

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

May 13, 2008
6:30 p.m.

Banning Civic Center
Council Chambers
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

Report by City Manager

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

*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)

1. Approval of Minutes – Regular Meeting – 04/22/08 1
2. Resolution No. 2008-45, Approving the Professional Services Agreement for Construction Management Services for Project No. 2007-07, Construction of the New Banning Police Station 12
3. Resolution No. 2008-48, Approving an Agreement with Siddhi Development, LLC for the Deferral of Required Development Impact Fees in the Amount of \$569,824.30 Associated with the Development of the La Quinta Hotel located on the north side of Joshua Palmer Way, east of Highland Springs Avenue & west of Apex Avenue (APN: 419-120-020 & 419-10-022) 20
4. Resolution No. 2008-51, Approving the National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit Implementation Agreement. 61
5. Resolution No. 2008-54, Recognizing the Green Valley Initiative As a Means to Becoming a Center of Green Technology. 82
6. Approve Amendment to Original Agreement with Civic Solutions, Inc. for Interim Community Development Director Services for the City of Banning Community Development Department. 92
7. Recommendation for the Installation of “Speed Humps” on Wesley Street between San Geronio Avenue and Hargrave Street. 93
8. Approve Final Tract Map No. 34330, Butterfield/Deutsch Specific Plans (located at the northeast corner of Highland Springs Avenue and Wilson Street). 94
9. Sponsorship of Western Riverside Council of Governments (WRCOG) 17th Annual General Assembly. 97
10. EDC Take the Lead to Establish a Pass Area Tourism Council. 100
11. Approval of Accounts Payable and Payroll Warrants for the Month of March 2008 101

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

IV. REPORTS OF OFFICERS

1. Matthew Bassi, Interim Community Development Director
 - A. Draft Ordinance Regulating Boarding Houses and Residential Care Facilities 103Recommendations: **That the City Council provide staff with direction on the attached draft ordinance so that a final draft can be prepared and brought to the Planning Commission for action and recommendation to the City Council.**

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 Unified 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. Update on Warehouse Moratorium (*Salas/Franklin – 03/25/08*) (*City Mgr.*) (*ETA 5/27/08*)

FUTURE MEETINGS

1. Redevelopment Workshop on OPA and Façade Grant Programs
Possible Date: May 29, 2008 at 6:30 p.m.

VI. CLOSED SESSION

1. Pending Litigation
The City Council will meet in closed session to confer with legal counsel pursuant to the provisions of Government Code Section 54956.9(a) with regard to the following matters of pending litigation:
 - Highland Springs Conference and Training Center v. City of Banning - (RIC 460950)
 - Center for Biological Diversity v. City of Banning – (RIC 460967)
 - Cherry Valley Pass Acres and Neighbors, and Cherry Valley Environmental Planning Group v. City of Banning – (RIC 461035)
 - Banning Bench Community of Interest Association, Inc. v. City of Banning – (RIC 461069)

2. Potential Litigation
That the City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) to confer with legal counsel with regard to one matter of significant exposure to litigation.
3. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Attorney 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].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/22/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on April 22, 2008 at 6:48 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

BOARD MEMBERS ABSENT: Councilmember Botts

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
Chris Paxton, Human Resources Director
Ted Yarbrough, Fire Marshal/Fire Prevention Officer
Jeff Stowells, Battalion Chief
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 Henry Ramirez, Morongo Faith Chapel.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

PUBLIC COMMENTS – On Items Not on the Agenda

Ellen Carr, 471 W. George St. addressed the Council representing Tender Loving Critters Animal Rescue. She asked for a chance so that they can live in peace with their neighbors and do what they do best to rescue and love the animals. She submitted to the Council some correspondence which tells a little bit about Tender Loving Critters in what they have done and what they would like to do.

Karen Clavelot, 5449 W. Riviera thanked all of the volunteers and all of the organizations, Public Works, Banning Police, Fire Department and everyone that helped

on Saturday for the Art Hope. It was a wonderful collaborative adventure for all of them. She received feedback that it was a great event. On Saturday, April 26 from 2 to 5 p.m. there will be a Gallery Reception for the Plein Air Artists of Riverside featuring their California Mission paintings. In the Gallery on May 24th the featured artist will be Mary Backer. The Healing Arts Program at the San Gorgonio Memorial Hospital will take place on May 11 and Peggy Gust will be the accomplished violinist performing. This is not just for the patients but also staff and those visiting someone at the hospital.

