Section I. The new Agreement to Reimburse TUMF Funds, as attached herewith as Attachment "A", is approved.

Section II. Authorization is hereby granted for the Mayor to execute said Agreement.

Section III. Said authorization shall be rescinded if the parties do not execute the Agreement within ninety (90) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 12th day of February, 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 the foregoing Resolution No. 2008-17 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of February, 2008.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT "A"

**WRCOG REIMBURSEMENT AGREEMENT
FOR TUMF-FUNDED PROJECTS**

TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

MODEL AGREEMENT TO REIMBURSE TUMF FUNDS

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2008, by and between the WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS ("WRCOG") and the City of Banning (the "AGENCY"). WRCOG and the AGENCY are sometimes collectively referred to herein as the "PARTIES".

RECITALS

A. WRCOG is the Administrator of the Transportation Uniform Mitigation Fee Program of Western Riverside County ("TUMF Program").

B. WRCOG has identified and designated certain transportation improvement projects throughout Western Riverside County as projects of regional importance ("Qualifying Projects" or "Projects"). The Qualifying Projects are more specifically described in that certain WRCOG study entitled "TUMF Nexus Study".

C. The TUMF Program is funded by TUMF fees paid by new development in Western Riverside County (collectively, "TUMF Program Funds"). TUMF Program Funds are held in trust by WRCOG for the purpose of funding the Qualifying Projects.

D. The AGENCY proposed to implement a Qualifying Project, and it is the purpose of this Agreement to identify the Project and to set forth the terms and conditions by which WRCOG will financially assist the AGENCY.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the PARTIES hereby agree as follows:

1. Description of the Qualifying Project. This Agreement is intended to distribute TUMF Program Funds to the Agency for the **Sunset Avenue Grade Separation**, (the "Project"), a Qualifying Project. A description of the Project, its implementation schedule, a detailed scope of work and the AGENCY's estimated project cost thereof, is more particularly described in Exhibit "A" attached hereto and, pursuant to Section 19 below, is subject to modification as requested by the Agency and approved by WRCOG. It is understood and agreed that the City shall expend TUMF Program Funds only as set forth in the Agreement and only for the Project. To this end, any use of the funds provided pursuant to this Agreement shall be subject to the review and approval of WRCOG.

2. WRCOG Funding Amount. WRCOG hereby agrees to distribute to AGENCY, on the terms and conditions set forth herein, a sum not to exceed **four million, two hundred thousand (\$4,200,000)**, to be used for reimbursing the AGENCY for eligible project expenses as described in Section 3 herein ("Funding Amount"). The PARTIES acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the PARTIES acknowledge and agree that WRCOG shall not be obligated to contribute TUMF Program Funds in excess of the maximum TUMF share identified in the TUMF Nexus Study ("Maximum TUMF Share").

3. Project Costs Eligible for Advance/Reimbursement. The total Project costs ("Total Project Cost") may include the following items, provided that such items are included in the scope of work attached as Exhibit "A": (1) AGENCY and/or consultant costs associated with direct Project coordination and support; (2) funds expended in preparation of preliminary engineering studies; (3) funds expended for preparation of environmental review documentation for the Project; (4) all costs associated with right-of-way acquisition, including right-of-way engineering, appraisal, acquisition, legal costs for condemnation procedures if authorized by the AGENCY, and costs of reviewing appraisals and offers for property acquisition; (5) costs reasonably incurred if condemnation proceeds; (6) costs incurred in the preparation of plans, specifications, and estimates by AGENCY or consultants; (7) AGENCY costs associated with bidding, advertising and awarding of the Project contracts; (8) construction costs, including change orders to construction contract approved by the AGENCY; and (9) construction management, field inspection and material testing costs.

4. Ineligible Project Costs. The Total Project Cost shall not include the following items which shall be borne solely by the AGENCY without reimbursement: (1) AGENCY administrative costs; (2) AGENCY costs attributed to the preparation of invoices, billings and payments; (3) any AGENCY fees attributed to the processing of the Project; and (4) expenses for items of work not included within the scope of work in Exhibit "A".

5. Procedures for Distribution of TUMF Program Funds to AGENCY.

(a) Initial Payment by the AGENCY. The AGENCY shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the AGENCY shall submit invoices to WRCOG requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed contractor invoices, or other demands for payment addressed to the AGENCY, and documents evidencing the AGENCY's payment of the invoices or demands for payment. Documents evidencing the AGENCY'S payment of the invoices shall be retained for three (3) years and shall be made available for review by WRCOG. The AGENCY shall submit invoices not more often than monthly and not less often than quarterly.

(b) Review and Reimbursement by WRCOG. Upon receipt of an invoice from the AGENCY, WRCOG may request additional documentation or explanation of the Project costs for which reimbursement is sought. Undisputed amounts shall be paid by WRCOG to the AGENCY within thirty (30) days. In the event that WRCOG disputes the eligibility of the AGENCY for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process is unsuccessful in

resolving the dispute, the AGENCY may appeal WRCOG's decision as to the eligibility of one or more invoices to WRCOG's Executive Director. The AGENCY may appeal the decision of the Executive Director to the full WRCOG Board, the decision of which shall be final. Additional details concerning the procedure for the AGENCY's submittal of invoices to WRCOG and WRCOG's consideration and payment of submitted invoices are set forth in Exhibit "B", attached hereto.

(c) Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to the AGENCY in an amount in excess of the maximum eligible TUMF share of the Project, as determined by the TUMF Nexus Study, or has provided reimbursement of ineligible Project costs, the AGENCY shall reimburse WRCOG for the excess or ineligible payments within 30 days of notification by WRCOG.

6. Increases in Project Funding. The Funding Amount may, in WRCOG's sole discretion, be augmented with additional TUMF Program Funds if the TUMF Nexus Study is amended to increase the maximum eligible TUMF share for the Project. Any such increase in the Funding Amount must be approved in writing by WRCOG's Executive Director. In no case shall the amount of TUMF Program Funds allocated to the AGENCY exceed the then-current maximum eligible TUMF share for the Project. No such increased funding shall be expended to pay for any Project already completed. For purposes of this Agreement, the Project or any portion thereof shall be deemed complete upon its acceptance by WRCOG's Executive Director.

7. No Funding for Temporary Improvements. Only segments or components of the Program that are intended to form part of or be integrated into the Project may be funded by TUMF Program Funds. No improvement which is temporary in nature, including but not limited to temporary roads, curbs, or drainage facilities, shall be funded with TUMF Program Funds except as needed for staged construction of the Project.

8. AGENCY's Funding Obligation to Complete the Project. In the event that the TUMF Program Funds allocated to the Project represent less than the total cost of the Project, the AGENCY shall provide such additional funds as may be required to complete the Project as described in Exhibit "A".

9. AGENCY's Obligation to Repay TUMF Program Funds to WRCOG. In the event that: (i) the AGENCY, for any reason, determines not to proceed with or complete the Project; or (ii) the Project is not timely completed, subject to any extension of time granted by WRCOG pursuant to the terms of this Agreement; the AGENCY agrees that any TUMF Program Funds that were distributed to the AGENCY for the Project shall be repaid in full to WRCOG. The Parties shall enter into good faith negotiations to establish a reasonable repayment schedule and repayment mechanism.

10. Term/Notice of Completion. The term of this Agreement shall be from the date first herein above written until: (i) the date WRCOG formally accepts the Project as complete, pursuant to Section 6; (ii) termination of this Agreement pursuant to Section 14; or (iii) the AGENCY has fully satisfied its obligations under this Agreement. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement.

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11. Representatives of the Parties. WRCOG's Executive Director, or his or her designee, shall serve as WRCOG's representative and shall have the authority to act on behalf of WRCOG for all purposes under this Agreement. The AGENCY hereby designates Duane Burk, Director of Public Works, or his or her designee, as the AGENCY's representative to WRCOG. The AGENCY's representative shall have the authority to act on behalf of the AGENCY for all purposes under this Agreement and shall coordinate all activities of the Project under the AGENCY's responsibility. The AGENCY shall work closely and cooperate fully with WRCOG's representative and any other agencies which may have jurisdiction over or an interest in the Project.

12. Expenditure of Funds by AGENCY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the AGENCY from expending funds on the Project prior to the execution of the Agreement, or from being reimbursed by WRCOG for such expenditures. However, the AGENCY understands and acknowledges that any expenditure of funds on the Project prior to the execution of the Agreement is made at the AGENCY's sole risk, and that some expenditures by the AGENCY may not be eligible for reimbursement under this Agreement.

13. Review of Services. The AGENCY shall allow WRCOG's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met.

14. Termination.

(a) Notice. Either WRCOG or AGENCY may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30 day period to cure any alleged breach. During the 30 day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

(b) Effect of Termination. In the event that the AGENCY terminates this Agreement, the AGENCY shall, within 180 days, repay to WRCOG in full all TUMF Program Funds provided to the AGENCY under this Agreement. In the event that WRCOG terminates this Agreement, WRCOG shall, within 90 days, distribute to the AGENCY TUMF Program Funds in an amount equal to the aggregate total of all unpaid invoices which have been received from the AGENCY regarding the Project at the time of the notice of termination; provided, however, that WRCOG shall be entitled to exercise its rights under Section 5(b), including but not limited to conducting a review of the invoices and requesting additional information. This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due it hereunder.

(c) Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

15. Prevailing Wages. The AGENCY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The AGENCY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The AGENCY shall defend, indemnify, and hold harmless WRCOG, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys, fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

16. Progress Reports. WRCOG may request the AGENCY to provide WRCOG with progress reports concerning the status of the Project.

17. Indemnification.

(a) AGENCY Responsibilities. In addition to the indemnification required under Section 16, the AGENCY agrees to indemnify and hold harmless WRCOG, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors. The AGENCY will reimburse WRCOG for any expenditures, including reasonable attorneys' fees, incurred by WRCOG, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the AGENCY.

(b) WRCOG Responsibilities. WRCOG agrees to indemnify and hold harmless the AGENCY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of WRCOG or its sub-consultants. WRCOG will reimburse the AGENCY for any expenditures, including reasonable attorneys' fees, incurred by the AGENCY, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of WRCOG.

(c) Effect of Acceptance. The AGENCY shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Project. WRCOG's review, acceptance or funding of any services performed by the AGENCY or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights WRCOG may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the AGENCY shall be and remain liable to WRCOG, in accordance with applicable law, for all damages to WRCOG caused by the AGENCY's negligent performance of this Agreement or supervision of any services provided to complete the Project.

18. Insurance. The AGENCY shall require, at a minimum, all persons or entities hired to perform the Project to obtain, and require their subcontractors to obtain, insurance of the

types and in the amounts described below and satisfactory to the AGENCY and WRCOG. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.

(a) Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

(i) Name WRCOG and AGENCY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

(ii) Be primary with respect to any insurance or self insurance programs covering WRCOG and AGENCY, and/or their respective officials, officers, employees, agents, and consultants; and

(iii) Contain standard separation of insured provisions.

(b) Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

(c) Professional Liability Insurance. Errors and omissions liability insurance with a limit of not less than \$1,000,000.00 Professional liability insurance shall only be required of design or engineering professionals.

(d) Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

19. Project Amendments. Changes to the characteristics of the Project, including the deadline for Project completion, and any responsibilities of the AGENCY or WRCOG may be requested in writing by the AGENCY and are subject to the approval of WRCOG's Representative, which approval will not be unreasonably withheld, provided that extensions of time for completion of the Project shall be approved in the sole discretion of WRCOG's Representative. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

20. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the AGENCY or WRCOG, during the term of his or her service with the AGENCY

or WRCOG, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

21. Limited Scope of Duties. WRCOG's and the AGENCY's duties and obligations under this Agreement are limited to those described herein. WRCOG has no obligation with respect to the safety of any Project performed at a job site. In addition, WRCOG shall not be liable for any action of AGENCY or its contractors relating to the condemnation of property undertaken by AGENCY or construction related to the Project.

22. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least four (4) years following termination of this Agreement, and they shall have access to such information during the four-year period for the purposes of examination or audit.

23. Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

25. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

26. Time of Essence. Time is of the essence for each and every provision of this Agreement.

27. Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

28. Public Acknowledgement. The AGENCY agrees that all public notices, news releases, information signs and other forms of communication shall indicate that the Project is being cooperatively funded by the AGENCY and WRCOG TUMF Program Funds.

35. Contract Amendment. In the event that the Parties determine that the provisions of this Agreement should be altered, the Parties may execute a contract amendment to add any provision to this Agreement, or delete or amend any provision of this Agreement. All such contract amendments must be in the form of a written instrument signed by the original signatories to this Agreement, or their successors or designees.

36. Independent Contractors. Any person or entities retained by the AGENCY or any contractor shall be retained on an independent contractor basis and shall not be employees of WRCOG. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the AGENCY or contractor, whichever is applicable. The AGENCY or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The AGENCY or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

37. Effective Date. This Agreement shall not be effective until executed by both parties. The failure of one party to execute this Agreement within forty-five (45) days of the other party executing this Agreement shall render any execution of this Agreement ineffective.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

WESTERN RIVERSIDE COUNCIL
OF GOVERNMENTS

CITY OF BANNING

By: _____
Rick Bishop
Executive Director

By: _____
Brenda Salas
Mayor

EXHIBIT A
SCOPE OF SERVICES

Sunset Avenue will be lowered about 20 feet at the tracks, 15 feet at the eastbound interchange ramps, and three feet at the westbound interchange ramps. Thus, the interchange ramps will be reconstructed to meet the new street grade. The change in grade of Sunset Avenue beneath the I-10 freeway bridge will be about 8' and involve modifications to the bridge. To accomplish the desired grade changes within the CALTRANS right-of-way, retaining walls will be constructed between the freeway bridge and the westbound ramps. Graded slopes will provide for the change in street grade for Sunset Avenue within the UPRR right-of-way and south of the railroad to Lincoln Street. The proposed railroad underpass bridge will be a pre-cast box girder design.

A 60" diameter storm drain will be installed to collect storm flows at the underpass bridge and deliver this drainage water south to a downstream outlet. Water, gas, and other existing and master planned utilities will be relocated or constructed. Traffic signals will be installed at the eastbound and westbound ramp termini with Sunset Avenue.

EXHIBIT A-1
ESTIMATE OF COST

Right-of-Way Allowance	\$ 1,530,000.00
Preliminary Engineering	\$ 1,440,000.00
Construction Engineering	<u>\$ 926,000.00</u>
Total Engineering	\$ 2,366,000.00
Bridge Construction	\$ 6,614,000.00
Railroad Work	\$ 3,320,000.00
Highway Approaches & Connections	\$15,456,880.00
Utility Relocation	\$ 545,000.00
Contingencies	\$ 6,638,120.00
Removing Existing Crossing	<u>\$ 30,000.00</u>
Total Construction Costs	<u>\$32,604,000.00</u>
 TOTAL PROJECT COST	 \$36,500,000.00

EXHIBIT A-2
PROJECT SCHEDULE

<u>Phase</u>	<u>Start</u> <u>(Mo./Yr.)</u>	<u>End</u> <u>(Mo./Yr.)</u>
Environmental	1/06	4/09
Design (PS&E)	1/06	5/09
Right-of-Way	5/09	12/09
Construction	12/10	6/12

**CITY COUNCIL AGENDA
CONSENT CALENDAR**

Date: February 12, 2008
TO: Honorable Mayor and City Council
FROM: Chris Paxton, Human Resources Director
SUBJECT: Classification Plan Amendment

RECOMMENDATION: Adopt Resolution No. 2008- 18 amending the City's Classification Plan to reflect new job classifications in accordance with approved budget authorizations and labor agreements. Approve by minute order those changes noted in attached "Exhibit A".

JUSTIFICATION: The City Council approved the City of Banning Classification and Compensation Plan on January 25, 2005. The plan has since been amended, most recently on June 26, 2007. Maintenance of this plan is a dynamic process in which Human Resources works continuously with operating departments to develop classifications which reflect the current needs of the department in their efforts to deliver quality services to residents. City Personnel Rules require that the City Council approve all changes to the City's Classification Plan. Council approval of this recommendation will meet the City's goal to provide top quality and reliable service to both internal and external customers and to ensure labor market competitiveness in both recruitment and retention.

BACKGROUND: As a result of recent labor negotiations with the General and Utility units, some changes were made to the City's Classification plan. Those changes are summarized in the attached "Exhibit A".

Additionally the City Council, at its meeting of October 9, 2007, approved a reorganization of the Police Department. That reorganization resulted in the creation of the new classification of Lead Public Safety Dispatcher.

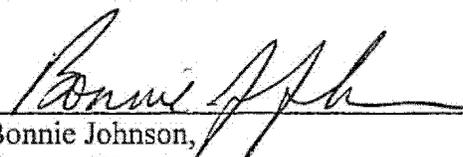
FISCAL DATA: There is no fiscal impact. This action merely approves the classification plan. Any anticipated costs are reflected in the City Council actions approving the Police Department reorganization and the Utility and General Unit MOUs.

RECOMMENDED BY:



Chris Paxton,
Human Resource Director

REVIEWED BY:



Bonnie Johnson,
Finance Director

APPROVED BY:



Brian Nakamura,
City Manager

Schedule of Proposed changes
Resolution 2008-18 with Classification and Compensation Plan

Exhibit A

<u>Existing Titles</u>	<u>Proposed Action</u>
1) Lead Public Safety Dispatcher	Add position per Resolution 2007-119
2) Water Crew Supervisor	Change Range from 56 to 58
3) Wastewater Collections System Supervisor	Change Range from 56 to 58
4) Auto Cad Technician	Change bargaining group from General to Utility
5) Information Systems Manager	Change to Information Technology Manager
6) Information Systems Coordinator	Change to Information Technology Coordinator
7) Information Systems/Media Technician	Change to Information Technology/Media Technician
8) Police Information Systems Technician	Change to Police Information Technology Technician

CITY OF BANNING
 CLASSIFICATION & COMPENSATION PLAN
 REVISED FEBRUARY 12, 2008 (RESOLUTION NO. 2008-18)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 - CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	109	Council Contract
	1005	Assistant City Manager	97	Contract
	1020	City Clerk/City Manager Secretary	55	Elected
Financial Services Group	1110	Finance Director/Assistant City Manager	97	Contract
	1130	Financial Services Specialist	45	IBEW-G
	1150	Accounting Manager	73	Mgmt/Conf
	1140	Accountant	52	General
	1160	Purchasing Manager	73	CBAM
	1165	Buyer	52	General
Human Resources Group	1210	Human Resources Director	83	Contract
	1220	Human Resources Analyst	60	Mgmt/Conf
	1225	Senior Human Resources Analyst (Recruitment & Benefit Manager)	68	Mgmt/Conf
	1240	Risk Management Analyst	60	CBAM
	1230	Human Resources Technician	52	Conf/Gen
Utility Billing Group	1310	Customer Services Manager	67	CBAM
	1340	Sr. Utility Billing Rep	46	IBEW-G
	1350	Utility Billing Representative	41	IBEW-G
Information/Cable Systems Group	1405	Information Technology Manager	73	CBAM
	1410	Information Technology Coordinator	57	IBEW-G
	1416	Police Information Technology Technician	57	IBEW-G
	1415	Info Technology/Media Technician	55	IBEW-G
	1510	Cable Services Specialist	42	IBEW-G
Office Support Group	1610	Executive Secretary	51	IBEW-G
	1620	Office Specialist	42	IBEW-G
	1630	Receptionist	29	IBEW-G

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2000 - POLICE SERIES

Police Group	2010	Police Chief	96	Contract
	2015	Deputy Police Chief	86	Police Mgmt/Conf
	2025	Police Lieutenant	82	Police Mgmt/Conf
	2030A	Police Staff/Master Sergeant	75	POA
	2030	Police Sergeant	68	POA
	2050	Police Officer	64	POA
	2060	Police Recruit/Trainee	N/A	At-Will
Police Support Group	2143	Lead Public Safety Dispatcher	54	IBEW-G
	2110	Public Safety Dispatcher	50	IBEW-G
	2120	Property & Evidence Specialist	48	POA
	2130	Community Services Officer	42	POA
	2140	Lead Police Records Specialist	43	IBEW-G
	2141	Police Records Assistant	31	IBEW-G

3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	3010	Community Development Director	88	Contract
	3021	Planning Engineer	72	CBAM
	3050	Senior Planner	75	CBAM
	3020	Associate Planner	64	CBAM
	3015	Assistant Planner	59	CBAM
	3026	Development Project Coordinator	56	IBEW-G
	3025	Planning Technician	54	IBEW-G
Economic/Redevelopment Group	3110	Redevelopment Director	84	Contract
	3115	Economic Development Manager	73	CBAM
	3103	Economic/Redevelopment Project Coordinator	56	IBEW-G
Development Services Group	3210	Development Services Manager (Building Official)	80	CBAM
	3215	Senior Building Inspector	65	IBEW-G
	3220	Building Inspector	60	IBEW-G
	3235	Senior Code Compliance Officer	59	IBEW-G
	3230	Code Compliance Officer	56	IBEW-G
	3240	Building Permit Specialist	53	IBEW-G

3300-COMMUNITY SERVICES GROUP

Community Services Group	3315	Recreation Director	78	Contract
	3325	Recreation Coordinator	49	IBEW-G
	3350	Lead Bus Driver/Trainer	53	IBEW-G
	3340	Bus Driver	45	IBEW-G

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4000-PUBLIC WORKS SERIES

Public Works Management Group	4010	Public Works Director	88	Contract
Streets/Parks Group	4210	Public Works Superintendent	77	CBAM
	4220	Streets/Parks Maintenance Manager	64	CBAM
	4230	Work Release Crew Leader	45	IBEW-G
	4240	Sr. Maintenance Worker	48	IBEW-G
	4250	Maintenance Worker	43	IBEW-G
	4260	Motor Sweeper Operator	48	IBEW-G
Engineering Group	4300	City Engineer	81	CBAM
	4350	Senior Civil Engineer (Water/Wastewater)	78	CBAM
	4320	Associate Civil Engineer	72	CBAM
	4325	Assistant Civil Engineer	64	CBAM
	4330	Public Works Inspector	60	IBEW-G
	4340	Engineering Services Assistant	46	IBEW-G
General Maintenance and Support Group	4410	Fleet Maintenance Manager	71	CBAM
	4425	Lead Fleet Maintenance Mechanic	54	IBEW-G
	4420	Fleet Maintenance Mechanic	51	IBEW-G
	4430	Building Maintenance Specialist	47	IBEW-G
	4440	Custodian	32	IBEW-G
	4450	Warehouse Services Specialist	50	IBEW-G

4100 WATER/WASTEWATER SERIES

	4101	Water/Wastewater Director	70	Contract
	4110	Assistant Public Utilities Director	81	CBAM
	4115	Public Utilities Superintendent	77	CBAM
	4120	Assistant Water Superintendent	65	IBEW-U
	4130	Water Crew Supervisor (Distribution Specialist)	58	IBEW-U
	4140	Water Services Worker	50	IBEW-U
	4145	Wastewater Collection System Technician	50	IBEW-U
	4150	Wastewater Collection System Specialist	52	IBEW-U
	4160	Water Crew Supervisor (Production Specialist)	58	IBEW-U
	4132	Water Valve Flushing Crew Lead	54	IBEW-U
	4133	Water Construction Crew Lead	54	IBEW-U
	4131	Water Meter Crew Lead	54	IBEW-U
	4155	Wastewater Collection System Supervisor	58	IBEW-U

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5000-ELECTRIC SERVICES SERIES

5001	Electric Services Director	96	Contract
5015	Electrical Systems Engineer	86	CBAM
5021	Power Contracts & Revenue Administrator	81	CBAM
5031	Sr. Electric Service Planner	77	IBEW-U
5030	Electric Service Planner	75	IBEW-U
5045	AutoCAD/GIS Technician	66	IBEW-U
5050	Public Benefits Coordinator	53	IBEW-U
5055	Utility Services Assistant	46	IBEW-U
5110	Electric Operations & Maintenance Manager	81	CBAM
5120	Powerline Crew Supervisor	77	IBEW-U
5130	Powerline Technician	73	IBEW-U
5140	Powerline Apprentice	65 / 71	IBEW-U
5150	Electric Services Worker	50	IBEW-U
1325	Field Service Representative	49	IBEW-U
5160	Electric Meter Test Technician	73	IBEW-U
5170	Apprentice Electric Meter Test Technician	65 / 71	IBEW-U

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RESOLUTION 2008-18

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
RESCINDING RESOLUTION NO. 2007-71 TO AMEND THE CLASSIFICATION
& COMPENSATION PLAN FOR THE CITY OF BANNING**

WHEREAS, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1:

The City Council adopts as its official Classification Plan the attached schedule setting forth all classifications of the City and their corresponding salary ranges.

