

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

April 22, 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

PRESENTATIONS:

1. Proclamation – May 2008 as Mental Health Month 1

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.

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

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 11

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

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

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| 1. Approval of Minutes – Regular Meeting – 04/08/08 | 3 |
| 2. Ordinance No. 1386 – 2 nd Reading: An Ordinance of the City Council of the City of Banning Allowing the Fire Chief to Declare Certain Wildland/Urban Interface Areas of the City Closed During Periods of High Fire Danger | 19 |
| 3. Ordinance No. 1387 – 2 nd Reading: A Ordinance of the City Council of the City of Banning Amending the Municipal Code by Adding Chapter 2.45 Establishing a Design Review Board; Amending Table 17.12.020 Permitted, Conditionally Permitted and Prohibited Uses in Commercial and Industrial Zones, and Amending Certain Provisions in Title 17 Pertaining to Walls and Fences | 21 |
| 4. Resolution No. 2008-42, Approving Emergency Mold Repairs at City Hall and Authorizing the Director of Finance to Make the Necessary Budget Adjustments and Appropriations to Cover Costs Incurred in the Amount of \$7,093.97 | 36 |
| 5. Resolution No. 2008-43, Authorizing Filing the Financial Assistance Application from the State Water Resources Control Board for the Water Reclamation Facility and Phase 1 Recycled Water Project to Obtain a State Revolving Fund Loan. | 39 |
| 6. Resolution No. 2008-44, Approving the Measure “A” Five Year Capital Improvement Plan. | 43 |
| 7. Resolution No. 2008-45, Approving the Professional Services Agreement for Construction Management Services with Cal K-12 Construction Management of Yucaipa, CA for Project No. 2006-07, Construction of the New Banning Police Station in the amount of Not to Exceed \$578,750.00. | 57 |
| 8. Resolution No. 2008-47, Amending the Current Police Department Report Fee to the Current Report fees Used by the City’s Finance and Administration Department | 64 |
| 9. Sole Source Purchase from Kustom Signals, Inc. for Replacement of Existing VHS Kustom Signals, Inc. Camera Systems in Patrol Vehicles in the amount of \$35,806.09 | 68 |

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|---|-----|
| 10. Approval of an Engineering Design Services Agreement for Project No. 2008-02W, Construction of Downtown Water Main Improvements to A P Engineering of Riverside, CA in the amount Not to Exceed \$34,990.00 | 72 |
| 11. Cal Heat Pass Area Baseball Club Donation | 106 |

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

IV. REPORTS OF OFFICERS

| | |
|--|-----|
| 1. Duane Burk, Public Works Director | |
| A. Resolution No. 2008-39, Awarding the Construction Contract for Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets, and Approving the Necessary Budget Appropriations for Said Project. | 109 |

Recommendations:

1. **That the City Council adopt Resolution No. 2008-39, Awarding the Construction Contract for Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets to International Pavement Solutions, Inc. of San Bernardino, CA for an amount of “Not to Exceed” \$675,000.00 including an approximate 10% construction contingency.**
2. **Authorizing the appropriation of \$17,578.00 from AB 2928 (Proposition 42) funds to Account No. 100-4901-431-9315 and authorize the Director of Finance to make the necessary budget adjustments related to these funds.**

V. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*) (*ETA 6/08*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (*ETA 6/08*)
3. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
4. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*) (*City Mgr.*)
5. Schedule Special Jt. Meetings with the City’s Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
6. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 6/08*)

7. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*City Atty. & Purvis*)
(*ETA 5/22/08*)
8. Update on Warehouse Moratorium (*Salas/Franklin – 03/25/08*) (*City Mgr.*) (*ETA 5/13/08*)

VI. CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation.
 - A. Opportunity for Public to address closed session items.
 - B. Convene to Closed Session

VII. 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].



PROCLAMATION

WHEREAS, mental health is critical for our well-being and vitality as well as that of our families, communities and businesses; and

WHEREAS, the Presidents' new Freedom Commission declared that mental disorders and mental health problems affect people of all backgrounds and all stages of life, and no one is immune; and

WHEREAS, the World Health Organization found that mental illnesses are the number one cause of disability in the United States and, collectively, are the most prevalent health problem in America today – more common than cancer, and lung and heart disease combined; and

WHEREAS, one in 10 children has a serious mental disorder that, if untreated, can lead to school failure, physical illness, substance abuse and even suicide; and

WHEREAS, the City of Banning has made a commitment to community-based mental health care for all residents; and

WHEREAS, the Mental Health America, the National Council for Community Behavioral Healthcare and their national partners observe Mental Health Month each May to raise awareness and understanding of mental illness; and

WHEREAS, according to the 2007 County of Riverside Homeless Count, there are more than 4,500 homeless adults and children on a given day and according to the same count, nearly 20% of the homeless were children under the age of 18 living with a homeless parent and according to the same count, nearly one-third reported symptoms of mental illness.

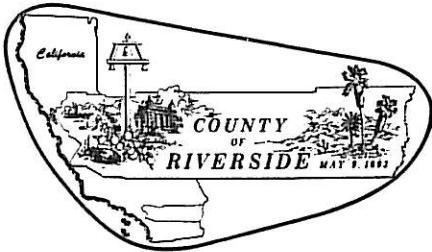
NOW THEREFORE, I, Brenda Salas, Mayor of the City of Banning, along with the City Council, do hereby proclaim May 2008 "MENTAL HEALTH MONTH" in the City of Banning and call upon all citizens, government agencies, public and private institutions, businesses and schools to recommit our community to increasing awareness and understanding of mental illness, improving the array of mental health services for consumers of all ages, and expanding the supply of affordable, supportive housing for people living with mental illness.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this day of April, 2008.

ATTEST:

Marie A Calderon, City Clerk

Brenda Salas, Mayor



MENTAL HEALTH BOARD

4060A County Circle Drive

Riverside, CA 92503

Phone: (951)358-4603

Fax: (951) 358-6924

<http://mentalhealth.co.riverside.ca.us>

<http://riverside.networkofcare.org>

March 12, 2008

Honorable Mayor Brenda Salas
Banning City Hall
99 E. Ramsey Street
Banning, CA 92220

SUBJECT: PROCLAMATION FOR MAY IS MENTAL HEALTH MONTH 2008

Dear Honorable Mayor Brenda Salas:

This letter is sent to you to request your assistance in creating public awareness of mental health issues in your community by issuing a proclamation from the City of Banning recognizing **MAY IS MENTAL HEALTH MONTH**.

Since 1949, Mental Health Month has opened the eyes of the American public to the importance of mental health and the reality of mental illnesses. Initiated as a week long public education campaign, it instantly enjoyed the involvement of many mental health associations and other groups across the country. The observance soon grew into a month's worth of activities, and Congress officially designated the month of May as Mental Health Month.

For your convenience, I am enclosing a suggested proclamation that you may wish to use. If at all possible, we would like to have the proclamation issued at your last City Council meeting in April or your first meeting in May 2008. We will make arrangements for a member of the Mental Health Board to be present to accept the proclamation on behalf of the Department of Mental Health. We wish to be placed on the City Council agenda and slotted for a three or four minute presentation prepared by the attending Mental Health Board member.

We hope that you and the members of your City Council will participate in helping to eliminate the stigma of mental illness in your community by proclaiming *May is Mental Health Month*. Your proclamation will be displayed in one of our local mental health clinics in honor of your contribution to public awareness.

If you have any questions or need further information, please contact Jane McCoy at (951) 358-4603.

Sincerely,


Jerry A. Wengerd, Director
Department of Mental Health

Attachment

2

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/08/08
REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the Banning Utility Authority was called to order by Mayor Salas on April 8, 2008 at 7:02 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

BOARD MEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Salas

BOARD MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager
Julie Hayward Biggs, Agency Counsel
Bonnie Johnson, Finance Director
Duane Burk, Public Works Director
Jim Earhart, Public Utility Director
Leonard Purvis, Police Chief
Phil Holder, Police Lieutenant
Ted Yarbrough, Fire Marshal/Fire Prevention Officer
Chris Paxton, Human Resources Director
Matthew Bassi, Interim Community Development Director
Heidi Meraz, Recreation Director
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 Pastor Steve Braun, Banning Foursquare Church.

CLOSED SESSION

City Attorney said that the City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator Brian Nakamura on the price and terms of the acquisition of .95 acres of property located north and east of Mountain Avenue identified as APN 531-080-010-8.

Meeting went into closed session at 7:02 p.m. and reconvened at 7:03 p.m. City Attorney said that the City Council met in closed session with regard to the acquisition of .95 acres of property as previously identified on the agenda. On the motion of Councilmember Botts and Hanna and approved by all members of the City Council they authorized the

acquisition of that property. This matter is on the consent agenda and will be acted on at that time.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Fred Sakurai, 4300 Dillon Road addressed the Council stating that there was a comment at one of the prior Council meetings about trying to emphasize having properties located by addresses and not just by assessor parcel numbers. As they try to take a look at the project it is very difficult to try to find it by assessor parcel numbers and if you can do it by the address or street intersections, it would make it easier.

Karen Clavelot, 5449 W. Riviera thanked the City Council and the City for their support on the Pass Area Performing Arts Program. They had four successful performances and everyone enjoyed it. Also, the 3rd Annual Art Hop will happen on April 19th in downtown Banning. The admission is free and will take place from 10 a.m. to 6 p.m. They will feature the local galleries and artists, there will be a children's chalk art contest, high school mural contest, tile painting, American Indian music, activities booths, carriage rides, handcrafted item and free entertainment on the stage. Between 4 and 6 p.m. at the gallery they will have a Plein Air Artist from Riverside featuring their California Mission paintings. They will also be beginning a program from the Cultural Alliance and it is in the beginning stages of developing the Healing Arts Program at San Gorgonio Memorial Hospital. This will include art and music.

Paula Schoen, 42 W. Ramsey Street, 2nd Floor addressed the Council stating that she came to the Council on December 11, 2007 to make the Council aware of the personal and financial loss that she has been experiencing due to the redevelopment project known as the Haven Art Center. She read from a prepared letter her situation and it is attached as "Exhibit A".

Mayor Salas asked for a copy of the letter be given to the City Clerk and she will make sure that the City Council receives a copy of it. She asked the City Attorney if she had any comments.

City Attorney said she did not have any comments at this time and they have heard from Miss Schoen's attorney and they are looking at the comments. This situation really hasn't changed very much from the beginning in terms of obligations of the parties. City Attorney said they will take a look at this but there are obligations for some things and no obligations for others and they have previously communicated those positions. She would suggest that they pull together from the comments this evening and the letter that the attorney's have sent them and a report will be given to the Council as to exactly where things are.

Patty Hanley, Library Director for the Banning Library District addressed the Council stating that they wanted to remind everyone that next week is National Library Week, April 13-19, 2008 and she extended an invitation to everyone in the community to an event on Wednesday, April 16th in the Library Youth Room from 3 to 5 p.m. At 3:30 p.m. they will do a special presentation to the Laura May Stewart Foundation thanking them for all the money that has been given to the library that has allowed them to buy a few additional books for the Children's Room, as well as, the three computers and some furniture. Also, the Spring Fling will be held Wednesday, April 9th through Friday, April 11th from 9 a.m. to Noon at the Cultural Alliance Center and the cost is \$1.00 a day and will feature international locations.

CORRESPONDENCE: None

ANNOUNCEMENTS/COUNCIL REPORTS:

Mayor Pro Tem Franklin –

- Received an award today from the Commission of Women for Riverside County as "Women of Year" from the 5th Supervisorial District but the reason she is mentioning it is because she was commended for participation and different programs like BPAL, Holiday Wish, Childcare Consortium Programs here in Banning and she thinks it was really an award for the City because we have so many good programs they thought they were worthy of recognition. The City has been awarded this also.

Councilmember Hanna –

- Announced the Women's Club will be having their Annual Rummage Sale May 1st and 2nd at the Banning Women's Club on Hays and Second Street.

Councilmember Machisic –

- Said that he and Councilmember Hanna attended a workshop with the Regional Conservation Authority. The most outstanding fact that he can present is that the goal of the RCA is to get 150,000 acres for conservation to protect and sustain endangered and threatened animals and plants and their inhabitants. They have reached 40,000 of the 150,000. What he didn't know in Western Riverside County that 350,000 acres are in conservation now and they belong to the State or to the Federal Government so when they put these 150,000 acres into it we will have 500,000 of natural area of conservation.
- RCR (Regional Conservation Authority) has increased their fees. They charge a fee for every house and the fee has been increased this year \$78.00 and for the conservation authority the new fee for every single house is \$1,938. Industrial and commercial fee is \$6,597.
- WRCOG – General Assembly Meeting will be held on June 19th at Casino Morongo Resort & Spa and the featured speaker is George Stephanopoulos who is a well know commentator and was a spokesman for one of the presidents. Also they have included in WRCOG the Eastern Municipal Water District and the Western Municipal Water District. Also, Edison has made an application to the

PUC that they would like to increase their rates 12.1% for this coming year. LA City which owns their water and electricity is increasing rates to the tune of \$7.50 per month for every house in the community. The two cities sitting in on WRCOG which are Riverside and Banning felt very fortunate because we have our own electric company. Also our rates last time quoted, without the rate increase, were 14% below Edison at that time.

Mayor Salas –

- The Legacy Christian Fellowship Easter Celebration was a success and there were 4500 in attendance and thousands of eggs were gone in a matter of minutes. They expect it to be a big success next year and it will be moved to one of the stadiums. Also this afternoon she and the Council Members attended the recognition for Joshua Palmer. The recognition was for his family in commemoration of the day of his death and today is “Joshua Palmer Day” in the city of Banning and will adjourn this meeting in his honor.
- April 12, 2008 there will be a Recycling Fair at Nicolet Middle School and it will begin at 8 a.m.

Mayor Pro Tem Franklin announced that the 3rd Annual Disaster Preparedness Expo will be held on April 26th from 10 a.m. to 2 p.m. and is free to the community. The idea is to help people prepare not only for themselves, their homes, their communities, their neighborhoods for when a disaster happens. It could be on a personal level where you have a water leak in your house or your house burns down or it might be something such as a toxic spill or an earthquake. There are 28 exhibits planned for inside the Community Center and approximately 10 will be outside.

CONSENT ITEMS

City Manager said that there is an item that they would like the Council to add to the Consent Agenda and also take action on it. It was an urgency item and it is time sensitive and a request by the District Attorney's Office to support by resolution their efforts pursue full funding of additional judicial officers to serve in Riverside County.

Motion Botts/Machisic to add this item to the agenda. Mayor Salas asked if there were any public comments on this item. There were none. **Motion carried, all in favor.**

Councilmember Machisic pulled Consent Item No. 5 for comment.

1. Approval of Minutes – Joint Meeting – 01/22/08

Recommendation: That the minutes of the Joint Meeting of January 22, 2008 be approved.

2. Approval of Minutes – Regular Meeting -03/25/08

Recommendation: That the minutes of the Joint Meeting of March 25, 2008 be approved.

3. Ordinance No. 1384 – 2nd Reading: An Ordinance of the City Council of the City of Banning Amending Various Provisions of Title 16 Subdivisions of the Banning Municipal Code.

Recommendation: That the Ordinance No. 1384 pass its second reading and be adopted.

4. Notice of Completion for Emergency Rainstorm Repairs and Cleanup Performed by Merlin Johnson Construction, Inc.

Recommendation: That the City Council accept the “Emergency Storm Repairs and Cleanup” as complete and direct the City Clerk to record the Notice of Completion.

6. Accept the Right-of-Way Dedication from Don Ranney for Street Improvements at Assessor’s Parcel Number 535-101-019.

Recommendation: Accept the Right-of-Way dedication from Don Ranney for Street Improvements at Assessor’s parcel Number 535-101-019, as described in Exhibit “A” and Exhibit “B”, and direct the City Clerk to accept and record said dedication.

7. Resolution No. 2008-41, approving a Purchase and Sale Agreement with Joint Escrow Instructions for APN 531-080-008 for the Purchase of .95 acres of land from Barbara L. Brinton in the amount of \$210,000 for the Sunset Substation Project and Appropriate the Necessary Funds for the Purchase.

Recommendation: That the City Council adopt Resolution No. 2008-41.

8. Adoption of Resolution No. 2008-43, Supporting the Riverside County District Attorney’s Office Effort to Pursue Full Funding of Additional Judicial Officers to Serve in Riverside County.

Recommendation: That the City Council adopt Resolution No. 2008-43.

Motion Botts/Franklin to approve Consent Items 1-4, and 6 and 7 and also including the added Item No. 8. Mayor Salas opened the item for public comments. There were none. **Motion carried, all in favor.**

5. Approval of the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Installation of Well No. 25.

Councilmember Machisic said he wanted the public to know that he has said several times that water is a regional problem and it takes cooperation among agencies. This is a prime example and it is the last three wells that we have jointly built. They shared the costs, shared the water and also have a connection so that if we have any difficulty in the future we can pump water from Beaumont to Banning or from Banning to Beaumont. This is a good example of what he calls cooperation among areas whether it be cities or agencies such as this.

Motion Machisic/Hanna to approve Consent Item No. 5 to approve release and partial payment to the Beaumont Cherry Valley Water District for installation of Well No. 25 in the amount of not-to-exceed \$1,135,634.20. Motion carried, all in favor.

ANNOUNCEMENTS

Councilmember Hanna announced that the Mexican American Scholarship Association will have their dinner on Monday, May 5th beginning at 6 p.m. at the Banning High School Cafeteria and Auditorium. This dinner is one of the best events in the city and she would encourage everyone to attend.

ORDINANCES - INTRODUCTION

1. Ordinance No. 1386, Allowing the Fire Chief to declare certain wildland/urban interface areas of the city closed during period of high fire danger.
(Staff Report – Ted Yarbrough, Fire Marshal/Fire Prevention Officer)

Fire Marshal gave the staff report as contained in the agenda packet. He said that this is a means of taking care of an omission from the new Fire Code. He displayed a map showing the proposed closed areas during the summer time. Staff recommends approval of this ordinance.

There was some discussion regarding the area and signage.

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

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1386. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Allowing the Fire Chief to Declare Certain Wildland/Urban Interface Areas of the City Closed During Periods of High fire Danger.