Rick Diaz, resident of Banning addressed the Council announcing the Banning Mexican-American Scholarship Association dinner to take place on May 5 at the Banning High School Multi-Purpose Room beginning at 6 p.m. to 8 p.m. Cost is \$10.00 for adults and \$5.00 for children. There will also be entertainment.

Bill Dickson, 5700 W. Wilson addressed the Council following up on what Mr. Diaz said. He said that his first association with the group was last night and he thinks the thing that was most interesting was the letters they received from some of the students that did receive the scholarships. The only disappointment was that there were not enough applicants. He would encourage everyone to support this program and attend the dinner and he would really like to see when they can get to the point where they are giving out 10 to 15 scholarships and that can only be done with the help of the community and its leaders.

Karen Hicks, 98 E. Santa Rita Place addressed the Council regarding an article in the newspaper about the San Gorgonio Memorial Hospital. It has a very big debt and they basically owe millions. They signed up with a company named "Brim" and there is an article dated 7/6/2007 saying that San Gorgonio like many of Southern California non-profits hospitals was struggling to survive in a heavily managed care environment. When we hired Brim San Gorgonio was going through hard times. The turnaround has been dramatic and dynamic. It also says, "Like us, Brim has a 'Can Do' committed attitude." The things that they are to do for San Gorgonio Memorial Hospital is to reduce accounts receivable backlog and improve collections by giving business office professionals the best resources and practices; modernize the hospital with new space for emergency services and intensive care, new administrative and medical offices and upgraded patient care rooms; relied heavily on Brim, saving considerably on independent consultant costs. Ms. Hicks said that none of this has been done and it is now April 22, 2008. She submitted copies of articles to the Council regarding this issue. She asked the Council for help and suggestions to reduce cost and improve the financial picture of the hospital. They need ideas and most of all they are asking in August that people vote for a new board. They need new people on that board.

Mayor Salas asked the City Manager to look at this and give the Council a report at the next meeting or prior to that with a memo in their boxes regarding the findings that he has come up with. She has had several concerns from the community in regards to the hospital in possibly taking a turn in maybe a not so good direction from what she hears and she would like to know a little bit more.

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Chris McCallum, 757 W. Westward and owner of Dream Makers Limousine addressed the Council regarding the Relay for Life. He said that the Armored Bearers and Motorcycle Ministry from Pure Rock Church in Beaumont will be raffling off at the Relay a special day with Dream Makers Limousine picking you and a guest up at a chosen location and off to be pampered by Salon Tranquility in Calimesa where you and a guest will both receive haircut and style, facial and relaxing massage and lunch. The money raised is great but the reality is that this Relay is the awareness of cancer. He also expressed that he was a cancer survivor and explained what happened to him. He asked that people buy a ticket for this cause and that the people of Banning come and support the Relay for Life and walk a lap because you will see someone you know either on the walk or walking around that is a survivor like him and that is more important than money.

Mayor Pro Tem Franklin asked, if the rest of the Council is in concurrence, when we have the report by the City Attorney to add a report by the City Manager on the agenda to address the comments that the Council gets in the public comments section and they could receive a follow-up from prior meetings. There was Council consensus.

Mayor Salas said at the last Council meeting the Council did support our cancer team here at the City to the tune of \$5,000 and so the Council does support the Relay for Life and will continue to do that every year at least while she is here.

CORRESPONDENCE: None

PRESENTATIONS:

1. Proclamation – May 2008 as Mental Health Month

Mayor Salas and the City Council presented the proclamation to Christina Salas who was appointed by the Riverside County Board of Supervisors to the Mental Health Board.