PASSED, APPROVED, AND ADOPTED this 12th day of February, 2008.

Brenda Salas, Mayor
City of Banning, California

**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. 2008-18 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2008
TO: Honorable Mayor and City Council
FROM: Chris Paxton, Director of Human Resources
SUBJECT: IBEW-General Unit Memorandum of Understanding

RECOMMENDATION: Adopt Resolution No. 2008-20 approving a Memorandum of Understanding (MOU) with the IBEW-General Unit which covers General Unit Employees in all departments.

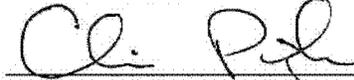
JUSTIFICATION: The City's most recent MOU with the IBEW-General Unit expired on September 30, 2007. A new MOU has now been negotiated.

BACKGROUND: With the expiration of its MOU with the IBEW-General Unit on September 30, 2007, the City entered into negotiations with IBEW.

After two months of negotiations under the provisions of the Myers-Milias-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 October 1, 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.

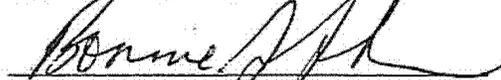
FISCAL DATA: The fiscal impact of this agreement over its three year term is \$1,178,600.00. The General Fund cost is approximately \$642,200.00. The necessary budgetary changes will be incorporated in the adjustments recommended as part of the mid-year budget review.

RECOMMENDED BY:



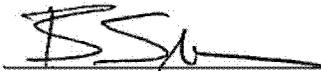
Chris Paxton
Director of Human Resources

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

Resolution 2008-20 with MOU

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RESOLUTION NO. 2008-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS GENERAL UNIT (IBEW-General Unit) AND THE CITY OF BANNING

WHEREAS, the City of Banning has recognized the International Brotherhood of Electrical Workers-General Unit (IBEW-General Unit) as the bargaining unit representing a group of its employees; and,

WHEREAS, the prior Memorandum of Understanding (MOU) between the City and IBEW-General Unit expired on September 30, 2007; and

WHEREAS, the City and IBEW-General Unit have successfully met and conferred under the Meyers-Miliias-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 12th day of February, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney

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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. 2008-20 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

MEMORANDUM OF UNDERSTANDING
THE CITY OF BANNING
AND
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL 47
GENERAL EMPLOYEES UNIT
October 1, 2007 through September 30, 2010

January 2008

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ARTICLE1-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 General 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 General 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:

Accountant
Building Permit Specialist
Building Inspector
Building Maintenance Specialist
Bus Driver
Bus Driver Lead/Trainer
Buyer
Cable Services Specialist
Code Compliance Officer
Custodian
Development Project Coordinator
Economic/Redevelopment Project Coordinator
Engineering Services Assistant

January 2008

Executive Secretary
Financial Services Specialist
Fleet Maintenance Mechanic
Information Technology Coordinator
Information Technology-Media Technician
Lead Fleet Maintenance Mechanic
Lead Police Records Specialist
Lead Public Safety Dispatcher
Maintenance Worker
Motor Sweeper Operator
Office Specialist
Police Information Technology Technician
Police Records Assistant
Public Safety Dispatcher
Public Works Inspector
Receptionist
Recreation Coordinator
Sr. Building Inspector
Sr. Code Compliance Officer
Sr. Maintenance Worker
Sr. Utility Billing Representative
Utility Billing Representative
Warehouse Services Specialist
Work Release 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 and the City's Police

Department, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Milias-Brown Act. Should an impasse be reached following such meet and confer sessions, the provisions of the Employer- Employee Relations Resolution (Resolution No. 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 Manager 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 shall not perform unit work except during the recruitment process for 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.

ARTICLE 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 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

9.1 After it has been executed by the parties, the City shall provide the Union with ten (10) 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 Public Safety Dispatchers. With respect to the classification of Public Safety Dispatcher, the employee may be assigned to any combination of hours and days for any workweek as necessary to provide continuous coverage in the Dispatch Division, according to work schedules assigned by the Police Chief, or his or her designee, who may utilize the provisions of the City's Administrative Policy A-30, i.e., the Alternative Workweek Policy, or otherwise as dictated by the needs of the Dispatch Division of the Police Department.

(a) For the classification of Public Safety Dispatcher working a scheduled ten (10) hour or twelve (12) hour day, all work performed in excess of such ten (10) hour or twelve (12) hour per day schedule shall be paid at the rate of one and one-half (1 ½) times the employee's regular hourly base rate of pay, providing the employee works in excess of forty (40) hours in one week.

(b) Public Safety Dispatchers scheduled by management of the Police Department to work on a holiday shall not be credited with a day off with pay but

shall receive eight (8) hours of holiday pay, plus an additional time and one-half for all hours worked.

11.3 Holiday Leave. When Holiday Leave is taken, the employee will be paid at the standard eight (8) hours per day, regardless of the assignment of a ten (10), twelve (12) or four (4) hour scheduled workday. When Holiday Leave is taken, an employee may utilize accrued Vacation and/or Compensatory Time hours to supplement the ten (10) hour or twelve (12) hour scheduled day, to provide for a complete ten (10) hour or twelve (12) hour shift when eight (8) hours of Holiday Leave is granted. When Vacation and/or Compensatory Time Off is taken, an employee may also utilize accrued Vacation and/or Compensatory Time hours to the extent necessary to provide for a complete one (1) hour or twelve (12) hour shift.

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, CERTIFICATE PAY, PREMIUM PAY, 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 14.3 below.

<u>Classification</u>	<u>Salary Range</u>
Accountant	52
Building Permit Specialist	53
Building Inspector	60
Building Maintenance Specialist	47
Bus Driver	45
Bus Driver Lead/Trainer	53
Buyer	52
Cable Services Specialist	42
Code Compliance Officer	56
Custodian	32
Development Project Coordinator	56
Economic/Redevelopment Project Coordinator	56
Engineering Services Assistant	46
Executive Secretary	51
Financial Services Specialist	45
Fleet Maintenance Mechanic	51
Information Technology Coordinator	57
Information Technology-Media Technician	55
Lead Fleet Maintenance Mechanic	54
Lead Public Safety Dispatcher	54
Lead Police Records Specialist	43
Maintenance Worker	43
Motor Sweeper Operator	48
Office Specialist	42
Police Information Technology Technician	57

Police Records Assistant	31
Public Safety Dispatcher	50
Public Works Inspector	60
Receptionist	29
Recreation Coordinator	49
Senior Building Inspector	65
Senior Code Compliance Officer	59
Senior Maintenance Worker	48
Senior Utility Billing Representative	46
Utility Billing Representative	41
Warehouse Services Specialist	50
Work Release Crew Lead	45

14.2 Certificate Pay (Public Safety Dispatchers) – The following sets forth the schedule for compensation for certificates attained by public safety dispatchers. Eligible employees shall receive 5% compensation for the first certificate and an additional 2.5% for each additional certificate up to a maximum additional compensation of 12.5%. Under no circumstances shall an eligible employee receive more than 12.5% in additional compensation for certificates. Eligible certifications:

POST Advanced Dispatcher
 Communications Training Officer
 Advanced Communications Training Officer

14.3- 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.

14.3 Bi-Lingual Premium - Employees who have been certified as being fluent in a language other than English, or sign language shall receive five percent (5%) premium pay, if the need for fluency is: (1) necessary for the current position, and (2) use of the language for compensation has been previously approved by the employee's supervisor and the Human Resources Director. Qualifications shall be based certification of a certifying authority selected by the City. Each employee shall be reviewed annually for bi-lingual pay as part of the annual evaluation. Authorization and continuation of premium pay shall be at the sole discretion of the City. Nothing contained herein shall preclude the City from requiring proficiency in a second language as a minimum job qualification for any future employee or position.

14.4 Trainer Premium (Public Safety Dispatchers) - Public Safety Dispatchers assigned as trainers shall receive additional premium compensation of \$2.00 (two dollars) per hour when working with an assigned trainee on an assigned shift.

14.5 Shift Differential Premium (Public Safety Dispatchers) - Public Safety Dispatchers who work between the hours of 11:00 pm and 5:00 am shall be paid a shift differential premium of \$1.50 (one dollar and fifty cents) per hour only for those hours worked between 11:00 pm and 5:00 am.

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 as provided for in the following schedule:

October 1, 2007 - September 30, 2008

Maximum 280 hours. All compensatory accrual banks with greater than 280 hours shall be frozen as of the effective date of this MOU and no additional comp time may be earned until the comp time balance decreases to less than 280 hours.

October 1, 2008 - September 30, 2009

Maximum 220 hours. All compensatory accrual banks with greater than 220 hours shall be frozen as of October 1, 2008 and no additional comp time may be earned until the comp time balance decreases to less than 220 hours.

October 1, 2009

Maximum 160 hours. All compensatory accrual banks with greater than 160 hours shall be frozen as of October 1, 2009 and no additional comp time may be earned until the comp time balance decreases to less than 160 hours.

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 – 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.

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.

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:

(a) The appropriate manager has placed the employee in on-call status by a notice in writing; and,

(b) 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,

(c) 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 14.5, constitute the placing of the employee in an on-call status.

ARTICLE 16 – TEMPORARY UPGRADE PAY AND PROMOTION PAY

16.1 – Temporary Upgrade. 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 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 # 47.

ARTICLE 17 - PAY FOR JURY DUTY & COURT APPEARANCES

17.1 Jury Duty - 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.

17.2 Court Appearances (Public Safety Dispatchers) - Represented employees shall be compensated for job related off-duty court appearances. The City will pay a minimum of 3 (three) hours for travel to and appearances in court at a rate of 1 ½ (one and one half) times the base rate of pay. All travel shall be calculated based on the time required to travel from the employee's work location to the destination. All hours required in excess of 3 (three) hours shall be compensated at 1 ½ (one and one half) times the base rate of pay.

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. This includes all field personnel in public works, streets, parks maintenance, transit, fleet maintenance, code enforcement and public safety dispatch. Other classifications may be added as the necessity for uniforms becomes apparent.

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.

18.4 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.

18.5 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.

18.6 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.

18.6.1 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.

18.6.2 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 and for meals as per the administrative policies of the City. (Currently A-8 for meals and E-1 for mileage).

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 "A" 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 - Conversion of sick leave will not be permitted. All represented employees may elect to receive a maximum buy-out of forty (40) hours each fiscal year of either sick leave or comp time or vacation, or a combination thereof, 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 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 City's Retiree Medical Savings Account. Such reimbursement to be computed based upon the employee's final compensation rate.

21.5 Bereavement - Non-probationary Unit members 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.

ARTICLE 22 - VACATION AND HOLIDAY ACCRUALS

22.1 Vacation Leave Accrual - 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 a maximum of three-hundred twenty (320) hours of vacation leave. If an employee has accumulated the maximum

allowed under this Article, said employee will receive no further Vacation Leave accruals until said employees 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 six (6) 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 22.6 above, shall be credited to each represented employee's account effective with the first payroll in each fiscal year. Accrued floating holiday hours may be taken in one hour increments.

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") for 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 non-probationary member of the bargaining unit 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 Tool Loan - Every member of the bargaining unit shall be entitled to participate in an interest free loan program for the purchase of mechanic shop tools. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. This loan cannot be used concurrently with any other City loan program.

25.4 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.

25.5 Security Deposit – Employees hired after the effective date of this MOU in any classification requiring issuance of a City uniform, computer or telephone equipment and/or keys will pay a refundable deposit of \$150.00 in increments of \$25.00 per payroll deduction and said deposit will be refunded to the employee after five (5) consecutive years of service. There shall be no interest payable on any such deductions made, or refundable deposit maintained. At the time of hire, in lieu of such payroll deductions, employees may elect to execute an agreement giving authorization to the City to deduct from the employee's last check, whether comprised of salary, accrual cash-out, or any combination thereof, the replacement cost value of the all City property which has not been returned to the City as of the date of the employee's last pay check.

25.6 Utility Allowance – Any represented employee who resides within the City shall receive a credit against the cost of electric and water service during the period of such residency according to the following schedule:

Beginning October 1, 2007	\$50.00 per month
Beginning October 1, 2008, increase to:	\$100.00 per month
Beginning October 1, 2009, increase to:	\$150.00 per month

25.7 Tool Reimbursement (Equipment Mechanic) - Employees in the position of Equipment Mechanic shall be entitled to a reimbursement of up to \$500 per year upon proof of purchase of tools for use in the performance of their duties. Such purchase shall have been previously approved by the supervisor.

ARTICLE 26 – IBEW RETIREE MEDICAL FUND

26.1 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 Of 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 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 or 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 Limits - The above time limits may be changed by mutual agreement.

28.9 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 Entire Agreement - This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

30.2 Items Not Covered - All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control.

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

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.

FOR THE CITY OF BANNING

Brenda Salas, Mayor City of Banning

FOR IBEW

Patrick Lavin, Bus. Manager IBEW #47

Stan Stosel, Asst. Bus. Mgr. IBEW #47

Ron Bengochea, Bus. Rep. IBEW #47

Gini Sorenson, Committee Member
IBEW #47

Steve Armitage, Committee Member
IBEW #47

Jacqueline Barnes, Committee Member
IBEW #47

Dated

January 2008

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: February 12, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Resolution No. 2008-21, "Approving the Projects and Funding Adjustment Request for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program"

RECOMMENDATION: Adopt Resolution No. 2008-21, "Approving the Projects for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program," and authorize staff to adjust original funding requests for City Council approved projects previously submitted to the Riverside County Economic Development Agency.

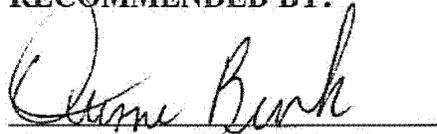
JUSTIFICATION: The approval of this resolution is essential in order to utilize the federally funded grant funds available through the Community Development Block Grant (CDBG) Fiscal Year 2008-09 Program.

BACKGROUND: The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG Program. On November 13, 2007 at its regular meeting, the City Council appointed a committee to review applications for Fiscal Year 2008-2009. On November 29, 2007 the committee met with the Public Works staff as well as all of the applicants and provided recommendations as shown as Exhibit "A". Please note that the total amount recommended by the committee for the service related projects amounted to \$45,000.00 (25% of the City's total eligible funds). On December 11, 2007, City Council approved Fiscal Year 2008-2009 Community Block Grant Project requests and applications were submitted to Riverside County Economic Development Agency.

In February of 2008, a representative from the Riverside County Economic Agency provided funding allocations for the City of Banning and recommended to staff the proposed fund distribution as per the Housing of Urban Development Requirements and Regulations as shown as Exhibit "B". The actual amount of funds being allocated for the said service related projects will be finalized by the County of Riverside Economic Development Agency and will be presented to the City Council for final approval at a later date.

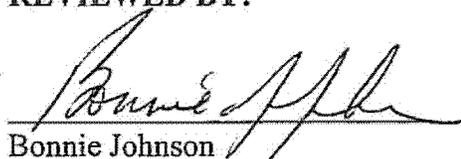
FISCAL DATA: The original estimated funding under the CDBG Fiscal Year 2008-09 Program is approximately \$180,000 and the approved funding allocation for the City of Banning is \$175,896.00. Upon approval of the City Council, the project funding adjustment requests will be submitted to the Riverside County Economic Development Agency. The final agreement is anticipated to be conveyed to the City by July, 2008.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROJECTS AND FUNDING ADJUSTMENT REQUESTS FOR FISCAL YEAR 2008-2009 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM

WHEREAS, the City of Banning has been submitting the applications for projects/activities under the Community Development Block Grant (CDBG) Program to the Riverside County Economic Development Agency annually; and

WHEREAS, on November 13, 2007 at its regular meeting, the City Council appointed a committee to review the applications and on November 29, 2007 the committee met with the Public Works staff as well as all of the applicants and provided recommendations; and

WHEREAS, on December 11, 2007, City Council approved Fiscal Year 2008-2009 Community Block Grant Project request and applications were submitted to Riverside County Economic Development Agency; and

WHEREAS, in February of 2008, a representative from the Riverside County Economic Agency provided funding allocations for the City of Banning and proposed funding distribution to staff as per the Housing of Urban Development Requirements and Regulations; and

WHEREAS, it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

NOW, THEREFORE, BE IT RESOLVED as follows:

Section I. Adopt Resolution No. 2008-21, approving the funding request adjustments on previously submitted and City Council approved projects/activities under the Fiscal Year 2008-2009 CDBG Program.

Section II. Authorize staff to submit funding request adjustments to the Riverside County Economic Development Agency for approval by their Board.

PASSED, ADOPTED AND APPROVED this 12th day of February, 2008.

Brenda Salas, Mayor

ATTEST:

Marie A. Calderon
City Clerk of the City of Banning

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

Burke, Williams & Sorenson, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-21, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008.

AYES:
NOES:
ABSTAIN:
ABSENT:

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

EXHIBIT "A"

**ORIGINAL PROJECT REQUEST AND AD-HOC COMMITTEE
RECOMMENDATIONS**

Requested Projects for FY 2008-2009
Community Development Block Grant (CDBG) Program

SERVICE RELATED PROJECTS

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 REQUESTED	AD-HOC RECOMMENDATION
1.	Alternatives to Domestic Violence	Shelter & Miscellaneous Services for Women and Children Impacted by Domestic Violence	\$10,000.00	0
2.	Banning Cultural Alliance	Youth Support	\$16,000.00	\$5,000.00
3.	Banning Library District	Equipment to Facilitate Community Meetings and Programs	\$17,800.00	\$5,000.00
4.	Banning Police Activities League	"At-Risk" Youth Programs Involving Sports Activities, Art Programs, and Community Participation	\$19,975.00	\$15,000.00
5.	Desert Hot Springs Community Task Force	Drug and Alcohol Abuse Youth Treatment Programs	\$10,000.00	0
6.	San Gorgonio Child Care Consortium	Providing Miscellaneous Services to Special Needs Children	\$30,000.00	\$15,000.00
7.	Soroptimist House of Hope	Residential 24 HR Substance Recovery	*\$6,680.00	\$5,000.00
8.	The Jitney Service	Providing Transportation Needs to the Seniors and Seniors with Disabilities	\$87,963.79	0
	Totals		\$198,418.79	**\$45,000.00

*\$5,850 will be requested from Desert Hot Springs bringing their total request above the \$10,000.00 minimum.

**The amount recommended herein is approximately 25% of the total allocation.

**Requested Project for FY 2008-2009
Community Development Block Grant (CDBG) Program**

CITY PROJECTS

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 REQUESTED	STAFF RECOMMENDATION
1.	Replier Park Bowl Rehabilitation	Project will include design, facade, stage repair, provide additional bathrooms, improvements to the superstructure, landscaping, walkways, etc.	\$300,000.00	\$150,000.00
	Totals		\$300,000.00	\$15,000.00

EXHIBIT "B"

FUNDING ADJUSTMENTS AS RECOMMENDED BY THE EDA

Requested Projects for FY 2008-2009
Community Development Block Grant (CDBG) Program

SERVICE RELATED PROJECTS

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 REQUESTED	STAFF RECOMMENDATION
1.	Alternatives to Domestic Violence	Shelter & Miscellaneous Services for Women and Children Impacted by Domestic Violence	\$10,000.00	0
2.	Banning Cultural Alliance	Youth Support	\$16,000.00	\$3,300.00
3.	Banning Library District	Equipment to Facilitate Community Meetings and Programs	\$17,800.00	\$3,500.00
4.	Banning Police Activities League	"At-Risk" Youth Programs Involving Sports Activities, Art Programs, and Community Participation	\$19,975.00	\$8,000.00
5.	Desert Hot Springs Community Task Force	Drug and Alcohol Abuse Youth Treatment Programs	\$10,000.00	0
6.	San Gorgonio Child Care Consortium	Providing Miscellaneous Services to Special Needs Children	\$30,000.00	\$8,000.00
7.	Soroptimist House of Hope	Residential 24 HR Substance Recovery	*\$6,680.00	\$3,500.00
8.	The Jitney Service	Providing Transportation Needs to the Seniors and Seniors with Disabilities	\$87,963.79	0
	Totals		\$198,418.79	**\$26,300.00

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**The amount recommended herein is approximately 15% of the total allocation as per HUD Rules and Regulations.

**Requested Project for FY 2008-2009
Community Development Block Grant (CDBG) Program**

CITY PROJECTS

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 REQUESTED	STAFF RECOMMENDATION
1.	Repplier Park Bowl Rehabilitation	Project will include design, facade, stage repair, provide additional bathrooms, improvements to the superstructure, landscaping, walkways, etc.	\$300,000.00	\$149,596.00
	Totals		\$300,000.00	\$149,596.00

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-22, "Amending the Agreement with Whitmore Construction, Inc. for Repair Services on an as Needed Basis to include an additional \$15,000.00"

RECOMMENDATION: City Council adopt Resolution No. 2008-22, "Amending the Agreement with Whitmore Construction, Inc. for repair services on an as needed basis to include an additional \$15,000.00."

JUSTIFICATION: City Council approval is necessary in order to amend the contract to include additional monies and enable staff to provide necessary repairs to City-owned facilities for the remainder of the fiscal year.

BACKGROUND: In June of 2007, the City of Banning and Whitmore Construction, Inc. entered into an agreement for repair services on an as needed basis for general construction repairs and improvements to the interior and/or exterior of buildings. The original contract amount of \$25,000.00 was initially expected to cover the entire 2008 fiscal year; however, due to unforeseen conditions the original contract amount has been exhausted resulting in the necessity to amend the contract.

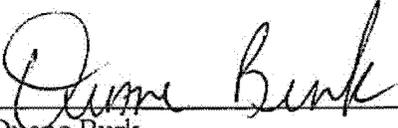
In October of 2007, high winds were present in the City of Banning. In order to preserve property and public safety, the Emergency Operations Center (EOC) was activated. Unavoidable damages occurred to City property, which posed substandard conditions that required immediate action. City staff solicited Whitmore Construction, Inc., to assess the damages caused by the storm and to provide necessary repairs. The total costs incurred related to this event equated to approximately \$10,000.00, depleting a large portion of the original contract amount.

In order to responsibly maintain City-owned facilities for the remainder of Fiscal Year 2008, staff requests City Council approval for an amendment to the contract to include an additional \$15,000.00 for repair services as needed.