Motion Machisic/Hanna to waive further reading of Ordinance No. 1386. Motion carried, all in favor.

Motion Hanna/Machisic that Ordinance No. 1386 pass its first reading. Motion carried, all in favor.

Mayor Pro Tem Franklin asked for a brief update on the weed abatement program to let public know what dates they are supposed to have their weeds down because we are talking about fire danger.

Fire Marshal said June 1st is the final date for people to have their weeds down and inspections will start that first week of June for properties. Approximately 1200 reminder cards will be sent out to every parcel that received a first notice last year. There was a lot of rain and a lot of green grass out there and a lot higher than it was last year and the fire danger will be a lot higher than it was last year.

REPORTS OF OFFICERS

1. A Union Pacific Railroad Track Renew Project (Staff Report – Duane Burk, Public Works Director)

Mr. Burk said at the last Council meeting he briefed the Council on the rail and railroad tie replacement for Union Pacific Railroad. What he has provided is the dates and they are: Sunset Avenue railroad will be closed April 19th through April 20th; 22nd Avenue railroad April 19 through April 22nd; San Gorgonio Avenue railroad April 19th through the 23rd. Hargrave will remain open during that time but it will be closed during April 20th through April 24th. They will be showing a presentation on Channel 10 regarding this process. He said that Joe Buck and Josh, Union Pacific Representatives are in attendance to address any concerns you may have as it relates to just the coordination with police and fire.

Mayor Salas asked if there will be proper signage on these roads so people know in advance what will be happening.

Mr. Buck addressed the Council stating that yes there will be. They are putting verbal message board on I-10 ten days before each closure.

Councilmember Hanna asked if there would be additional signage showing people how they are to go. This is a pretty drastic closure for our city.

Mr. Buck said absolutely. They did this two years ago and it worked out very well. He said that Lincoln and Ramsey will be the detour routes for the entire project. Sunset and Hargrave were the big issues and one of those streets will be open at all times. This machine that is coming through town is quite unique in that there are only two in the entire world. One is in Europe and one will be coming through Banning. It is a complete track renewal project which basically replaces the rail, the tie and all the ballasts all in one motion. It is \$40,000 per hour to operate at a cost of about \$400,000 per day so consideration on these closures would be much appreciated by the Union Pacific. They are waiting for final approval from Caltrans to allow them to put the proper signage on I-10 because it falls in Caltrans jurisdiction and not the city and they are pretty confident that is going to happen.

Mayor Salas opened the item for public comments.

Pat Moore, 411 N. Wood Avenue said her question had to do with the noise level when this is being done. There is quite a bit of noise when the train goes by now and she didn't know if this great big thing that they were going to bring in is going to add anything to it.

Mr. Buck said the hours of operation will be approximately 6 a.m. to 6 p.m. each day. He said that he is not a Union Pacific employee. He is contracted by the Union Pacific so any legalities as far as noise decimal levels he cannot answer that. They went right through from Ontario all the way through to the City of Industry and finished the project last month. There were very little complaints. As far as the train traffic that goes through Banning from what he understands is a lot and it is not as loud as the train traffic going through but there

will be some backup beeping devices for safety reasons. Basically it is a train where there is a constant conveyor belt delivering concrete ties as they pull out the old wooden ties and it move about one mile per hour and will impact you for about four days. He doesn't think it is as loud as the train going by.

Councilmember Machisic said obviously this machine takes up at least one tract. Does that mean then that those many trains that are coming through will possibly be backed up?

Mr. Buck said that in Banning it is double tracked. There will be live train traffic on one rail and a work crew on the other rail that completely takes the train traffic off of that rail for the entire duration of the project. And there will be a slow order in effect because there will be up to 300 men working on the tract for those four days. Train traffic will be only on one track.

1. B Resolution No. 2008-40, Declaring the Intention to Levy and Collect Assessments, Approving the Engineer's Report and Setting the Date for the Public Hearing for Landscape Maintenance District No. 1.
(Staff Report -Duane Burk, Public Works Director)

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

Mayor Salas asked the City Attorney if she owns property in any of these areas, does she need to abstain.

City Attorney said she didn't need to abstain because you are not affected any differently than anyone else.

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

Motion Hanna/Machisic that the City Council adopt Resolution No. 2008-40, declaring the intention to levy and collect assessments within Landscape Maintenance District No. 1 (LMD No. 1) during the Fiscal year 2008-09, pursuant to the "Landscaping and Lighting Act of 1972"; approving the Engineer's report; and giving notice of a public hearing for renewal of said maintenance district. Motion carried, all in favor.

PUBLIC HEARINGS

1. City Taxi Permit for Express Transportation Systems, Inc.
(Staff Report - Lieutenant Phil Holder)

Lt. Holder gave the staff report as contained in the agenda packet. This would be a full service, 24-hous a day, seven days a week taxi service with five vehicles. He is compliant will laws of the State and City and they have been shown to representatives of the Banning Police Department. Every new employee with Express Transportation Systems is required to undergo a background check through the Department of Justice, the FBI and be drug

tested before being hired. Presently this company also has city licenses through several other cities in Riverside County, as well as the County itself allowing it to provide transportation to other cities throughout the County. They recommend approval.

There was some discussion in regards to the number of taxi services in the city and the insurance levels and compliance.

Mayor Salas opened the public hearing for public comments. Being none, the Mayor closed the public hearing.

Motion Machisic/Franklin that the City Council approve a City Taxi Permit for Express Transportation Systems, Inc. permitting the company to provide taxi services within the City Limits of Banning. Motion carried, all in favor.

2. 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 the staff report as contained in the agenda packet. He asked the Council to adopt Resolution No. 2008-08.

Mayor Salas opened the public hearing for public comments. Being none, the Mayor closed the public hearing.

Motion Botts/Franklin that the City Council adopt Resolution No. 2008-08, adopting the Airport Master Plan Update for the Banning Municipal Airport. Motion carried, all in favor.

Councilmember Botts reminded the Council that the Council designated himself and Councilmember Franklin to work with staff as they go forward and plan the next steps on a fixed based operator. There was Council consensus.

3. Request for Extension of Time Tentative Parcel Map (TPM) 33326 (Sun Lakes Commercial): The subdivision of 47.1-acre site into 14 commercial parcels ranging in size from 1.3 to 5.5 acres. The proposed project site is located generally, north of Sun Lakes Boulevard, east of Highland Springs Ave. APN: 419-140-057
(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton gave the staff report as contained in the agenda packet. Staff is recommending approval.

Mayor Salas opened the public hearing for public comments.

Tim Hamilton, 15 Enterprise, Aliso Viejo, California addressed the Council stating that they are the developers of the property and stating that they have submitted a final map

application and it is in second plan check. He has been told that they should have it ready to record in the next 60 days. This is just a gap that they need to fill until the final map is replaced. This will help them tremendously because then they could subdivide it and be able to sell it to individual parcel buyers or tenants as opposed to having just locked up into one big 47 acre parcel.

Councilmember Hanna asked that when this is divided into parcels, you are still responsible for complete infrastructure development at one time and is that correct. Mr. Hamilton said that was correct.

Mayor Salas closed the public hearing on this item.

Motion Machisic/Franklin that the City Council adopt Resolution No. 2008-38, granting a one-Year extension of time for Tentative Parcel Map No. 33326. Motion carried, all in favor.

4. Amendment to certain provisions of the Municipal Code Adding Chapter 2.45 Establishing a Design Review Board. Also, Amending Table 17.12.020 Permitted, Conditionally Permitted and Prohibited Uses in Commercial and Industrial zones; and Amending certain provisions in Title 17 pertaining to walls and fences.

(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton gave the staff report as contained in the agenda packet. Some of these amendments are cleanup provisions and the other one establishes the Design Review Board and has been in the work for a long time. It consists of three members who have knowledge and expertise in architecture and landscape architecture. They will serve a two year term and will be an advisory body only. One will have a one-year term and two will have a two-year term. They will review commercial projects and also residential tract architecture. The other provisions that are included in this ordinance are clean-up provisions and she explained those amendments. Staff is recommending approval.

There was some questions and discussion in regards to getting members for this board from outside the area, walk-up services, chain link fences and use of the Design Review Board for façade grant approval.

Mayor Salas opened the public hearing on this item.

Jim Stewart addressed the Council stating that in regards to the Design Review Board if you put too many architects on that board nothing gets done. No two architects ever agree with the third architect's design. They have had that happen in many cities and projects just get held up. He is not speaking for or against it but just the appointments to that particular Review Board should not be all architects by all means because you will never get anything accomplished.

Mayor Salas closed the public hearing.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1387 City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending the Municipal Code by Adding Chapter 2.45 Establishing A Design Review Board; Amending Table 17.12.020 Permitted, Conditionally Permitted and Prohibited Uses in Commercial and Industrial Zones, and Amending Certain Provisions in title 17 Pertaining to Walls and Fences.

Motion Machisic/Hanna to waive further reading of Ordinance No. 1387. Motion carried, all in favor.

Motion Hanna/Machisic that Ordinance No. 1387 pass its first reading. Motion carried, all in favor.

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

CONSENT ITEMS

A-1. Funding of the Bond Reserve Requirement Related to the Outstanding Water Bonds Issued by the Banning Utility Authority.

- 1) That the Banning City Council approve the funding of the bond reserve requirement for the 2005 Water Bonds from operating reserves.
- 2) The Banning Utility Authority approve the funding of the bond reserve requirement for the 2005 Water Bonds from operating reserves.

Motion Hanna/Franklin to approve Consent Items 1 and 2. Mayor Salas asked for public comments. There were none. **Motion carried, all in favor.**

Joint meeting was adjourned back to the regular City Council Meeting.

ITEMS FOR FUTURE AGENDAS

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*) (*Comm. Dev.*) (*ETA 4/08*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*) (*City Atty.*)
4. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*) (*City Mgr.*)
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*) (*Johnson*) (*ETA 3/08*)
8. Ordinances in Regards to Group Homes (*Botts – 12/11/07*) (*City Atty. & Purvis*) (*ETA 4/22/08*)

9. Need to Set Date for Meeting with Morongo Band of Mission Indians regarding The Banning Municipal Airport (*Hanna -2/12/08*) (*City Mgr.*)
10. Update on Warehouse Moratorium (*Salas/Franklin – 03/25/08*) (*City Mgr.*) (*ETA 5/13/08*)
11. Discussion on Districting Proposal (*Hanna -3/25/08*)

Councilmember Hanna said that they could remove Item No. 9 and they will be having a meeting with them on Thursday and she wanted to know what else would be on the agenda for that meeting with the Tribal Council.

Mayor Salas said that the meeting would be on May 1st at 5:30 p.m. and there is no set agenda. It is a meet and greet and discussion with no set agenda.

Mayor Pro Tem Franklin said on Item No. 3 that Assemblyman Cook has been working on that and they are getting reports back from his assistant, Art Welch. It is going to be a long process and we don't need to keep it on the pending list so Item 3 can be removed. Also, can remove Item No. 11 because it has not gone through the process yet. There was Council consensus to remove Item No. 11.

Mayor Pro Tem Franklin wanted an update on Item No. 11 as to where we are.

City Manager said the City contracted with Larry Kossmott to do an analysis on our warehousing in the city. The current moratorium in accordance with the ordinance is due on June 25, 2008. It was a ten month and 15 day moratorium. He believes that prior to that time the Council can take action to either extend the moratorium but he believes that once they receive the information from Mr. Kossmott it will be placed on the agenda for discussion. There will be more discussion prior to the moratorium date.

City Attorney added that there was discussion at the last meeting about various letters that went back and forth and so on having to do with requests to be exempt. They did receive a copy of that letter from the City Manager's Office and they did not previously receive it. It does talk about some kind of an exemption process. The current moratorium does not provide for that process so if the Council wishes to create an exemption process that can be done but she will need direction from the Council to that affect. That may be something to think about as the report itself comes forward. Whether the moratorium is going to be continued or you wish to create an exemption process and some criteria for exempting projects that would be something for the Council to talk about later.

City Manager introduced Interim Community Development Director Mr. Matthew Bassi.

Mayor Salas said she received a letter from the President of Cal State San Bernardino and asked the Council if they would like to support sending a letter to the State asking that they be careful in how much money they take away from Cal State and our junior colleges and K thru 12. She asked the City Manager's Office to take care of that. Also recently they received a call from Ellen Carr and her group Tender Loving Critters and they have plenty of homes throughout not just Banning but Beaumont and the Pass Area

and also the Desert that foster animals and these are the animals that could be adopted out and may need a little extra care. She spoke with the City Manager and maybe they could take a look at proposing some type of ordinance that would spell out what we expect of these homes so there is something on record versus just them operating as a non-profit without any legislation or anything. Her concern would be in the future and they are doing a wonderful job but we wouldn't want to open the door for anyone that would want to have a great number of animals in their home. She said this was just a thought but wanted to run it by the Council.

There was Council consensus to have staff look into it. City Manager said that he would provide an update to the Council of what they find within the next week.

Mayor Pro Tem Franklin asked if staff could give a little bit of information about what efforts could be taken by the City or if any that could be done outside the city regarding when some developments start and then they stop due to various issues. An example was given like the Banning Business Center. She wanted staff to give a brief update of what happened with that. Everyone thinks that the developer ran out of money and maybe this could be clarified and what is the City's role in that.

City Manager said it is an interesting situation from any perspective whether you are developing retail, commercial, industrial or residential properties. As you know, throughout the State we have encountered a serious setback in our economy. In the Banning Business Center case without getting into a lot of specifics the due diligence on behalf of the developer was being met. It was the bank that actually decided not to fund the remaining part of the project so it left the individuals to try to seek other types of funding. City Manager explained further.

CLOSED SESSION

Chairman Botts reconvened the Community Redevelopment Agency Meeting.

City Attorney said that the Community Redevelopment Agency will be meeting in closed session pursuant to Government Code Section 54956.8 to confer with its real property negotiator Brian Nakamura on the price and terms of the potential acquisition of property for APN Numbers 541-181-024, -026, -027 and -028. The City Council will be meeting in closed session pursuant to Government Code Section 54957 with regard to City Manager evaluation.

Mayor Salas asked for public comments.

Jim Stewart said that in regards to the real property he is the agent involved with the property and he is here for questions if there are any.

Meeting went into closed session at 8:29 p.m. and reconvened that 10:00 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 10:00 p.m. in memory of Joshua Palmer.

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.

Good evening. I appreciate the opportunity to speak to you tonight. My name is Paula Schoen. I am the artist who leases the second floor of 42 W. Ramsey Street, as I have for the last 12 years.

I came here on December 11th, almost 4 months ago to make you aware of the personal and financial loss I was experiencing due to the re-development project known as the Haven Art Center. As you know, over a year ago the City of Banning entered into a partnership agreement with Banning Commercial Investors to extensively re-develop the building that I live in.

The last time that I spoke with you, I asked for reasonable consideration and an honest evaluation of the real impact of this project on me. Since the City of Banning offered every other tenant in the building relocation assistance, I expected fair treatment and help in dealing with temporary relocation costs so that I could get out of the way of this construction without incurring loss or damage.

I hoped for a simple, common sense approach, like walking across the street to look at the situation first hand. I hoped to talk about planning, cooperation and understanding of my situation as the only residential tenant in the building.

Instead, the City chose to look the other way and refer the matter to their attorney in Riverside. An attorney sitting in an office in Riverside knows nothing of the physical conditions surrounding the demolition of the site, nor my personal and professional circumstances in relation to the building. Instead of an honest, hands-on evaluation, I got litigation.

In the face of losing my home and business to this project, I asked for sensitivity and assistance. What I got was an arrogant letter from the City Attorney. The letter stated that the City agreed I should get some assistance, but they were not responsible for providing it. It seems that the City of Banning is pleased to initiate and fund a three quarter of a million dollar project, but not take responsibility for the impact of it. That doesn't seem right to me.

The City knowingly entered into an agreement that would have a huge negative impact on me, without incorporating real measures to make sure that a long time resident could get out of the way without significant loss. Employees of the City came to my place and saw firsthand what was at stake, yet they treated the loss of my home and business as a purely legal matter. That is not right.

Aside from the difficulty that I have had in meeting the costs involved with temporary relocation, as well as the loss of my livelihood, neither the City of Banning nor Banning Commercial Investors has provided me with a schedule for construction, plan for security of my personal property and the space that I lease, or information concerning the health and safety issues during construction. This has been requested with no response.

I have been informed that at some time unknown to me, they are going to break into the exterior wall, directly into my home, as well as cut a large hole into my floor. Every day I fear that my space will be broken into without notice.

I saw a sign on the freeway the other day that said, "Banning is Coming! Invest in your future." Well, I invested in my future 12 years ago when I first came to Banning. And when the future finally came to me in the form of this re-development project, I was confronted with bureaucracy, hostility and loss.

I seriously doubt if my future is in Banning, if this is what they have to offer. A \$785,000 building façade is not going to make a difference. True integrity and change takes commitment and a willingness to engage on a human level.

I come here tonight to ask the City of Banning to honor its obligations and take responsibility for the projects that they initiate and fund, as well as the partnerships that they enter into.

I am asking you to provide, or require your partner to provide, a schedule for construction and rules for entry, as well as a security plan for my personal well being and property. I am also entitled to information regarding health and safety issues associated with demolition and construction.

I am asking you to fully recognize the damage and loss that the City of Banning and Banning Commercial Investors have caused me and the costs that I have incurred in temporary relocation.

And, most importantly, I ask the City of Banning and Banning Commercial Investors to engage in meaningful dialogue with me to arrive at a solution that is fair and comprehensive.

In short, please be accountable and take responsibility for your actions. Rather than turning the other way, take a good, close look across the street and do what is right.

April 8, 2008

Paula Schoen
42 W. Ramsey Street
Suite 200
Banning, CA 92220

Exhibit "A" to Public Comments

2nd Read

ORDINANCE NO. 1386

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ALLOWING THE FIRE CHIEF TO DECLARE CERTAIN WILDLAND/URBAN INTERFACE AREAS OF THE CITY CLOSED DURING PERIODS OF HIGH FIRE DANGER.

Section 1. Definitions

Fire Chief – The person designated as the Chief Officer of the Riverside County Fire Department or their authorized designee.