Ms. Salas thanked the Council and the community for their commitment to bringing about awareness and understanding of mental illness. Mental illness as it states is the number one disability in America and it affects everyone. It affects the community, the consumers, as well as, their families. There is a direct correlation between mental illness and homelessness. In the city of Banning there is the Mental Health Clinic and that serves the community from Calimesa to Cabazon. On any given day they serve up to 50 people and right now they are also dealing with budget cuts but they are providing several services such as medication support and also have counselors there and therapist who work directly with the individuals, as well as, their families. They goal is recovery. Also just established is a Harmony Center that meets at the Banning Community Center and they offer classes for family members and peer support groups for individuals of mental illness. Also with the resources they have they are outreaching to the community and individuals with mental illness.

ANNOUNCEMENTS/COUNCIL REPORTS:

Mayor Pro Tem Franklin –

- Commended United Water Plant in Banning on receiving 2nd Place statewide for their competition for Small City Operations.
- Commended the City employees for their participation in the United Way Campaign for this year and our City received Outstanding Municipality Campaign and also received a Gold Award and the City's two coordinators were Kris Harapan and Rita Chapparosa.
- Attended Legislative Action Days in Sacramento and there was one main topic which was the budget. There were no concrete ways given as solutions but they did say there would probably have to be some give on both sides, everybody is going to have to share in the wealth of the cuts and there may be additional user fees for different services that we have. The budget revision will come out on May 15th. Also our female Speaker of the House will take her seat on May 13, 2008 and that is Karen Bass.
- Recycling Fair was put on by WRCOG for the first time this year and there was good participation by our PBAL students and there were many booths but we need to get in the habit of doing this and hopefully another will be held and more people will come out.
- Attended the Riverside Workforce Development Strategic Planning Program and they discussed ideas of how to connect the workforce with the employers. One thing that came across very strongly was that we are not getting people now or anticipated in the near future the people with the soft skills necessary to do the jobs that are going to be available. For that day they did talk about how to make a connection including our education systems, transportation system and all the different things we need to make sure that we have a way to connect the people who want jobs with those people that have jobs.
- Thursday, April 24th – Open House for the Mt. San Jacinto Office here in Banning. They can register for classes at the college at that site. This is also a Banning Chamber mixer starting at 5:30 p.m.
- Saturday, April 26th – 3rd Annual Disaster Survival Expo at the Banning Community Center. There will be 28 booths indoors with 10 outside. There will also be many giveaways, raffles and coloring contest. She commended Karen Soto the Banning High School student who did the winning drawing for the Survival Expo but the committee was also impressed with the amount of expertise of the drawings submitted.
- There will be a City Clean-up day on May 10th.

Councilmember Hanna –

- Today is Earth Day. She attended a Municipal Green Building Conference and Expo that was sponsored by the Gas Company regarding going Green. They heard from cities of what they are doing to get involved in green programs. What is means to be “Green” is that we are reducing the amount of energy, amount of water that is necessary for a good quality of life. She learned many different things but one thing she learned was about the importance of trees in terms of holding water and if Southern California uses comprehensive programs that involves trees it could reduce water imports by 50% and reduce pollution into the Bay, etc. And this

Council has given staff direction that we want to be a “clean and green” city and they are waiting for staff to come back with a comprehensive program of how this can be accomplished. The Council has received these “green” bags from the Public Utilities Department and she asked the Director to give an explanation about these bags.

Jim Earhart, Public Utilities Director explained that in their on-going efforts to move Banning “green and clean” as we can this is their latest promotional product and they will be provided at the Survival Expo on Saturday. Next time someone asks you “paper or plastic” he would say “canvas” and let’s go forward with these things and start using them. Let’s reduce the manufacturing and disposal of all paper products, paper sacks and plastic because of what it does to our waste facilities and it is bad for the environment so let promote canvas. The department will continue to promote their programs and they have 15 programs now that offer incentives and rebates for the public benefit.