FISCAL DATA: Funding is available in the Building Maintenance, Account No.001-3200-412.30-02, (Building Repair/Maintenance) in the amount of \$15,000.00.

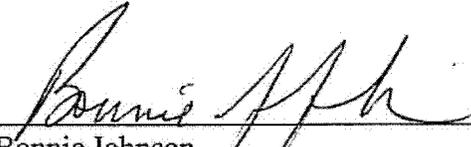
Signatures Next Page

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE AGREEMENT WITH WHITMORE CONSTRUCTION, INC. FOR REPAIR SERVICES ON AN AS NEEDED BASIS TO INCLUDE AN ADDITIONAL \$15,000.00

WHEREAS, in June of 2007, the City of Banning and Whitmore Construction, Inc. entered into an agreement for repair services on an as needed basis for general construction repairs and improvements to the interior and/or exterior of buildings; and T

WHEREAS, the original contract amount of \$25,000.00 was initially expected to cover the entire 2008 fiscal year; however, due to unforeseen conditions the original contract amount has been exhausted resulting in the necessity to amend the contract; and

WHEREAS, in October of 2007, high winds were present in the City of Banning which posed substandard conditions that required immediate action. City staff solicited Whitmore Construction, Inc., to assess the damages caused by the storm and to provide necessary repairs which equated to approximately \$10,000.00, depleting a large portion of the original contract amount; and

WHEREAS, in order to responsibility maintain City-owned facilities for the remainder of Fiscal Year 2008, staff requests City Council approval for an amendment to the contract to include an additional \$15,000.00 for repair services as needed.

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

Section I. The City Council of the City of Banning approve the Amendment to the Agreement with Whitmore Construction, Inc. for Fiscal Year 2008 repairs on an as needed basis to include an additional amount of "Not to Exceed" \$15,000.00.

Section II. The City Manager is hereby authorized to execute the amendment to the Agreement with Whitmore Construction, Inc. for Fiscal Year 2008 repairs on an as needed basis. This authorization will be rescinded if the parties do not execute the contract amendment within thirty (30) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 12th day February, 2008.

Brenda Salas, Mayor

ATTEST:

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

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

Burke, Williams & Sorensen, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-22 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 12th day of February, 2008.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk of the
City of Banning

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-23, "Declaring an Emergency Condition Existed Related to Severe Rainstorms, and Awarding an Emergency Repair and Cleanup Contract to Merlin Johnson Construction, Inc. in an amount 'Not to Exceed' \$167,692.58"

RECOMMENDATION: The City Council adopt Resolution No. 2008-23:

- I. Declaring an emergency condition existed related to severe rainstorms.
- II. Authorizing the Director of Finance to make the necessary budget appropriations and transfers from the General Fund to the Gas Tax Fund in the amount of \$52,395.52 in order to cover a portion of this expense.
- III. Awarding an Emergency Repair and Cleanup Contract to Merlin Johnson, Inc. of Mentone, California.

JUSTIFICATION: The immediate storm repairs and cleanup were necessary in order to remediate unsafe and substandard conditions caused by severe rainstorms in Banning. City Council approval is necessary in order to override the formal bid process and is essential in order to disburse payment.

BACKGROUND: In December of 2007, severe rainstorms caused unsafe conditions and damaged various locations throughout the City. In order to preserve property, infrastructure and public safety, immediate repairs and cleanup were deemed necessary and were unavoidable. City staff solicited Merlin Johnson Construction, Inc., a reputable contractor that has successfully performed work for the City in the past, to assess the damages caused by the storm and to provide necessary repairs and cleanup.

Merlin Johnson Construction, Inc. provided emergency services for the following locations throughout the City of Banning.

- Westward Avenue between Highland Homes Road & Sunset Avenue
The scope of services for emergency storm repair included removing erosion build up along two creek crossings, re-grading of the existing creek to provide positive flow into culverts and prevent ponding, extending existing 48" CMP by installing new sections of pipe, placing and grouting rip-rap to protect the crossing and paving Westward Avenue at the crossings. The total cost incurred for this location was \$115,297.06.

- Wilson Avenue between Sunrise Avenue and Stargaze Way
The scope of services included emergency storm cleanup of dirt eroded away from the existing development at the northwest corner of Sunrise Avenue and Wilson Street. The cleanup also consisted of placing sand bag chevrons along Wilson Street to settle out any future sediment caused by expected rainfall. This precaution was taken in order to prevent buildup of sediment in the City storm drains. The cost of the described mitigation in the amount of \$6,547.73 is expected to be fully reimbursed to the City by the developer of said Tract.
- 2253 Silver Star Drive
Storm drain repair was necessary as run-off from the hill behind the property clogged the drainage pipe and inlet to the storm drain with mud and debris. The scope of services included the unplugging, cleaning, and repair of inlet and storm drain. The cost incurred for this location was \$21,015.97.
- Emergency Storm Cleanup and Mitigation at Various Locations
As a result of the first storm this season, Merlin Johnson Construction, Inc. was called out to cleanup debris and settlement on City streets. The contractor also prepared for expected storms by placing sand bags on the edge of streets, gutters, and around storm drain inlets. The cost incurred for emergency storm drain mitigation and cleanup at miscellaneous locations throughout the City was \$24,813.79.

In the case of an emergency, which does not permit the delay resulting from the competitive bidding process, Public Contract Code Section 22050 authorizes the City of Banning to take corrective actions necessary to respond to the situation without securing bids. Staff believed that the unsafe conditions and damages caused by the abovementioned storms needed to be addressed as expeditiously as possible in order to preserve property, infrastructure, and public safety.

FISCAL DATA: This Emergency Contract will be funded by the Water Department, Account No. 660-6300-471.95-10, in the amount of \$58,000.00, and by the Wastewater Department, Account No. 680-8000-454.95-14, in the amount of \$57,297.06. Additionally, an appropriation and transfer of funds from the General Fund to the Gas Tax Fund in the amount of \$52,395.52 is necessary in order to cover a portion of the total expense. The total contract amount is "Not to Exceed" \$167,692.58. As mentioned above, costs incurred related to Wilson Avenue, between Sunrise Avenue and Stargaze Way, are anticipated to be recovered by the surety company in the amount of \$6,547.76.

Signatures Next Page

RECOMMENDED BY:

Duane Burk

Duane Burk
Director of Public Works

ly HS

Jim Earhart
Interim Water/Wastewater Utility Director

REVIEWED BY:

Bonnie Johnson

Bonnie Johnson
Finance Director

APPROVED BY:

BSM

Brian Nakamura
City Manager

RESOLUTION NO. 2008-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING AN EMERGENCY CONDITION EXISTED RELATED TO SEVERE RAINSTORMS, AND AWARDING AN EMERGENCY REPAIR AND CLEANUP CONTRACT TO MERLIN JOHNSON CONSTRUCTION, INC. IN AN AMOUNT "NOT TO EXCEED" \$167,692.58

WHEREAS, severe storms were present in the City of Banning in December of 2007 resulting in unsafe conditions and damage to various locations throughout the City; and

WHEREAS, in order to preserve property, infrastructure and public safety, immediate repairs and cleanup were deemed necessary and were unavoidable; and

WHEREAS, City staff solicited Merlin Johnson Construction, Inc., a reputable contractor that has successfully performed work for the City in the past, to assess the damages caused by the storms and to provide necessary repairs and cleanup; and

WHEREAS, Merlin Johnson Construction, Inc. provided various emergency storm repairs and cleanup at the following locations: Wilson Avenue, between Sunrise Avenue and Stargaze Way; Westward Avenue, between Highland Home Road & Sunset Avenue; 2253 Silver Star Drive; and at other various locations; and

WHEREAS, in the case of an emergency, which does not permit the delay resulting from the competitive bidding process, Public Contract Code Section 22050 authorizes the City of Banning to take corrective actions necessary to respond to the situation without securing bids; and

WHEREAS, City Council approval is necessary in order to override the formal bid process and is essential in order to disburse payment.

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

Section I. The City Council of the City of Banning approves the repairs and cleanup at various locations throughout the City as mentioned above, allowing the formal bid process to be overridden and payments to be distributed.

Section II. The City Council of the City of Banning award an Emergency Repair and Cleanup Contract to Merlin Johnson Construction, Inc. of Mentone, California in an amount "Not to Exceed" \$167,692.58.

Section III. The Director of Finance is hereby authorized to make the necessary budget appropriations and transfers from the General Fund to the Gas Tax Fund in the amount of \$52,395.52.

Section IV. The City Manager is hereby authorized to execute the Emergency Repair and Cleanup Contract related to the severe storms throughout the City. This authorization will be rescinded if the parties do not execute the contract agreement within thirty (30) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 12th day February, 2008.

Brenda Salas, Mayor

ATTEST:

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

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

Burke, Williams & Sorensen, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-23 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 12th day of February, 2008.

AYES:
NOES:
ABSENT:
ABSTAIN:

Marie A. Calderon
City Clerk of the
City of Banning

**CITY COUNCIL
CONSENT CALENDAR**

DATE: February 12, 2008

TO: Mayor and City Council Members

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Resolution No. 2008-24 to approve Amendment No. 2 to the Joint Exercise of Powers Agreement Creating the Western Riverside County Regional Conservation Authority

RECOMMENDATION: That the Council adopt Resolution No. 2008-24, approving Amendment No. 2 to the Joint Exercise of Powers Agreement (JPA) creating the Western Riverside County Regional Conservation Authority (RCA).

JUSTIFICATION: Section 32 of the approved JPA allows modifications.

BACKGROUND: In 2003, the City Council adopted the JPA creating the RCA. This JPA is made by and between the City of Banning, the County of Riverside and the Cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto and Temecula, for the purpose of acquiring, administering, operating and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). Following its adoption, the Council approved Amendment No. 1 to the Agreement (Attachment "1"). Now, Amendment No. 2 is proposed that will:

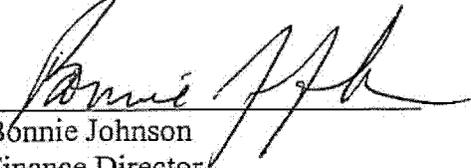
1. Modify the appointment procedures of alternates by the members of the Board of Supervisors; and
2. Reference the "Marks-Roose Local Bond Pooling Act of 1985" to authorize the Western Riverside Conservation Authority (RCA) to issue promissory notes for the purchase of real property (as indicated by the Agreement). These promissory notes would permit the agency to pay for property over time, typically within five years in much the same way as a seller in a private transaction would take back a deed of trust to secure a portion of the sales proceeds.

FISCAL DATA: None

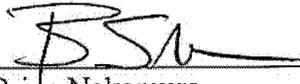
RECOMMENDED BY:


Oscar W. Orci
Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

Exhibits:

1. Approved Agreement (with Amendment No. 1)
2. Resolution No. 2008-24 with Amendment No. 2 to the Joint Powers Agreement

*JOINT EXERCISE OF
POWERS AGREEMENT*

*APPROVED AGREEMENT
WITH
AMENDMENT NO. 1*

EXHIBIT “1”

JOINT EXERCISE OF POWERS AGREEMENT CREATING THE
WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

This Joint Powers Agreement dated this _____ day of _____, 2004, is made by and between the COUNTY OF RIVERSIDE, hereinafter sometimes referred to as "County", and the Cities of BANNING, BEAUMONT, CALIMESA, CANYON LAKE, CORONA, HEMET, LAKE ELSINORE, MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN JACINTO and TEMECULA, hereinafter sometimes referred to as "Cities", for the purpose of acquiring, administering, operating and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan, hereinafter referred to as the "MSHCP".

RECITALS

WHEREAS, the Cities and the County, hereinafter sometimes jointly referred to as "Parties", are authorized and empowered to contract with each other for the joint exercise of powers pursuant to Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California, hereinafter referred to as "the Act"; and

WHEREAS, the County and the Cities each have the authority and power to prepare and implement habitat conservation plans for the protection of rare, threatened and endangered species, and to acquire, own, maintain and operate habitat reserves for such species in connection with said habitat conservation plans; and

WHEREAS, the formation of a single public agency would most efficiently serve the interests of the County and Cities by allowing the County and the Cities to jointly exercise the aforementioned powers; and

WHEREAS, the County in consultation with the Cities has prepared the MSHCP; and

WHEREAS, the County and the Cities desire to organize themselves pursuant to this Joint Powers Agreement, hereinafter referred to as the "Agreement", to implement the MSHCP should the MSHCP ultimately be approved by the County and Cities; and

WHEREAS, it is intended that the activities of the public agency formed pursuant to this

1 Agreement shall be coordinated with the Western Riverside Council of Governments, hereinafter
2 referred to as "WRCOG".

3 NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter
4 stated, the Parties hereto agree as follows:

5 **Section 1. Purpose.** The purpose of this Agreement is to create a public agency to acquire,
6 administer, operate and maintain land and facilities to establish habitat reserves for the conservation and
7 protection of species covered by the MSHCP and to implement the MSHCP in the event the MSHCP is
8 approved by the County and Cities and appropriate permits are issued by the U.S. Fish and Wildlife
9 Service and the California Department of Fish and Game.

10 **Section 2. Creation of the Authority.** Pursuant to the Act, there is hereby created a public
11 agency to be known as the "Western Riverside County Regional Conservation Authority", hereinafter
12 referred to as the "RCA". The RCA shall be a public agency, separate and apart from its members, and as
13 provided by law and not otherwise prohibited by this Agreement, shall be empowered to take such actions
14 as may be necessary or desirable to implement and carry out the purposes of this Agreement.

15 **Section 3. Powers.** In carrying out the purpose of this Agreement, the RCA shall have the
16 following powers:

- 17 A. To make and enter into contracts;
- 18 B. To employ agents, consultants, attorneys and employees;
- 19 C. To acquire property, and any interest in property, both real and personal by purchase, gift,
20 option, grant, bequest, devise or otherwise, and hold and dispose of such property;
- 21 D. To conduct and direct studies and to develop and implement plans to complement, modify
22 or supplement the MSHCP;
- 23 E. To incur debts, liabilities, and obligations;
- 24 F. To sue and be sued in its own name;
- 25 G. To employ reserve managers and other personnel to operate, maintain, and administer the
26 habitat reserves established through implementation of the MSHCP;
- 27 H. To be an applicant, make applications for, and receive grants from governmental and
28 private entities and to participate in State bond issues;

1 I. To prepare project reports and applications, to qualify for grants, and to enter into grant
2 contracts and to do all other things necessary to comply with State and Federal laws and regulations with
3 respect to grants;

4 J. To borrow or receive advances of funds from its members or from such other sources as
5 may be permitted by law;

6 K. To contract with its members and other entities who operate or will operate the habitat
7 reserves established through implementation of the MSHCP;

8 L. To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and
9 expenses to carry out the powers of the RCA;

10 M. To acquire, hold, and dispose of equipment;

11 N. To lobby state and federal governments and their officials as well as private entities to
12 obtain funding for implementation of the MSHCP and employ individuals or entities to conduct such
13 lobbying activities on its behalf; and

14 O. To exercise all other powers common to the members not specifically mentioned above
15 which may be necessary to carry out the purposes of this Agreement.

16 **Section 4. Term.** The term of this Agreement shall commence upon approval and execution
17 by the County and at least one of the fourteen Cities who are Parties to this Agreement and shall continue
18 until terminated by the Parties hereto by their mutual written consent as set forth in Section 5 of this
19 Agreement.

20 **Section 5. Termination, Withdrawal and Amendment.**

21 A. This Agreement shall be automatically terminated and considered null and void in the
22 event the MSHCP is not approved by the County and the Cities or appropriate permits are not issued by
23 the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

24 B. Any Party to this Agreement may withdraw for any reason upon giving all other Parties
25 sixty (60) days advance written notice of the effective date of such withdrawal. This Agreement shall
26 thereupon be deemed automatically amended to reflect the withdrawal of said Party from the RCA and
27 this Agreement. Upon withdrawal of any Party from the RCA and this Agreement, the withdrawing Party
28 shall not receive any distribution, partial or otherwise, of any cash or other assets of the RCA.

1 C. Provided there is mutual consent by the governing bodies of each of the Parties to this
2 Agreement, evidenced in writing, this Agreement may be: (1) amended to add new Parties; or (2)
3 amended to change any portion of this Agreement.

4 D. The Parties to this Agreement specifically agree that this Agreement creates an entity
5 which may acquire or hold property. Pursuant to California Government Code Sections 6511 and 6512,
6 upon completion of the purposes of this Agreement or upon termination thereof, any property or assets
7 acquired or surplus money on hand which was obtained pursuant to this Agreement and which is not
8 required by law or contract to be distributed in a different manner, may be returned to the then Parties to
9 the Agreement in proportion to the contributions made or in the alternative may be transferred to any
10 local, state, federal or private entity who agrees to assume the duties and obligations of the RCA.
11 However, any distribution of assets shall be subject to the prior discharge of enforceable liability against
12 the RCA. Subject to the foregoing, each Parties proportionate share shall be based upon each Parties
13 contributions to the RCA submitted to the RCA in accordance with Sections 17.A. and B. below.

14 **Section 6. RCA Board and Membership.** This Agreement and the authority hereby
15 created shall be administered by the governing body of the RCA which shall be known as the "Board of
16 the Western Riverside County Regional Conservation Authority" hereinafter referred to as the "Board".

17 The Board shall be composed of five members of the Riverside County Board of Supervisors and
18 the WRCOG Executive Committee member from each City who is signatory to this Agreement who shall
19 serve as regular members. Each member of the Riverside County Board of Supervisors may appoint an
20 alternate member and each City may appoint one alternate member. Each regular member and alternate
21 member of a City must hold an elective office on the respective governing body appointing the regular or
22 alternate member. In the absence of a regular member, the alternate member shall, if present, participate
23 in a meeting of the Board the same as if the alternate member were the regular member.

24 Regular members and alternate members shall serve on the Board during the term for which they
25 were appointed or until their successor has been appointed or their appointment has been revoked,
26 whichever is earlier. However, a regular or alternate member position on the Board shall automatically
27 terminate if and when the term of the elected public office of such regular or alternate member is
28 terminated. When a vacancy occurs, it shall be the duty of the respective Party having the vacancy to

1 promptly inform the Board of the name of the replacement regular or alternate member.

2 Regular members and alternate members, if participating in a meeting of the Board on behalf of a
3 regular member, shall be entitled to compensation for participation in meetings of the Board and
4 necessary traveling and personal expenses incurred in the performance of the member's duties as
5 authorized by the Board. Such compensation shall be fixed by resolution of the Board.

6 **Section 7. Meetings of the RCA Board.**

7 A. **Meetings.** The Board shall establish the time and place for its regular and special
8 meetings. The dates, hour and location of regular meetings shall be fixed by resolution of the Board and a
9 copy of such resolution shall be provided to the governing body of each of the Parties and with each
10 Party's designated regular and alternate member. Special meetings and adjourned meetings may be held
11 as required or permitted by law.

12 All regular and special meetings shall be held, to the extent feasible, on the same dates as meetings
13 of the Executive Committee of the WRCOG are held. ~~The Executive Director of the RCA shall~~
14 ~~coordinate with the Executive Director of WRCOG the scheduling of regular and special meetings and~~
15 ~~their respective agendas.~~

16 B. **Ralph M. Brown Act.** All meetings of the Board, including without limitation,
17 regular, special and adjourned meetings, shall be called, noticed, held and conducted in accordance with
18 the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California
19 Government Code).

20 C. **Quorum and Voting.** A majority of the members of the Board shall constitute a
21 quorum for the transaction of business and all official acts of the Board shall require the affirmative vote
22 of a majority of the members of the Board. Each regular member or alternate member acting in the place
23 of a regular member shall have one vote at meetings of the Board. However, any member of the Board,
24 immediately after a vote of the Board and prior to the start of the next item on the agenda may call for a
25 weighted vote. For an item to be passed by weighted vote, all of the following requirements shall be met:

26 I. the item shall be approved by a majority of the Board members present at
27 the meeting who represent the Riverside County Board of Supervisors, who each shall have one vote;

28 II. the item shall be approved by a majority of the Board members present at

1 the meeting who represent Cities, who each shall have one vote; and

2 III. the item shall be approved by Board members present at the meeting who
3 represent Cities representing a majority of an equal combination of 1) the population of the county living
4 in incorporated areas within the boundaries of the MSHCP Plan area, and 2) the acres within these
5 incorporated areas anticipated to be conserved within the Criteria Area established by the MSHCP as
6 follows: Banning – 70 acres; Beaumont – 7,250 acres; Calimesa – 1,740 acres; Canyon Lake – 40 acres;
7 Corona – 470 acres; Hemet – 810 acres; Lake Elsinore – 6,350 acres; Moreno Valley – 105 acres;
8 Murrieta – 2,390 acres; Norco – 100 acres; Perris – 1,060 acres; Riverside – 90 acres; San Jacinto – 2,130
9 acres; and Temecula – 990 acres. For purposes of this paragraph, each regular Board member of at the
10 meeting who represents a City shall be assigned votes based on the percentage of the population of
11 incorporated areas within the boundaries of the MSHCP Plan area represented by that member in relation
12 to the total population of incorporated areas within the boundaries of the MSHCP Plan area present at the
13 meeting, as well as the percentage of the acreage anticipated to be conserved within the Criteria Area
14 subject to the jurisdiction of that member in relation to the total incorporated area acreage within the
15 Criteria Area set forth in the MSHCP. Population data shall be determined through California
16 Department of Finance estimates, adjusted annually. In addition, as lands within the Criteria Area are
17 acquired and conserved, the Board may through resolution revise the above-referenced average number of
18 acres that are anticipated to be conserved within incorporated areas.

19 D. The Board may adopt, from time to time, such rules and regulations for the conduct
20 of its meetings and affairs as it may deem necessary, including, without limitation, the designation of a
21 person to record and transcribe the minutes of each public meeting of the RCA.

22 Section 8. Officers. The Board shall select a Chairperson and a Vice-Chairperson at its first
23 meeting and at the first meeting held in each succeeding calendar year. Additionally, at its first meeting
24 and at the first meeting held in each succeeding calendar year shall, the Board shall select any other
25 officers it deems appropriate. In the event an officer resigns or ceases to be an officer, the Board shall
26 select a replacement therefore at the next regular meeting of the Board. In the absence or inability of the
27 Chairperson to act, the Vice-Chairperson shall act as Chairperson.

28 A. Treasurer. The treasurer of a member agency shall serve as the treasurer of the

1 RCA. The Board pursuant to the adoption of a resolution shall appoint the treasurer of a member agency
2 to serve as the Treasurer. The Treasurer shall have the custody of the RCA money and disburse RCA
3 funds pursuant to the accounting procedures developed in accordance with the provisions of this
4 Agreement, the Act, and with those procedures established by the Board. The Treasurer shall assume the
5 duties described in Section 6505.5 of the Government Code, namely: receive and receipt for all money of
6 the RCA and place in the Treasury of the Treasurer to the credit of the RCA; be responsible upon an
7 official bond as prescribed by the Board for the safekeeping and disbursement of all RCA money so held;
8 pay, when due, out of money of the RCA so held, all sums payable, only upon warrants of the officer
9 performing the functions of the Controller who has been designated by the RCA or Board; verify and
10 report in writing on the first day of July, October, January and April of each year to the RCA the amount
11 of money held for the RCA, the amount of receipts since the last report, and the amount paid out since the
12 last report; and perform such other duties as are set forth in this Agreement or specified by the Board.