Wildland/Urban Interface Areas – Open areas, covered with natural vegetation, that are adjacent to, or combined with, developed areas.

Hazardous Fire Areas – Open areas where, due to weather and vegetative conditions, wildfires can easily start and are difficult to contain.

High Fire Danger Periods – Periods of time when the Fire Chief determines that the weather and vegetative conditions create the potential for hazardous fires.

Section 2. Prohibition

The Fire Chief shall determine and publicly announce when hazardous fire areas shall be closed to entry and when such areas shall again be opened to entry. The areas to be closed shall be determined by the Fire Chief and displayed on maps that are available for public viewing. Entry onto and occupation of hazardous fire areas, except public roads and inhabited areas, are prohibited.

EXCEPTIONS:

1. Residents and owners of private property in hazardous fire areas and their invitees and guests going into or being upon their lands. Invitees and guests must be accompanied by the property owner or resident or must have, in their possession, written permission to be on the property signed by the property owner or resident.
2. Persons in possession of written permission from the Fire Chief.
3. Entry, in the course of duty, by peace or police officers, and other duly authorized public officers, members of a fire department and members of the United States Forest Service.

Section 3.

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

PASSED, APPROVED AND ADOPTED this 8th day of April, 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 Ordinance No. 1386 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of April, 2008, and was duly adopted at a regular meeting of said City Council on the 22nd day of April, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

2nd Read.

ORDINANCE NO. 1387

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE MUNICIPAL CODE BY ADDING CHAPTER 2.45 ESTABLISHING A DESIGN REVIEW BOARD; AMENDING TABLE 17.12.020 PERMITTED, CONDITIONALLY PERMITTED AND PROHIBITED USES IN COMMERCIAL AND INDUSTRIAL ZONES, AND AMENDING CERTAIN PROVISIONS IN TITLE 17 PERTAINING TO WALLS AND FENCES.

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council hereby finds and determines that:

1. This ordinance is consistent with the goals and policies of the City's General Plan. The City's General Plan contains land use policies requiring that development be of a high quality and that the zoning ordinance shall include design standards and guidelines to facilitate high quality development. This ordinance furthers these policies by establishing a Design Review Board whose specific purpose is to make recommendations on design related issues. This ordinance also furthers these policies by further regulating the types of fencing that are allowed in the city to promote the aesthetics of the City.

2. This ordinance is internally consistent with the City's zoning ordinance. The current zoning ordinance has been in effect since March of 2006. This purpose of this ordinance is to clarify and clean up the zoning ordinance.

3. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act ("CEQA"), and has determined that the zoning text amendments contained in Section Two of this ordinance are categorically exempt from CEQA per Section 15320 of the CEQA Guidelines ("Changes in Organization of Local Agencies") and that the remainder of the zoning text amendments contained in this ordinance is not a "project" as that term is defined in Section 15061(b)(3) of the CEQA Guidelines because these zoning text amendments do not have the potential for causing a significant effect on the environment.

SECTION 2. Addition of Chapter 2.45 to the Banning Municipal Code. A new Chapter 2.45 is hereby added to the Banning Municipal Code, and shall read as follows:

Chapter 2.45 Design Review Board

Sections:

- 2.45.010 Membership Requirements
- 2.45.020 Term and Vacancies
- 2.45.030 Compensation
- 2.45.040 Rules of Procedure
- 2.45.050 Duties and Responsibilities
- 2.45.060 Conflict of Interest Requirements

- 2.45.070 Staff Liaison
- 2.45.080 Meeting Times and Places
- 2.45.090 Adoption

Section 2.45.010 Membership Requirements

- A. Members of the Design Review Board shall have expertise in the areas of architecture or landscape architecture.
- B. Recruitment for the members may occur outside the city limits.
- C. Members may not be employees of the City.

Section 2.45.020 Term and Vacancies

- A. Members of the Design Review Board shall consist of three (3) members.
- B. Members of the Design Review Board shall serve two (2) year terms. The initial appointments shall have two members with two-year terms and one member with a one-year term.
- C. Appointments shall be made by the City Council.
- D. Applications shall be made available and the closing date announced at least two months prior to the expiration of the Member's term to be filled.
- E. Members shall serve at the pleasure of the Council and may be removed at any time by a majority vote of the entire Council.
- F. Any member who is unexcused for two consecutive regular meetings of the Board or six meetings within a 12 month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the City Council shall appoint a new member to serve in the resigned board member's place for the remainder of their term.
- G. To be excused from any such meeting, a member shall notify the Planning Department, at least 48 hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the Board shall constitute an excused absence.

Section 2.45.030 Compensation

- A. Members of the Design Review Board shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.
- B. Upon authorization by the City Manager, the Design Review Board and members of its staff may attend conferences or meetings, or hearings on relevant legislation, or matters affecting the development of the City. The reasonable expenses of such attendance shall be charged upon the funds allocated to the Board.

C. All funding shall be established through the City of Banning budget, which shall be approved by the City Council.

Section 2.45.040. Rules of Procedure

A. A quorum of the Design Review Board shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the Design Review Board to hold a meeting.

B. The Design Review Board shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.

C. The Board shall follow all applicable City fiscal and administrative policies and procedures.

Section 2.45.050 Duties and Responsibilities

A. The Design Review Board shall make recommendations as to design issues to be included in the staff report to the Planning Commission in accordance with the applicable provisions of the General Plan and Zoning Code.

B. At the regular February meeting, the Design Review Board shall select a Chairman and a Vice-Chairman from among its members. The Chairman and Vice-Chairman shall serve for a one term. Both positions shall rotate every one year. All members must be present to conduct this business.

1. The Chairman shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.

2. The Vice-Chairman shall assume all duties of the Chairman in their absence.

C. The Design Review Board's scope of responsibility is:

1. The Design Review Board shall make recommendations as to design issues to be included in the staff report to the Planning Commission;

2. The Design Review Board will meet only one time on a given project;

3. The recommendations of the Design Review Board shall be advisory only and not binding on the Planning Commission.

4. The Design Review Board will consider both residential (tracts only, not individual homes or remodels) and commercial property improvement in accordance with the applicable provisions of the General Plan and Zoning Code.

D. The Design Review Board is an important function within the City of Banning, and as such, certain expectations are held by the City Council in making the appointment of individuals to the Board. These expectations include the following:

1. Members will attend all regular meetings and special meetings as they arise;

2. Members will communicate expected and unexpected absences to the Planning Department, in a timely manner;
3. Members will communicate any potential conflicts of interest on agenda items to the Planning Department in advance of the hearing to allow confirmation of a quorum;
4. Members will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting;
5. Members will prepare themselves for each meeting by reading the agenda, reports and other materials, and visiting the site, as necessary, and communicate any questions to the secretary in advance of the hearing.
6. Pursuant to Resolution 2000-41, if a Board Member visits the site prior to a hearing on the matter, the Board Member shall disclose at the hearing such evidence and observation gathered during the site visit;
7. Members are encouraged to attend the annual conference, if any or an equivalent planning training program given by a University of California Campus (or approved equivalent) and may attend other conferences and or training classes as the need and opportunities arise. The City will also provide regular in-service training and make-up training where attendance is required;
8. New members are expected to become familiar with the City's General Plan and relevant Municipal Code sections particularly those relevant to zoning.
9. Applicants to the Design Review Board will be expected to attend a brief orientation session explaining the role of Board Member, the development process, and the expectations of members that are appointed; and
10. New members will attend an expanded orientation session with the liaison to the Design Review Board and other staff as deemed necessary, to provide new appointees with a solid understanding immediately upon appointment. The orientation will include an overview of the development process, policies and bylaws, a summary of available documents and resources, and a review of the member's relationship with citizens, staff, developers, and the governing body.

F. The Design Review Board may serve on regional boards or commissions as directed by the City Council.

Section 2.45.060 Conflict of Interest Requirements

- A. The State of California Political Reform Act requires Design Review Board members to disclose interests in investments, real property, and income derived within the City of Banning or from sources doing business within the City of Banning. Filings are required within 10 days of assuming office and on an annual basis.
- B. Members shall not work for the "Pass" Cities, which include Beaumont, Calimesa, and Riverside County in roles such as Economic Development, Planning, or Redevelopment.
- C. If an apparent conflict of interest arises, the member shall inquire of the City Attorney or staff

prior to the meeting. Because the nature of some potential conflicts of interest may require legal research, please advise the City Attorney several days prior to the meeting if possible. If a member has a conflict, the member shall state the nature of the conflict of interest when an agenda item comes before them and shall leave the meeting room.

Section 2.45.070 Staff Liaison

A. The staff liaison to the Design Review Board shall be the Community Development Director.

B. The Design Review Board Liaison, supported by the Secretary to the Design Review Board (a staff position), shall be responsible for:

1. Confirming that a quorum will be present prior to each meeting;
2. Receiving and recording all exhibits, petitions, documents, or other material presented to the Design Review Board in support of, or in opposition to, any issue before the Design Review Board;
3. Signing all meeting minutes and resolutions upon approval;
4. Preparing and distributing agendas and agenda packets;
5. Facilitating the tape recording of meetings and preparation of minutes; and
6. Responding to all questions from Design Review Board members regarding agenda items in advance of meetings.

Section 2.45.080 Meeting Times and Places

A. The Design Review Board shall meet the third Wednesday of each month at 11:30 a.m. at the City Council Chambers located at 99 E. Ramsey Street.

B. Members will attend special meetings as they arise.

Section 2.45.090 Adoption

This document, as adopted and amended by Council resolution, shall serve as the Bylaws for the Design Review Board.

SECTION 3. Amendment of Table 17.12. Table 17.12 in the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

| | DC | GC | HSC | PO | I | AI | BP | IMR |
|-------------------------------------|----|----|-----|----|---|----|----|-----|
| Resource and Open Space Uses | | | | | | | | |
| Plant nurseries, with on-site sales | X | P | X | X | X | X | C | C |

| | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| Plant nurseries, without on-site sales | X | C | X | X | X | X | X | C |
| Surface Mining ¹ | X | X | X | X | C | X | X | D |
| Cargo/Storage Containers ² | X | T | T | X | C | C | C | C |
| Recreation, Education and Public Assembly | | | | | | | | |
| Adult entertainment | X | X | X | X | C | X | X | X |
| Adult day care facilities | X | C | C | C | X | X | C | X |
| Automobile race track | X | X | X | X | C | C | X | X |
| Billiard parlors/pool halls | C | C | C | X | X | C | C | X |
| Churches | X | X | X | C | C | X | C | X |
| Community centers | P | P | C | C | X | X | X | X |
| Convention facilities | P | P | P | X | X | P | X | X |
| Day Care Centers | C | C | C | C | X | X | C | X |
| Health/fitness facilities | C | P | P | P | X | X | C | X |
| Indoor recreation centers | C | P | P | X | X | C | X | X |
| Libraries | P | P | P | P | X | P | X | X |
| Membership organization facilities | X | X | X | C | C | P | C | X |
| Museums | P | P | P | P | X | P | X | X |
| Outdoor commercial recreation | P | P | P | C | X | C | C | X |
| Public parks and playgrounds | P | P | P | P | X | P | P | X |
| Recreational vehicle (RV) parks | X | X | C | X | X | X | X | X |
| Recreational vehicle (RV) storage | X | X | X | X | C | X | C | X |
| Schools | X | X | X | C | X | P | X | X |
| Sport facilities and outdoor public assembly | C | C | C | C | X | C | C | X |
| Studios for dance, art, music, photography, etc. | P | P | P | P | C | X | C | X |
| Theatres and meeting halls | P | P | X | C | X | C | X | X |

| Retail Uses | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Accessory retail uses | P | P | P | P | P | P | P | X |
| Alcoholic Beverage Sales, on- or off-site | X | C | C | C | X | X | X | X |
| Antique stores | P | P | P | X | X | X | P | X |
| Art Galleries | P | P | C | C | X | P | P | X |
| Auto, mobile home, and motor vehicle sales, and part sales, new | X | P | P | X | C | X | C | X |
| Auto, mobile home, and motor vehicle sales, and part sales, new and used ³ | X | P | P | X | C | X | C | X |
| Bakeries, retail | P | P | P | C | X | X | P | X |
| Bars and drinking establishments | C | C | C | X | X | C | X | X |
| Building material stores | X | P | P | X | X | X | P | X |
| Certified farmers' markets | P | P | P | X | X | X | X | X |
| Convenience Stores | C | P | P | C | X | C | X | X |
| Convenience Stores, no liquor sales | P | P | P | X | X | X | P | X |
| Department stores | P | P | P | X | X | X | P | X |
| Drive-in and drive-through sales | X | P | P | C | X | X | C | X |
| Drug stores | P | P | P | C | X | X | C | X |
| Factory outlet centers | X | P | P | X | X | X | C | X |
| Farm and ranch supply stores | X | P | P | X | X | X | X | X |
| Furniture, furnishings, home equipment stores | P | P | P | X | X | X | P | X |
| Gift shops | P | P | P | C | X | P | P | X |
| Grocery stores, retail butchers and green grocers | P | P | P | X | X | X | C | X |
| Hardware/lumber stores | X | P | C | X | X | X | P | X |
| Liquor stores (off-site consumption) | X | C | C | C | X | X | X | X |

| | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| Outdoor retail merchandise display & activities | P | C | C | C | X | X | C | X |
| Outdoor retail sales, temporary | T | T | T | T | X | T | T | X |
| Pawn shops | X | P | P | X | X | X | C | X |
| Pet stores and grooming | P | P | C | X | X | X | C | X |
| Restaurants, no beer, wine or liquor sales | P | P | P | C | X | P | P | X |
| Restaurants, serving beer, wine or liquor ⁴ | C | C | C | C | X | P | C | X |
| Restaurants, drive-in, take-out, fast food | C | P | P | C | X | X | C | X |
| Retail stores, general merchandise | P | P | P | X | X | X | P | X |
| Second hand/thrift stores | X | C | C | X | X | X | X | X |
| Shopping centers, 15,000 square feet or more | C | P | P | X | X | X | C | X |
| Video rental stores | P | P | P | X | X | X | P | X |
| Warehouse or club stores (i.e. "Big box stores") | X | P | P | X | X | X | P | X |
| Services | | | | | | | | |
| Automatic teller machine (ATM), not at a bank | P | P | P | P | X | P | P | X |
| Banks and financial establishments/services | P | P | P | P | X | X | P | X |
| Barber Shops and Beauty Shops | P | P | P | X | X | X | P | X |
| Bed and breakfast establishments | P | C | C | X | X | X | X | X |
| Business support/secretarial services | P | P | P | P | X | P | P | X |
| Car wash | X | P | P | X | X | X | C | X |
| Columbariums and mortuaries | X | C | C | X | X | X | C | X |
| Construction storage (indoor and/or outdoor) | X | X | X | X | P | X | C | C |
| Drive-in and drive-through | X | P | P | C | X | X | C | X |

| services | | | | | | | | |
|---|---|----------------|---|---|---|---|---|---|
| Dry cleaning, retail | C | P | P | C | X | X | P | X |
| Equipment rental yards | X | X | C | X | P | C | C | X |
| Government offices ⁵ | C | C | C | P | X | P | X | X |
| Hotels and motels | P | P | P | X | X | X | C | X |
| Laundry, coin operated | C | P | P | X | X | X | X | X |
| Massage Parlors | C | C | C | C | X | X | X | X |
| Medical services, clinics and labs | C | C | C | P | X | X | C | X |
| Vehicle fueling/service stations | X | P | P | X | X | P | X | X |
| Professional offices | P | P | C | P | X | C | P | X |
| Public parking | P | P | P | P | P | P | P | X |
| Public utility and safety facilities | P | P | P | P | P | P | P | P |
| Real estate offices | P | P | C | P | X | X | C | X |
| Repair and maintenance of consumer products | X | P | P | C | X | X | P | X |
| Repair and maintenance of motor vehicles, including auto body | X | C | P | X | P | P | P | X |
| Research and development facilities | X | X | X | C | C | C | P | X |
| Storage, accessory, including self-storage | X | X | X | X | C | X | C | X |
| Veterinary clinics, animal hospitals, grooming | C | P | C | C | X | X | X | X |
| Manufacturing and Processing Uses | | | | | | | | |
| Assembly from prefabricated parts or products | X | C ⁶ | X | X | P | P | P | X |
| Auto wrecking/parts salvaging | X | X | X | X | C | X | X | X |
| Bakeries, wholesale | X | X | X | X | P | X | P | X |
| Breweries and distilleries | C | C | C | X | C | X | C | X |
| Breweries and distilleries, | C | C | C | X | X | P | C | X |

| | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| ancillary to a bar or restaurant | | | | | | | | |
| Cabinet shops, carpentry, furniture manufacturing & assembly | X | X | X | X | P | X | P | X |
| Ceramics manufacturing & assembly | X | X | X | X | P | X | P | X |
| Cleaning and dyeing plants | X | X | X | X | P | X | X | X |
| Contractor's storage yards | X | X | X | X | P | C | P | P |
| Creameries and dairies | X | X | X | X | C | X | X | X |
| Distribution | X | X | X | X | P | P | P | X |
| Food products manufacturing | X | X | X | X | P | X | C | X |
| Furniture and fixtures | X | X | X | X | P | X | P | X |
| Garment and shoe manufacturing | X | X | X | X | P | X | P | X |
| Ice and cold storage | X | X | X | X | P | P | P | X |
| Laundries and dry cleaning plants | X | C | C | X | P | X | X | X |
| Lumber yards | X | X | X | X | P | X | C | X |
| Machining, welding and blacksmithing | X | X | X | X | P | P | C | C |
| Manufacturing facilities, Light | X | X | X | X | P | C | P | X |
| Manufacturing facilities, Heavy | X | X | X | X | P | C | X | X |
| Metal Plating shops | X | X | X | X | C | X | X | X |
| Mixed use office/industrial | X | X | X | X | P | C | P | C |
| Mixed use industrial/commercial | X | X | X | X | P | X | C | X |
| Packing plant | X | X | X | X | P | X | P | X |
| Printing/publishing | C | C | C | C | P | X | P | X |
| Recycling facilities | X | X | X | X | P | X | C | X |
| Recycling - reverse vending machines | P | P | P | X | P | X | P | X |
| Sheet metal shops | X | X | X | X | P | P | C | C |
| Stone and granite storage and sales | X | X | X | X | P | X | C | P |

| | | | | | | | | |
|--|---|---|---|---|---|---|---|---|
| Storage Yard | X | X | X | X | P | C | C | P |
| Tire recapping, retreading and storage | X | X | X | X | C | C | C | X |
| Truck (commercial) repair, towing, storage and service | X | X | X | X | P | P | C | C |
| Trucking yard or terminal | X | X | X | X | C | C | C | X |
| Warehousing | X | X | X | X | P | P | P | C |
| Wholesaling | X | X | X | X | P | C | P | X |
| Residential Uses | | | | | | | | |
| Caretaker/watchperson's dwelling | C | X | X | X | C | C | C | C |
| Group homes | X | X | X | X | X | X | C | X |
| Guest house | X | X | X | X | X | X | X | X |
| Home occupations | P | X | X | X | X | X | X | X |
| Mixed Use, residential/commercial | P | P | C | C | X | X | C | X |
| Organizational and boarding houses | X | X | C | X | X | X | X | X |
| Residential accessory uses and structures | C | X | X | X | X | X | X | X |
| Senior Citizen/Congregate Care Housing | C | X | X | C | X | X | C | X |
| Single room occupancy facilities | C | X | C | X | X | X | X | X |
| Single family dwellings, existing | C | X | X | X | X | X | X | X |
| Single family dwellings, new | X | X | X | X | X | X | X | X |
| Other Uses | | | | | | | | |
| Commercial or Telecommunications Antennae | X | C | C | C | C | C | C | C |
| Public utility facilities | X | P | P | P | P | P | P | P |

¹ Surface Mining Permit required. See Chapter 17.100.