Mayor Salas –

- Attended the First 5 Commission and basically the topic was Child Care and now with the enormous growth in our County we are substantially below the child care needs. They discussed possible solutions and how to work together in a collaborative effort to address this issue.
- Had a roundtable discussion last Friday at Banning High School with 23 students and they gave ideas and thoughts and had questions about the city. One thing that came in echoing comments was their concern with food in the school. She did let them know that there was not a whole lot the City could do about that but did refer that to Amy Herr about having healthier food in the school. Also they would like to have more events here in the city and possible Battle of the Bands event.
- Attended a meeting for Supervisor Ashley (Pass Area Municipal Advisory Council) and this Council puts together all the unincorporated areas in the County and the reason she is bringing this up is that it might be beneficial for the City Council to have a representative who would attend these meeting regularly to find out what is happening.
- She commended the organizers of the Art Hop and said it was most successful. She met with the vendors and they are excited to come back next year and some came from as far away as Las Vegas and Victorville.
- May 1st is the National Day of Prayer and at 8 a.m. Pastor Westholder is putting together a breakfast. Banning and Beaumont are coming together with their leadership and the pastors for the entire Pass Area to pray over our communities and that is something that is important as we move forward.

CONSENT ITEMS

Councilmember Machisic pulled Consent Item No. 11 and Councilmember Hanna pulled Consent Item No. 7 for discussion.

1. Approval of Minutes – Regular Meeting – 04/08/08

Recommendation: That the minutes of the Regular meeting of April 8, 2008 be approved.

2. Ordinance No. 1386 – 2nd 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.

Recommendation: That Ordinance No. 1386 pass its second reading and be adopted.

3. Ordinance No. 1387 – 2nd 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.

Recommendation: That Ordinance No. 1387 pass its second reading and be adopted.

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.

Recommendation: That Resolution No. 2008-42 be adopted and approve emergency repairs related to water damage at city Hall and all related expenditures and authorize the Director of Finance to make the necessary budge adjustments and appropriations to cover all costs incurred in the amount of \$7,093.97.

5. Resolution No. 2008-43A, 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.

Recommendation: 1) That the City Council adopt Resolution No. 2008-43A 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) 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; 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.

6. Resolution No. 2008-44, Approving the Measure "A" Five Year Capital Improvement Plan.

Recommendation: That the City Council adopt Resolution No. 2008-44, approving the Measure "A" Five Year Capital Improvement Plan as presented.

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.

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.

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.

Recommendation: That the City Council 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.

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.

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" \$34,990.00.

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

**Motion Machisic/Franklin to approve Consent Items 1 through 6 and 8 through 10.
Motion carried, all in favor with Councilmember Botts absent.**

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.

City Manager asked that this item be tabled until the next Council Meeting so that the Council can digest the additional information that was provided to them and if there are any questions or comments the Council can contact him or Mr. Burk, the Public Works Director.

Motion Hanna/Machisic that Consent Item No. 7 be tabled to the next Council Meeting. Mayor Salas asked if there were any comments on this item. There were none.
Motion carried, all in favor with Councilmember Botts absent.

11. Cal Heat Pass Area Baseball Club Donation.

Councilmember Machisic said that he pulled this item to hear more information from the group.

Frank Linares native of Banning addressed the Council stating that he graduated from Banning High School in 1985. He moved away from the community for awhile and when he returned he thought about what he could do to help give back to the community and since he loves baseball so much he thought about putting together a program. Travel ball used to be designed for improving on skill level and throughout the years it has become so competitive that coaches literally go out in the areas and recruit the best athletes. He made it a point to stay in the community and the first year it originated was 2004 and he had a group from Banning and some adjustments have been made since then. This year three teams were established and the 13 and under team probably had 50% of the kids from Banning and this will be their last year for the 13 and under team. It was 50% Beaumont/Cherry Valley and 50% were Banning. He has an 8 and under division which will break-off and start their own program and he is left with the 12 year olds. A majority of these kids are from Beaumont/Cherry Valley and he is the director from Banning and his son plays on this team also. He introduced his Board to the Council. He said that they were presented with a once in a lifetime opportunity and they are reaching out to the community for some assistance. They have done many fundraising events and with the economy the way it is it has been very difficult. They have raised about \$4,000 and the City of Beaumont has also contributed to their fundraising efforts. They are asking the City of Banning for some sponsorship help. Mr. Linares said this once in a lifetime trip is to Cooperstown New York and they will be competing in the National Cooperstown Tournament of Champions. He also went over the other sites they will be visiting. The cost is \$1,865 per player for this trip. There was further information given on the team's fundraising efforts.