13 B. Controller. The Finance Director of a member agency shall serve as the
14 Controller of the RCA. The Board pursuant to the adoption of a resolution shall appoint the finance
15 director of a member agency to serve as the Controller. The Controller shall draw warrants to pay
16 demands against the RCA when such demands have been approved by the Board or by any other person
17 authorized to so approve such by this Agreement or by resolution of the Board. The Controller shall
18 perform such duties as are set forth in this Agreement and such other duties as are specified by the Board.

19 There shall be strict accountability of all funds and reporting of all receipts and
20 disbursements. The Controller shall establish and maintain such procedures, funds and accounts as may
21 be required by sound accounting practices, the books and records of the RCA in the possession of the
22 Controller shall be open to inspection at all reasonable times by representatives of the Parties.

23 The Controller, with the approval of the RCA, shall contract with an independent certified
24 public accountant or firm or certified public accountants to make an annual audit of the accounts and
25 records of the RCA, and a complete written report of such audit shall be filed as public records annually,
26 within six (6) months of the end of the fiscal year under examination, with each of the Parties. Such
27 annual audit and written report shall comply with the requirements of Section 6505 of the Government
28 Code. The cost of the annual audit, including contracts with, or employment of such independent

1 certified public accountants in making an audit pursuant to this Agreement shall be a charge against any
2 unencumbered funds of the RCA available for such purpose. The Board by unanimous vote, may replace
3 the annual audit with a special audit covering a two-year period.

4 **Section 9. MSHCP Advisory Committee.** Within thirty (30) days after issuance of the
5 permits by the U.S. Fish and Wildlife Service and California Department of Fish and Game for the
6 MSHCP, the Board shall form an MSHCP Advisory Committee. The MSHCP Advisory Committee shall
7 consist of the Riverside County Habitat Conservation Agency (RCHCA) Board of Directors and one
8 representative from each City who is not a member of the RCHCA. Within six (6) months of execution
9 of this Agreement, or at any time thereafter, the Board may review the RCA organizational structure
10 established by this Agreement to determine if it is facilitating MSHCP implementation.

11
12 **Section 10. Executive Director.** The Board shall retain an Executive Director to administer
13 the MSHCP in compliance with the duties and responsibilities set forth in Sections 5.0 and 6.0 of the
14 MSHCP. As required by the MSHCP, the RCA shall initially contract with the County of Riverside to
15 provide an appropriate department or individual to act as the Executive Director within thirty (30) days of
16 the formation of the RCA. The appropriate department or individual shall be recommended by the
17 County's Executive Officer and approved considered by the Board. It is understood by the Parties to this
18 Agreement that the Board may accept or reject the County Executive Officer's recommendation of an
19 appropriate department or individual to serve as the Executive Director. This contract shall be for an
20 initial term of three (3) years. At least six (6) months prior to the expiration of this initial contract term,
21 the Board shall review the County department's or individual's performance as Executive Director.
22 Based upon this review, the Board may elect to extend the contract with the County or select an
23 alternative entity or individual for the Executive Director position upon expiration of the initial term.

24 **Section 11. Administrative/Personnel Services.** The Board may contract with WRCOG or
25 any other public entity to provide administrative/personnel services to the RCA.

26 **Section 12. Monitoring Program Administrator.** Upon issuance of the permits for the
27 MSHCP by the U.S. Fish and Wildlife Service and California Department of Fish and Game and for a
28 period of eight (8) years thereafter, the California Department of Fish and Game shall serve as the

1 Monitoring Program Administrator for the MSHCP. The Monitoring Program Administrator shall be
2 responsible for implementing the monitoring program contained in Section 5.0 of the MSHCP and shall
3 perform all duties and responsibilities as set forth in Sections 5.0 and 6.0 of the MSHCP. Thereafter, the
4 Board may elect to have the Department continue acting in the capacity or shall select an alternative
5 individual or entity for this position if the Board determines that the Department cannot adequately
6 perform the duties and responsibilities of this position.

7 **Section 13. Reserve Managers.** The Board shall retain at least one Reserve Manager to
8 manage lands owned by the RCA within the MSHCP Conservation Area. This Reserve Manager(s) shall
9 report to the Executive Director and shall perform all the duties and responsibilities set forth in Section
10 5.0 and Section 6.0 of the MSHCP. Additionally, Reserve Managers managing lands owned by any Party
11 to this Agreement that are within the MSHCP Conservation Area shall report to the Executive Director.

12 **Section 14. Independent Science Advisors.** The Board shall retain, as appropriate,
13 independent science advisors who are qualified biologists and conservation experts with expertise in
14 species covered by the MSHCP and their habitats. Additionally, to the extent feasible, the independent
15 science advisors shall have experience in land management. Independent science advisors shall be
16 retained on an annual basis, shall report to the Executive Director and shall comply with the duties and
17 responsibilities set forth in Section 6.0 of the MSHCP.

18 **Section 15. Funding Coordination Committee.** Within one hundred and twenty (120) days
19 after issuance of the permits by the U.S. Fish and Wildlife Service and California Department of Fish and
20 Game for the MSHCP, the Board shall form a Funding Coordination Committee to provide
21 recommendations to the Board on local funding priorities and local MSHCP Conservation Area
22 acquisitions. Members of this committee shall be appointed by the Board and shall consist of, at a
23 minimum, representatives of the Parties to this Agreement, the U.S. Fish and Wildlife Service, and the
24 California Department of Fish and Game. To the extent feasible, members of the Funding Coordination
25 Committee shall have expertise in real estate or land use planning and/or experience implementing large
26 scale conservation programs.

27 The Funding Coordination Committee shall make recommendations to the Board through the
28 Executive Director on local land acquisitions and funding priorities. Additionally, this Committee shall

1 provide a forum to discuss land acquisition priorities of the U.S. Fish and Wildlife Service and California
2 Department of Fish and Game and acquisitions by other entities using non-local sources of revenue. The
3 Board shall establish policies under which the Funding Coordination Committee shall make
4 recommendations to the Board. Such policies shall include conflict of interest guidelines for the
5 Committee members.

6 The Planning Directors of each Party to this Agreement shall receive prior notice of all meetings
7 of the Funding Coordination Committee. Such notice shall include a meeting agenda and a list of
8 potential acquisition sites, if applicable. The Planning Directors or their designated representatives may
9 participate in Committee meetings, as appropriate.

10 **Section 16. Reserve Management Oversight Committee.** The Reserve Management
11 Oversight Committee (RMOC) shall be formed within sixty (60) days of the effective date of the contract
12 between the RCA and the County concerning the establishment of an Executive Director. The RMOC
13 shall be composed of, at a minimum, one representative appointed by each of the following entities:

- 14 A. U. S. Fish and Wildlife Service,
- 15 B. California Department of Fish and Game,
- 16 C. Riverside County Regional Parks and Open Space District,
- 17 D. Bureau of Land Management,
- 18 E. U.S. Forest Service,
- 19 F. California Department of Parks and Recreation,
- 20 G. RCA, and
- 21 H. Up to five (5) other private or public agencies or entities that own or manage land
22 within the MSHCP Conservation Area.

23 The RMOC shall serve as the intermediary between the Reserve Managers and the decision
24 making function of the RCA. The Executive Director shall serve as chair of the RMOC.

25 **Section 17. Rules and Governing Law.** This Agreement shall be construed and enforced in
26 accordance with the laws of the State of California. The laws of the State of California applicable to the
27 County of Riverside shall govern the RCA in the manner of exercising its powers, subject, however, to
28 such restrictions as are applicable to said city in the manner of exercising such powers, as required by

1 Government Code Section 6509. The Board, at its first meeting or as soon thereafter as may be possible,
2 shall adopt such rules and regulations as the Board may deem necessary for the conduct of the RCA's
3 affairs. Among these rules shall be a conflict of interest code and a purchasing ordinance. The Board
4 may, as it deems appropriate, review and revise these rules and regulations.

5 **Section 18. Fiscal Year.** The fiscal year of the RCA shall be the period commencing on July
6 1 of each year and ending on and including the following June 30.

7 **Section 19. Contributions/Estimated Budget.**

8 A. Contributions of Development Mitigation Fees. The Parties to this Agreement shall
9 impose a development mitigation fee on all new development to support the acquisition of additional
10 reserve lands pursuant to the MSHCP. All development mitigation fees collected by the Parties shall be
11 forwarded to the RCA within ninety (90) days after receipt by each Party. The RCA may, in its
12 discretion, conduct an audit of the development mitigation fees collected by any Party to this Agreement.

13 B. Other Contributions. The RCA may accept contributions of money or property from the
14 Parties or other individuals or entities including but not limited to contributions from Parties, MSHCP
15 Permittees and Special Participating Entities who obtain take authorization under the MSHCP for public
16 utility, schools, transportation, flood control and other public infrastructure projects. Additionally, a Party
17 may hold and manage its own property as a contribution to implementation of the MSHCP and the
18 MSHCP Conservation Area. Landfill Tipping Fees and Density Bonus Fees collected by the County may
19 be contributed to the RCA on an annual basis subject to the discretion of the Board of Supervisors.

20 C. Use of Contributions. When approved by the Board, revenues received by the RCA,
21 including without limitation, fees and other contributions, shall be used to implement the MSHCP. In
22 addition, the RCA shall reimburse the County for any and all litigation costs, including but not limited to
23 attorneys fees, incurred in defense of any legal challenge concerning the adoption of the MSHCP or any
24 related actions as well as any costs incurred to establish the Executive Director and any other necessary
25 staff prior to entering into the contract contemplated in Section 10 of this Agreement.

26 D. Budget. The annual budget for the RCA shall be prepared by the Executive Director. In
27 the alternative, the RCA may contract with WRCOG to prepare an annual budget. The annual budget
28 shall be based on an estimate of the amount of revenue necessary to implement the MSHCP during the

1 ensuing fiscal year and shall consider necessary land acquisition, improvements, maintenance,
2 management, monitoring, administration, and operation costs during the current fiscal year as such costs
3 are set forth in the then current approved budget for the RCA.

4 **Section 20. MSHCP Reporting Requirements.** In order to assist in the preparation of the
5 annual report required to be prepared by the RMOC and submitted to the USFWS, CDFG, and RCA as
6 set forth in the MSHCP and Implementing Agreement, the Parties shall on a monthly basis provide the
7 following information to the RCA:

- 8 A. grading permit activity including the number of the permit issued, the location of
9 the development site identified by assessor's parcel number, and the amount of
10 acreage disturbed;
- 11 B. single family home and mobilehome construction activity within the Criteria Area
12 including the number of the grading, building, site preparation or installation permit
13 issued and the location of the development site identified by assessor's parcel
14 number;
- 15 C. development mitigation fee collection including identification by assessor's parcel
16 number of the project for which the fee was collected, the amount of the fee paid,
17 and any exemptions or credits that may have been included in any calculation of the
18 fee; and
- 19 D. any other information required to comply with the provisions of the MSHCP as
20 may be determined necessary by the Executive Director.

21 In addition, the County shall submit on an annual basis all information contained in the Existing
22 Agricultural Operations Database including the amount of new agricultural land, if any, added to the
23 Database as well as any documentation concerning the expansion of agricultural operations within the
24 Criteria Area.

25 **Section 21. Joint Project/Acquisition Review Process.** To ensure that the requirements of
26 the MSHCP and its Implementing Agreement are properly met, a joint project/acquisition review process
27 shall be instituted by the RCA. This process is set forth in Section 6 of the MSHCP.

28 **Section 22. Liabilities.** Except as may be provided herein, the debts, liabilities and

1 obligations of the RCA shall be the debts, liabilities and obligations of the RCA alone, and not of the
2 Parties to this Agreement.

3 **Section 23. Indemnification.** Provided that a Party has acted in good faith and in accordance
4 with this Agreement, the approved MSHCP and its Implementing Agreement and the Permits, the RCA
5 shall defend, indemnify and hold such Party free and harmless from any loss, liability or damage incurred
6 or suffered by such Party by reason of litigation arising from or as a result of any of the following: the
7 Party's development mitigation fee ordinance; the Party's participation in the RCA; actions taken to
8 approve and/or implement the MSHCP; claims of inverse condemnation or unconstitutional takings
9 against a Party; or any other act performed or to be performed by the Party pursuant to this Agreement,
10 the MSHCP, its Implementing Agreement or the Permits; provided, however, that such indemnification or
11 agreement to hold harmless pursuant to this Section shall be recoverable only out of RCA assets and not
12 from other Parties.

13 **Section 24. Notices.** Notices required or permitted hereunder shall be sufficiently given if
14 made in writing and delivered either personally or by registered or certified mail, postage prepaid to said
15 respective Parties, as follows:

- 16
- 17 A. Riverside County Conservation Authority
 Executive Director
 4080 Lemon Street, 7th Floor
18 Riverside, CA 92501
- 19
- 20 B. County of Riverside
 Transportation and Land Management Agency
 Agency Director
21 4080 Lemon Street, 7th Floor
 Riverside, CA 92501
22 (909) 955-6742
 (909) 955-6879
- 23
- 24 C. City of Banning
 City Manager
25 99 E. Ramsey Street
 Banning, CA 92220
26 (909) 922-3103
27 (909) 922-3128 fax
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D. City of Beaumont
City Manager
550 E. 6th Street
Beaumont, CA 92223
(909) 769-8520
(909) 769-8526 fax

E. City of Calimesa
City Manager
908 Park Ave
Calimesa, CA 92320
(909) 795-9801
(909) 795-4399 fax

F. City of Canyon Lake
City Manager
31516 Railroad Canyon Road
Canyon Lake, CA 92587
(909) 244-2955
(909) 246-2022 fax

G. City of Corona
City Manager
PO Box 940
Corona, CA 92878
(909) 736-2371
(909) 736-2493 fax

H. City of Hemet
City Manager
445 E. Florida Avenue South
Hemet, CA 92543
(909) 765-2300
(909) 765-3785 fax

I. City of Lake Elsinore
City Manager
130 S. Main Street
Lake Elsinore, CA 92530
(909) 674-6727 ext. 261
(909) 674-2392 fax

J. City of Moreno Valley
City Manager

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PO Box 88005
Moreno Valley, CA 92553
(909) 413-3008
(909) 413-3760 fax

K. City of Murrieta
City Manager
26442 Beckman Court
Murrieta, CA 92562-9755
(909) 698-1040
(909) 698-9885 fax

L. City of Norco
City Manager
2870 Clark Avenue
Norco, CA 92860
(909) 270-5611
(909) 270-5622 fax

M. City of Perris
City Manager
101 North D Street
Perris, CA 92570
(909) 657-5882
(909) 657-1087 fax

N. City of Riverside
City Manager
3900 Main Street
Riverside, CA 92522
(909) 826-5991
(909) 826-5470 fax

O. City of San Jacinto
City Manager
201 E Main Street
San Jacinto, CA 92583
(909) 487-7342
(909) 654-3728 fax

P. City of Temecula
City Manager
PO Box 9033

1 Temecula, CA 92589-9033
2 (909) 694-6440
3 (909) 694-6499 fax

4 **Section 25. Severability.** If any section, clause or phrase of this Agreement or the application
5 thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of
6 competent jurisdiction, it shall be deemed severable and the remainder of the Agreement or the
7 application of such provisions to the other party or to other persons or circumstances shall not be affected
8 thereby.

9 **Section 26. Other Agreements Not Prohibited.** Other agreements by and between the
10 Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by
11 execution of this Agreement. Furthermore, the Parties hereto agree upon request to execute, acknowledge
12 and deliver all additional papers and documents necessary or desirable to carry out the intent of this
13 Agreement.

14 **Section 27. Other Obligations.** The responsibilities and obligations of each Party to this
15 Agreement shall be solely as provided in this Agreement, or as may be provided for in supplemental
16 agreements to be executed by the Parties.

17 **Section 28. Non-Assignability.** The rights, titles and interests of any Party to this Agreement
18 shall not be assignable or transferable without the consent of the governing body of each Party hereto.

19 **Section 29. Section Headings.** The section headings herein are for convenience of the Parties
20 only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or
21 intent of the provisions or language of this Agreement.

22 **Section 30. Construction of Language.** It is the intention of the Parties hereto that if any
23 provision of this Agreement is capable of two constructions, one of which would render the provision
24 void and the other of which would render the provision valid, then the provision shall have the meaning
25 which renders it valid.

26 **Section 31. Cooperation.** The Parties recognize the necessity and hereby agree to cooperate
27 with each other in carrying out the purposes of this Agreement, including cooperation in matters relating
28 to the public, accounting, litigation, public relations and the like.

1 Section 32. Future Amendments. To preserve a reasonable degree of flexibility, many parts
2 of this Agreement are stated in general terms. It is understood that there may be Amendments to this
3 Agreement which will further define the rights and obligations of the Parties.

4 Section 33. Successors. This Agreement shall be binding upon and shall inure to the benefit
5 of the successors of the Parties hereto.

6 IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and
7 attested by their proper officers thereunto duly authorized as of the date first above written.

8
9
10 Dated: _____

COUNTY OF RIVERSIDE

11 Attest:

12 _____

By: _____
Chairman, Board of Supervisors

13
14 Dated: _____

CITY OF BANNING

15 Attest:

16 _____

By: _____
Mayor

17 City Clerk

18 Dated: _____

CITY OF BEAUMONT

19 Attest:

20 _____

By: _____
Mayor

21 City Clerk

22
23 Dated: _____

CITY OF CALIMESA

24 Attest:

25 _____

By: _____
Mayor

26 City Clerk

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28 Dated: _____

CITY OF CANYON LAKE

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Attest:

City Clerk

By: _____
Mayor

CITY OF CORONA

Dated: _____

Attest:

City Clerk

By: _____
Mayor

CITY OF HEMET

Dated: _____

Attest:

City Clerk

By: _____
Mayor

CITY OF LAKE ELSINORE

Dated: _____

Attest:

City Clerk

By: _____
Mayor

CITY OF MORENO VALLEY

Dated: _____

Attest:

City Clerk

By: _____
Mayor

CITY OF MURRIETA

Dated: _____

Attest:

City Clerk

By: _____
Mayor

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Dated: _____

CITY OF NORCO

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF PERRIS

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF RIVERSIDE

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF SAN JACINTO

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF TEMECULA

Attest:

City Clerk

By: _____
Mayor

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1 JOINT EXERCISE OF POWERS AGREEMENT CREATING THE
2 WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

3
4 This Joint Powers Agreement dated this _____ day of _____, 2004, is made by and
5 between the COUNTY OF RIVERSIDE, hereinafter sometimes referred to as "County", and the Cities of
6 BANNING, BEAUMONT, CALIMESA, CANYON LAKE, CORONA, HEMET, LAKE ELSINORE,
7 MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN JACINTO and TEMECULA,
8 hereinafter sometimes referred to as "Cities", for the purpose of acquiring, administering, operating and
9 maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare,
10 threatened and endangered species covered by the Western Riverside County Multiple Species Habitat
11 Conservation Plan, hereinafter referred to as the "MSHCP".

12 RECITALS

13 WHEREAS, the Cities and the County, hereinafter sometimes jointly referred to as "Parties", are
14 authorized and empowered to contract with each other for the joint exercise of powers pursuant to Article
15 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of
16 California, hereinafter referred to as "the Act"; and

17 WHEREAS, the County and the Cities each have the authority and power to prepare and
18 implement habitat conservation plans for the protection of rare, threatened and endangered species, and to
19 acquire, own, maintain and operate habitat reserves for such species in connection with said habitat
20 conservation plans; and

21 WHEREAS, the formation of a single public agency would most efficiently serve the interests of
22 the County and Cities by allowing the County and the Cities to jointly exercise the aforementioned
23 powers; and

24 WHEREAS, the County in consultation with the Cities has prepared the MSHCP; and

25 WHEREAS, the County and the Cities desire to organize themselves pursuant to this Joint Powers
26 Agreement, hereinafter referred to as the "Agreement", to implement the MSHCP should the MSHCP
27 ultimately be approved by the County and Cities; and

28 WHEREAS, it is intended that the activities of the public agency formed pursuant to this

1 Agreement shall be coordinated with the Western Riverside Council of Governments, hereinafter
2 referred to as "WRCOG".

3 NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter
4 stated, the Parties hereto agree as follows:

5 **Section 1. Purpose.** The purpose of this Agreement is to create a public agency to acquire,
6 administer, operate and maintain land and facilities to establish habitat reserves for the conservation and
7 protection of species covered by the MSHCP and to implement the MSHCP in the event the MSHCP is
8 approved by the County and Cities and appropriate permits are issued by the U.S. Fish and Wildlife
9 Service and the California Department of Fish and Game.

10 **Section 2. Creation of the Authority.** Pursuant to the Act, there is hereby created a public
11 agency to be known as the "Western Riverside County Regional Conservation Authority", hereinafter
12 referred to as the "RCA". The RCA shall be a public agency, separate and apart from its members, and as
13 provided by law and not otherwise prohibited by this Agreement, shall be empowered to take such actions
14 as may be necessary or desirable to implement and carry out the purposes of this Agreement.

15 **Section 3. Powers.** In carrying out the purpose of this Agreement, the RCA shall have the
16 following powers:

- 17 A. To make and enter into contracts;
- 18 B. To employ agents, consultants, attorneys and employees;
- 19 C. To acquire property, and any interest in property, both real and personal by purchase, gift,
20 option, grant, bequest, devise or otherwise, and hold and dispose of such property;
- 21 D. To conduct and direct studies and to develop and implement plans to complement, modify
22 or supplement the MSHCP;
- 23 E. To incur debts, liabilities, and obligations;
- 24 F. To sue and be sued in its own name;
- 25 G. To employ reserve managers and other personnel to operate, maintain, and administer the
26 habitat reserves established through implementation of the MSHCP;
- 27 H. To be an applicant, make applications for, and receive grants from governmental and
28 private entities and to participate in State bond issues;

1 I. To prepare project reports and applications, to qualify for grants, and to enter into grant
2 contracts and to do all other things necessary to comply with State and Federal laws and regulations with
3 respect to grants;

4 J. To borrow or receive advances of funds from its members or from such other sources as
5 may be permitted by law;

6 K. To contract with its members and other entities who operate or will operate the habitat
7 reserves established through implementation of the MSHCP;

8 L. To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and
9 expenses to carry out the powers of the RCA;

10 M. To acquire, hold, and dispose of equipment;

11 N. To lobby state and federal governments and their officials as well as private entities to
12 obtain funding for implementation of the MSHCP and employ individuals or entities to conduct such
13 lobbying activities on its behalf; and

14 O. To exercise all other powers common to the members not specifically mentioned above
15 which may be necessary to carry out the purposes of this Agreement.

16 **Section 4. Term.** The term of this Agreement shall commence upon approval and execution
17 by the County and at least one of the fourteen Cities who are Parties to this Agreement and shall continue
18 until terminated by the Parties hereto by their mutual written consent as set forth in Section 5 of this
19 Agreement.

20 **Section 5. Termination, Withdrawal and Amendment.**

21 A. This Agreement shall be automatically terminated and considered null and void in the
22 event the MSHCP is not approved by the County and the Cities or appropriate permits are not issued by
23 the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

24 B. Any Party to this Agreement may withdraw for any reason upon giving all other Parties
25 sixty (60) days advance written notice of the effective date of such withdrawal. This Agreement shall
26 thereupon be deemed automatically amended to reflect the withdrawal of said Party from the RCA and
27 this Agreement. Upon withdrawal of any Party from the RCA and this Agreement, the withdrawing Party
28 shall not receive any distribution, partial or otherwise, of any cash or other assets of the RCA.

1 C. Provided there is mutual consent by the governing bodies of each of the Parties to this
2 Agreement, evidenced in writing, this Agreement may be: (1) amended to add new Parties; or (2)
3 amended to change any portion of this Agreement.