² Cargo and storage containers in the commercial zones are only to be used for temporary (seasonal) storage, and require a Temporary Use Permit.

³ Must include a minimum of 50% new product sales.

⁴ Refer to Section 17.12.050 (B) for Conditional Use Permit requirements

⁵ A government office shall include administrative functions as well as those activities that will involve on-site customer patronage. A government office that is only administrative in nature, involving no customer patronage, can be considered a professional office.

⁶ When undertaken in conjunction with on-site retail as a primary use.

SECTION 4. Amendment to Section 17.08.240(L) of the Banning Municipal Code.
Section 17.08.240(L) of the Banning Municipal Code is hereby amended to add the following provisions:

5. Chain link fences and barbed wire are not acceptable materials.
6. Wood, wrought iron, masonry, vinyl and adobe are acceptable fence/wall materials.
7. Decorative masonry walls, including, but not limited to, slump stone and split-face block can be used without a stucco or plaster finish, but must be architecturally treated and complement the adjacent dwelling units.
8. All property fencing must be compatible in design and of similar materials.

SECTION 5. Amendment to Section 17.08.270(L) of the Banning Municipal Code.
Section 17.08.270(L) of the Banning Municipal Code is hereby amended to read as follows:

L. Walls. Walls and fences are an important part of the streetscape and should be designed thoughtfully. Walls and fences should have the following characteristics:

1. Both sides of all perimeter walls or fences should be architecturally treated.
2. Walls should be of smooth stucco finish, or of plaster or of other approved masonry or stonework. They should be designed in a style, materials and color to complement the adjacent dwelling units.
3. Chain link fences and barbed wire are not acceptable materials.
4. Wood, masonry, vinyl and adobe are acceptable fence/wall materials.
5. Decorative masonry walls, including, but not limited to, slump stone and split-face block can be used without a stucco or plaster finish, but must be architecturally treated and complement the adjacent dwelling units.
6. All property fencing must be compatible in design and of similar materials.

SECTION 6. Amendment of Section 17.24.080 of the Banning Municipal Code.
Section 17.24.080 of the Banning Municipal Code is hereby amended to read as follows:

A. Only decorative block or stucco walls and wrought iron shall be permitted around the perimeter of subdivisions or planned communities. Wood fencing is prohibited.

B. Fences, walls, and hedges shall not exceed 6 feet in height, unless required by any law or regulation of the City, the State of California, Federal Government, or agency thereof.

C. Fences, walls and hedges located in the front yard setback shall not exceed 48 inches in height in any District.

D. On a corner lot, no fence, wall, hedge, sign or other structure, shrubbery, mounds of earth, or other visual obstruction over 36 inches in height above the nearest street curb elevation shall be erected, placed, planted, or allowed to grow within a Traffic Safety Sight Area. The foregoing provision shall not apply to public utility poles; trees trimmed (to the trunk) to a line at least 6 feet above the level of the intersection; saplings or plant species of open growth habits and not planted in the form of a hedge, which are so planted and trimmed as to leave at all seasons a clear and unobstructed cross view; supporting members of appurtenances to permanent structures existing on the date this Zoning Ordinance becomes effective; and official warning signs or signals.

E. Barbed wire, electrified fences or razor wire fences are prohibited in any district unless required by any law or regulation of the City, the State of California, Federal Government, or agency thereof. Chain link fences are prohibited in all districts except the R/A, R/A/H, RR, RR/H if approved by the Director. Agricultural and equestrian uses may use electrical fences if approved by the Director.

F. Decorative masonry walls, including, but not limited to, slump stone and split-face block can be used without a stucco or plaster finish, but must be architecturally treated and complement the adjacent dwelling units.

G. All property fencing must be compatible in design and of similar materials.

SECTION 7. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8. Non-Exclusivity. Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

SECTION 9. Effective Date. This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

SECTION 10. Publication. The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 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 Ordinance No. 1387 was duly introduced at a special meeting of the City Council of the City of Banning, held on the 8th day of April, 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
Banning, California

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: April 22, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2008-42, "Approving Emergency Repairs Related to Water Damage at City Hall and Authorizing the Director of Finance to make the Necessary Budget Adjustments and Appropriations to Cover Costs Incurred in the Amount of \$7,093.97"

RECOMMENDATION:

- I. Approve emergency repairs related to water damage at City Hall and all related expenditures.
- II. Authorize the Director of Finance to make the necessary budget adjustments and appropriations to cover all cost incurred in the amount of \$7,093.97.

JUSTIFICATION: The immediate removal of water damaged walls and window frames and rebuilding of the damaged areas was necessary in order to provide a safe working environment, eliminate the risk of mold, and remove the City's potential liability factor. The City Council's approval to override the formal bid process is necessary in order to expedite repairs and disburse payment.

BACKGROUND:

Water intrusion was discovered near an office window on the south side of City Hall, west of the front doors, in December of 2007. In order to provide a safe working environment and eliminate the risk of mold, immediate action was necessary. The City hired a contractor, Whitmore Construction, Inc., to remediate the unsafe condition. Whitmore Construction, Inc. and the City of Banning's Building Maintenance Manager drilled holes in the office's wall in December to inspect for mold, and none was found.

Whitmore's scope of work included removing windows on the south side of City Hall, west of the front door; installing new dual pane commercial grade anodized brown windows and frames; patching holes around the windows and in the drywall on the interior walls; and lathing, plastering, and painting the exterior walls around the new windows.

FISCAL DATA: An appropriation of funds for \$7,093.97 is required in Account No. 470-3200-412-9015 is necessary to cover costs incurred for the water damage repairs at City Hall. The approximate available balance in the Capital Improvement Fund allotted to the City Hall Interior Reorganization is \$615,157.00.

RECOMMENDED BY:



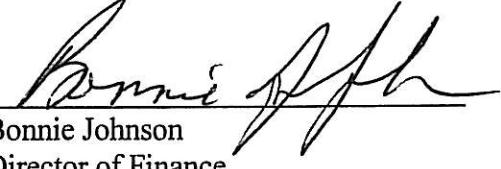
Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

RESOLUTION NO. 2008-42

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
APPROVING EMERGENCY MOLD REPAIRS AT CITY HALL AND AUTHORIZING THE
DIRECTOR OF FINANCE TO MAKE THE NECESSARY BUDGET ADJUSTMENTS AND
APPROPRIATIONS TO COVER COSTS INCURRED IN THE AMOUNT OF \$7,093.97**

WHEREAS, December of 2007, water intrusion was found near an office window, located on the south side of City Hall, west of the front doors; and

WHEREAS, approving the emergency water damage repairs at City Hall and all related expenditures is necessary to in order to override the formal bid process and disburse payment; and

WHEREAS, in order to provide a safe working environment, eliminate the risk of mold, and reduce the City's liability factor, immediate action was required and could not be avoided; and

WHEREAS, the City hired Whitmore Construction, Inc. to assess the situation and perform interior and exterior building repairs related to the water damage, including removal of existing windows, installation of new windows and frames, patching around holes around windows and in the drywall of the interior walls, and lathing and plastering of exterior walls around the new windows; and

WHEREAS, an appropriation of funds for \$7,093.97 is required in Account No. 470-3200-412-9015 is necessary to cover costs incurred for the water damage repairs, and the approximate available balance in the Capital Improvement Fund allotted to the City Hall Interior Reorganization is \$615,157.00.

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 hereby approves the emergency water damage repairs at City Hall, allowing the formal bid process to be overridden and payments to be distributed.

Section II. The Director of Finance is hereby authorized to appropriate funds from the City Hall Interior Reorganization Fund to Account No. 470-3200-412-9015 in the amount of \$7,093.97.

Section III. The City Manager is hereby authorized to execute all contract agreements related to the emergency water damage repairs at City Hall. This authorization will be rescinded if the parties do not execute the contract agreement within sixty (60) days of the date of this resolution attached herein.

PASSED, ADOPTED AND APPROVED this 22nd day of April, 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. 2008-42 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 22nd day of April, 2008.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: April 22, 2008

TO: City Council

FROM: George Thacker, Assistant Public Utilities Director

SUBJECT: Adopt Resolution No. 2008-43 Authorizing the Filing of the Financial Assistance Application from the State Water Resources Control Board for the Water Reclamation Facility and Phase I Recycled Water Project to Obtain a State Revolving Fund Loan

RECOMMENDATION:

1. The City Council adopt Resolution No. 2008-43 of the City of Banning that hereby authorizes the City Manager or his designee, the Electric Utility Director to sign and file, for and on behalf of the City of Banning a Financial Assistant Application for a loan/grant from the State Water Resources Control Board in the estimated amount of \$37,000,000 for the design and construction of the Water Reclamation Facility and Phase I Recycled Water Project.
2. The City Council of the City of Banning hereby agrees and further does authorize the aforementioned representative or his/her designee to certify the City has and will comply with all applicable state and federal statutory and regulatory requirements related to any federal and state loan/grants received.
3. Furthermore, the City Manager or his /her designee of the City of Banning is hereby authorized to negotiate and execute a loan/grant contract and any amendments or change orders thereto, and to certify loan/grant disbursement on behalf of the City of Banning.

JUSTIFICATION: Expansion of the Wastewater Treatment Plant is essential to accommodate future growth and recycled water for irrigation purposes.

BACKGROUND: The City is the provider of Wastewater Treatment and collection of sewerage in the Sanitary Sewer System for the service area of the City of Banning. Expansion and renovation of the existing Wastewater Treatment Plant is essential to accommodate future growth as well as to produce recycled water suitable for irrigation purposes. The City is under way with the design of a 1.5 MG Tertiary Expansion of the WWTP and it is 90% complete. However, the City needs assistance with the funding of a project for the expansion of the WWTP and installation of a Recycled Water System.

A preliminary Financial Assistant Application has been submitted to the State Water Resources Control Board for a State Revolving Fund (SRF) loan/grant with the following Project Description:

Water Reclamation Facility and Phase I Recycled Water Project will consist of expanding the City's existing WWTP by 1.5 MGD to produce high quality recycled water for irrigation use and groundwater replenishment and design and construction of infrastructures needed to supply the recycled water to non-potable water users in the vicinity of the WWTP and up to the Sun Lakes development, mainly for the golf courses. Non-potable water from groundwater Well R-1 near the WWTP is also available for irrigation uses as a part of this project.

The State Water Resources Control Engineer has responded to the preliminary application with a list of items that have to be completed before approval of a SRF loan/grant. The aforementioned Resolution will basically take care of three items, such as, authorization to sign documents, City will comply will all applicable state and federal statutory and regulatory requirements, and authorization to negotiate and execute a loan/grant contract.

There are other items, such as, a revenue stream for payment of the SRF loan, a Discharge Permit from the Regional Water Quality Control Board, and CEQA approval. Staff is presently working on these items and they will come before the Council very soon.

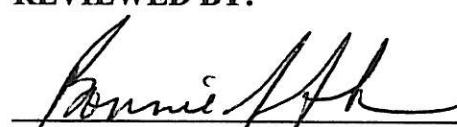
FISCAL DATA: Presently, no funding is required to submit the Financial Assistant Application with State Water Rescores Control Board.

RECOMMENDED BY:



Jim Earhart
Electric Utility Director

REVIEWED BY:



Bonnie J. Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
AUTHORIZING FILING THE FINANCIAL ASSISTANCE APPLICATION FROM THE
STATE WATER RESOURCES CONTROL BOARD FOR THE WATER
RECLAMATION FACILITY AND PHASE I RECYCLED WATER PROJECT TO
OBTAIN A STATE REVOLVING FUND LOAN**

WHEREAS, the City of Banning owns and operates a 3.6 million gallons per day (MGD) Wastewater Treatment Plant (WWTP) and collection system throughout the City; and

WHEREAS, the Water Reclamation Facility and Phase I Recycled Water Project will consist of expanding the City's existing WWTP by 1.5 MGD to produce high quality recycled water for irrigation use and groundwater replenishment and design and construction of infrastructures needed to supply the recycled water to non-potable water users in the vicinity of the WWTP and up to the Sun Lakes development, mainly for the golf courses; and

WHEREAS, non-potable water from groundwater Well R-1 near the WWTP is also available for irrigation uses as a part of this project; and

WHEREAS, the State Water Resources Control Board requires a Financial Assistant Application to be filed to obtain a State Revolving Fund (SRF) loan; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Banning that the City Manager or his designee, the Electric Utility Director is hereby authorized and directed to sign and file, for and on behalf of the City of Banning a Financial Assistant Application for a loan/grant from the State Water Resources Control Board in the estimated amount of \$37,000,000 for the design and construction of the Water Reclamation Facility and Phase I Recycled Water Project.

BE IT RESOLED, that the City Council of the City of Banning hereby agrees and further does authorize the aforementioned representative or his/her designee to certify the City has and will comply with all applicable state and federal statutory and regulatory requirements related to any federal and state loan/grants received, and

BE IT FURTHER RESOLVED, that the City Manager or his /her designee of the City of Banning is hereby authorized to negotiate and execute a loan/grant contract and any amendments or change orders thereto, and to certify loan/grant disbursement on behalf of the City of Banning.

PASSED, APPROVED, AND ADOPTED this 22nd day of April, 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. 2008-43 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 22nd day of April, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
Banning, California

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: **April 22, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Kahono Oei, City Engineer**

(A)

SUBJECT: **Resolution No. 2008-44, "Approving the Measure 'A' Five Year Capital Improvement Plan"**

RECOMMENDATION: Adopt Resolution No. 2008-44, approving the Measure "A" Five Year Capital Improvement Plan as presented.

JUSTIFICATION: The City is required to submit a Five Year Capital Improvement Plan annually to the Riverside County Transportation Commission (RCTC) in order to receive Measure "A" funds.

BACKGROUND: Voters in Riverside County approved Measure "A" in 1988, which authorized the Riverside County Transportation Commission to impose an additional one-half percent (0.5%) sales tax for the next 20 years to be used for improvements of state highways, public transit systems, and local streets. In 2002, voters in Riverside County approved a 30-year extension of the one-half percent sales tax for transportation improvements.

RCTC has estimated that the City of Banning will receive Measure "A" Funds totaling \$2,651,000.00 as follows for the next five years:

| <u>Year</u> | <u>Estimated Amount</u> |
|--------------------|--------------------------------|
| 2009 | \$655,000.00 |
| 2010 | \$475,000.00 |
| 2011 | \$484,000.00 |
| 2012 | \$503,000.00 |
| 2013 | \$534,000.00 |

Each City in Riverside County is required by the RCTC to submit a Five Year Capital Improvement Plan (CIP), as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years. The list of street locations under the Five-year CIP is attached as Exhibit "A".

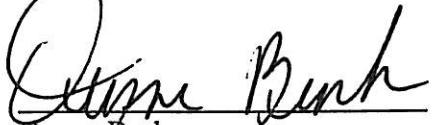
In addition, the City is required to submit a list of Estimated Street Expenditures for FY 2007/2008, which has been prepared by the Finance Department and is attached as Exhibit "B". The Maintenance of Effort Certification must be signed by the City Manager and is attached as Exhibit "C".

The program is intended for local transit systems, street pavement rehabilitation, and public street improvements at various locations as attached herein. The priority list of street locations can be changed by the City Council during the design stage or at the time of award of the construction contract.

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FISCAL DATA: The estimated revenue for the City of Banning's Measure "A" Program was provided by the RCTC. The actual amounts will be determined during each Fiscal Year.

RECOMMENDED BY:



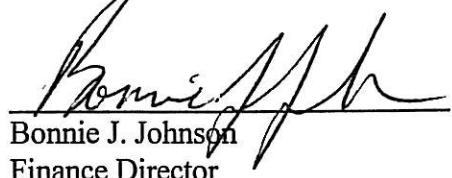
Duane Burk
Director of Public Works

REVIEWED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie J. Johnson
Finance Director

44

RESOLUTION NO. 2008-44

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE MEASURE "A" FIVE YEAR CAPITAL
IMPROVEMENT PLAN**

WHEREAS, in 1988, Riverside County voters approved a 0.5% sales tax (Measure "A") over a 20-year span to be used toward improvements of state highways, local transit systems, and public streets; and

WHEREAS, in 2002, Riverside County voters approved a 30-year extension of the Measure "A" 0.5% sales tax; and

WHEREAS, each City in Riverside County is required by the Riverside County Transportation Commission (RCTC) to submit a Five Year Capital Improvement Plan (attached as Exhibit "A"), as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years; and

WHEREAS, the RCTC has estimated that the City of Banning will receive a total of \$2,651,000.00 in Measure "A" funds over the next five years; and

WHEREAS, the program is intended for local transit systems, street pavement rehabilitation and public street improvements at various locations, and the priority list of street locations can be changed by the City Council during the design stage or at the time of award of the construction contract.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, that Resolution No. 2008-44, "Approving the Measure 'A' Five Year Capital Improvement Plan," is hereby adopted.