Motion Machisic/Salas to donate \$5,000 to the Cal Heat Pass Area Baseball Club for their trip.

Mayor Salas opened the item for public comments.

Christina Salas, 604 Pendleton asked how close they were to reaching their goal.

Mr. Linares said that they are about \$8,000 away. Their main focus is to get the kids there and then work on the coaches to assist them. Any other money that is available or left over will be spread evenly to help the parents offset their costs.

Mayor Salas closed the item for public comments.

Motion carried, all in favor with Councilmember Botts absent.

REPORTS OF OFFICERS

1. 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.
(Staff Report - Duane Burk, Public Works Director)

Mr. Burk gave the staff report on this item as contained in the staff report. He said that on page 113, on First Street from Hays to Ramsey St., they will not be paving that street in anticipation that they will be working with the Utility Department to put new infrastructure in there. So what they are going to do because there was a request to do some improvements there so they are going to crack, seal and slurry that street because there are a lot of events down there so and they need to fix some of those cracks. So when they tear it up it will not be the new asphalt.

Councilmember Hanna asked about sidewalk improvements.

Mr. Burk said the sidewalk improvements will be on Williams Street on the north side from Martin to Hathaway Street and that is a continuation of the sidewalk they did last year on Williams Street.

Mayor Pro Tem Franklin asked Mr. Burk to give a brief overview on how streets are selected for this process and what time frames are we looking at to get the work done.

Mr. Burk said that many years ago there was a master paving list and the City has been very aggressive in paving projects annually. The master paving list was adopted by previous Council's and those are the streets that they follow in paving the roads. There are individual requests that come out for example, First Street from Hays to Ramsey as a request for the downtown area. They try to coordinate projects as it relates to the utilities and improvements. It is anticipated that this year there will be a new master paving list and will do more of an inventory of the streets that are out there and bring that list back to the Council. The timeline to do this once it is approved is to start the project in May and it will take about two months.

There was some further Council discussion regarding street overlay and sidewalks.

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

Motion Machisic/Franklin that the City Council adopt: 1) 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; and 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. Motion carried, all in favor with Councilmember Botts absent.

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 Unified 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*)

Councilmember Hanna said that they needed to add the meeting with the Morongo Tribal Council for May 1st at 5:30 p.m. Also need to schedule the workshop for Redevelopment.

Mayor Pro Tem Franklin said that the Community Action Partnership of Riverside County is sponsoring a Poverty Symposium on May 22nd at Morongo. It is open to the public and one of the featured speakers is John Husing who will be speaking on the economy and how it is impacting our poor. It will be held from 9 a.m. to 2 p.m.

There was Council discussion regarding the Workshop on the OPA and Façade programs and the date suggested was May 29th at 6:00 or 6:30 p.m. pending Councilmember Botts is okay with that date. City Manager will confirm the date with Councilmember Botts.

Mayor Salas asked when our bills will be able to be paid on-line.

Finance Director said that just today they were testing it and did some test payments and they are planning on doing some more testing and training of staff next week and she would anticipate and in probably two to three weeks they will be telling the public that it is available to them. They are testing to make sure everything works on the accounting end and the accounts are updating properly.

Mayor Salas said she attended a meeting with the Beaumont City Council and several residents and it was the Beaumont Women’s Club 100 Year Anniversary. The history that both Banning and Beaumont provide to our communities is important. She said that

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after we bring back our ordinance on how we name streets she would like the Council to consider naming streets after these founding President's because of the history they have brought to the Pass Area. The Beaumont Mayor Brian De Forge said that he would also do that in Beaumont. This would be for a future date.

Mayor Salas said that she would like to close the meeting in memory of two ladies that have contributed to our community and that is Mary Clever who was a Red Coat Chamber Ambassador and Joy Holden, wife of Chamber Executive Director Jack Holden.

Mayor Pro Tem Franklin said she would like to add to that the name of Sylvia Johnson who passed away during the Relay for Life last year.

Councilmember Machisic said that he appreciates the list of dates that he receives from the City Clerk and he is most appreciative of that because they write dates down and possibly put down the wrong date or time and the list clarifies the matter.