4 D. The Parties to this Agreement specifically agree that this Agreement creates an entity
5 which may acquire or hold property. Pursuant to California Government Code Sections 6511 and 6512,
6 upon completion of the purposes of this Agreement or upon termination thereof, any property or assets
7 acquired or surplus money on hand which was obtained pursuant to this Agreement and which is not
8 required by law or contract to be distributed in a different manner, may be returned to the then Parties to
9 the Agreement in proportion to the contributions made or in the alternative may be transferred to any
10 local, state, federal or private entity who agrees to assume the duties and obligations of the RCA.
11 However, any distribution of assets shall be subject to the prior discharge of enforceable liability against
12 the RCA. Subject to the foregoing, each Parties proportionate share shall be based upon each Parties
13 contributions to the RCA submitted to the RCA in accordance with Sections 17.A. and B. below.

14 **Section 6. RCA Board and Membership.** This Agreement and the authority hereby
15 created shall be administered by the governing body of the RCA which shall be known as the "Board of
16 the Western Riverside County Regional Conservation Authority" hereinafter referred to as the "Board".

17 The Board shall be composed of five members of the Riverside County Board of Supervisors and
18 the WRCOG Executive Committee member from each City who is signatory to this Agreement who shall
19 serve as regular members. Each member of the Riverside County Board of Supervisors may appoint an
20 alternate member and each City may appoint one alternate member. Each regular member and alternate
21 member of a City must hold an elective office on the respective governing body appointing the regular or
22 alternate member. In the absence of a regular member, the alternate member shall, if present, participate
23 in a meeting of the Board the same as if the alternate member were the regular member.

24 Regular members and alternate members shall serve on the Board during the term for which they
25 were appointed or until their successor has been appointed or their appointment has been revoked,
26 whichever is earlier. However, a regular or alternate members position on the Board shall automatically
27 terminate if and when the term of the elected public office of such regular or alternate member is
28 terminated. When a vacancy occurs, it shall be the duty of the respective Party having the vacancy to

1 promptly inform the Board of the name of the replacement regular or alternate member.

2 Regular members and alternate members, if participating in a meeting of the Board on behalf of a
3 regular member, shall be entitled to compensation for participation in meetings of the Board and
4 necessary traveling and personal expenses incurred in the performance of the member's duties as
5 authorized by the Board. Such compensation shall be fixed by resolution of the Board.

6 **Section 7. Meetings of the RCA Board.**

7 A. **Meetings.** The Board shall establish the time and place for its regular and special
8 meetings. The dates, hour and location of regular meetings shall be fixed by resolution of the Board and a
9 copy of such resolution shall be provided to the governing body of each of the Parties and with each
10 Party's designated regular and alternate member. Special meetings and adjourned meetings may be held
11 as required or permitted by law.

12 All regular and special meetings shall be held, to the extent feasible, on the same dates as meetings
13 of the Executive Committee of the WRCOG are held.

14 B. **Ralph M. Brown Act.** All meetings of the Board, including without limitation,
15 regular, special and adjourned meetings, shall be called, noticed, held and conducted in accordance with
16 the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California
17 Government Code).

18 C. **Quorum and Voting.** A majority of the members of the Board shall constitute a
19 quorum for the transaction of business and all official acts of the Board shall require the affirmative vote
20 of a majority of the members of the Board. Each regular member or alternate member acting in the place
21 of a regular member shall have one vote at meetings of the Board. However, any member of the Board,
22 immediately after a vote of the Board and prior to the start of the next item on the agenda may call for a
23 weighted vote. For an item to be passed by weighted vote, all of the following requirements shall be met:

24 I. the item shall be approved by a majority of the Board members present at
25 the meeting who represent the Riverside County Board of Supervisors, who each shall have one vote;

26 II. the item shall be approved by a majority of the Board members present at
27 the meeting who represent Cities, who each shall have one vote; and

28 III. the item shall be approved by Board members present at the meeting who

1 represent Cities representing a majority of an equal combination of 1) the population of the county living
2 in incorporated areas within the boundaries of the MSHCP Plan area, and 2) the acres within these
3 incorporated areas anticipated to be conserved within the Criteria Area established by the MSHCP as
4 follows: Banning - 70 acres; Beaumont - 7,250 acres; Calimesa - 1,740 acres; Canyon Lake - 40 acres;
5 Corona - 470 acres; Hemet - 810 acres; Lake Elsinore - 6,350 acres; Moreno Valley - 105 acres;
6 Murrieta - 2,390 acres; Norco - 100 acres; Perris - 1,060 acres; Riverside - 90 acres; San Jacinto - 2,130
7 acres; and Temecula - 990 acres. For purposes of this paragraph, each regular Board member of the
8 meeting who represents a City shall be assigned votes based on the percentage of the population of
9 incorporated areas within the boundaries of the MSHCP Plan area represented by that member in relation
10 to the total population of incorporated areas within the boundaries of the MSHCP Plan area as well as the
11 percentage of the acreage anticipated to be conserved within the Criteria Area subject to the jurisdiction of
12 that member in relation to the total incorporated area acreage within the Criteria Area set forth in the
13 MSHCP. Population data shall be determined through California Department of Finance estimates,
14 adjusted annually. In addition, as lands within the Criteria Area are acquired and conserved, the Board
15 may through resolution revise the above-referenced average number of acres that are anticipated to be
16 conserved within incorporated areas.

17 D. The Board may adopt, from time to time, such rules and regulations for the conduct
18 of its meetings and affairs as it may deem necessary, including, without limitation, the designation of a
19 person to record and transcribe the minutes of each public meeting of the RCA.

20 **Section 8. Officers.** The Board shall select a Chairperson and a Vice-Chairperson at its first
21 meeting and at the first meeting held in each succeeding calendar year. Additionally, at its first meeting
22 and at the first meeting held in each succeeding calendar year shall, the Board shall select any other
23 officers it deems appropriate. In the event an officer resigns or ceases to be an officer, the Board shall
24 select a replacement therefore at the next regular meeting of the Board. In the absence or inability of the
25 Chairperson to act, the Vice-Chairperson shall act as Chairperson.

26 A. **Treasurer.** The treasurer of a member agency shall serve as the treasurer of the
27 RCA. The Board pursuant to the adoption of a resolution shall appoint the treasurer of a member agency
28 to serve as the Treasurer. The Treasurer shall have the custody of the RCA money and disburse RCA

1 funds pursuant to the accounting procedures developed in accordance with the provisions of this
2 Agreement, the Act, and with those procedures established by the Board. The Treasurer shall assume the
3 duties described in Section 6505.5 of the Government Code, namely: receive and receipt for all money of
4 the RCA and place in the Treasury of the Treasurer to the credit of the RCA; be responsible upon an
5 official bond as prescribed by the Board for the safekeeping and disbursement of all RCA money so held;
6 pay, when due, out of money of the RCA so held, all sums payable, only upon warrants of the officer
7 performing the functions of the Controller who has been designated by the RCA or Board; verify and
8 report in writing on the first day of July, October, January and April of each year to the RCA the amount
9 of money held for the RCA, the amount of receipts since the last report, and the amount paid out since the
10 last report; and perform such other duties as are set forth in this Agreement or specified by the Board.

11 B. Controller. The Finance Director of a member agency shall serve as the
12 Controller of the RCA. The Board pursuant to the adoption of a resolution shall appoint the finance
13 director of a member agency to serve as the Controller. The Controller shall draw warrants to pay
14 demands against the RCA when such demands have been approved by the Board or by any other person
15 authorized to so approve such by this Agreement or by resolution of the Board. The Controller shall
16 perform such duties as are set forth in this Agreement and such other duties as are specified by the Board.

17 There shall be strict accountability of all funds and reporting of all receipts and
18 disbursements. The Controller shall establish and maintain such procedures, funds and accounts as may
19 be required by sound accounting practices, the books and records of the RCA in the possession of the
20 Controller shall be open to inspection at all reasonable times by representatives of the Parties.

21 The Controller, with the approval of the RCA, shall contract with an independent certified
22 public accountant or firm or certified public accountants to make an annual audit of the accounts and
23 records of the RCA, and a complete written report of such audit shall be filed as public records annually,
24 within six (6) months of the end of the fiscal year under examination, with each of the Parties. Such
25 annual audit and written report shall comply with the requirements of Section 6505 of the Government
26 Code. The cost of the annual audit, including contracts with, or employment of such independent
27 certified public accountants in making an audit pursuant to this Agreement shall be a charge against any
28 unencumbered funds of the RCA available for such purpose. The Board by unanimous vote, may replace

1 the annual audit with a special audit covering a two-year period.

2 **Section 9. MSHCP Advisory Committee.** Within thirty (30) days after issuance of the
3 permits by the U.S. Fish and Wildlife Service and California Department of Fish and Game for the
4 MSHCP, the Board shall form an MSHCP Advisory Committee. The MSHCP Advisory Committee shall
5 consist of the Riverside County Habitat Conservation Agency (RCHCA) Board of Directors and one
6 representative, from each City who is not a member of the RCHCA. Within six (6) months of execution
7 of this Agreement, or at any time thereafter, the Board may review the RCA organizational structure
8 established by this Agreement to determine if it is facilitating MSHCP implementation.

9 **Section 10. Executive Director.** The Board shall retain an Executive Director to administer
10 the MSHCP in compliance with the duties and responsibilities set forth in Sections 5.0 and 6.0 of the
11 MSHCP. As required by the MSHCP, the RCA shall initially contract with the County of Riverside to
12 provide an appropriate department or individual to act as the Executive Director within thirty (30) days of
13 the formation of the RCA. The appropriate department or individual shall be recommended by the
14 County's Executive Officer and considered by the Board. It is understood by the Parties to this
15 Agreement that the Board may accept or reject the County Executive Officer's recommendation of an
16 appropriate department or individual to serve as the Executive Director. This contract shall be for an
17 initial term of three (3) years. At least six (6) months prior to the expiration of this initial contract term,
18 the Board shall review the County department's or individual's performance as Executive Director.
19 Based upon this review, the Board may elect to extend the contract with the County or select an
20 alternative entity or individual for the Executive Director position upon expiration of the initial term.

21 **Section 11. Administrative/Personnel Services.** The Board may contract with WRCOG or
22 any other public entity to provide administrative/personnel services to the RCA.

23 **Section 12. Monitoring Program Administrator.** Upon issuance of the permits for the
24 MSHCP by the U.S. Fish and Wildlife Service and California Department of Fish and Game and for a
25 period of eight (8) years thereafter, the California Department of Fish and Game shall serve as the
26 Monitoring Program Administrator for the MSHCP. The Monitoring Program Administrator shall be
27 responsible for implementing the monitoring program contained in Section 5.0 of the MSHCP and shall
28 perform all duties and responsibilities as set forth in Sections 5.0 and 6.0 of the MSHCP. Thereafter, the

1 Board may elect to have the Department continue acting in the capacity or shall select an alternative
2 individual or entity for this position if the Board determines that the Department cannot adequately
3 perform the duties and responsibilities of this position.

4 **Section 13. Reserve Managers.** The Board shall retain at least one Reserve Manager to
5 manage lands owned by the RCA within the MSHCP Conservation Area. This Reserve Manager(s) shall
6 report to the Executive Director and shall perform all the duties and responsibilities set forth in Section
7 5.0 and Section 6.0 of the MSHCP. Additionally, Reserve Managers managing lands owned by any Party
8 to this Agreement that are within the MSHCP Conservation Area shall report to the Executive Director.

9 **Section 14. Independent Science Advisors.** The Board shall retain, as appropriate,
10 independent science advisors who are qualified biologists and conservation experts with expertise in
11 species covered by the MSHCP and their habitats. Additionally, to the extent feasible, the independent
12 science advisors shall have experience in land management. Independent science advisors shall be
13 retained on an annual basis, shall report to the Executive Director and shall comply with the duties and
14 responsibilities set forth in Section 6.0 of the MSHCP.

15 **Section 15. Funding Coordination Committee.** Within one hundred and twenty (120) days
16 after issuance of the permits by the U.S. Fish and Wildlife Service and California Department of Fish and
17 Game for the MSHCP, the Board shall form a Funding Coordination Committee to provide
18 recommendations to the Board on local funding priorities and local MSHCP Conservation Area
19 acquisitions. Members of this committee shall be appointed by the Board and shall consist of, at a
20 minimum, representatives of the Parties to this Agreement, the U.S. Fish and Wildlife Service, and the
21 California Department of Fish and Game. To the extent feasible, members of the Funding Coordination
22 Committee shall have expertise in real estate or land use planning and/or experience implementing large
23 scale conservation programs.

24 The Funding Coordination Committee shall make recommendations to the Board through the
25 Executive Director on local land acquisitions and funding priorities. Additionally, this Committee shall
26 provide a forum to discuss land acquisition priorities of the U.S. Fish and Wildlife Service and California
27 Department of Fish and Game and acquisitions by other entities using non-local sources of revenue. The
28 Board shall establish policies under which the Funding Coordination Committee shall make

1 recommendations to the Board. Such policies shall include conflict of interest guidelines for the
2 Committee members.

3 The Planning Directors of each Party to this Agreement shall receive prior notice of all meetings
4 of the Funding Coordination Committee. Such notice shall include a meeting agenda and a list of
5 potential acquisition sites, if applicable. The Planning Directors or their designated representatives may
6 participate in Committee meetings, as appropriate.

7 **Section 16. Reserve Management Oversight Committee.** The Reserve Management
8 Oversight Committee (RMOC) shall be formed within sixty (60) days of the effective date of the contract
9 between the RCA and the County concerning the establishment of an Executive Director. The RMOC
10 shall be composed of, at a minimum, one representative appointed by each of the following entities:

- 11 A. U. S. Fish and Wildlife Service,
- 12 B. California Department of Fish and Game,
- 13 C. Riverside County Regional Parks and Open Space District,
- 14 D. Bureau of Land Management,
- 15 E. U.S. Forest Service,
- 16 F. California Department of Parks and Recreation,
- 17 G. RCA, and
- 18 H. Up to five (5) other private or public agencies or entities that own or manage land
19 within the MSHCP Conservation Area.

20 The RMOC shall serve as the intermediary between the Reserve Managers and the decision
21 making function of the RCA. The Executive Director shall serve as chair of the RMOC.

22 **Section 17. Rules and Governing Law.** This Agreement shall be construed and enforced in
23 accordance with the laws of the State of California. The laws of the State of California applicable to the
24 County of Riverside shall govern the RCA in the manner of exercising its powers, subject, however, to
25 such restrictions as are applicable to said city in the manner of exercising such powers, as required by
26 Government Code Section 6509. The Board, at its first meeting or as soon thereafter as may be possible,
27 shall adopt such rules and regulations as the Board may deem necessary for the conduct of the RCA's
28 affairs. Among these rules shall be a conflict of interest code and a purchasing ordinance. The Board

1 may, as it deems appropriate, review and revise these rules and regulations.

2 **Section 18. Fiscal Year.** The fiscal year of the RCA shall be the period commencing on July
3 1 of each year and ending on and including the following June 30.

4 **Section 19. Contributions/Estimated Budget.**

5 A. Contributions of Development Mitigation Fees. The Parties to this Agreement shall
6 impose a development mitigation fee on all new development to support the acquisition of additional
7 reserve lands pursuant to the MSHCP. All development mitigation fees collected by the Parties shall be
8 forwarded to the RCA within ninety (90) days after receipt by each Party. The RCA may, in its
9 discretion, conduct an audit of the development mitigation fees collected by any Party to this Agreement.

10 B. Other Contributions. The RCA may accept contributions of money or property from the
11 Parties or other individuals or entities including but not limited to contributions from Parties, MSHCP
12 Permittees and Special Participating Entities who obtain take authorization under the MSHCP for public
13 utility, schools, transportation, flood control and other public infrastructure projects. Additionally, a Party
14 may hold and manage its own property as a contribution to implementation of the MSHCP and the
15 MSHCP Conservation Area. Landfill Tipping Fees and Density Bonus Fees collected by the County may
16 be contributed to the RCA on an annual basis subject to the discretion of the Board of Supervisors.

17 C. Use of Contributions. When approved by the Board, revenues received by the RCA,
18 including without limitation, fees and other contributions, shall be used to implement the MSHCP. In
19 addition, the RCA shall reimburse the County for any and all litigation costs, including but not limited to
20 attorneys fees, incurred in defense of any legal challenge concerning the adoption of the MSHCP or any
21 related actions as well as any costs incurred to establish the Executive Director and any other necessary
22 staff prior to entering into the contract contemplated in Section 10 of this Agreement.

23 D. Budget. The annual budget for the RCA shall be prepared by the Executive Director. In
24 the alternative, the RCA may contract with WRCOG to prepare an annual budget. The annual budget
25 shall be based on an estimate of the amount of revenue necessary to implement the MSHCP during the
26 ensuing fiscal year and shall consider necessary land acquisition, improvements, maintenance,
27 management, monitoring, administration, and operation costs during the current fiscal year as such costs
28 are set forth in the then current approved budget for the RCA.

1 **Section 20. MSHCP Reporting Requirements.** In order to assist in the preparation of the
2 annual report required to be prepared by the RMOC and submitted to the USFWS, CDFG, and RCA as
3 set forth in the MSHCP and Implementing Agreement, the Parties shall on a monthly basis provide the
4 following information to the RCA:

- 5 A. grading permit activity including the number of the permit issued, the location of
6 the development site identified by assessor's parcel number, and the amount of
7 acreage disturbed;
- 8 B. single family home and mobilehome construction activity within the Criteria Area
9 including the number of the grading, building, site preparation or installation permit
10 issued and the location of the development site identified by assessor's parcel
11 number;
- 12 C. development mitigation fee collection including identification by assessor's parcel
13 number of the project for which the fee was collected, the amount of the fee paid,
14 and any exemptions or credits that may have been included in any calculation of the
15 fee; and
- 16 D. any other information required to comply with the provisions of the MSHCP as
17 may be determined necessary by the Executive Director.

18 In addition, the County shall submit on an annual basis all information contained in the Existing
19 Agricultural Operations Database including the amount of new agricultural land, if any, added to the
20 Database as well as any documentation concerning the expansion of agricultural operations within the
21 Criteria Area.

22 **Section 21. Joint Project/Acquisition Review Process.** To ensure that the requirements of
23 the MSHCP and its Implementing Agreement are properly met, a joint project/acquisition review process
24 shall be instituted by the RCA. This process is set forth in Section 6 of the MSHCP.

25 **Section 22. Liabilities.** Except as may be provided herein, the debts, liabilities and
26 obligations of the RCA shall be the debts, liabilities and obligations of the RCA alone, and not of the
27 Parties to this Agreement.

28 **Section 23. Indemnification.** Provided that a Party has acted in good faith and in accordance

1 : with this Agreement, the approved MSHCP and its Implementing Agreement and the Permits, the RCA
2 shall defend, indemnify and hold such Party free and harmless from any loss, liability or damage incurred
3 or suffered by such Party by reason of litigation arising from or as a result of any of the following: the
4 Party's development mitigation fee ordinance; the Party's participation in the RCA; actions taken to
5 approve and/or implement the MSHCP; claims of inverse condemnation or unconstitutional takings
6 against a Party; or any other act performed or to be performed by the Party pursuant to this Agreement,
7 the MSHCP, its Implementing Agreement or the Permits; provided, however, that such indemnification or
8 agreement to hold harmless pursuant to this Section shall be recoverable only out of RCA assets and not
9 from other Parties.

10 **Section 24. Notices.** Notices required or permitted hereunder shall be sufficiently given if
11 made in writing and delivered either personally or by registered or certified mail, postage prepaid to said
12 respective Parties, as follows:

- 13
- 14 A. Riverside County Conservation Authority
Executive Director
4080 Lemon Street, 7th Floor
Riverside, CA 92501
- 15
- 16 B. County of Riverside
Transportation and Land Management Agency
Agency Director
4080 Lemon Street, 7th Floor
Riverside, CA 92501
(909) 955-6742
(909) 955-6879
- 17
- 18
- 19
- 20
- 21 C. City of Banning
City Manager
99 E. Ramsey Street
Banning, CA 92220
(909) 922-3103
(909) 922-3128 fax
- 22
- 23
- 24
- 25 D. City of Beaumont
City Manager
550 E. 6th Street
Beaumont, CA 92223
(909) 769-8520
(909) 769-8526 fax
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- E. City of Calimesa
City Manager
908 Park Ave
Calimesa, CA 92320
(909) 795-9801
(909) 795-4399 fax

- F. City of Canyon Lake
City Manager
31516 Railroad Canyon Road
Canyon Lake, CA 92587
(909) 244-2955
(909) 246-2022 fax

- G. City of Corona
City Manager
PO Box 940
Corona, CA 92878
(909) 736-2371
(909) 736-2493 fax

- H. City of Hemet
City Manager
445 E. Florida Avenue South
Hemet, CA 92543
(909) 765-2300
(909) 765-3785 fax

- I. City of Lake Elsinore
City Manager
130 S. Main Street
Lake Elsinore, CA 92530
(909) 674-6727 ext. 261
(909) 674-2392 fax

- J. City of Moreno Valley
City Manager
PO Box 88005
Moreno Valley, CA 92553
(909) 413-3008
(909) 413-3760 fax

- K. City of Murrieta
City Manager
26442 Beckman Court
Murrieta, CA 92562-9755
(909) 698-1040
(909) 698-9885 fax

1 L. City of Norco
2 City Manager
3 2870 Clark Avenue
4 Norco, CA 92860
(909) 270-5611
(909) 270-5622 fax

5 M. City of Perris
6 City Manager
7 101 North D Street
8 Perris, CA 92570
(909) 657-5882
(909) 657-1087 fax

9 N. City of Riverside
10 City Manager
11 3900 Main Street
12 Riverside, CA 92522
(909) 826-5991
(909) 826-5470 fax

13 O. City of San Jacinto
14 City Manager
15 201 E Main Street
16 San Jacinto, CA 92583
(909) 487-7342
(909) 654-3728 fax

17 P. City of Temecula
18 City Manager
19 PO Box 9033
20 Temecula, CA 92589-9033
(909) 694-6440
(909) 694-6499 fax

21
22 **Section 25. Severability.** If any section, clause or phrase of this Agreement or the application
23 thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of
24 competent jurisdiction, it shall be deemed severable and the remainder of the Agreement or the
25 application of such provisions to the other party or to other persons or circumstances shall not be affected
26 thereby.

27 **Section 26. Other Agreements Not Prohibited.** Other agreements by and between the
28 Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by

1 execution of this Agreement. Furthermore, the Parties hereto agree upon request to execute,
2 acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent
3 of this Agreement.

4 **Section 27. Other Obligations.** The responsibilities and obligations of each Party to this
5 Agreement shall be solely as provided in this Agreement, or as may be provided for in supplemental
6 agreements to be executed by the Parties.

7 **Section 28. Non-Assignability.** The rights, titles and interests of any Party to this Agreement
8 shall not be assignable or transferable without the consent of the governing body of each Party hereto.

9 **Section 29. Section Headings.** The section headings herein are for convenience of the Parties
10 only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or
11 intent of the provisions or language of this Agreement.

12 **Section 30. Construction of Language.** It is the intention of the Parties hereto that if any
13 provision of this Agreement is capable of two constructions, one of which would render the provision
14 void and the other of which would render the provision valid, then the provision shall have the meaning
15 which renders it valid.