PASSED, APPROVED and ADOPTED this 22nd day of April, 2008.

Brenda Salas, Mayor

ATTEST:

Marie A. Calderon, City Clerk

45

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-44 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 22nd day of April, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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

Burke, Williams & Sorensen, LLP
City Attorney

EXHIBIT "A"

MEASURE "A" FIVE YEAR CAPITAL IMPROVEMENT PLAN

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
MEASURE "A" LOCAL FUNDS PROGRAM
FISCAL YEAR 2009-2013**

Agency: City of Banning
Prepared By: Ann Marie Loconte
Phone No. (909) 922-3130
Date: April 2, 2008

**Citywide Street 1 ½"
Asphaltic Concrete (A.C.) Overlay Program**

| ITEM NO. | YEAR 2009 STREET LOCATION - FROM/TO | TOTAL COST (\$1,000) | MEASURE "A" FUND (\$1,000) |
|---------------------|---|-------------------------------------|---|
| 1. | Wilson Street – 8 th Street to 20 th Street | 655 | 655 |
| | TOTAL | 655 | 655 |

RIVERSIDE COUNTY TRANSPORTATION COMMISSION
MEASURE "A" LOCAL FUNDS PROGRAM
FISCAL YEAR 2009-2013

Agency: City of Banning
 Prepared By: Ann Marie Loconte
 Phone No. (909) 922-3130
 Date: April 2, 2008

Citywide Street 1 ½"
Asphaltic Concrete (A.C.) Overlay Program

| ITEM NO. | YEAR 2010 STREET LOCATION – FROM / TO | TOTAL COST (\$1,000) | MEASURE "A" FUND (\$1,000) |
|----------|---|-------------------------|-------------------------------|
| 1. | Jefferson Street – East of 22 nd Street to Dead End | 85 | 85 |
| 2. | Monroe Street – East of 22 nd Street to Jefferson Street | 90 | 90 |
| 3. | San Andreas Road – Durward Street to Florida Street | 85 | 85 |
| 4. | Sims Street – Williams Street to Nicolet Street | 65 | 65 |
| 5. | Santa Rita Place – Durward Street to Florida Street | 85 | 85 |
| 6. | 23 rd Street – north of Lincoln Street to End | 65 | 65 |
| | TOTAL | 475 | 475 |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
MEASURE "A" LOCAL FUNDS PROGRAM
FISCAL YEAR 2009-2013**

Agency: City of Banning
Prepared By: Ann Marie Loconte
Phone No. (909) 922-3130
Date: April 2, 2008

**Citywide Street 1 ½"
Asphaltic Concrete (A.C.) Overlay Program**

| ITEM NO. | YEAR 2011 STREET LOCATION – FROM / TO | TOTAL COST (\$1,000) | MEASURE "A" FUND (\$1,000) |
|----------|---|-------------------------|-------------------------------|
| 1. | Gilman Street – 8 th Street to San Gorgonio Avenue | 315 | 315 |
| 2. | Hermosa Street – Wesley Street to Victory Street | 85 | 85 |
| 3. | Florida Street – Wesley Street to Victory Street | 84 | 84 |
| | TOTAL | 484 | 484 |

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RIVERSIDE COUNTY TRANSPORTATION COMMISSION
MEASURE "A" LOCAL FUNDS PROGRAM
FISCAL YEAR 2009-2013

Agency: City of Banning
 Prepared By: Ann Marie Loconte
 Phone No. (909) 922-3130
 Date: April 2, 2008

Citywide Street 1 1/2"
Asphaltic Concrete (A.C.) Overlay Program

| ITEM NO. | YEAR 2012 STREET LOCATION – FROM / TO | TOTAL COST (\$1,000) | MEASURE "A" FUND (\$1,000) |
|----------|--|-------------------------|-------------------------------|
| 1. | Florida Street – Theodore Street to north of Lombardy Lane | 220 | 220 |
| 2. | Murray Street – Wilson Street to Hoffer Street | 83 | 83 |
| 3. | Murray Street – Gilman Street to Theodore Street | 83 | 83 |
| 4. | Pendleton Road – San Gorgonio Avenue to Ripley Way | 71 | 71 |
| 5. | Ripley Way – Pendleton Road to Lancaster Road | 46 | 46 |
| | TOTAL | 503 | 503 |

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
MEASURE "A" LOCAL FUNDS PROGRAM
FISCAL YEAR 2009-2013**

Agency: City of Banning
Prepared By: Ann Marie Loconte
Phone No. (909) 922-3130
Date: April 2, 2008

**Citywide Street 1 ½"
Asphaltic Concrete (A.C.) Overlay Program**

| ITEM NO. | YEAR 2013 STREET LOCATION – FROM / TO | TOTAL COST (\$1,000) | MEASURE "A" FUND (\$1,000) |
|----------|--|-------------------------|-------------------------------|
| 1. | Alessandro Road – Williams Street to Gilman Street | 380 | 380 |
| 2. | 12 th Street – Williams Street to George Street | 154 | 154 |
| | TOTAL | 534 | 534 |

| | | |
|-----------------------|-------|-------|
| 2009-2013 GRAND TOTAL | 2,651 | 2,651 |
|-----------------------|-------|-------|

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EXHIBIT “B”

**ESTIMATED STREET EXPENDITURES
FY 2007/2008**

**ESTIMATED STREET EXPENDITURES AND RELATED SOURCES OF FUNDS
FOR FISCAL YEAR ENDED JUNE 30, 2008**

ESTIMATED STREET EXPENDITURES

| | |
|---|------------------|
| Gas Tax Street Fund | 1,265,261 |
| Less transfers out and loan repayments | <u>81,838</u> |
| | 1,183,423 |
| AB 2928 | 337,953 |
| Measure "A" Fund | 1,512,672 |
| Less transfers out and loan repayments | <u>279,615</u> |
| | 1,233,057 |
| SB 300 Street Fund | 0 |
| Article 3 Sidewalk Fund | 795,852 |
| CDBG Fund Street Expenditures | 0 |
| Landscape Maintenance Fund | 164,300 |
| Traffic Control Facility Fund | 217,532 |
| Air Quality Improvement Fund | 0 |
| Engineering Department Expenditures on Streets (20%) | 133,501 |
| Parks Department Expenditures on Streets (Maintenance of medians, etc.) | <u>5,000</u> |
| Total Budgeted Street Expenditures | <u>4,070,618</u> |

ESTIMATED STREET SOURCES OF FUNDS - NON-DISCRETIONARY

| | |
|---|------------------|
| Gas Tax Funds | 515,000 |
| AB 2928 | 337,953 |
| Interest earnings on Gas Tax Funds | 17,000 |
| Measure "A" Fund | 1,233,057 |
| Article 3 Sidewalk Fund | 795,852 |
| CDBG Fund Street Expenditures | 0 |
| Total Estimated Non-Discretionary Funds | <u>2,898,862</u> |

ESTIMATED STREET SOURCES OF FUNDS - DISCRETIONARY

| | |
|--|------------------|
| SB 300 Street Fund | 0 |
| Landscape Maintenance Fund | 106,035 |
| Ramsey/HIGHLAND Home Signal Fund | 0 |
| Air Quality Improvement Fund | 0 |
| Traffic Control Facility Fund | 217,532 |
| Spl Assmt District-Wilson St | 0 |
| Wilson Median Fund | 0 |
| General Fund and other money | <u>848,189</u> |
| Total Estimated Discretionary Funds | <u>1,171,756</u> |
| Total Estimated Sources of Funds for Street Purposes | <u>4,070,618</u> |

EXHIBIT "C"

MAINTENANCE OF EFFORT CERTIFICATION

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MAINTENANCE OF EFFORT CERTIFICATION STATEMENT

The undersigned hereby agrees and certifies for the CITY OF BANNING (the "Agency") that sales tax transportation funds received pursuant to Ordinance No. 88-1 of the Riverside County Transportation Commission (Measure "A") shall be used in compliance with the Commission's Maintenance of Effort Guidelines, and that the Agency shall not use such funds to replace discretionary local funds previously expended by the Agency for local transportation purposes. The Agency hereby acknowledges that the failure of the Agency to continue such local expenditure shall result in a reduction or loss of Measure "A" funds.

Dated:

Brian Nakamura, City Manager

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: **April 22, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Duane Burk, Public Works Director**

SUBJECT: **Resolution No. 2008-45 – Approving the Professional Services Agreement for Construction Management Services for Project No. 2006-07, “Construction of the New Banning Police Station”**

RECOMMENDATION: Adopt Resolution No. 2008-45:

- I. Approving the Professional Services Agreement for Construction Management Services with Cal K-12 Construction Management, of Yucaipa, California, in the amount of “Not to Exceed” \$578,750.00.
- II. Authorize the Director of Finance to make the necessary budget adjustments and appropriations from BUA Bond proceeds to Account No. 470-2200-413-9010.

JUSTIFICATION: It is essential to hire an experienced professional Construction Management firm to ensure that the construction of the new Police Station is managed effectively, efficiently, and is built per the project plans and specifications.

BACKGROUND: The existing Banning Police Station was built approximately 20 years ago, and it was demolished and needs to be rebuilt in order to meet the Police Department’s current and future demand. The Police Department and its staff have moved to a temporary facility located at 321 W. Ramsey St. to accommodate the construction of the new building. The Banning Chamber of Commerce has also relocated to its newly renovated building at 60 E. Ramsey St.

On December 15, 2004, the City Council approved the professional services agreement with Holt Architects, Inc., for the design of the new Banning Police Station. The design of said facility was completed in September, 2006. The project was advertised for bids on October 2, 2006 and October 9, 2006, and the bid opening was held on December 19, 2006, with four bid submissions. The Engineer’s cost estimate for the project was \$12 million dollars; and the bids received were over the budget allocated for the project. Therefore, on February 13, 2007, City Council approved Resolution No. 2007-18, “Rejecting All Bids for Project No. 2006-07, ‘Construction of the New Banning Police Station.’”

In order to move forward with the project, on February 27, 2007 the City Council adopted Resolution No. 2007-20, “Amending the Existing Design and Architectural Services Contract with Holt Architect, Inc. for the Redesign of the New Banning Police Station.” The building was reduced in size and scope to meet project budget. While the redesign of the New Police Station was being completed, a contract was awarded to Cal K-12 Construction Management to review

the Police Station plans and specifications to ensure constructability (to reduce potential Change Orders) and provide value engineering (to save costs on various materials). On March 25, 2008 a Request for Proposal (RFP) was sent to Byers Construction Management, Cal K-12 Construction Management, Neff Construction, Inc., and Tilden-Coil Constructors, four experienced firms in Construction Management Services, and two responded with proposals to the Engineering Division.

The scope of work consists of all construction management needed for the construction of an approximately 30,000-square-foot, masonry, steel-and-wood frame, two-story building, as shown on the approved plans. The consultant will be responsible for reviewing and becoming familiar with the approved plans and specifications of the project and coordinating all activities to ensure the project budget and schedule are met. The scope of work for this professional services agreement is extensive and is on file in the office of the Public Works Director.

The proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, and project approach, responsiveness to the RFP, and technical competency. The committee also evaluated each consultant's familiarity with the City of Banning and with experience in providing Construction Management Services for large projects. An interview/presentation was held with both firms on April 8, 2008. Proposals received for the project were ranked as follows:

| <u>Rank</u> | <u>Name of Consultant</u> | <u>Fee Estimate</u> |
|-------------|---|---------------------|
| 1. | Cal K-12 Construction Management, Yucaipa, CA | \$ 578,750.00 |
| 2. | Byers Construction Management, Murrieta, CA | \$ 450,000.00 |

Upon review of the proposals, it was determined that Cal K-12 Construction Management is the most qualified firm for the project, as per the guidelines set forth in the RFP. Cal K-12 Construction Management is a reputable firm in the Construction Management industry, and has extensive experience with Construction Management Services of schools. Cal K-12 Construction Management reviewed the plans and specifications for this project and made cost saving changes by providing constructability (Value Engineering) services. The "Estimate, Proposed Budget and Schedule" report for Project No. 2006-07, "Construction of the New Banning Police Station" was prepared by Cal K-12 Construction Management and was forwarded to City Council under a separate cover.

Since they are very familiar with the project, it is prudent to approve the Construction Management Services (CMS) proposal they submitted. A copy of Cal K-12 Construction's proposal is on file in the Public Works Department and the Fee Proposal is attached as Exhibit "A."

Government Code, Section 4526, requires that the selection of professional services of a firm shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required and that the services should be provided at a fair and reasonable price to the public agencies.

If approved, it is anticipated that the Construction Management Services for Project No. 2006-07, "Construction of the New Banning Police Station" will be completed once the New Police Station has been accepted as final. Project No. 2006-07, "Construction of the New Banning Police Station" is currently out to Bid with the Bid Opening scheduled for May 16, 2008. When

the Construction contract is awarded, other services such as soils and materials testing, construction inspection and surveying will also be awarded.

FISCAL DATA: An appropriation of funds from BUA bond proceeds to Account No. 470-2200-413-9010 in the amount of \$578,750.00 is necessary to cover the proposed Professional Services Agreement for Construction Management Services for Project No. 2006-07, "Construction of the New Banning Police Station," which is for a "Not to Exceed" amount of \$578,750.00. The BUA bond proceeds and related interest earnings balance is approximately \$14,230,747.00.

RECOMMENDED BY:



Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

RESOLUTION NO. 2008-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROFESSIONAL SERVICES AGREEMENT FOR CONSTRUCTION MANAGEMENT SERVICES FOR PROJECT NO. 2006-07, "CONSTRUCTION OF THE NEW BANNING POLICE STATION"

WHEREAS, the City of Banning's Police Department and its staff have moved to a temporary facility; and

WHEREAS, the City Council approved the professional services agreement with Holt Architects, Inc., for the design and redesign of the new Banning Police Station on December 15, 2004 and February 27, 2007, respectively; and

WHEREAS, a Request for Proposals (RFP) was sent to four experienced Construction Management Consulting Firms and two responded to the Engineering Division with proposals to perform the work; and

WHEREAS, Cal K-12 Construction Management was ranked as the most qualified Construction Management Services firm based upon their response to the Request for Proposals for the project and their experience in performing the constructability and value engineering analysis of the New Banning Police Station Plans and Specifications; and

WHEREAS, miscellaneous construction services, including soils and materials testing, daily construction inspection, and surveying will be required from other consultants/contractors to ensure construction contractor compliance with the project drawings and specifications; and

WHEREAS, the funding for the project is available from BUA bond proceeds in the amount of \$578,750.00 to cover the Construction Management Services cost of the New Banning Police Station.

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

Section I. The Professional Services Agreement for the Construction Management Services of Project No. 2006-07, "Construction of the New Banning Police Station" is hereby awarded to Cal K-12 Construction Management of Yucaipa, California, in the amount of "Not to Exceed" \$578,750.00.

Section II. Authorize the Director of Finance to make the necessary budget adjustments and appropriations from BUA bond proceeds to Account No. 470-2200-413-9010.

Section III. That the Mayor is authorized to execute the contract agreement with Cal K-12 Construction Management of Yucaipa, California. This authorization will be rescinded if the contract agreement is not executed by the parties within fifteen (15) days of the date of this resolution.

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PASSED, ADOPTED AND APPROVED this 22nd day of April, 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. 2008-45, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of April, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

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ATTACHMENT "A"

FEE SCHEDULE
FOR
PROJECT NO. 2006-07,
"CONSTRUCTION OF THE NEW BANNING POLICE STATION"

CAL K-12 CONSTRUCTION MANAGEMENT

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CONSTRUCTION, INC.

April 14, 2008

Mr. Duane Burk
Director of Public Works
City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220-0998

Reference: Request for Proposals (RFP) - Construction Management Services for
Project No. 2006-07, "Construction of the New Banning Police Station"

Dear Mr. Burk:

Thank you for your request for a proposal for construction management service for the above project. We are pleased to offer the following:

PROPOSAL

Cal K-12 Construction, Inc. (Construction Manager) proposes to further the interests of the City of Banning (Owner) by furnishing Construction Management services in cooperation with and in reliance upon, the services of the Architect. We agree to furnish the requested specific business administration and management services associated with the Construction of the New Banning police Station located in Banning, CA. This service shall be performed in an expeditious and economical manner consistent with the interests of the City of Banning.

Services are proposed at a lump sum rate of six and twenty-five hundreds percent (6.25 %) of the combined estimated construction cost of Nine Million Five Hundred Thousand dollars (\$9,500,000.00) \$593,750.00 minus the cost of the Complete Interdisciplinary Constructability Review of \$15,000 equating to a total Proposal cost of \$578,750.00.

Thank you again for this opportunity.

Respectfully,

Steve Morse
CEO

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **April 22, 2008**

TO: **City Council**

FROM: **Phil Holder, Lieutenant**

SUBJECT: **Resolution No. 2008-47 Amendment of Police Department Report Fees**

RECOMMENDATION: "That the City Council adopt Resolution No. 2008-47, A Resolution of the City of Banning, California, amending the police department report fees, as listed in the current Miscellaneous Police Department Fees, at the recommendation of the City Attorney's Office."

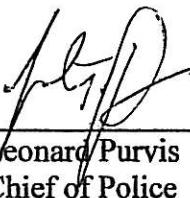
JUSTIFICATION: Changing the current Police Department report fee of \$15 per report to the current City's Finance and Administration Department report fees, as identified on Exhibit A, will bring the Police Department in compliance with the California Public Records Act.

BACKGROUND: In October of 2007, the City Attorney's Office reviewed the City's fee resolution, Resolution No. 2007-17, which was adopted on October 9, 2007, together with the Departmental User Fee Study prepared by a consultant for the City dated March 14, 2005, which provided the basis for the fees set forth in the Resolution. The City Attorney determined the copying and duplication fees adopted in Banning for the Police Department are unsupported by that fee study and will not withstand legal scrutiny. The City Attorney advised a change was necessary to bring the Banning Police Department in compliance with the California Public Records Act (specifically Government Code Section 6253(b)).

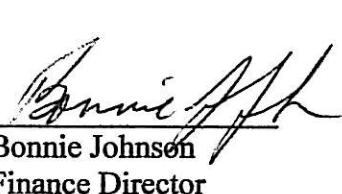
The City Attorney further recommended that in order for the Police Department to comply with the California Public Records Act it should adopt the current report fee schedule used by the City's Finance and Administration Department.

FISCAL DATA: It is difficult to project revenue decreases based on the recommended adjustment in as much as the ultimate revenue generation is based upon the annual request for Police Department reports. Therefore, no estimated decrease in revenue generation is being presented in relation to these fees at this time.

RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

RESOLUTION NO. 2008-47

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA AMENDING THE CURRENT POLICE DEPARTMENT REPORT FEE
TO THE CURRENT REPORT FEES USED BY THE CITY'S FINANCE AND
ADMINISTRATION DEPARTMENT.**

WHEREAS, Ordinance Nos. 908 and 912 amended the Municipal Code of the City of Banning by adding and subsequently modifying Chapter 29 entitled "Fee and Service Charge Revenue/Cost Comparison System" ("Fee Ordinance") and authorizing the City to levy fees for certain enumerated regulations, products, and services (collectively "Service Fees"); and,

WHEREAS, the Fee Ordinance authorizes the City Council to periodically review and revise, by resolution, the amount charged for Service Fees to ensure that the City is recovering the percentage of costs reasonably borne in providing the regulations, projects, and services; and,

WHEREAS, the City Council has previously revised the amount charged for the amount charged for the Services Fees by Resolution No. 2007-117; and

WHEREAS, the City Council supports staying within compliance of the California Public Records Act.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the requested change in the current Police Department report fee to mimic the report fees for the City's Finance and Administration Department.

PASSED, APPROVED, AND ADOPTED this 22nd day of April, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-47 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of April 2008, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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FINANCE AND ADMINISTRATION FEES

EXHIBIT A

| | <u>Present Fees</u> | <u>Recommended Fees</u> |
|--|--|--|
| Document Printing Fees | | |
| Black & White | \$.25 per copy | \$.25 per copy |
| Color | \$.35 per copy | \$.35 per copy |
| Photocopying of Documents | | |
| Black & White | \$.25 per page | \$.25 per page |
| Color | \$.35 per page | \$.35 per page |
| Bound Document Fees | Applicable per page charge plus \$1.00 for binding materials | Applicable per page charge plus \$1.00 for binding materials |
| Photocopy Fees - Oversized Documents (Such as Maps) | Actual cost | Actual cost |
| Providing Agendas, Minutes, Packets, etc. | <ul style="list-style-type: none">- Free if examined at City Hall.- Free for Council, Affected Commissioners, Dept. Heads and Press.- Free for Council Candidates two months prior to election. <p>\$.25 per page, plus postage if mailed</p> | <ul style="list-style-type: none">- Free if examined at City Hall.- Free for Council, Affected Commissioners, Dept. Heads and Press.- Free for Council Candidates two months prior to election. <p>\$.25 per page, plus postage if mailed</p> |
| | \$.25 per page, plus postage if mailed | \$.25 per page, plus postage if mailed |
| Document Certification Charge | \$.25 per page | \$.25 per page |
| Copy of Budget - Other Than Regulatory Bodies, etc. | Applicable per page charge plus postage if mailed | Applicable per page charge plus postage if mailed |
| Copy of Audit Report - Other Than Regulatory Bodies, etc. | Applicable per page charge plus postage if mailed | Applicable per page charge plus postage if mailed |
| Return Check Processing | \$25.00 1st returned check \$35.00 2nd returned check No collection-treble damages | \$25.00 1st returned check \$35.00 2nd returned check No collection-treble damages |
| Cassette Tape of Meeting, etc. | \$9.00 per cassette | \$9.00 per cassette |

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: April 22, 2008

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Sole Source Purchase from Kustom Signals, Inc. for replacement of Existing VHS Kustom Signals, Inc. Camera Systems in Patrol Vehicles

RECOMMENDATION: "Review and approve the Police Department's request to purchase six additional digital wireless camera systems to replace the antiquated VHS camera system in six of the department's patrol units through Kustom Signals, as a sole source provider, in the amount of \$35,806.09."

JUSTIFICATION: Replacing the current VHS camera system in the Police Department's patrol cars with a digital wireless camera system will enhance the department's ability to capture critical video evidence without having to physically remove the information from the vehicle system and manually transfer it onto a DVD. The replacement wireless transfer system will automatically collect video data from patrol vehicles, located in the Police Department's parking lot, and download it onto a hard drive located in the department's evidence room.

The replacement system will allow the department to remove all existing VHS camera systems from the trunks of the patrol cars and place them in the front passenger compartment of the vehicles. Subsequently, patrol vehicle battery drainage issues will be reduced as the digital camera systems will no longer require continuous fan activation during extreme temperatures.

BACKGROUND: On March 8, 2008, the Banning City Council approved a sole source purchase through Kustom Signals, Inc. in the amount of \$68,402.44 to upgrade the department's digital camera systems with the wireless camera system for thirteen patrol units. SLESF grant funds were used for this purchase. The delivery of the new systems will begin arriving in the near future and will be installed promptly.

With the earlier approved upgrade, the department still has six patrol vehicles operating with the antiquated VHS camera systems that are not upgradable to the new digital wireless system. Subsequently, each system must be replaced in its entirety. There is also an additional cost for more server memory, as the added cameras will require additional storage space for their recordings.

The requested wireless replacement can only be provided through Kustom Signals, Inc., as no other company has the ability or equipment necessary to replace our current digital camera systems and remain compatible with our existing infrastructure.

STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will help facilitate the Police Department's goals of improving the department's image in the community.

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FISCAL DATA: Funding for the purchase of the six requested systems with more memory and installation is available through current department salary savings from open positions. Subsequently, no new funds are required for this purchase. The Finance Department is authorized to make necessary budget adjustments related to these funds.

RECOMMENDED BY:



Leonard Purvis
Chief of Police

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

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KUSTOM SIGNALS, INC.

A SUBSIDIARY OF PUBLIC SAFETY EQUIPMENT, INC.
8825 Pfleum, Lenexa KS 66215-3347
913-492-1400 Fax 813-492-1758
sales@kustomsignals.com www.kustomsignals.com

Quotation

Page 1 of 2

Date 03/11/2008

To... LT PHIL HOLDER
BANNING POLICE DEPT
321 W RAMSEY
PO BOX 1177
BANNING CA 92220-0008

Quote # 661957460306W70
Terms Net 30
This Quote Expires on 06/09/2008
Phone 951-922-3170
Fax 951-922-3158

| Qty | Product Description | Unit Price | SubTotal |
|-----|--|------------|-------------|
| 6 | DIGITAL EYEWITNESS ION ECLIPSE SYSTEM, WIRELESS TRANSFER PACKAGE WITH 80GB REMOVABLE HARD DRIVE, INTEGRATED OVERHEAD CONSOLE, CLEARCOMM | \$5,495.00 | \$32,970.00 |
| 6 | SHIPPING & HANDLING | \$47.00 | \$282.00 |
| 5 | 1 TARABYTE HARD DRIVE (I HAVE ADDED AN ADDITIONAL BLADE TO INSURE SAFETY BACK UP OF SYSTEM) AS PER SUGGESTION OF BACK OFFICE ENGINEER CRAIG CIGARD | \$480.00 | \$2,400.00 |
| 6 | REBATE 6 VHS SYSTEMS | \$-450.00 | \$-2,700.00 |
| 1 | D-LINK DEMM WIRELESS ACCESS POINT (AT STATION) | \$299.00 | \$299.00 |
| 1 | CA USE TAX 7.75% | \$2,555.09 | \$2,555.09 |

Total \$35,806.09

Signature

*** Applicable Sales Tax not Included ***

*** Order subject to agreement between Kustom Signals and customer on configuration and terms ***

*** Payment Terms: Net 30 from date of Invoice ***

Phyllis Roberts
9325 Pfleum Lenexa Kansas 66215-3345
FAX 913-492-1703 Phone 800-458-7866 EXT 3010

Toll Free 800-4KUSTOM (800-458-7866)

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KUSTOM SIGNALS, INC.
TERMS AND CONDITIONS

1. APPLICABILITY. Unless otherwise specified in a written bid, quote or contract, the following terms and conditions shall apply.

2. PRICES AND TAXES. Prices will be Kustom Signals, Inc.'s ("Seller") prices in effect on the date a purchase order is accepted by Seller, and Seller may change its prices at any time, in its sole discretion. All prices will be F.O.B. Champe, Kansas, and net of any duties, sales, use or similar taxes, fees or assessments, and do not include shipping, packaging or any insurance costs, all of which are Buyer's responsibility.

3. PAYMENT. Unless otherwise provided on the face of the invoice, payment is due net 30 days of invoice in US dollars. Partial payments are not permitted unless authorized in writing. Partial payments will be treated as non-payment. Each invoice is independent from shipping sequence and disputes relating to other invoices. Failure to pay an invoice within 30 days will be considered a default.

4. DELIVERY AND PERFORMANCE. Delivery dates are approximate. Seller disclaims all liability for late or partial delivery. Seller may deliver in such lots and at such times as is convenient for Seller.

5. LOSS IN TRANSIT. Risk of loss will pass to Buyer upon delivery of the goods to the carrier. In case of breakage or loss in transit, Buyer will have notation of same made on expense bill before paying freight. Seller may reject claims for shortages not made within 15 days of Buyer's receipt of the goods.

6. TERMINATION, RESTOCKING CHARGES. Buyer may terminate this purchase order for its convenience, in whole or in part, by written, faxed or telegraphic notice at any time. If Buyer terminates this purchase order for convenience, Buyer will be liable to Seller for Seller's reasonable costs incurred in the performance of this purchase order that Seller cannot mitigate. Unless otherwise agreed upon in advance in writing by Seller, Seller may charge Buyer a 25% restocking fee, if: (a) the Buyer returns any non-defective goods covered by this purchase order; or (b) prior to shipment, but after the goods are produced by Seller, Buyer cancels the order for the subject goods.

7. WARRANTY. Seller's warranty is provided separately.

8. LIMITATION OF LIABILITY. SELLER IS NOT LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS, EVEN IF A SELLER REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS, NOR IS SELLER LIABLE FOR ANY CLAIM BY ANY THIRD PARTY. SELLER'S AGGREGATE LIABILITY UNDER OR IN

CONNECTION WITH THIS PURCHASE ORDER IS LIMITED TO THE AMOUNT PAID FOR THE GOODS.

9. INDEMNIFICATION. Buyer will indemnify, defend and hold Seller harmless from all losses, damages, liabilities and costs, including attorneys' fees, incurred or sustained by Seller as a result of any third party claim made against Seller, including a claim by a customer of Buyer, arising from its negligent, reckless, willful, or intentional actions in marketing and reselling the goods.

10. EXPORT RULES. Buyer will not ship, transfer or export the goods into any country or use the goods in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the goods are identified as export controlled items under the Export Laws, Buyer represents and warrants that Buyer is not a citizen, or otherwise located within, an embargoed nation (including, without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, and North Korea) and that Buyer is not otherwise prohibited under the Export Laws from receiving the goods.

11. MISCELLANEOUS. This purchase order, together with any other written agreement between Buyer and Seller, if any: (i) is the exclusive statement of the parties with respect to the subject matter and supersedes any prior or contemporaneous communications; (ii) may not be amended except in writing executed by the parties; and (iii) will be interpreted and enforced in accordance with the laws of the State of Kansas, without giving effect to principles of conflicts of law. This purchase order is: (1) solely for the benefit of the parties, and no provision of this purchase order will be deemed to confer upon any other person any remedy, claim, liability, reimbursement, cause of action or other right. Each party consents to the exclusive personal jurisdiction of the state and federal courts located in the State of Kansas for purposes of any suit, action or other proceeding arising out of this Agreement, waives any argument that venue in any such forum is not convenient and agrees that the venue of any litigation initiated by either of them in connection with this Agreement will be in either the District Court of Johnson County, Kansas, or the United States District Court, District of Kansas. If any provision of this purchase order is unenforceable, the remaining provisions will remain in effect. No waiver (whether by course of dealing or otherwise) is effective unless it is made in writing and signed by the party to be charged with such waiver. Unless otherwise specified in writing, notices must be given in writing by registered or certified mail, return receipt requested, addressed to:

Kustom Signals, Inc.
Attn: Sales Dept.
9325 Pfleum
Lenexa, KS 66215

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**CITY COUNCIL AGENDA
CONSENT**

Date: **April 22, 2008**

TO: **City Council**

FROM: **George Thacker, Assistant Public Utilities Director**

SUBJECT: **Approval of an Engineering Design Services Agreement for Project No. 2008-02W, "Construction of Downtown Water Main Improvements"**

RECOMMENDATION: Approval of an Engineering Design Services Agreement for Project No. 2008-02W, "Construction of Downtown Water Main Improvements" to A P Engineering, Riverside, CA for the amount "Not to Exceed" of \$34,990.00.

JUSTIFICATION: Construction of the proposed water improvements for the downtown area will replace old waterlines and move the existing waterlines and water meters out of the allies for improving future maintenance.

BACKGROUND: The City is the Urban Water Supplier for the water service area of the City of Banning. The City is in the process of improving the Downtown Area and this area has old existing waterlines located in the allies that are in need of repairs.

The Scope of Work for the engineering design of the project consists of the following streets:

1. Second Street (from Livingston Street to Williams Street)
2. First Street (from Livingston Street to Williams)
3. San Gorgonio Avenue (form Livingston Street to Williams Street)
4. Hays Street (from Second Street to first ally east of San Gorgonio Avenue connecting to the existing 8" water line).
5. Ramsey Street (from Second Street to first ally east of San Gorgonio Avenue connecting to the existing 8" water line).
6. Relocating meters in the connecting Allies.

Staff requested a proposal from A P Engineering who could immediately start the work. This company is a reputable firm in the Water Utility industry and has extensive experience with design and construction. Also, A P Engineering has successfully completed numerous projects with the City of Banning, including the recent design of Water Well C6 pipeline drain.

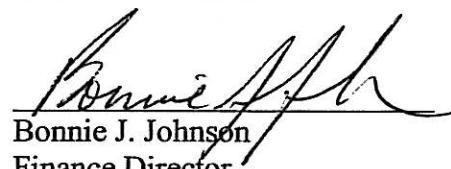
Government Code, Section 4526, requires that the selection of professional services of an engineering firm shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required, and that the services should be provide at a fair and reasonable price to the public agencies.

FISCAL DATA: The proposed Engineering Design Services Agreement for Project No. 2008-02W, "Construction of Downtown Water Main Improvements" is for a "Not to Exceed" amount of \$34,990.00. Funding for this engineering design work is available in the FY 07-08 Water Division Operations Budget, Account No. 660-6300-471.95-10 Water Mains.

RECOMMENDED BY:

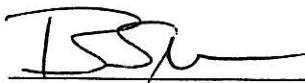
Jim Earhart,
Electrical Utility Director

REVIEWED BY:



Bonnie J. Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

CONSULTANT SERVICES AGREEMENT

**For Engineering Design of Project No. 2008-02W, "Construction of
Downtown Water Main Improvements"**

By and Between

**THE CITY OF BANNING,
a municipal corporation**

AND

**A P Engineering,
a corporation**

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
A P ENGINEERING, CALIFORNIA**

This Agreement for Consultant Services ("Agreement") is entered into as of this 22nd day of April, 2008 by and between the City of Banning, a municipal corporation ("City") and A P Engineering a corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 2 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 2 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Consultant Services Agreement and the City Mayor has authority to execute this Agreement.

E. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the scope of services set forth in Exhibit "A" "Scope of Services" shall be completed pursuant to the schedule specified in Exhibit "A." Should the scope of services not be completed pursuant to that schedule, the Consultant shall be deemed to be in Default of this Agreement pursuant to Section 21 of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Consultant to continue performing the scope of services until such services are complete.

SECTION 2. SCOPE OF SERVICES.

Consultant agrees to perform the services set forth in Exhibit "A" "Scope of Services" and made a part of this Agreement.

SECTION 3. ADDITIONAL SERVICES.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit "A" "Scope of Services," unless such additional services are authorized in advance and in writing by the City Council or City Manager of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in Exhibit "B" "Compensation" and made a part of this Agreement. The total compensation, including reimbursement for actual expenses, shall not exceed thirty four thousand nine hundred ninety dollars (\$34,990.00), unless additional compensation is approved in writing by the City Council or City Manager.

(b) Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

(c) Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice.

(d) Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Consultant's work by City shall

not constitute a waiver of any of the provisions of this Agreement including, but not limited to, sections 16 and 17, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. Upon completion, expiration or termination of this Agreement, Consultant shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warrants related to Standard of Performance and found in Section 9 of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. Any and all such documents or records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the City and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

(b) The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warranties related to Standard of Performance shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS, PERMITS, AND LICENSES.

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 11. PREVAILING WAGE LAWS

It is the understanding of City and Consultant that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

SECTION 12. NONDISCRIMINATION.

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

SECTION 13. UNAUTHORIZED ALIENS.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

SECTION 14. CONFLICTS OF INTEREST.

(a) Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(c) City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the scope of work under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

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

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant , its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 16. INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any

kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity Agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

(d) The provisions of this section do not apply to claims occurring as a result of City's sole negligence or willful acts or omissions.

SECTION 17. INSURANCE.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Consultant agrees to provide City with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

SECTION 20. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Consultant or City fails to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in Section 4 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this Agreement.

SECTION 21. DEFAULT.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

SECTION 22. EXCUSABLE DELAYS.

Consultant shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 23. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the

Exhibit "A" "Scope of Services," shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 24. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by Telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

| | |
|----------------|--|
| To City: | City of Banning Attn: George Thacker 176 East Lincoln Street Banning, CA 92220 Phone: 951 922-3282 Fax: 951 849-1550 |
| To Consultant: | A P Engineering Attn: Gurinder Jit Singh 1271 Columbia Avenue, Suite 10 Riverside, California 92507 Phone: 951 686-2512 Fax: 951 686-3845 |

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 25. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Consultant to the performance of its obligations hereunder.