16 **Section 31. Cooperation.** The Parties recognize the necessity and hereby agree to cooperate
17 with each other in carrying out the purposes of this Agreement, including cooperation in matters relating
18 to the public, accounting, litigation, public relations and the like.

19 **Section 32. Future Amendments.** To preserve a reasonable degree of flexibility, many parts
20 of this Agreement are stated in general terms. It is understood that there may be Amendments to this
21 Agreement which will further define the rights and obligations of the Parties.

22 **Section 33. Successors.** This Agreement shall be binding upon and shall inure to the benefit
23 of the successors of the Parties hereto.

24 **IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be executed and
25 attested by their proper officers thereunto duly authorized as of the date first above written.

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Dated: _____

Attest: _____

COUNTY OF RIVERSIDE

By: _____
Chairman, Board of Supervisors

Dated: _____

Attest: _____

City Clerk

CITY OF BANNING

By: _____
Mayor

Dated: _____

Attest: _____

City Clerk

CITY OF BEAUMONT

By: _____
Mayor

Dated: _____

Attest: _____

City Clerk

CITY OF CALIMESA

By: _____
Mayor

Dated: _____

Attest: _____

City Clerk

CITY OF CANYON LAKE

By: _____
Mayor

Dated: _____

Attest: _____

City Clerk

CITY OF CORONA

By: _____
Mayor

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Dated: _____

CITY OF HEMET

Attest:

By: _____

City Clerk

Mayor

Dated: _____

CITY OF LAKE ELSINORE

Attest:

By: _____

City Clerk

Mayor

Dated: _____

CITY OF MORENO VALLEY

Attest:

By: _____

City Clerk

Mayor

Dated: _____

CITY OF MURRIETA

Attest:

By: _____

City Clerk

Mayor

Dated: _____

CITY OF NORCO

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City Clerk

Mayor

Dated: _____

CITY OF PERRIS

Attest:

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City Clerk

Mayor

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Dated: _____

Attest:

City Clerk

CITY OF RIVERSIDE

By: _____
Mayor

Dated: _____

Attest:

City Clerk

CITY OF SAN JACINTO

By: _____
Mayor

Dated: _____

Attest:

City Clerk

CITY OF TEMECULA

By: _____
Mayor

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*JOINT EXERCISE OF
POWERS AGREEMENT*

*RESOLUTION
NO. 2008-24*

EXHIBIT “2”

RESOLUTION NO. 2008-24

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING APPROVING AMENDMENT NO. 2 TO THE
JOINT EXERCISE OF POWERS AGREEMENT CREATING
THE WESTERN RIVERSIDE COUNTY REGIONAL
CONSERVATION AUTHORITY**

WHEREAS, on October 28, 2003, the City of Banning entered in the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority; and,

WHEREAS, this Joint Exercise of Powers Agreement is made by and between the City of Banning, the County of Riverside, herein after sometimes referred as the "County", and Cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto and Temecula, hereinafter sometimes referred to as "Cities", for the purpose of acquiring, administering, operating and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan, herein after referred to as the "MSHCP"; and,

WHEREAS, on January 27, 2004, the City of Banning approved Amendment No. 1 to the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority; and,

WHEREAS, Section 32 of the Agreement states that there may be amendments to the Agreement which will further define the rights and obligations of the Parties.

WHEREAS, Amendment No. 2, attached hereto and incorporated by reference, which will: 1) reference the "Marks-Roos Local Bond Pooling Act of 1985 to authorize the RCA to finance the acquisition of property over time under the Act; and 2) include a method of appointing alternates by the members of the Board of Supervisors.

NOW THEREFORE, the City Council does resolve as follows:

1. Approval of Amendment No. 2 to the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority, attached hereto as Exhibit "A"; and
2. Authorize the Mayor to execute said Amendment No. 2.

PASSED, APPROVED AND ADOPTED this 12th day of February, 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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-24, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

*JOINT EXERCISE OF
POWERS AGREEMENT*

*RESOLUTION
NO. 2008-24*

EXHIBIT “2”

RESOLUTION NO. 2008-24

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING APPROVING AMENDMENT NO. 2 TO THE
JOINT EXERCISE OF POWERS AGREEMENT CREATING
THE WESTERN RIVERSIDE COUNTY REGIONAL
CONSERVATION AUTHORITY**

WHEREAS, on October 28, 2003, the City of Banning entered in the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority; and,

WHEREAS, this Joint Exercise of Powers Agreement is made by and between the City of Banning, the County of Riverside, herein after sometimes referred as the "County", and Cities of Beaumont, Calimesa, Canyon Lake, Corona, Hemet, Lake Elsinore, Moreno Valley, Murrieta, Norco, Perris, Riverside, San Jacinto and Temecula, hereinafter sometimes referred to as "Cities", for the purpose of acquiring, administering, operating and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan, herein after referred to as the "MSHCP"; and,

WHEREAS, on January 27, 2004, the City of Banning approved Amendment No. 1 to the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority; and,

WHEREAS, Section 32 of the Agreement states that there may be amendments to the Agreement which will further define the rights and obligations of the Parties.

WHEREAS, Amendment No. 2, attached hereto and incorporated by reference, which will:
1) reference the "Marks-Roos Local Bond Pooling Act of 1985 to authorize the RCA to finance the acquisition of property over time under the Act; and 2) include a method of appointing alternates by the members of the Board of Supervisors.

NOW THEREFORE, the City Council does resolve as follows:

1. Approval of Amendment No. 2 to the Joint Exercise of Powers Agreement creating the Western Riverside County Regional Conservation Authority, attached hereto as Exhibit "A"; and
2. Authorize the Mayor to execute said Amendment No. 2.

PASSED, APPROVED AND ADOPTED this 12th day of February, 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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-24, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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*JOINT EXERCISE OF
POWERS AGREEMENT*

*RESOLUTION
NO. 2008-24*

ATTACHMENT "A"

EXHIBIT "2"

1 AMENDMENT NO. 2 TO JOINT EXERCISE OF POWERS AGREEMENT CREATING
2 THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

3 This Amendment No. 2 dated _____, 2007, is made by and between the
4 COUNTY OF RIVERSIDE, hereinafter sometimes referred to as "County," and the Cities
5 of BANNING, BEAUMONT, CALIMESA, CANYON LAKE, CORONA, HEMET, LAKE
6 ELSINORE, MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN
7 JACINTO and TEMECULA, hereinafter sometimes referred to as "Cities."
8

9 RECITALS

10 WHEREAS, the Cities and the County hereinafter sometimes jointly referred to as
11 "Parties," are authorized and empowered to contract with each other pursuant to Article
12 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government
13 Code of the State of California; and

14 WHEREAS, the Parties, and each of them, have executed a Joint Exercise of
15 Powers Agreement Creating the Western Riverside County Regional Conservation
16 Authority ("Agreement"); and

17 WHEREAS, section 32 of the Agreement states that there may be Amendments
18 to the Agreement which will further define the rights and obligations of the Parties.

19 NOW, THEREFORE, for and in consideration of the mutual covenants and
20 conditions hereinafter stated, the Parties hereto agree as follows:

21 **Section 1. Revision to Powers of Agreement.**

22 (a) Revision to Section 1 of Agreement. The following language is added to
23 the end of Section 1 of the Agreement:

24 "Additionally, this Agreement shall permit the financing of public capital
25 improvements and those purposes permitted under the Marks-Roos Local Bond
26 Pooling Act of 1985, being Article 4 (commencing with Section 6584) of Chapter
27 5, Division 7, Title 1 of the California Government Code (the "Bond Law")."
28

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

1 (b) Revision to Section 2 of Agreement. The first sentence of Section 2 of the
2 Agreement is hereby amended as follows:

3 "Pursuant to the Act and the Bond Law, there is hereby created a public
4 agency to be known as the "Western Riverside County Regional Conservation
5 Authority" hereinafter referred to as the "RCA"."

6 (c) Amendments to Section 3.

7 A. Section 3.O is hereby amended by inserting as the first sentence the
8 following:

9 "O. To exercise the powers granted to it under the Act, including,
10 but not limited to, the Bond Law and the powers common to each member, as
11 may be necessary to accomplish the purposes of this Agreement."

12 B. Section 3.P is added to read as follows:

13 "P. To invest money in the treasury pursuant to Section 6505.5 of
14 the Act that is not required for the immediate necessities of the Authority, as the
15 Authority determines is advisable, in the same manner and upon the same
16 conditions as local agencies, pursuant to Section 53601 of the California
17 Government Code."

18 Section 2. Revised Agreement Section 6 Regarding RCA Board and
19 Membership. Section 6 of the Agreement is amended to read as follows:

20 "This Agreement and the authority hereby created shall be administered by the
21 governing body of the RCA which shall be known as the "Board of the Western Riverside
22 County Regional Conservation Authority" hereinafter referred to as the "Board."

23 The regular members of the Board shall be the five members of the Riverside
24 County Board of Supervisors and one member from each incorporated city who is
25 signatory to the Agreement. Written notification of the appointment of a City
26 representative shall be provided to the Chairperson of the Board.

27 Each member of the Riverside County Board of Supervisors may appoint an
28 alternate member and each City may appoint one alternate member. Each regular

1 member and alternate City appointed member must hold an elective office on the
2 respective governing body appointing the regular or alternate member. The Board of
3 Supervisors may appoint a city council member of a member city to represent each
4 Board of Supervisor member as an alternate at meetings of the RCA Board or
5 committees. Notwithstanding the prior sentence, in no event shall the same person
6 serve as a city representative and alternate for the Board of Supervisor's member of the
7 same meeting. Notice of the appointment of an alternate shall be made in writing to the
8 chairperson of the RCA Board. In the absence of a regular member, the alternate
9 member shall, if present, participate in a meeting of the Board the same as if the
10 alternate member were the regular member.

11 Regular members and alternate members shall serve on the Board during the
12 term for which they were appointed or until their successor has been appointed or their
13 appointment has been revoked, whichever is earlier. However, a regular or alternate
14 member's position on the Board shall automatically terminate if and when the term of the
15 elected public office of such regular or alternate member is terminated. When a vacancy
16 occurs, it shall be the duty of the respective Party having the vacancy to promptly inform
17 the Board of the name of the replacement regular or alternate member.

18 Regular members and alternate members, if participating in a meeting of the
19 Board on behalf of a regular member, shall be entitled to compensation for participation
20 in meetings of the Board and necessary traveling and personal expenses incurred in the
21 performance of the member's duties as authorized by the Board. Such compensation
22 shall be fixed by resolution of the Board."

23 **Section 3. Revised Agreement Section 17 Regarding Rules and Governing**
24 **Law.** Section 17 of the Agreement is amended to read as follows:

25 "This Agreement shall be construed and enforced in accordance with the laws of
26 the State of California. The Act, the Bond Law, and the laws of the State of California
27 applicable to a general law city shall govern the RCA in the manner of exercising its
28 powers, subject, however, to such restrictions as are applicable to said city in the

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P.O. BOX 1028
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1 manner of exercising such powers, as required by Government Code section 6509. The
2 Board, at its first meeting or as soon thereafter as may be possible, shall adopt such
3 rules and regulations as the Board may deem necessary for the conduct of the RCA's
4 affairs. Among these rules shall be a conflict of interest code and a purchasing
5 ordinance. The Board may, as it deems appropriate, review and revise these rules and
6 regulations."

7 **Section 4. Other Provisions to Remain in Effect.** Except as set forth herein,
8 all provisions of the Agreement shall remain in full force and effect, and shall govern the
9 actions of the parties hereto and the amended provisions set forth in this Amendment.

10 **IN WITNESS WHEREOF**, the Parties hereto have caused this Amendment to be
11 executed and attested by their proper officers thereunto duly authorized as of the date
12 first above written.

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Dated: _____

CITY OF BANNING

Attest:

By: _____
Mayor

City Clerk

Dated: _____

CITY OF BEAUMONT

Attest:

By: _____
Mayor

City Clerk

Dated: _____

CITY OF CALIMESA

Attest:

By: _____
Mayor

City Clerk

Dated: _____

CITY OF CANYON LAKE

Attest:

By: _____
Mayor

City Clerk

Dated: _____

CITY OF CORONA

Attest:

By: _____
Mayor

City Clerk

Dated: _____

CITY OF HEMET

Attest:

By: _____
Mayor

City Clerk

172

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Dated: _____

CITY OF LAKE ELSINORE

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF MORENO VALLEY

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF MURRIETA

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF NORCO

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF PERRIS

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF RIVERSIDE

Attest:

City Clerk

By: _____
Mayor

LAW OFFICES OF
BEST BEST & KRIEGER LLP
3750 UNIVERSITY AVENUE
P.O. BOX 1028
RIVERSIDE, CALIFORNIA 92502

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Dated: _____

CITY OF SAN JACINTO

Attest:

City Clerk

By: _____
Mayor

Dated: _____

CITY OF TEMECULA

Attest:

City Clerk

By: _____
Mayor

Dated: _____

COUNTY OF RIVERSIDE

Attest:

By: _____
Chairman, Board of Supervisors

174

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: February 12, 2008
TO: Honorable Mayor and City Council
FROM: Duane Burk, Director of Public Works
SUBJECT: Notice of Completion for Project No. 2007-10, "Demolition of the Former Community Redevelopment Agency Building"

RECOMMENDATION: That the City Council accept Project No. 2007-10, "Demolition of the Former Community Redevelopment Agency Building," as complete and direct the City Clerk to record the Notice of Completion.

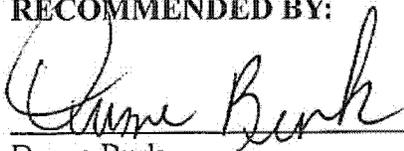
JUSTIFICATION: The contractor has completed the work as per the approved plans and specifications.

BACKGROUND: On November 27, 2007 the City Council adopted Community Redevelopment Agency Resolution No. 2007-23, "Awarding the Construction Contract for Project No. 2007-10, 'Demolition of the Former Community Redevelopment Agency Building,'" to Graham Crackers Demo, Inc. of Menifee, California.

The scope of work for Project No. 2007-10, "Demolition of the Former Community Redevelopment Agency Building," included demolition and disposal of a two-story concrete and masonry unit, wood-roof commercial building of approximately 6,200 square feet, located at 70 N. San Geronio Ave., and the demolition and disposal of the foundation and slab.

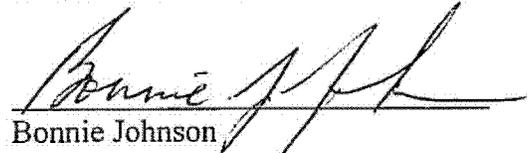
FISCAL DATA: This project was completed at the original contract amount of \$34,400.00. This project was funded through Account No. 856-9500-490.90-24.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

1 WHEN RECORDED MAIL TO:

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

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

12
13 NOTICE OF COMPLETION
14 DEMOLITION OF THE FORMER COMMUNITY
15 REDEVELOPMENT AGENCY BUILDING
16 PROJECT NO. 2007-10

17
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,
19 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of
20 the State of California, and is hereby accepted by the City of Banning pursuant to
21 authority conferred by the City Council this February 12, 2008, and the grantees consent
22 to recordation thereof by its duly authorized agent.
23

24 (1) That the City of Banning and Graham Crackers Demo, Inc. of Menifee,
25 Calif., the vendee, under the November 2007 contract, for the furnishing of labor,
26 materials, tools, equipment and other services necessary for Project No. 2007-10,
27 "Demolition of the Former Community Redevelopment Agency Building," within the
28 City of Banning. The scope of work under this project included demolition and disposal
29 of a two-story, concrete and masonry unit, wood-roof commercial building of
30 approximately 6,200 square feet, and the demolition and disposal of the foundation and
31 slab, in accordance with the City of Banning Standard Specifications.

32 (2) That the work of improvement was completed on December 19, 2007, and
33 the Nature of Interest was to eradicate an unused City-owned building and complete a
34 necessary step towards providing additional parking spaces adjacent to City Hall.

35 (3) That the City of Banning, a municipal corporation, whose address is
36 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
37 of improvement.

38 (4) That the said work of improvement was performed at the former
39 Community Redevelopment Agency Building, at 70 N. San Gorgonio Ave., in Banning,
40 California, 92220.

41 (5) That the original contractor for said improvements was Graham Crackers
42 Demo, Inc., State Contractor's License No. 745828.

43 (6) That the corporate surety on the performance and payment bonds is
44 SureTec Insurance Co., 952 Echo Lane, Houston, Texas, 77024.

45

46 Attach. Exhibit "A"

47

48 Dated: February 12, 2008

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50

CITY OF BANNING

51

A Municipal Corporation

52

53

54

By _____

55

Duane Burk

56

Director of Public Works

57

APPROVED AS TO FORM:

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59

60

61 _____
Burke, Williams & Sorensen, LLP

62

City Attorney

63

EXHIBIT "A"

PAYMENT AND PERFORMANCE BONDS

is bond was issued in (2) two identical counterparts

Bond No. 4365296

THE FINAL PREMIUM IS
PREDICATED ON THE
FINAL CONTRACT PRICE

SECTION 1.6
OF
PROCEDURAL DOCUMENTS
PAYMENT BOND
(CALIFORNIA PUBLIC WORKS)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Banning
(referred to hereinafter as "Obligee") has awarded
to Graham Crackers - Demo, Inc. (hereinafter
designated as the "Contractor") a contract dated November 20th, 2007, for work described
as follows:

PROJECT NO. 2007-10, "DEMOLITION OF THE FORMER COMMUNITY
REDEVELOPMENT AGENCY BUILDING" (hereinafter referred to as the "Public Works
Contract"); and

WHEREAS said Contractor is required to furnish a bond in connection with said Public Works
Contract, and pursuant to Section 3247 of the California Civil Code;

NOW, THEREFORE, we Graham Crackers - Demo, Inc.
the undersigned Contractor, as Principal, and SureTec Insurance Company, a
corporation organized and existing under the laws of the State of Texas, and
duly authorized to transact business under the laws of the State of California, as Surety, are held and
firmly bound unto the CITY OF BANNING and to any and all persons, companies or corporation
entitled to file stop notices under Section 3181 of the California Civil Code in the sum of
Thirty Four Thousand Four Hundred and 00/100 Dollars
(\$ 34,400.00), said sum being not less than 100 percent of the total amount payable by
the said obligee under the terms of the said Public Works Contract, for which payment will and
truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns,
jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if said Contractor, his or its heirs,
executors, administrators, successors or assigns, or Subcontractors, shall fail to pay for any
materials, provisions, vendor or other supplies or teams, implements or machinery used in, upon,
for or about the performance of the Public Work contracted to be done, or for any work or labor
thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to
such work or labor, or for any amounts required to be deducted, withheld, and paid over to the
Franchise Tax Board from the wages of employees of said Contractor and his Subcontractors
pursuant to Section 18806 of the Revenue and Taxation Code with respect to such work and labor
as required by the provisions of Section 3247 through 3252 of the Civil Code, the Surety or Sureties
hereon will pay for the same in an amount not exceeding the sum specified in this bond, otherwise
the above obligation shall be void. In case suit is brought upon this bond, the said Surety or

180 34

Sureties will pay a reasonable attorney's fee to be fixed by the Court. In addition to the provisions herein above, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to serve stop notices under Section 3181 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Public Work Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29th
day of November, 2007.

PRINCIPAL:

Graham Crackers - Demo, Inc.

By *Christank Graham*

SURETY:

SureTec Insurance Company

By *[Signature]*

Attorney-in-fact Daniel Huckabay

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

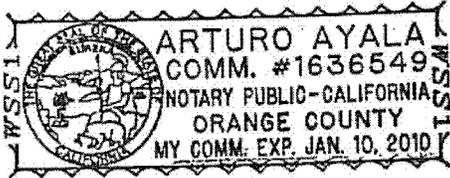
County of Orange

On 11/29/2007 before me, Arturo Ayala, Notary Public
Date Name, Title of Officer - E.G. "Jane Doe, NOTARY PUBLIC"

personally appeared Daniel Huckabay
NAME(S) OF SIGNER(S)

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]
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

Payment Bond
TITLE OR TYPE OF DOCUMENT

Two
NUMBER OF PAGES

11/29/2007
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

is bond was issued in (2) two identical counterparts

Bond No. 4365296
Premium: \$860.00

SECTION 1.7
OF
PROCEDURAL DOCUMENTS

THE FINAL PREMIUM IS
PREDICATED ON THE
FINAL CONTRACT PRICE

CONTRACT PERFORMANCE BOND
(CALIFORNIA PUBLIC WORK)

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the CITY OF BANNING
(referred to hereinafter as "Obligee") has awarded to Graham Crackers - Demo, Inc.
(hereinafter designated as the "Contractor") a contract dated November 20th, 2007, for
work described as follows:

PROJECT NO. 2007-10, "DEMOLITION OF THE FORMER COMMUNITY
REDEVELOPMENT AGENCY BUILDING" (hereinafter referred to as the "Public Works
Contract"); and

WHEREAS, the Contractor is required by said Public Works Contract to perform the terms thereof
and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we Graham Crackers - Demo, Inc.
the undersigned Contractor, as Principal, and SureTec Insurance Company a corporation
organized and existing under the laws of the State of Texas, and duly
authorized to transact business under the laws of the State of California, as Surety, are held and
firmly bound unto the CITY OF BANNING in the sum of Thirty Four Thousand Four
Hundred and 00/100 Dollars (\$ 34,400.00), said sum being not less
than 100 percent of the total amount payable by the said obligee under the terms of the said Public
Works Contract, for which amount well and truly to be made, we bind ourselves, our heirs,
executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the bounden Principal, his or its
heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and
well and truly keep and perform the covenants, conditions and agreements in the said Public Works
Contract and any alteration thereof made as therein provided, on his or its part, to be kept and
performed at the time and in the manner therein specified, and in all respects according to their
intent and meaning; and shall faithfully fulfill the one-year guarantee of all materials and
workmanship; and indemnify and save harmless the Obligee, its officers and agents, as stipulated in
said Public Works Contract, then this obligation shall become null and void; otherwise it shall be
and remain in full force and effect. In case suit is brought upon this bond, the said Surety will pay
to Obligee a reasonable attorney's fee to be fixed by the Court.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time,
alteration or additions to the terms of the said Public Works Contract or to the work to be performed
thereunder or the Specifications accompanying the same shall in any way affect its obligations on

this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

No final settlement between the Obligee and the Contractor hereunder shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29th day of November, 2007.

PRINCIPAL:

Graham Crackers - Demo, Inc.

By Christon R. Graham

SURETY:

SureTec Insurance Company

By

Attorney-in-fact Daniel Huckabay

The rate of premium on this bond is \$25.00 per thousand.

The total amount of premium charged, \$ 860.00. (The above must be filled in by corporate surety.)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance Code.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

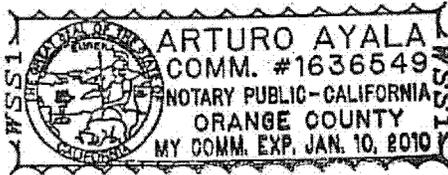
County of Orange

On 11/29/2007 before me, Arturo Ayala, Notary Public
Date Name, Title of Officer - E.G. "Jane Doe, NOTARY PUBLIC"

personally appeared Daniel Huckabay
NAME(S) OF SIGNER(S)

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]
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Performance Bond
TITLE OR TYPE OF DOCUMENT

Two
NUMBER OF PAGES

11/29/2007
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
SAN FRANCISCO

№ 08138

Certificate of Authority

THIS IS TO CERTIFY THAT, Pursuant to the Insurance Code of the State of California,

SureTec Insurance Company,

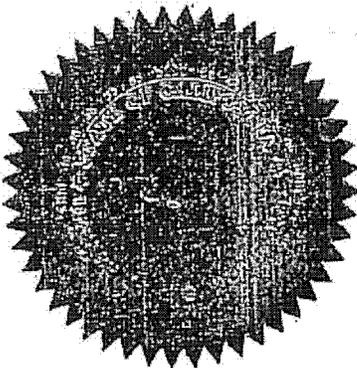
of Texas, organized under the
laws of Texas, subject to its Articles of Incorporation or
other fundamental organizational documents, is hereby authorized to transact within the State, subject to
all provisions of this Certificate, the following classes of insurance:

Surety

as such classes are now or may hereafter be defined in the Insurance Laws of the State of California.

THIS CERTIFICATE is expressly conditioned upon the holder hereof now and hereafter being in full compliance with all, and not in violation of any, of the applicable laws and lawful requirements made under authority of the laws of the State of California as long as such laws or requirements are in effect and applicable, and as such laws and requirements now are, or may hereafter be changed or amended.

IN WITNESS WHEREOF, effective as of the 24th
day of October, 2005, I have hereunto
set my hand and caused my official seal to be affixed this
24th day of October, 2005



John Garamendi
Insurance Commissioner

By

Patricia K. Staggs
for Richard D. Baum Deputy
Chief Deputy

NOTICE:

Qualification with the Secretary of State must be accomplished as required by the California Corporations Code promptly after issuance of this Certificate of Authority. Failure to do so will be a violation of Insurance Code Section 701 and will be grounds for revoking this Certificate of Authority pursuant to the covenants made in the application therefor and the conditions contained herein.

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SureTec Insurance Company

LIMITED POWER OF ATTORNEY

Know All Men by These Presents, That SURETEC INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Texas, and having its principal office in Houston, Harris County, Texas, does by these presents make, constitute and appoint

Arturo Ayala, Ralph Eidem, Jr., Daniel Huckabay

of Orange, CA its true and lawful Attorney(s)-in-fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include waivers to the conditions of contracts and consents of surety, providing the bond penalty does not exceed

Five Million Dollars and no/100 (\$5,000,000.00)

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment shall continue in force until 10/31/08 and is made under and by authority of the following resolutions of the Board of Directors of the SureTec Insurance Company:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and of behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and effected by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached. (Adopted at a meeting held on 20th of April, 1999.)

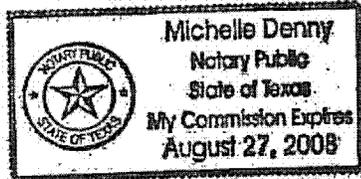
In Witness Whereof, SURETEC INSURANCE COMPANY has caused these presents to be signed by its President, and its corporate seal to be hereto affixed this 20th day of June, A.D. 2005.



SURETEC INSURANCE COMPANY
By: [Signature]
B.J. King, President

State of Texas ss:
County of Harris

On this 20th day of June, A.D. 2005 before me personally came B.J. King, to me known, who, being by me duly sworn, did depose and say, that he resides in Houston, Texas, that he is President of SURETEC INSURANCE COMPANY, the company described in and which executed the above instrument; that he knows the seal of said Company; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order.



[Signature]
Michelle Denny, Notary Public
My commission expires August 27, 2008

I, M. Brent Beaty, Assistant Secretary of SURETEC INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Company, which is still in full force and effect; and furthermore, the resolutions of the Board of Directors, set out in the Power-of Attorney are in full force and effect.

Given under my hand and the seal of said Company at Houston, Texas this 29th day of November, 2007, A.D.

[Signature]
M. Brent Beaty, Assistant Secretary

Any instrument issued in excess of the penalty stated above is totally void and without any validity.
For verification of the authority of this power you may call (713) 812-0800 any business day between 8:00 am and 5:00 pm CST.

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: February 12, 2008
TO: City Council
FROM: Bonnie Johnson, Finance Director
SUBJECT: Auditor's Report for Fiscal Year 2006-2007

RECOMMENDATION: "The City Council accept and place on file the auditor's report from Lance, Soll & Lunghard, LLP for the fiscal year ended June 30, 2007."

JUSTIFICATION: The annual audit of the City's financial statements by an independent audit firm satisfies the legal requirement for such a periodic review and report.

BACKGROUND/ANALYSIS: The audit firm of Lance, Soll & Lunghard, LLP has issued an unqualified opinion on the financial statements for the fiscal year ended June 30, 2007. This means that their examination, testing and review process lead them to believe that the financial statements present fairly both the financial position of the City as of June 30, 2007 and the results for the City's operations for that year.

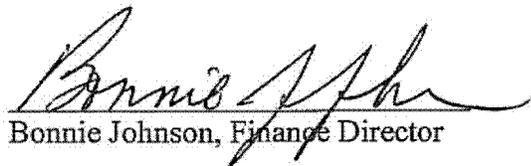
The auditors issued a compliance letter regarding internal controls. During their audit they noted two areas needing improvement; accounts payable and documentation of the components of internal control. Finance has addressed both issues i.e. system changes and other procedures have been put in place to allow the proper accrual of payables as well as internal control procedures have begun to be documented. A copy of the compliance letter is included with the audit report.

The new financial reporting model (GASB Statement No. 34) which includes management's discussion and analysis (MD&A) continues to be in effect this year.

The report is on file at the City Clerk's office and is available in the City Council's office.

FISCAL DATA: None

RECOMMENDED BY:


Bonnie Johnson, Finance Director

APPROVED BY:


Brian Nakamura, City Manager

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: February 12, 2008
TO: City Council
FROM: Bonnie Johnson, Finance Director
SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of December 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 December 2007.

The reports are:

Expenditure approval lists

December 6, 2007	335,023.19
December 6, 2007	2,000.00 ⁽¹⁾
December 13, 2007	830,010.55
December 20, 2007	311,003.02
December 27, 2007	518,623.49
January 9, 2008	2,615,628.72 (December Month End)

Payroll check registers

December 7, 2007	6,220.50
December 21, 2007	6,125.56
Manual check dated Dec. 26, 2007	4,234.09

Payroll direct deposits*

December 7, 2007	344,807.05
December 21, 2007	344,793.90

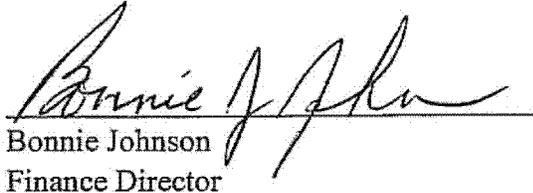
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

* Included on the DECEMBER month end expenditure approval list of 1/09/2008.

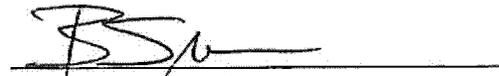
⁽¹⁾ Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Michelle Green, Accounting Manager

RECOMMENDED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

Fund/Department Legend:

General Fund – 001

Departments

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

All Other Funds

100 – Gas Tax Street Fund	600 – Airport Fund
101 – Measure A Street Fund	610 – Transit Fund
103 – SB 300 Street Fund	660 – Water Fund
104 – Article 3 Sidewalk Fund	661 – Water Capital Facilities
110 – CDBG Fund	662 – Irrigation Water Fund
111 – Landscape Maintenance	663 – BUA Water Capital Project Fund
132 – Air Quality Improvement Fund	666 – Water Participation CTF 86
140 – Asset Forfeiture-Police Fund	667 – Water Participation CTF 89
144 – Local Law Enforcement Block Grant	669 – BUA - Water Debt Service
145 – COPS MORE Grant Fund	670 – Electric Fund
146 – San Gorgonio Gang Task Force	671 – Electric Capital Facility Fund
148 – Supplemental Law Enforcement	672 – Rate Stability Fund
149 – Public Safety Sales Tax Fund	673 – Electric Improvement Fund
150 – State Park Bond Fund	674 – '07 Elec Revenue Bond Project Fund
170 – Peacock Valley II	675 – Public Benefit Fund
200 – Special Donation Fund	678 – '07 Elec Revenue Bond Debt Service Fund
201 – Sr. Center Activities Fund	680 – Wastewater Fund
202 – Animal Control Reserve Fund	681 – Wastewater Capital Facility Fund
203 – Police Volunteer Fund	683 – BUA Wastewater Capital Project Fund
204 – D.A.R.E. Donation Fund	685 – State Revolving Loan Fund
300 – City Administration COP Debt Service	687 – Wastewater Participation CTF 89
360 – Sun Lakes CFD #86-1	689 – BUA Wastewater Debt Service Fund
365 – Wilson Street #91-1 Assessment Debt	690 – Refuse Fund
370 – Area Police Computer Fund	700 – Insurance Fund
375 – Fair Oaks #2004-01 Assessment Debt	702 – Fleet Maintenance
376 – Cameo Homes	703 – Information Systems Services
400 – Police Facilities Development	761 – Utility Billing Administration
410 – Fire Facility Development	810 – CRA – Low/Mod Fund
420 – Traffic Control Facility Fund	830 – CRA – Debt Service Fund
421 – Ramsey/Highland Home Road Signal	850 – CRA - Administration Fund
430 – General Facilities Fund	854 – CRA Low/Mod Bond Fund
451 – Park Development Fund	855 - 2007 TABS Bond Proceeds
470 – Capital Improvement Fund	856 – 2003 TABS Bond Proceeds
475 – Fair Oaks #2004-01 Assessment District	857 – 2003 TABS Bond Proceeds Low/Mod
	860 – CRA - Project Fund

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**CITY COUNCIL
PUBLIC HEARING**

Date: February 12, 2008

TO: City Council

FROM: Kim Clinton, Senior Planner

SUBJECT: General Plan Map Amendment and Zone Change #07-2502: A Request to change the General Plan Land Use Map and Zoning Map designations from Low Density Residential (0-5 Units / Acre) to Professional Office at 935 E. Williams Street. APN 541-121-022.

RECOMMENDATION:

That the City Council:

Adopt Ordinance No. 1385 approving General Plan Map Amendment / Zone Change #07-2502: to change the Zoning and General Plan Map designation from Low Density Residential to Professional Office on parcel 541-121-022.

MOTION:

1. *"I move the City Council adopt Resolution No. 2008-25 adopting the Negative Declaration of Environmental Impact."*
2. *"I move the City Council adopt Ordinance No. 1385 approving Zone Change / General Plan Map Amendment #07-2502: to change the Zoning and General Plan Map designation from Low Density Residential to Professional Office on parcel 541-121-022."*

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing to its next regularly scheduled meeting":

Denial:

"I move the City Council deny Ordinance No. 1385 for GPA / ZC #07-2502 on the following basis: (the City Council will need to make its findings).

JUSTIFICATION: At the January 22, 2008 City Council meeting, the City Council continued the Public Hearing to their next regularly scheduled meeting and directed staff to prepare an Ordinance to approve the General Plan Map amendment and Zone Change.

BACKGROUND: The Council voted three to two to have staff prepare the Zone Change with the dissenting members citing that incompatible uses could change the low-density residential character of surrounding neighborhoods. The council members recommending approval cited the blighted condition of the neighborhood, the difficulties of developing in a blighted area and the compatibility of office uses with the surrounding neighborhood.

As discussed at the public hearing and in staff's original staff report to the Planning Commission supporting the Zone Change, numerous examples were provided of successful integration of Professional Office uses adjacent to residential uses in older established communities such as in the City of Redlands where such services are plentiful along collector streets similar to Williams Street. This site could serve as a buffer between the intensity of Ramsey Street and the I-10 and the quieter residential district north of Nicolet. The site's proximity to the high traffic areas and uses on the south and it's location in a generally blighted area of town does not make it an ideal location for new low density single-family development. However an office campus could be a very good neighbor and could bring in services that the surrounding neighborhood could utilize. The key to the successful integration into the community will be high quality architectural design with a residential character, innovative site planning, and the screening of incoming uses through the conditional use permit process.

Findings:

Findings to recommend approval of the change in the General Plan land use map and Zoning designation have been made and are included in the attached resolution.

Public Notice

This proposal was advertised in the Record Gazette newspaper on January 11, 2008. All property owners within 300 feet of the site were mailed a public hearing notice. To date, no written comments have been received.

Environmental Consideration

The Community Development Department has determined that the project does not have the potential to have a negative impact on the environment and therefore a negative declaration is recommended.

FISCAL DATA: The approval of the application will have no fiscal impact.

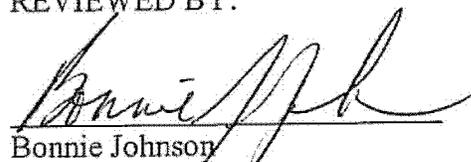
RECOMMENDED BY:


Kim Clinton, AICP
Senior Planner

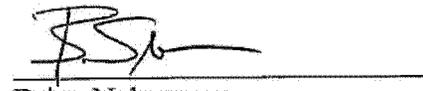
REVIEWED BY:

Oscar W. Orci
Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

Exhibits:

- 1) Resolution No. 2008-25
- 2) Ordinance No. 1385 with Exhibit "A"
- 3) Initial Study

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GPA / ZC #07-2502
VICSETH CONSTRUCTION

RESOLUTION
NO. 2008-25

EXHIBIT “1”

RESOLUTION NO. 2008-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A NEGATIVE DECLARATION FOR GENERAL PLAN MAP AMENDMENT AND ZONE CHANGE # 07-2502 TO CHANGE A 4.62 ACRE PARCEL FROM LOW DENSITY RESIDENTIAL (0-5 DU/AC) TO PROFESSIONAL OFFICE

WHEREAS, an application for a General Plan Map Amendment and Zone Change # 07-2502 to change a 4.62 acre parcel from Low Density Residential (0-5 du/ac) to Professional Office has been filed by:

Applicant / Owner:	VicSeth, Inc.
Authorized Agent:	Elena Labastida
Project Location:	935 E. Williams St.
APN Number:	541-121-022
Lot Area:	4.62 acres

WHEREAS, the proposed General Plan Map Amendment and Zone Change # 07-2502 to change a 4.62 acre parcel from Low Density Residential (0-5 du/ac) to Professional Office is considered a "project" as defined by the California Environmental Quality Act, Public Resources Code § 21000 et seq. ("CEQA"); and,

WHEREAS, after completion of an Initial Study, the Community Development Director determined that it did not identify any potentially significant effects on the environment nor was there any substantial evidence from which it could be fairly argued that the project would have a significant effect on the environment. Therefore, staff has proposed a Negative Declaration for this project; and,

WHEREAS, the proposed Negative Declaration consists of the following documents: Initial Study and Determination Page, and,

WHEREAS, on November 20, 2007, using a method permitted under CEQA Guidelines Section 15072(b), the City provided notice of its intent to adopt the proposed Negative Declaration to the public, responsible agencies, trustee agencies, and the Riverside County Clerk; and,

WHEREAS, the City made the proposed Negative Declaration available for public review beginning on November 20, 2007 and closing on December 10, 2007, a period of not less than 20 days. During the public review period, the City received no written comments concerning the proposed Negative Declaration; and,

WHEREAS, the Banning City Council conducted a duly noticed public hearing on February 12, 2008 at which it received public testimony concerning the project and the proposed Negative Declaration and considered the proposed Negative Declaration.

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

SECTION 1. 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 proposed Negative Declaration and documents incorporated therein by reference, any written comments received and responses provided, and other substantial evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record and/or provided at the public hearing, hereby finds and determines as follows:

1. **Review Period:** That the City has provided the public review period for the Negative Declaration for the duration required under CEQA Guidelines Sections 15073 and 15105.
2. **Compliance with Law:** That the Negative Declaration was prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.
3. **Independent Judgment:** That the Negative Declaration reflects the independent judgment and analysis of the City.
4. **No Significant Effect:** That there is no substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. Therefore, the City Council concludes that the project will not have a significant effect on the environment.

SECTION 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 hereby takes the following actions:

1. **Adoption of a Negative Declaration:** The Negative Declaration for General Plan Map Amendment and Zone Change # 07-2502 to change a 4.62 acre parcel from Low Density Residential (0-5 du/ac) to Professional Office is hereby approved.
2. **Notice of Determination:** In compliance with Public Resources Code § 21152 and CEQA Guidelines § 15075, the Community Development Director shall prepare a Notice of Determination concerning the approval and adoption of the Negative Declaration, and within five (5) working days of project approval, file the Notice with the Riverside County Clerk for posting.

3. **Location:** The Negative Declaration, and all documents incorporated therein or forming the record of decision therefore, shall be filed with the Banning Planning Department at the Banning City Hall, 99 E. Ramsey Street, Banning, California 92220 and shall be made available for public review upon request.

PASSED, APPROVED AND ADOPTED this 12th day of February 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. 2008-25, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

*GPA / ZC #07-2502
VICSETH CONSTRUCTION*

*ORDINANCE
NO. 1385
WITH EXHIBIT "A"*

EXHIBIT "2"

ORDINANCE NO. 1385

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING GENERAL PLAN / ZONING MAP AMENDMENT #07-2502 TO CHANGE THE ZONING CLASSIFICATION FROM LOW DENSITY RESIDENTIAL TO PROFESSIONAL OFFICE AT 935 E. WILLIAMS STREET/APN 541-121-022.

WHEREAS, the City undertook a comprehensive General Plan and Zoning Ordinance update in 2003; and

WHEREAS, the Municipal Code allows for Zoning/General Plan Map Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, an application for a Zoning/General Plan Map Amendment to change the zoning from Low Density Residential to Professional Office has been duly filed by:

Applicant / Owner:	VicSeth Construction
Authorized Agent:	Elena Labastida
Project Location:	935 E. Williams Street
APN Number:	APN 541-121-022
Lot Area:	4.6 acres

WHEREAS, in accordance with Government Code § 65854, on November 16, 2007 the City gave public notice by advertisement in the Press Enterprise Newspaper and by mailing public notices to property owners within a 300 foot radius, of the holding of a public hearing at which the project would be considered by the Planning Commission; and

WHEREAS, on December 4, 2007 and January 2, 2008 the Planning Commission held the noticed public hearings at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change and at which the Planning Commission considered the GPA / Zone Change; and

WHEREAS, at these public hearings the Planning Commission considered, heard public comments on, and on January 2, 2008 adopted Resolution No. 2008-01 recommending denial of the proposed zone change; and

WHEREAS, in accordance with Government Code § 65854, on January 11, 2008 the City gave public notice by advertisement in the Record Gazette and by mailing public notices to property owners within a 300 foot radius, of the holding of a public hearing at which the project would be considered by the City Council; and

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WHEREAS, on January 22, 2008 and February 12, 2008 the City Council held the noticed public hearings at which interested persons had an opportunity to testify in support of, or opposition to, the GPA / Zone Change and at which the City Council considered the Zone Change; and

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES RESOLVE, DETERMINE, FIND AND ORDER 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 Director as provided in the Staff Report dated January 22, and February 12, 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 approval of this General Plan Amendment is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on February 12, 2008, at a duly noticed public hearing, the City Council approved and adopted a Negative Declaration reflecting its independent judgment and analysis and documenting that there was not substantial evidence, in light of the whole record, from which it could be fairly argued that the project may have a significant effect on the environment. The documents comprising the City's environmental review for the project are on file and available for public review at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

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 Fees paid for by developer of the property when that land is developed.

SECTION 2. REQUIRED ZONE CHANGE FINDINGS.

Pursuant to Banning Municipal Code Section 17.44.010, the City Council makes the following findings pertaining to GPA / Zone Change No. 07-2502:

Finding #1: The proposed Amendment is consistent with the goals and policies of the general plan.

Fact: The property is located at 935 Williams Street, in the Low Density Zone of the General Plan. The property is bound by Williams Street on the south, Nicolet Street on the north, is west of Phillips Street and is approximately 330 feet east of Hargrave Street. This area is made up of a variety of land uses. There are office and commercial uses to the south of Williams Street, there are single family and multifamily developments on the north, east and west and, therefore, the proposed zone change supports the City's Vision

Statement that includes: *"We see well-balanced commercial development, where revenue generating commercial neighborhoods provide a diversified economy and a wide range of jobs, where people can live and work without needing their cars..."*. The introduction of the low impact uses that are permitted in the Professional Office Zone will provide jobs and much needed services close to home, in an office complex designed to be architecturally low key and residential in character.

One of the Land Use Element's areas of focus for development opportunities is the use of neighborhood plans as an opportunity to revitalize neighborhoods, to enhance their character and identity and to create a livable city. The Zone Change is for a parcel that lies on the boundary of a Low-Density Residential neighborhood; is on a street that straddles the transition between commercial and residential uses; therefore the low impact uses that are permitted in the Professional Office Zone can provide not only jobs and much needed services close to home, but can serve as a transitional buffer between the more intense uses located along Ramsey Street, while revitalizing a blighted neighborhood by setting the tone for an upgraded neighborhood aesthetic.

Finding #2: The proposed Amendment is internally consistent with the Zoning Ordinance.

Fact: Changing the zone from Low Density Residential to Professional Office is internally consistent with the Zoning Ordinance, because the uses included for Professional Office zoning in the permitted uses matrix of the Zoning Ordinance are suitable for within residential neighborhoods as evidenced by the successful co-existence of similar neighborhood offices located in older, established neighborhoods throughout the country. Moreover, through the conditional use permit and design review processes provided for in the Zoning Ordinance, the site can be designed and conditioned to ensure neighborhood compatibility.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

Approve GPA / Zone Change No. 07-2502 changing the General Plan and Zoning Map from Low Density Residential to Professional Office as shown in Exhibit A, which is attached hereto and incorporated herein by reference.