SECTION 26. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 27. MODIFICATION OF AGREEMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council or City Manager. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 28. WAIVER.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 29. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 30. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 31. ENTIRE AGREEMENT.

This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other Agreements, whether oral or written, made by any parties which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 32. SEVERABILITY.

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

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

CITY OF BANNING

By: _____
Brenda Salas, Mayor

Date: _____

ATTEST:

Marie Calderon
City Clerk

APPROVED AS TO FORM

By: _____
Burke, Williams & Sorenson, LLP
City Attorney

CONSULTANT

Date: _____

By: _____

Its: _____

Two signatures are required if a corporation

By: _____

Its: _____

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On _____, before me, _____, personally appeared _____,

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

WITNESS my hand and official seal.

(SIGNATURE 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

PARTNER(S) LIMITED
 GENERAL

DESCRIPTION OF ATTACHED DOCUMENT

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER _____

SIGNER IS REPRESENTING:

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On _____, before me, _____, personally appeared _____,

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

WITNESS my hand and official seal.

(SIGNATURE 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

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER _____

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

See Proposal Dated April 8, 2008

I. Consultant will perform the following Services:

- A. Conduct a field investigation of the project area to become familiar with the existing facilities and project environment.
- B. Complete design of the Downtown Water Main Improvements for the following streets:
 - 1. Second Street (from Livingston Street to Williams Street)
 - 2. First Street (from Livingston Street to Williams)
 - 3. San Gorgonio Avenue (form Livingston Street to Williams Street)
 - 4. Hays Street (from Second Street to first ally east of San Gorgonio Avenue connecting to the existing 8" water line).
 - 5. Ramsey Street (from Second Street to first ally east of San Gorgonio Avenue connecting to the existing 8" water line).
 - 6. Relocating meters in the connecting Allies.
- C. Prepare construction plans.
- D. Prepare Contract Specifications for the Downtown Water Main Improvements incorporating following Sections:
 - Section I – Procedural Documents.
 - Section II – General Conditions.
 - Section III – Supplemental General Conditions.
 - Section IV – Special Provisions.
 - Appendix – City Standards.
- E. Coordination with the City.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

- A. Three sets of 90% Design Plans and Specifications for plan checking.
- B. Five sets 100% Design Plans and Specifications

III. During performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

A. Prepare monthly statements of progress of work.

IV. The tangible work products and status reports will be delivered to the City pursuant to the following schedule:

A. As agreed with Assistant Public Utilities Director.

B. Completion Date for this Agreement is September 30, 2009.

V. Consultant will utilize the following personnel to accomplish the Services:

A. Gurinder Jit Singh

B. William L. White

VI. Consultant will utilize the following subcontractors to accomplish the Services:

NONE

VII. Amendments

The Scope of Services, including services, work products, and personnel, are subject to change by mutual Agreement. In the absence of mutual Agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

**EXHIBIT "B"
COMPENSATION**

See attached Proposal Dated April 8, 2008

- I. Consultant shall use APE's Prevailing Hourly Billing Rates dated January 1, 2008.**
- II. Consultant may utilize subcontractors as indicated in this Agreement. The hourly rate for any subcontractor is not to exceed \$ N/A per hour without written authorization from the City Manager or his designee.**
- III. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
 - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
 - B. Line items for all supplies properly charged to the Services.**
 - C. Line items for all travel properly charged to the Services.**
 - D. Line items for all equipment properly charged to the Services.**
 - E. Line items for all materials properly charged to the Services.**
 - F. Line items for all subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.**
- IV. The total compensation for the Services shall not exceed \$34,990.00, as provided in Section 4 of this Agreement.**

EXHIBIT "C"
INSURANCE

A. Insurance Requirements. Consultant shall provide and maintain insurance, acceptable to the City Manager or City Counsel, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. Consultant shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

(4) Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 3 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 3-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

(4) Professional Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

(2) Consultant's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(3) Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

C. Other Requirements. Consultant agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.

* Complete design of the Down Town Water Main Improvements for the following streets:

1. Second Street (From Livingston Street to Williams Street)
2. First Street (From Livingston Street to Williams Street)
3. San Gorgonio Avenue (From Livingston Street to Williams Street)
4. Hays Street (From Second Street to first ally east of San Gorgonio Avenue connecting to the existing 8" water line)
5. Ramsey Street (From Second Street to the first alley east of San Gorgonio Avenue connecting to the existing 8" water line in this alley).
6. Relocating meters in the connecting Allies.

* Prepare construction plans

* Prepare Contract Specifications for the Down Town Water Main Improvements incorporating following Sections:

- Section I – Procedural Documents.
- Section II - General Conditions.
- Section III – Supplemental General Conditions.
- Section IV – Special Provisions.
- Appendix – City Standards.

* Coordination with the City

APE possesses complete knowledge and experience with enough resources to undertake and accomplish this project successfully within the schedule time. For this project, we have organized a team of highly qualified and experienced engineer. Gurinder Jit Singh, P.E. will be the Project Manager and William L. White will be the Project Designer.

We are thoroughly familiar with the City's Project. The team members have vast local experience in designing water main improvements. Our commitment is developing and maintaining close working relationship with our clients. Project goals and objectives, governmental requirements and client needs are met through a strong emphasis on communication. All plans, specifications and reports are prepared to withstand peer, agency and public scrutiny.

In summary, APE possesses the diverse professional expertise and proven experience necessary for successful completion of the City's Project. We assure you that the project undertaken by APE will be the best functional and the most economical project. This proposal outlines our professional services and qualifications. The fee proposal is enclosed in a separate cover.

Very Truly Yours,

A P Engineering Corporation


Gurinder Jit Singh P.E.
Managing Director

4/8/08

TABLE OF CONTENTS

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| III | EXPERIENCE |
| IV | DESCRIPTION OF ORGANIZATION |
| V | CLIENTS REFERENCES |

SECTION I SUMMARY

This proposal is prepared in response to the City of Banning, Water Department request to provide professional engineering services for Down Town Water Main Improvement for City of Banning are as follows:

- Prepare Contract Specifications for the above Water Improvements.
- 8" water main, new water main on Second Street, 8" water main on First Street, and 12" water main on San Gorgonio Avenue from Livingston Street to Williams Street
- A 12" water main on Hays Street from Second Street to first alley east of San Gorgonio Avenue, which will connect to the existing 8" water main located in this alley.
- An 8" water main on Ramsey Street from Second Street to the first alley east of San Gorgonio Avenue, which will connect to the existing 8" water main located in this alley..
- Relocate service meters which are located in the alleys between Second Street and First Street, and between First Street and San Gorgonio Avenue from Livingston Street to Williams Street.

This task includes investigating existing system, preparing construction plans, technical specifications, and submitting plans for review and comments.

This proposal has five Sections, Section I, Summary, provides Project Approach and Scope of Services. Section II describes the proposed personnel and their resume. Section III describes the experiences of APE's staff in executing several similar kinds of projects. APE has attained the reputation of a highly professional, ethical and sophisticated firm. APEC has been applauded many times by our clients for executing the works most orderly, economically, and efficiently.

In Section IV, detailed organizational structure of the firm is presented and it includes type of organization, composition, and functions to be performed by members of the firm. Section V provides the Client References.

Throughout the entire course of the contract, the project manager will maintain close liaison with the City of Banning staff to coordinate and provide needed services.

PROJECT APPROACH

The development of a sound approach and detailed scope of services is essential to produce a quality project on time and within budget. APE proposes a task-oriented approach to the project, which is flexible and can be tailored to the specific needs of the City of Banning.

APE will maintain close communication with the City of Banning Staff to provide information and seek input regarding cost-effective alternatives, reduction of project costs, and resolution of any conflicts.

The following is task listing delineating the scope of services:

PROJECT MEETINGS AND COORDINATION

Prior to initiation of project activities, APE will meet the City of Banning staff to clarify the project requirements, review available data, discuss scheduling, and identify any project constraints. In order to maintain close and open communication with all concerned agencies, APE will attend regularly scheduled meetings. We anticipate two meetings to review the progress of the work.

TASKS

1. Research and investigate the existing water mains.
2. Prepare construction plans.
3. Prepare project technical specifications.
4. We will submit plans for review and comments.
5. Prepare Contract Specifications.

DELIVERABLE AND DUE DATES

APE will meet and beat all the due dates as we have done on all our previous projects. We will submit all recommendations and comments to the City of Banning on or before due date.

SECTION II PROJECT TEAM

The success of any project depends upon the capabilities and experience of the personnel committed to the project. APE has carefully selected a project team that will meet the specific needs for the City of Banning's projects.

The project organization is structured in a manner, which offers City of Banning full benefit of the team's knowledge and experience. The following is the resume synopsis of the experience of key project team members.

Gurinder Jit Singh, P. E. is currently the Managing Director of the APE will be the Project Manager on the City of Banning Project. He is a registered engineer with Master of Science degree and has over 29 years of engineering and management experience in public sector projects. His expertises include water distribution, water conservation measures, project planning, quality assurance, wastewater collection, and water resources. He has designed several water main improvement systems. He has prepared and reviewed engineering documents to obtain permits and approvals from the public agencies.

Mr. Singh will be responsible for making full resources of APE available to the project team as needed to accomplish the work professionally and efficiently. He will assure that APEC contractual commitments to City of Banning are met to their satisfaction. He will be coordinating the activities of our proposed Project Team and for assuring a cost effective, on time and successful project.

William L. White will be Project Designer, for APE, with eleven years of experience in the design and preparing construction documents grading and drainage facilities. Mr. White is also experienced in CAD drafting using AutoCAD. He will be responsible for design and drafting of the plans, computing construction quantities, and technical specifications.

WILLIAM L. WHITE

PROJECT MANAGER

SUMMARY: Approximately eleven years experience working in the field of civil engineering doing general administration, CAD drafting, marketing, preparing quotations, submittals, contracts and coordinating project needs.

EDUCATION: Westech College, Pomona, CA, Diploma in Civil CAD and Board Drafting, 1993-1994.
126 College units at Long Beach State College and Long Beach City College.

EXPERIENCE: Construction Administration preparing bid quotations, scheduling jobs, co-ordination, attending pre-job and kick-off meetings, preparation of shop drawings, submittals, co-ordination with subcontractors and co-ordination of project activities and watches the progress of work.

Project Designer, for APE doing design and preparation of construction documents for grading and drainage facilities. CAD drafting using AutoCAD and Microstation, responsible for design and drafting of the plans, computing construction quantities, and technical specifications.

The following is the description of similar projects evolved in as an APE staff member, which were successfully completed for City of Banning:

- Engineered, designed and prepared construction plans for Water Well C-6 Blowoff Line at San Gorgonio Avenue and Barbour Street..
- Engineered, designed and prepared construction plans for Water Line Improvements at locations on Ramsey Street, at Hays Street and 12th Street.
- Investigated the existing system, prepared construction plans and profile, technical specifications for installing three Pressure Regulation Stations for 8th Street, 16th Street, and Lincoln Street water mains.
- Designed a complete Irrigation Water Supply System for the City of Banning. The source of raw water was the underground well water. The system included production wells, booster pumps stations and distribution mains.
- Updated and prepared Banning Standard Plans on electronic media.

GURINDER JIT SINGH, P. E.
MANAGING DIRECTOR

QUALIFICATIONS:

Mr. Singh has over 35 years of civil and environmental engineering experience specializing in public works including water and waste water treatment plants, storm channels, pumping stations, water resources, street improvements, drainage, land development and subdivision projects. He is currently working as Managing Director with A P Engineering (APE). Prior to joining APE, Mr. Singh had worked for C M Engineering Associates, Charles Haver and Associates, Bechtel Power Corporation, Bovay Engineers and State of Punjab Public Works Department.

EXPERIENCE:

City of Banning

- Engineered, designed and prepared construction plans for Water Well C-6 Blowoff Line at San Gorgonio Avenue and Barbour Street.
- Engineered designed and prepared construction plans for street improvement of Alessandro, Hays and Wilson Streets.
- Engineered designed and prepared construction plans for water line improvements at various locations.
- Investigated the existing system, prepared construction plans and profile, technical specifications for installing three pressure regulation stations for 8th Street, 16th Street, and Lincoln Street water mains.
- Planned and prepared piped irrigation water supply system using reclaimed water source. Project involved feasibility study, conceptual planning, cost estimations, funding and construction plans.

Acacia Animal Hospital: Designed 9000 square feet facility installed with the most advanced and modern medical equipments. Prepared construction plans, bid documents, cost estimates, and processed quotations.

Eastern Municipal Water District - Conducted a feasibility study for water harvesting project for San Jacinto and Hemet areas. Project involved concept development, planning, hydrology modeling of drainage basins, reservoirs, water conveyance, and lift stations.

Rancho Las Flores - Design engineer for 9 mgd water treatment plant and tertiary wastewater treatment plant. Reviewed and analyzed alternate processes and selected the most cost effective and functional process based on the capital cost and operation cost.

City of Pasadena - Designed Gould pipe line, 16" main project at Arroyo Seco Canyon Road including alignment selection, hill side, and creek crossings.

Galveston County Water Authority - Designed a 6 mgd water treatment plant including intake structure and distribution system.

South Texas Nuclear Power Project - Responsible for utility water, and non-radioactive wastewater treatment and disposal systems, including reservoirs, storage, filters, reverse osmosis and ion exchangers. Reviewed criteria and construction documents for compliance with Nuclear Regulation Commission.

Habitat 2000, Imperial County - Prepared water and wastewater master plans for "Habitat 2000", a planned community development comprising of 10,000 residential units, commercial and recreational facilities in the Imperial County near Salton City in the State of California.

Coachella Valley Water District - Designed water mains, sewer lines, force mains, lift stations, storm channels, and drainage facilities.

City of Houston - Conducted flood controls, abatement studies, and 200 mgd water conveyance and distribution network systems studies for Southeast Houston.

Ludhiana City - Responsible for water resources planning, including surface and groundwater inventories, water storage, reservoirs, regulation of water for domestic and municipal purpose. Installed several domestic water wells for the city water supply system.

State of Punjab - Executive Engineer, responsible for planning, designing and construction of several drainage, flood abatement, channels, reservoirs, water supply and sewerage projects. Prepared engineering reports for obtaining the World Bank loans and grants.

Executed and administered several construction projects, including loans and grants applications, funds allocations, budget control, scheduling, technical approvals, work orders, specifications, field inspections, change orders and project reports.

EDUCATION:

Bachelor of Science in Civil Engineering
Indian Institute of Technology, New Delhi-1969

Master of Science in Environmental Engineering
University of Houston, Texas-1980

PROFESSIONAL REGISTRATION:

California, Civil Engineer No. 40392

PROFESSIONAL AFFILIATION:

American Society of Civil Engineers

SECTION III EXPERIENCE

The proposed APE staff members have extensive experience in design and technical development of water distribution systems and water improvements including pressure-regulating stations. Our staff members have practical experience with an emphasis on public facilities and are familiar with State, Federal, and Local regulating agencies, codes, and design criteria. APE staff members were involved in this type of design and technical development of public facilities. We have provided consulting engineering services on a number of jobs for a wide range of public agencies.

The following is the description of similar projects that APE staff members have successfully completed:

City of Banning

Engineered, designed and prepared construction plans for Water Well C-6 Blowoff Line at San Gorgonio Avenue and Barbour Street..

City of Banning

Engineered, designed and prepared construction plans for Water Line Improvements at locations on Ramsey Street, at Hays Street and 12th Street.

City of Banning

Investigated the existing system, prepared construction plans and profile, technical specifications for installing three Pressure Regulation Stations for 8th Street, 16th Street, and Lincoln Street water mains.

City of Banning

Designed a complete Irrigation Water Supply System for the City of Banning. The source of raw water was the underground well water. The system included production wells, booster pumps stations and distribution mains.

National Training Center at Fort Irwin

Conducted a feasibility study for the construction of an additional water treatment plant for NTC at Fort Irwin. The available source of water was the underground water which contained excessive amounts of contaminants primarily fluorides, nitrates, and iron. We conducted photovoltaic system study to provide portion of the electric power necessary to run the plant. Prepare cost estimates, layout plans, P & I Ds for the proposed system.

Rancho Las Flores

Designed one 9 MGD water treatment plant based on surface water treatment and 1 MGD tertiary wastewater treatment plant for the City of Hesperia.

Eastern Municipal Water District

Conducted Water Harvesting project studies for the San Jacinto and Hemet areas. The project included water reservoirs, pump stations and aquifer water charging keeping into consideration the water quality impacts.

South Texas Project

Complete design of a 1200 gpm water treatment plant for the Nuclear Power Project involving ion exchange and reverse osmosis systems to reduce TDS level less than 1 ppm. The STP project was handled by Bechtel Power Corporation for the Houston Light and Power Utility Company.

Belle Meadows Ranch

Designed 1 MGD tertiary waste water treatment plant and booster pumps stations. Tertiary treatment used reverse osmosis system to reduce TDS levels to acceptable limits set by the Water Quality Control Board.

City of Pasadena

Designed 16 inches water supply main passing through creeks and mountainous terrains.

Santa Ana Watershed Project Authority

Conducted Reclaimed Water Study for the Counties of San Bernardino, Riverside, and Orange.

Rubidoux Water District

Designed 12 inches water main for water supply improvements in the Market Street.

SECTION IV DESCRIPTION OF ORGANIZATION

A P Engineering (APE) is a professional engineering firm offering a full spectrum of in-house capabilities and services in the fields of civil, structural, architectural, construction management, land planning, science, and field surveying. The firm's corporate headquarters is located in Riverside County, California.

APE is an emerging engineering firm in California. It prizes quality above quantity, and high value integrity technically with advanced, innovative, and sophisticated technical ideas. The staff is mostly licensed professionals and they have the theoretical knowledge, and the field-earned practical experience to perform work which will be responsive to the complete satisfaction of the clients.

APE places a high priority on innovation and the integration of new technology while being sensitive to the needs of its clients. APE believes that the best service can be rendered to its clients by the direct and continual involvement of experienced principals in the conduct of each project, and the firm's size assures that each client receives the personal attention of its top managers.

APE engineering and staff members maintain membership in several professional organizations and is an active participant in the American Society of Civil Engineers.

Dedicated to providing the most competent professional and qualifies engineering and architectural services possible, APE occasionally finds it appropriate to supplement its in-house expertise with specialized expertise of appropriate consultants. In this regard, APE will retain any firms needed to provide City of Banning with a complete and successful project.

SECTION V CLIENTS REFERENCES

Please feel free to contact any of the following clients listed. Our staff has provided engineering services for each of them on several projects and the contact person in each case is familiar with the performance on the respective projects.

Eastern Municipal Water District

Contact: P. Ravishanker
Assistant General Manager
2045 S. San Jacinto Avenue
San Jacinto, CA 92383-1300
(909) 925-7676

County of San Bernardino

Contact: Bob Marlin
Project Manager, Public Works Group
Architecture & Engineering Department
825 East Third Street
San Bernardino, CA 92415-0849
(909) 883-1125

Santa Ana Watershed Project Authority

Contact: Mark Norton
Project Manager
11615 Sterling Avenue
Riverside, CA 90503
(909) 785-5411

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: April 22, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: CAL HEAT PASS AREA BASEBALL CLUB Donation

RECOMMENDATION:

That the City Council consider donating funds the Cal Heat Pass Area Baseball Club, a non-profit youth baseball program, to travel to New York and compete in the under 12 National Cooperstown Tournament of Champions, the week of July 19, 2008. The desire by Cal Heat Pass Area Baseball team is that the City Council will consider matching the City of Beaumont's donation of \$5,000. However, the Team does recognize City funds are limited and appreciates any donation amount.

BACKGROUND:

The City Council has made donations toward a wide range of community/charitable events in the past. As stated in their sponsorship request, The Cal Heat Pass Area Baseball Club has and continues to participate in several fund raising events, such as car washes, yard sales, candy sales, and volunteer work.

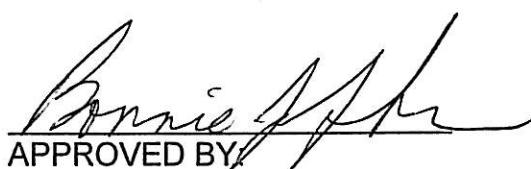
Players represent the cities of Banning, Beaumont, San Jacinto, and Hemet and the City of Beaumont has committed equivalent funds to support this event.

FISCAL DATA:

Funds are available in the City Council's Community Support Fund.



RECOMMENDED BY:



APPROVED BY:

106

CAL HEAT PABC

April 5, 2008

Dear Prospective Sponsor/Supporter,

The Cal Heat Pass Area Baseball Club is a non-profit youth baseball program with a team roster consisting of players from the surrounding communities of the San Gorgonio Pass Area.

The Cal Heat 12U team has been presented with an amazing once-in-a-lifetime opportunity! The team will be traveling to New York, representing the San Gorgonio Pass Area, to participate in the National Cooperstown Tournament of Champions the week of July 19, 2008 through July 25, 2008. We will be competing against 24 other teams from across the United States. It would be a great honor for our team to go to New York and represent the Pass Area. It is also the last chance for this team to be eligible to participate in the tournament due to the age of the boys.

The cost for this trip is \$1,865.00 per player and a detailed list has been attached. This price includes round-trip airfare, accommodations for the week, three meals a day, induction into the Cooperstown Youth Baseball Hall of Fame, a Cooperstown Youth Baseball Hall of Fame ring, a minimum 7 competitive game guarantee, pins for pin trading activity, required uniform apparel, required baseball gear, and a ticket to the National Baseball Hall of Fame and Museum.

With the help of sponsors, team fundraising and parent contributions we can make this happen! The team has been working very hard to raise funds by participating in several fundraisers (car washes, hosting tournaments, yard sales, working a Cold Stone Night, and candy sales) generating \$250-\$500 each fundraiser. However, due to the limitations of fundraisers, we are still in need of sponsorships and assistance to help make this dream come true.

If you would like to support our team with a one time contribution you may send a donation to: **Cal Heat PABC, 9780 Mountain View Ave, Cherry Valley, CA 92223.** Checks can be made payable to: **Cal Heat PABC.** If you have any questions or need additional information, please contact Susan Turley at (909) 633-0417.

Cal Heat PABC would be grateful for any support your organization can provide and would like to thank you for taking the time to consider sponsoring our team.

Sincerely,



Frank Linares
Director

Expenses for Cal Heat 12U Cooperstown New York Tournament

Tournament Package: \$665 per player/coach

Includes:

5 days and 6 nights accommodations
3 meals a day,
2 All-Star Village tournament jerseys
2 pair socks
1 cap
7 game guarantee
1 ticket to the National Baseball Hall of Fame and Museum
1 Cooperstown Youth Baseball Hall of Fame ring
Induction into the Cooperstown Youth Baseball Hall of Fame

Additional Expenses: \$1,200 per player/coach

Includes:

| | |
|-----------------------------|-------|
| Round-trip airfare | \$550 |
| 2 pair baseball pants | \$60 |
| 2 belts | \$10 |
| 1 underarmour shirt | \$50 |
| 1 sweatshirt | \$40 |
| 1 Warm-up suit | \$60 |
| 1 pair cleats | \$60 |
| 1 baseball bag | \$50 |
| 3 pair team shorts | \$30 |
| 4 team t-shirts | \$25 |
| Trading Pins | \$90 |
| Required bedding | \$25 |
| Ground transportation | \$50 |
| Equipment shipping | \$25 |
| Hotel accommodations (7/18) | \$50 |
| Incidentals | \$25 |

**CITY COUNCIL AGENDA
RESOLUTION**

DATE: April 22, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer 

SUBJECT: Resolution No. 2008-39, "Awarding the Construction Contract for Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets," and Approving the Necessary Budget Appropriations for Said Project.

RECOMMENDATION: Adopt Resolution No. 2008-39:

I. Awarding the Construction Contract for Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets," to International Pavement Solutions, Inc. of San Bernardino, California for an amount of "Not to Exceed" \$675,000.00, including an approximate 10% construction contingency.

II. Authorizing the appropriation of \$17,578.00 from AB 2928 (Proposition 42) funds to Account No. 100-4901-431-9315 and authorize the Director of Finance to make the necessary budget adjustments related to these funds.

JUSTIFICATION: International Pavement Solutions, Inc. is the lowest responsible bidder to perform the work for the City of Banning's Annual Asphaltic Concrete (A.C.) Overlay Project.

BACKGROUND: The voters of Riverside County approved a 0.5% sales tax for the purpose of transportation infrastructure improvements through the passage of the Measure "A" program. The City Council approved last year's Five-Year Capital Improvement Program on May 29, 2007, which subsequently was approved by the Riverside County Transportation Commission (RCTC), and contained the list of streets to be rehabilitated in this project.

The scope of work under this project includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per the City Engineer's recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, fire hydrants, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes, and mailboxes when required by the Public Works Inspector; striping improvements; and cleaning, on various streets. The proposed sidewalk location has been approved by the RCTC under the SB-821 Bicycle and Pedestrian Facilities Program and is shown with the proposed street locations on the attached Exhibit "A."

After the project went out to bid, staff received a request to pave Sidney Street, north of Repplier Road and west of San Gorgonio Avenue. The street is in poor condition due to street and waterline repairs and has not been paved in over 15 years.

The SB-821 Grant Program is awarded annually on a competitive basis and is open to eligible cities within Riverside County. In FY 2007/2008, Engineering staff obtained a grant for one sidewalk location in the amount of \$93,000.00. This grant was accepted by the City Council on August 14, 2007, and matching funds were appropriated at the time the City Council accepted said grant.

The project was advertised for bids on March 7, 2008, as shown attached as Exhibit "B", and nine (9) bids were received and opened on March 28, 2008 with the following results:

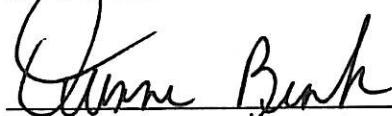
| | <u>NAME OF FIRM</u> | <u>BID AMOUNT</u> |
|----|--|-------------------|
| 1. | International Pavement Solutions, Inc. | \$613,828.00 |
| 2. | Grand Pacific Contractors, Inc. | \$663,158.50 |
| 3. | Hardy & Harper, Inc. | \$679,000.00 |
| 4. | Matich Corporation | \$751,157.00 |
| 5. | All American Asphalt | \$753,000.00 |
| 6. | Silvia Construction Company, Inc. | \$766,380.00 |
| 7. | Contreras Construction Company | \$792,848.75 |
| 8. | Elite Bobcat Service, Inc. | \$808,999.00 |
| 9. | Imperial Paving Company | \$817,843.50 |

*Please note that some of the above bid amounts differ from those shown on the Bid Opening Summary Sheet due to math/clerical errors on the Bid. The above numbers are the correct values.

The Engineer's estimate for the project is \$650,000.00.

FISCAL DATA: The majority of funds necessary to cover this project have been previously appropriated in the Measure "A" (\$515,278.00), SB-821 (\$136,400.00 was appropriated but only \$106,176.00 may be needed) and AB 2928/Proposition 42 (\$35,968.00) funds. An additional appropriation from the AB 2928/Proposition 42 funds in the amount of \$17,578.00 is needed for the Street Fund, Account No. 100-4901-431-9315, to cover the remaining costs of the project.

RECOMMENDED BY:



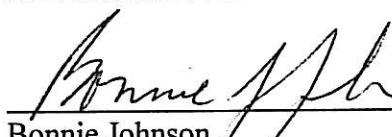
Duane Burk
Director of Public Works

REVIEWED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Finance Director

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RESOLUTION NO. 2008-39

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2008-02, "A.C.
OVERLAY, PAVEMENT REHABILITATION AND SIDEWALK IMPROVEMENTS ON
VARIOUS STREETS"**

WHEREAS, on May 29, 2007 the City Council approved a 5 year Citywide Annual Street Rehabilitation Program for the City of Banning and it was subsequently approved by the Riverside County Transportation Commission (RCTC); and

WHEREAS, the City of Banning obtained a grant from the RCTC for the SB-821 Bicycle and Pedestrian Facilities Program Grant in FY 2007/2008 for one sidewalk project, amounting to \$93,000.00; and

WHEREAS, the project was advertised for bids on March 7, 2008 and bids were received and opened on March 28, 2008, with nine (9) contractors bidding the project; and

WHEREAS, International Pavement Solutions, Inc. of San Bernardino, California, is the lowest responsible bidder; and

WHEREAS, a majority of funding for the project is available in the Measure "A," AB 2928/Proposition 42 and SB-821 (Bicycle and Pedestrian Facilities Program Grant) funds, and an additional appropriation in the amount of \$17,578.00 from AB 2928/Proposition 42 funds to the Street Fund is necessary to cover the remaining costs of the project.

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

Section I. Award the construction contract for Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets," to International Pavement Solutions, Inc. of San Bernardino, California, for an amount "Not to Exceed" \$675,000.00 (which includes an approximate 10% construction contingency), and all other bids are hereby rejected.

Section II. Authorize the appropriation of \$17,578.00 from AB 2928/Proposition 42 funds to the Street Fund, Account No. 100-4901-431-9315, and authorize the Director of Finance to make the necessary budget adjustments related to these funds.

Section III. The Mayor is authorized to execute the contract agreement for Project No. 2008-02, "A.C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets." This authorization will be rescinded if the contract agreement is not executed by both parties within fifteen (15) days of the date of this resolution.

///

PASSED, ADOPTED AND APPROVED this 22nd day of April, 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. 2008-39, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of April, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

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EXHIBIT "A"

STREET AND SIDEWALK LIST

STREET PAVING LIST

| No. | Street Locations | 1-1/2" to 2-1/2" of A.C. Overlay | 1-1/2" of A.C. Overlay | 6" A.C. Berm | 4" of A.C. over Base | Grade, Compact, and Place Specified Base |
|-----|--|---|------------------------------|-----------------|-------------------------------|--|
| 1. | Westward Avenue, from Sunset Avenue to 22 nd Street (south side) | | | | * | * 6" Base |
| 2. | Wesley Street, from about 450 easterly of San Gorgonio Avenue to Hargrave Street | | * | | * | * 6" Base |
| 3. | Hathaway Street, from Wesley Street to Porter Road | | | | * | * 6" Base |
| 4. | 1 st Street, from Hays Street to Ramsey Street | * | | | | |
| 5. | Florida Street and Repllier Road intersection | | | | * | * 3" A.C. 4" Base |
| 6. | Wesley Street and Hargrave Street intersection (southeast corner) | | | * | * | * 6" Base |
| 7. | Alessandro Road, from Hoffer Street to King Street (west side) | | | * | * | * 6" Base |
| 8. | Wilson Street, from Apex Street to Highland Springs Avenue (north side) | | | * | | |
| 9. | Williams Street, north side, west of 381 E. Williams Street | | | * | * | * 8" Base |
| 11. | Ramsey Street, berm in median, east of Omar Street on east bound side | | | * | | |
| 12. | San Gorgonio Avenue and Hoffer Street intersection (northeast corner) | | | * | | |

SIDEWALK IMPROVEMENT LIST
FISCAL YEAR 2007/2008
SB-821 FUNDED

| No. | Sidewalk Locations | From | To |
|-----|------------------------------|---------------|-----------------|
| 1. | Williams Street (north side) | Martin Street | Hathaway Street |

EXHIBIT "B"

**NOTICE INVITING TO BID
AND BID OPENING SUMMARY**

**NOTICE INVITING TO BID
PROJECT TITLE: NO. 2008-02
"A.C. OVERLAY, PAVEMENT REHABILITATION AND SIDEWALK
IMPROVEMENTS ON VARIOUS STREETS"**

OWNER: City of Banning

PROJECT DESCRIPTION: The scope of work under this project includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per City Engineer's recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes, and mailboxes when required by the Public Works Inspector; striping improvements; and cleaning; etc., on various streets. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector.

PLANS & SPECS: Available March 7, 2008 at City of Banning, 99 E. Ramsey St., Engineering Div., (951) 922-3130; non-refundable \$40 per set, + \$10/mailing.

REQUIREMENTS: Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Class "A" Contractor's License

NON-MANDATORY PRE-BID MEETING: March 18, 2008 @ 9 a.m., at City Hall, above address.

SEALED BIDS DUE: March 28, 2008 and Opened Publicly @ 10:00 a.m., at the above address, Attn: City Clerk

CITY OF BANNING, CALIFORNIA

Dated: 3-03-08



Marie A. Calderon
City Clerk

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**SUMMARY OF BIDS RECEIVED
CITY OF BANNING**

PROJECT NO.: PROJECT NO. 2008-02

**DESCRIPTION: A. C. OVERLAY, PAVEMENT REHABILITATION AND
SIDEWALK IMPROVEMENTS ON VARIOUS STREETS**

BID OPENING DATE: March 28, 2008 TIME: 10:00 a.m.

| NAME OF BIDDER: | Schedule 1 | Schedule 2 | | TOTAL BID AMOUNT: |
|--|---------------|---------------|--|-------------------|
| Grand Pacific Contractors, Inc. Corona, CA | \$ 585,708.50 | \$ 120,450.00 | | \$ 706,158.50 |
| Hardy & Harper, Inc. Santa Ana, CA | \$ 549,000.00 | \$ 130,000.00 | | \$ 679,000.00 |
| Contreras Construction Company Indio, CA | \$ 669,103.75 | \$ 123,745.00 | | \$ 669,103.75 |
| All American Asphalt Corona, CA | \$ 588,000.00 | \$ 165,000.00 | | \$ 753,000.00 |
| EBS Inc. Corona, CA | \$ 662,249.00 | \$ 146,750.00 | | \$ 808,999.00 |
| Matich Corp. San Bernardino, CA | \$ 624,257.00 | \$ 126,900.00 | | \$ 751,157.00 |
| Silvia Construction, Inc. Rancho Cucamonga, CA | \$ 635,390.00 | \$ 129,350.00 | | \$ 764,740.00 |
| International Pavement Solutions, Inc. San Bernardino, CA | \$ 517,278.00 | \$ 96,550.00 | | \$ 613,828.00 |
| Imperial Paving Co. Santa Fe Springs, CA | \$ 683,445.00 | \$ 134,675.00 | | \$ 818,119.00 |

VERIFIED BY:

John G. Collier, City Clerk
Ann Marie Scott, Associate Civil Engineer

NOTICE INVITING TO BID

PROJECT NO. 2008-02

**“A.C. OVERLAY, PAVEMENT REHABILITATION AND SIDEWALK
IMPROVEMENTS ON VARIOUS STREETS”**

PRESS ENTERPRISE

THE PRESS-ENTERPRISE

3512 Fourteenth Street
Riverside CA 92501-3878
951-684-1200
951-368-9018 FAX

PROOF OF PUBLICATION (2010, 2015.5 C.C.P.)

Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: Project 2008-02

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper of general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673 and under date of August 25, 1995, Case Number 267864; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

03-07-08

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

Date: Mar. 7, 2008
At: Riverside, California

Ad Copy:

NOTICE INVITING TO BID
PROJECT TITLE NO.
2008-02
"A.C. OVERLAY,
PAVEMENT
REHABILITATION AND
SIDEWALK IMPROVE-
MENTS ON VARIOUS
STREETS"

OWNER: City of Banning
PROJECT DESCRIPTION: The scope of work under this project includes grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per City Engineer's recommendations; constructing A.C. berm, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes, and mailboxes when required by the Public Works Inspector; striping improvements; and cleaning, etc., on various streets. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector.

PLANS & SPECS: Available March 7, 2008 at City of Banning, 99 E. Ramsey St., Engineering Div., (951) 922-3130; non-refundable \$40 per set, + \$10 mailing.

REQUIREMENTS: Prevailing Wage, Certified Payroll,

Bid Bond, Payment and Performance Bond, Class "A" Contractor's License.

NON-MANDATORY PRE-BID MEETING: March 18, 2008 @ 9 a.m. at City Hall, above address.

SEALED BIDS DUE: March 26, 2008 and Opened Publicly @ 10:00 a.m., at the above address, Attn: City Clerk

CITY OF BANNING,
CALIFORNIA
Dated: 3-03-08
S/ Marie A. Calderon
City Clerk

3/7

PUBLIC WORKS / CITY OF BANNING

99 E RAMSEY ST
BANNING CA 92220

Ad #: 9114536

PO #:

Agency #: _____

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