PASSED, APPROVED AND ADOPTED this 12th day of February, 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. 1385 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 12th day of February, 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, California

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541-12

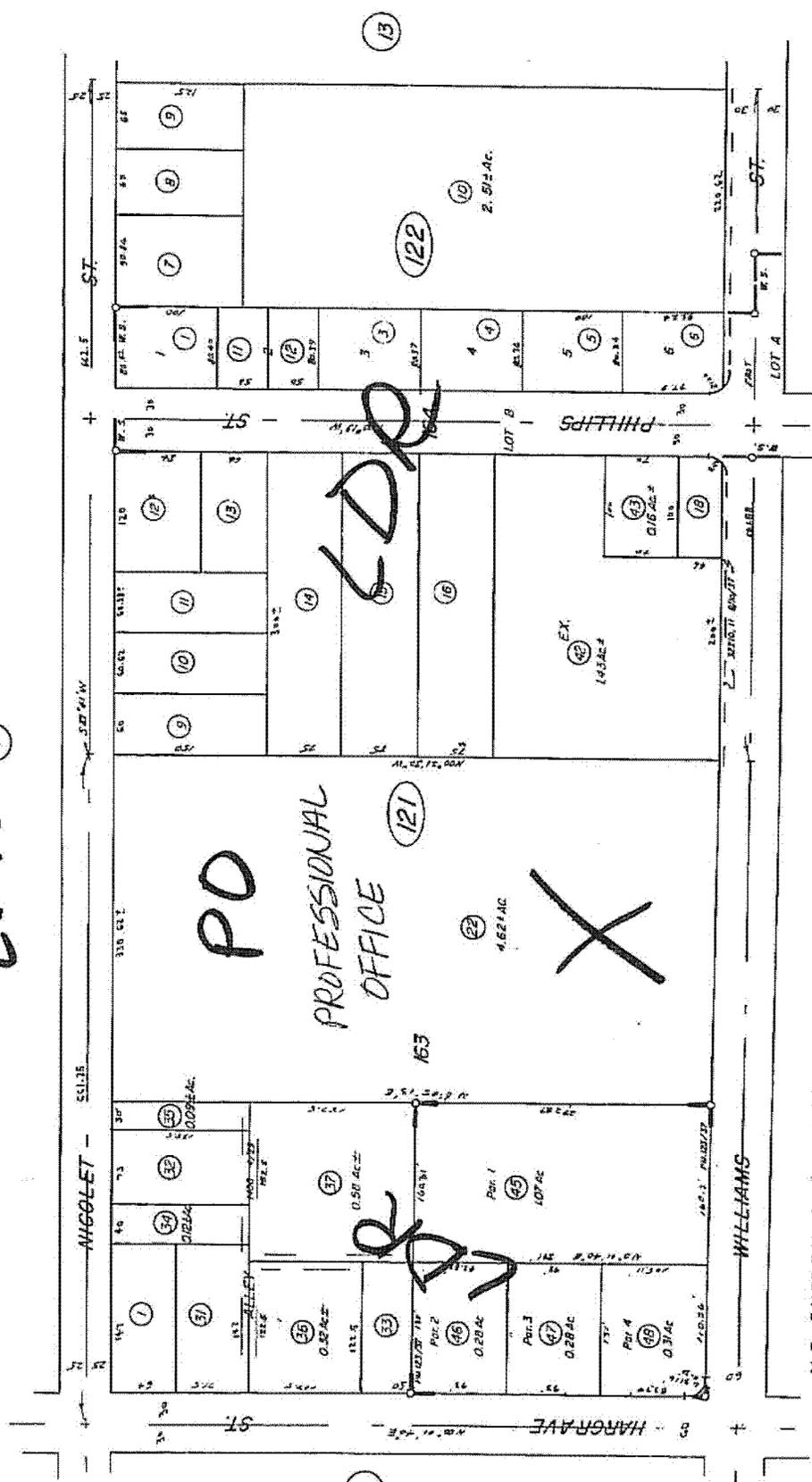
T.C.A. 100

POR S. 2 NE 4 SEC. 10 T.3S.R.1E.

LDR (8)



DATE	SEC. NO.	TWP. NO.	RANGE NO.
3/77	5	19	
3/77	6	20	
3/77	7	21	
3/77	8	22	
3/79	10	20	35-38
3/79	10	20	39-44
3/79	10	20	45-48
3/79	10	20	49-52
3/79	10	20	53-56
3/79	10	20	57-60
3/79	10	20	61-64
3/79	10	20	65-68
3/79	10	20	69-72
3/79	10	20	73-76
3/79	10	20	77-80
3/79	10	20	81-84
3/79	10	20	85-88
3/79	10	20	89-92
3/79	10	20	93-96
3/79	10	20	97-100



M.B. 5/186 RIV. Banning Colony Lands (Part of)
 M.B. 3/149 S.D.
 M.B. 18/7
 R.M. 123/37-38 Parcel Map No. 17889

(16) BP

ASSESSOR'S MAP BK. 541 PG. 12
 RIVERSIDE COUNTY, CALIF.

SEPT. 1969

EXHIBIT "A"

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GPA / ZC #07-2502
VICSETH CONSTRUCTION

INITIAL STUDY

EXHIBIT “3”

Environmental Checklist Form

1. Project title: General Plan Map Amendment and Zone Change 07-2502
2. Lead agency name and address: City of Banning
99 East Ramsey
Banning, CA 92220
3. Contact person and phone number: Kim Clinton
951-922-3125
4. Project location: On the north side of Williams Street, approximately 330 feet east of Hargrave Street. Assessors Parcels # 541-121-022.
5. Project sponsor's name and address: Elena Labastida
VicSeth, Inc.
897 Via Lata, #A
Colton, CA 92324

- | | |
|--|--|
| 6. General plan designation: Current: Low Density Residential; Proposed: Professional Office | 7. Zoning: Current: Low Density Residential; Proposed: Professional Office |
|--|--|

8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)

The General Plan and Zoning Map amendments are requested to change the permitted land use on the property from (LDR) Low Density Residential (0-5 units per acre) to (PO) Professional Office.

9. Surrounding land uses and setting: Briefly describe the project's surroundings:

North: Low Density Residential, Nicolet Street, Single family homes
South: Business Park, Williams Street, Industrial and commercial office development
East: Low Density Residential, Single family homes, multi-family units
West: Low Density Residential, Single family homes, multi-family units

10. Other public agencies whose approval is required (e.g., permits, financing approval, or participation agreement.)

None

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Agriculture Resources	<input type="checkbox"/>	Air Quality
<input type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Geology /Soils
<input type="checkbox"/>	Hazards & Hazardous Materials	<input type="checkbox"/>	Hydrology / Water Quality	<input type="checkbox"/>	Land Use / Planning
<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Noise	<input type="checkbox"/>	Population / Housing
<input type="checkbox"/>	Public Services	<input type="checkbox"/>	Recreation	<input type="checkbox"/>	Transportation/Traffic
<input type="checkbox"/>	Utilities / Service Systems	<input type="checkbox"/>	Mandatory Findings of Significance		

DETERMINATION: (To be completed by the Lead Agency)

On the basis of this initial evaluation:

X	I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
	I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
	I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
	I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature

Date

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EVALUATION OF ENVIRONMENTAL IMPACTS:

- 1) A brief explanation is required for all answers except "No Impact" answers that are adequately supported by the information sources a lead agency cites in the parentheses following each question. A "No Impact" answer is adequately supported if the referenced information sources show that the impact simply does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A "No Impact" answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project-specific screening analysis).
- 2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts.
- 3) Once the lead agency has determined that a particular physical impact may occur, then the checklist answers must indicate whether the impact is potentially significant, less than significant with mitigation, or less than significant. "Potentially Significant Impact" is appropriate if there is substantial evidence that an effect may be significant. If there are one or more "Potentially Significant Impact" entries when the determination is made, an EIR is required.
- 4) "Negative Declaration: Less Than Significant With Mitigation Incorporated" applies where the incorporation of mitigation measures has reduced an effect from "Potentially Significant Impact" to a "Less Than Significant Impact." The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less than significant level (mitigation measures from Section XVII, "Earlier Analyses," may be cross-referenced).
- 5) Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case, a brief discussion should identify the following:
 - a) Earlier Analysis Used. Identify and state where they are available for review.
 - b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
 - c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
- 6) Lead agencies are encouraged to incorporate into the checklist references to information sources for potential impacts (e.g., general plans, zoning ordinances). Reference to a previously prepared or outside document should, where appropriate, include a reference to the page or pages where the statement is substantiated.
- 7) Supporting Information Sources: A source list should be attached, and other sources used or individuals contacted should be cited in the discussion.
- 8) This is only a suggested form, and lead agencies are free to use different formats; however, lead agencies should normally address the questions from this checklist that are relevant to a project's environmental effects in whatever format is selected.
- 9) The explanation of each issue should identify:
 - a) the significance criteria or threshold, if any, used to evaluate each question; and
 - b) the mitigation measure identified, if any, to reduce the impact to less than significance

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
I. AESTHETICS -- Would the project:				
a) Have a substantial adverse effect on a scenic vista? (Application materials)				X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? (Application materials)				X
c) Substantially degrade the existing visual character or quality of the site and its surroundings? (Application materials)				X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area? (RivCo General Plan, The Pass Area Plan, Figure 6)				X

I. a)-c) The General Plan Map Amendment and Zone Change will have no impact on aesthetics. The site is zoned for low density residential development, and was previously zoned for high density residential development. No impacts are expected as a result of the change in zone to professional office.

The site is currently vacant and does not include any significant rock outcroppings, trees or historic structures.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
II. AGRICULTURE RESOURCES: Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? (General Plan)				X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract? (Zoning Map)				X
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use? (Project description)				X

II. a)-c) The General Plan Map Amendment and Zone Change will have no impact on agricultural resources. The proposed project occurs in the City's urban core. No agricultural lands occur in the vicinity of the project site. The site is not designated for farming uses, or part of a Williamson Act contract. The site is zoned for low density residential development, and was previously zoned for high density residential development. No impacts are expected as a result of a change in zoning to professional office.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
III. AIR QUALITY: Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan? (SCAQMD CEQA Handbook)			X	
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation? (SCAQMD CEQA Handbook)			X	
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)? (SCAQMD CEQA Handbook)			X	
d) Expose sensitive receptors to substantial pollutant concentrations? (Project Description)			X	
e) Create objectionable odors affecting a substantial number of people? (Project Description)				X

III. a)-e) The General Plan Map Amendment and Zone Change will have no impact on air quality. The project site occurs within the jurisdiction of the South Coast Air Quality Management District. The District's air quality management plans have been developed based on the City's General Plan. Although the change in intensity will result in more potential traffic to the site, Williams Street is designated in the General Plan as a collector highway, therefore the projected traffic on and adjacent to Williams Street is generally consistent with land use plans and therefore air quality plans for the area. Overall impacts associated with air quality are expected to be less than significant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
IV. BIOLOGICAL RESOURCES -- Would the project:				
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? (General Plan)				X
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service? (General Plan)				X
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means? (General Plan)				X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? (General Plan)				X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? (General Plan)				X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? (General Plan)				X

IV. a)-f)

The General Plan Map Amendment and Zone Change will have no impact on biological resources. Future development the site would eliminate vegetation from a site that has been previously graded and contains nonnative volunteers that are periodically removed as required by the Fire Marshal. The project area occurs within the Western Riverside County Multiple Species Habitat Conservation Plan (WRMSHCP), but outside of criteria cells, linkage areas, or other protected lands under the WRMSHCP. The Conservation Summary Report Generator did not identify a need for habitat assessments for any species on the project site. The site is sparsely vegetated with non-native species, and has been impacted by off-road use. The site is surrounded on all sides by development or City roadways, and is a remainder infill parcel. The site is not expected to be habitat for a sensitive species, nor is it suitable as a wildlife corridor. There are no wetlands or riparian areas within the site. The applicant will be required to contribute WRMSHCP fees in effect at the time of development to compensate for the loss of vacant lands. Impacts are expected to be insignificant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
V. CULTURAL RESOURCES -- Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in '15064.5? (General Plan)				X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to '15064.5? (General Plan)				X
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? (General Plan)				X
d) Disturb any human remains, including those interred outside of formal cemeteries? (General Plan)				X

V. a)-d) The General Plan Map Amendment and Zone Change will have no impact on cultural resources. Eventual development of the site will disturb the ground, however, the project site is located in an area of low sensitivity for cultural resources. The project site is vacant, and does not include any historic buildings. The site is not located in an area of paleontologic sensitivity. Therefore, the potential for cultural resources on the site is considered negligible.

When development occurs the project proponent will be required by law to report any human remains, if found during project construction, to law enforcement authorities, who will be responsible for their proper removal. This requirement of law assures that impacts to buried remains are less than significant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VI. GEOLOGY AND SOILS -- Would the project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (General Plan)			X	
ii) Strong seismic ground shaking?			X	
iii) Seismic-related ground failure, including liquefaction? (General Plan)			X	
iv) Landslides? (General Plan)				X
b) Result in substantial soil erosion or the loss of topsoil? (General Plan)			X	
c) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? (General Plan)				X
d) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water? (General Plan)				X

VI. a)-d) The General Plan Map Amendment and Zone Change will have no impact on geology and soils. When future development occurs however, it will be impacted by both. The City is located in an extremely active seismic area. The site is not located in an Alquist-Priolo Fault Zone. However, the site is located approximately two miles south of such a zone. The City implements the most stringent Uniform Building Code requirements for construction in seismic areas, and will apply these standards to the project site. The Building Code has implemented standards which are designed to mitigate strong seismic ground shaking to less than significant levels.

The City Building Department requires that detailed geotechnical analysis be completed prior to the issuance of grading permits for the site, to assure that all cut and fill, excavation and foundation design will address site-specific soil conditions. Therefore, foundation and soil compatibility will be analyzed and mitigated to the satisfaction of the City Building Official prior to the issuance of grading permits.

The area is not identified as being susceptible to liquefaction, due to the depth to groundwater. The project site is located within a low lying area of the City, and therefore is underlain by alluvial fan sediments that are composed primarily of granular soils, the expansion potential for these soils range from very low to moderately low.

The site will be connected to the City's sanitary sewer system, and will not employ septic tanks.

Overall impacts associated with geology and soils are expected to be less than significant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VII. HAZARDS AND HAZARDOUS MATERIALS --Would the project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? (Application materials)				X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? (Application materials)				X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school? (Application materials)				X
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? (Riverside County Hazardous Materials Listing)				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area? (General Plan land use map)				X
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area? (General Plan land use map)				X
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? (General Plan, VI-E)				X
h) Expose people or structures to a				X

significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? (General Plan, Exhibits V-9, V-10)				
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VII. a)-h) The General Plan Amendment and Zone Change will have no impact on hazards and hazardous materials. The eventual development of the site will result in the use of small quantities of waste due to the use of paints, cleaners, batteries and electronics. The City's solid waste franchisee is responsible for the proper disposal of such products. If a use such as medical office is proposed on-site the user will be required to comply with State Law regarding the disposal of medical waste.

The project site is located in an area rated as a high threat for wild land fires. However, it is an urbanized area and is not in a very high fire severity zone. The project proponent will be required to comply with all standards and requirements of the Riverside County Fire Department relating to wild land fire prevention. Overall impacts are expected to be insignificant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
VIII. HYDROLOGY AND WATER QUALITY -- Would the project:				
a) Violate any water quality standards or waste discharge requirements? (General Plan)			X	
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)? (Water Master Plan)			X	
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site? (General Plan)			X	
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site? (General Plan)			X	
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff? (General Plan)			X	
f) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? (FEMA Maps)				X

g) Place within a 100-year flood hazard area structures which would impede or redirect flood flows? (FEMA Maps)				X
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VIII. a) & b) The General Plan Map Amendment and Zone Change will have no impact on hydrology or water resources. 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 water service for a professional office development. Expected water demand from this type of development will not substantially deplete groundwater supplies, or interfere with groundwater recharge. The water demand for the project is calculated in the City's Urban Water Management Plan, insofar as the site is part of the City's urban core, and will consist of a small project.

Developer of the site will be required to implement the City's water efficient landscaping and construction provisions, which will ensure that the least amount of water is utilized within the project.

Future developers will also be required to comply with the City's NPDES standards, requiring that potential pollutants not be allowed to enter surface waters during either construction or operation of the project. These City standards will assure that impacts to water quality and quantity will be less than significant.

VIII. c)-e) The City requires the preparation of hydrology studies for all projects prior to the issuance of grading permits. The City will review and approve the hydrology study for the proposed project, to assure the retention of the 100 year storm on the site, as required by City standards. The project will be required to contain storm flows to a level which does not exceed current conditions. These requirements will assure that impacts associated with storm water are reduced to less than significant levels.

VIII. f) & g) The site is not located in a flood zone as designated by FEMA.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
IX. LAND USE AND PLANNING - Would the project:				
a) Physically divide an established community? (Aerial photo)				X
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect? (General Plan Land Use Element)			X	
c) Conflict with any applicable habitat conservation plan or natural community conservation plan? (Banning Municipal Code)				X

IX. a)-c) The General Plan Map Amendment and Zone Change will change the land use on the site from Low Density Residential at 5 units per acre to Professional Office uses. Under the Low Density Residential category, the site could develop with as many as 23 single or multi family units with up to 40% building coverage projecting a potential 260 ADT. According to the 7th edition of the Trip Generation Handbook in the office park category with up to 35% building coverage a potential 800 ADT is projected. The parcel occurs in an area of mixed development, including single family homes to the north, along Nicolet Street, apartments along the north side of Williams Street and commercial/industrial office uses to the south along Williams Street. Williams Street is designated as a Collector Highway and with the capacity of 12,800 vehicles at LOS C, will be adequate to carry the additional traffic. One block south is Ramsey Street which is the major commercial/industrial corridor in the City. Two parcels to the west (approximately 300 feet) is Hargrave Street, a Secondary Highway and a conduit to an I-10 freeway interchange located two blocks to the south of the subject site. These surrounding streets are designed to accommodate the increase in vehicle trips. Prior to adoption of the General Plan, the site had been designated High Density Residential, allowing up to 24 units per acre with a potential of 111 d.u. at this site, resulting in a potential of up to 1,100 ADT. The change occurred in the General Plan due to a concern regarding the over-concentration of poor quality existing apartment projects in this area of the City. Given the mix of development types already occurring in this part of the City, however, the proposal would not represent a significant conflict with the General Plan and would bring the opportunity for neighborhood-oriented professional services to be brought into an area that is currently lacking in such conveniences, and potentially reducing vehicle trips. Depending on the type of development proposed for the site subsequent to the zone change, a focused traffic study would be required for any project generating over 50 peak

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hour vehicle trips to determine if traffic mitigation measures are necessary. Overall impacts to traffic and circulation are expected to be less than significant.

The site is currently vacant, and development of the project will not divide an existing community. The applicant will conform to the WRMSHCP through the payment of fees.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
X. MINERAL RESOURCES -- Would the project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? (General Plan, Exhibit IV-8)				X
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? (General Plan, Exhibit IV-8)				X

X. a) & b) The General Plan Map Amendment and Zone Change will have no impact on mineral resources. The project site is located in a MRZ3 zone, as is most of the City of Banning. A MRZ3 area may contain mineral deposits, the significance of which cannot be evaluated from available data. The project site is urbanized and there will not be any loss of availability of either regional or local mineral resources if the project is implemented.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XI. NOISE Would the project result in:				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? (City of Banning, Noise Ordinance, Section 11D-09)				X
b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? (City of Banning, Noise Ordinance, Section 11D-09)				X
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project? (City of Banning, Noise Ordinance, Section 11D-09)				X
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project? (City of Banning, Noise Ordinance, Section 11D-09)				X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? (General Plan land use map)				X
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? (General Plan land use map)				X

XI. a)-f) The General Plan Map Amendment and Zone Change will have no impact on noise. The eventual development of the site will generate noise on- and off-site. The primary noise source in the City of Banning is motor vehicle traffic. The proposed project is located in a part of the City which has relatively low to moderate ambient noise levels. This condition is expected to continue. Impacts associated with long term noise are expected to be less than significant.
The site is located outside of the Banning Municipal Airport Policy Area.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XII. POPULATION AND HOUSING – Would the project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)? (General Plan, application materials)				X
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere? (General Plan, application materials)				X
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? (General Plan, application materials)				X

XII. a)-c) The General Plan Map Amendment and Zone Change will have an insignificant impact on population and housing. Currently there is the potential for up to 26 single family homes to be developed on the site. As a result of the zone change, there would be a potential for mixed use development with a residential component to occur on the site. The project site is currently vacant, so no displacement will occur.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XIII. PUBLIC SERVICES				
a) Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection? (General Plan)			X	
Police protection? (General Plan)			X	
Schools? (General Plan MEA)				X
Parks? (General Plan; Recreation and Parks Master Plan)				X
Other public facilities? (General Plan)				X

XIII. a) The General Plan Map Amendment and Zone Change will have no impact on public facilities.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XIV. RECREATION --				
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? (Application materials)				X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment? (Application materials)				X

XIV. a) & b) The General Plan Map Amendment and Zone Change will have no impact on recreational facilities.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XV. TRANSPORTATION/TRAFFIC -- Would the project:				
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)? (General Plan EIR p. III-20 ff.)			X	
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways? (General Plan EIR p. III-20 ff.)			X	
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? (No air traffic involved in project)				X
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? (General Plan)				X
e) Result in inadequate emergency access? (General Plan)			X	
f) Result in inadequate parking capacity? (General Plan)				X
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? (General Plan)				X

XV. a)-g) The General Plan Map Amendment and Zone change will have an insignificant impact on traffic and circulation. Under the Low Density Residential land use designation, the site could generate 220 trips per day. If the site were to develop at a maximum lot coverage of 35% under the Professional Office designation 60,505 square feet of office space resulting in up to 600 trips could be generated. The increase in trips associated with the change in designation, is relatively substantial. It is less than the projected ADT for the high density residential development permitted under the former general plan zoning.

However, the General Plan EIR identified streets in this portion of the City as operating at acceptable levels of service at General Plan build out. Williams Street is designated as a Collector Highway in the General Plan. The intersection of Hargrave (Secondary Highway), and Williams Street is approximately 330 feet west of the site. The parcel is one block north of Ramsey Street (a Major Highway) and two blocks north of the I-10/Hargrave Freeway Interchange. These streets will serve the subject site and are designated will have the capacity to carry the amount of traffic that potentially could be generated by a professional office project. By the change in trip generation associated with professional office development rather than single family development, will not significantly change the total projected number of trips on these streets. When a development is proposed subsequent to this zone change, the appropriate dedications and improvements pursuant to the general plan will be required. Furthermore, if a future project has the potential to generate more than 50 peak hour vehicle trips, a focused traffic study will be required to determine if any mitigation will be required. Therefore, the impact of the General Plan Map Amendment and Zone Change is expected to be less than significant.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XVI. UTILITIES AND SERVICE SYSTEMS. Would the project:				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board? (General Plan)			X	
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (Water Master Plan)			X	
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects? (Preliminary Hydrology Study)			X	
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed? (Water Master Plan)			X	
e) Result in a determination by the			X	

wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the projects projected demand in addition to the providers existing commitments? (General Plan, Dept. of Public Works)				
f) Be served by a landfill with sufficient permitted capacity to accommodate the projects solid waste disposal needs? (General Plan)			X	
g) Comply with federal, state, and local statutes and regulations related to solid waste? (General Plan)			X	

Source: Hydrology & Drainage , Martin & Ziemniak, February 2006.; SGMHD Specific Plan p.48-49;

XVI. a)-g) The General Plan Amendment and Zone Change will have no impact on utilities. The eventual development of the residential units will require utility services. Electric, telephone and other utilities and services have facilities in this area, and will collect connection and usage fees to balance the cost of providing services. The City's solid waste franchisee will continue to implement the requirements of AB 939, requiring the reduction of the solid waste stream. The construction of the proposed project would not significantly impact utility providers.

	Potentially Significant Impact	Less Than Significant w/ Mitigation	Less Than Significant Impact	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE --				
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?			X	
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term environmental goals?			X	
b) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?			X	
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?			X	

XVII. a) The proposed project site is an infill parcel vegetated with non-native plants, and does not harbor sensitive species. The site is in a low sensitivity area for cultural resources. Impacts are expected to be less than significant.

XVII. b) The proposed amendment supports the General Plan's vision statement by providing for "...well-balanced commercial development where revenue generating commercial neighborhoods provide a diversified economy and a wide range of jobs where people can live and work without needing their cars..." The proposal supports this vision by providing the opportunity for professional neighborhood services located in a campus-like setting, to occur in reasonable walking distance to an existing neighborhood.

- XVII. c) The proposed project will not result in cumulative impacts. The impacts resulting from the change to professional office zone uses is not substantial when considering the City's build out.
- XVII. d) The proposed project will significantly impact human beings insofar as impacts associated with construction noise could be significant. However, these impacts have been reduced to less than significant levels through the mitigation measures included in this Initial Study.

XVIII. EARLIER ANALYSES.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In this case a discussion should identify the following on attached sheets:

- a) **Earlier analyses used.** Identify earlier analyses and state where they are available for review.

The General Plan EIR was used in this analysis.

- b) **Impacts adequately addressed.** Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.

Not applicable.

- c) **Mitigation measures.** For effects that are "Less than Significant with Mitigation Incorporated," describe the mitigation measures which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

Not applicable.