Mayor Salas asked for a moment of silence for those ladies mentioned that have passed away.

CLOSED SESSION

There was no closed session this evening due to the absence of Councilmember Botts.

ADJOURNMENT

By common consent the meeting adjourned at 7:50 p.m. in memory of Mary Clever, Joy Holden and Sylvia Johnson.

Marie A. Calderon, City Clerk

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: May 13, 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 Proposals (RFP) was sent to Byers Construction Management, Cal K-12 Construction Management, Neff Construction, Inc., and Tilden-Coil Constructors, four firms that provide 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 the New Banning Police Station, 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 technical competency, project understanding and approach, the proposed project team's technical experience, project management, and responsiveness to the RFP. 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. A comparison between both firm's response to the RFP is attached as Exhibit "A." 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, and deemed by the Review Committee to be the most qualified, it is prudent to approve the Construction Management Services (CMS) proposal they submitted. A copy of Cal K-12 Construction Management's proposal was forwarded to City Council under a separate cover and the Fee Proposal is attached as Exhibit "B."

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 current BUA bond proceeds and related interest earnings balance is approximately \$14,230,747.00.

RECOMMENDED BY:



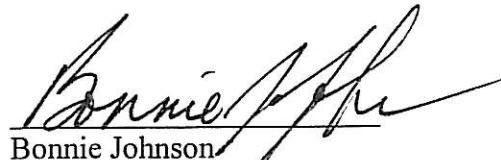
Duane Burk
Director of Public Works

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 firms that provide Construction Management Services 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 extensive experience and overall 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.

PASSED, ADOPTED AND APPROVED this 13th day of May, 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 13th day of May, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"

PROPOSAL COMPARISON FOR CONSTRUCTION MANAGEMENT SERVICES FOR PROJECT NO. 2006-07: "CONSTRUCTION OF THE NEW BANNING POLICE STATION"

	CAL K-12 CONSTRUCTION MANAGEMENT	BYERS CONSTRUCTION MANAGEMENT
1.	37 recent projects with construction costs varying from \$83,500.00 to \$29.9 Million.	Zero projects as Byers Construction
2.	Incorporated in 1999.	Incorporated in 2007
3.	18 full time employees Project team consists of one full-time Construction Manager. 7 staff members will be available for the PD project with multiple degrees and certificates and extensive experience in construction management (totaling over 100 years).	Byers Construction Management primarily consists of one person, Mac Byers, whom also consists of the entire team to be provided during construction. Mr. Byers has 26 years of experience. It was mentioned by Mr. Byers that there would be a chance that he would be juggling multiple projects along with the PD project.
4.	Meets all insurance requirements	Did not meet insurance requirements
5.	Current reference letters (all from 2008) from numerous school districts.	Although the reference letters were all good, many were pre 1996 for various firms and positions such as: superintendent, field engineer, and construction manager.
6.	The proposal expressed a thorough understanding of the project, included a concise list of the proposed services and activities and provided a well thought out project approach.	Although the proposal was well organized and put together, the overall responsiveness to the Request for Proposals lacked in certain areas such as proposed services and activities, team organization and firm experience.
7.	Review Committee Average Score: 93.7	Review Committee Average Score: 84

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

CAL K-12 CONSTRUCTION MANAGEMENT



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
CONSENT ITEM**

DATE: May 13, 2008

TO: Honorable Mayor and City Council

FROM: Matthew Bassi, Interim Community Development Director 

Subject: Agreement for Deferral of Development Impact Fees Between the City of Banning and Siddhi Development, LLC, for the La Quinta Inn Hotel Project

RECOMMENDATION:

That the City Council adopt Resolution No. 2008-48 authorizing an Agreement between the City of Banning and Siddhi Development, LLC for the deferral of Development Impact Fees for the La Quinta Inn project.

BACKGROUND:

On November 13, 2007, the City Council adopted Resolution No. 2007-140 authorizing the execution of deferral agreement with Siddhi Development, LLC for the deferral of development impact fees for the La Quinta Inn project. A primary component of the Council resolution was that the project applicant had to execute the agreement within 60 days of Council approval (January 13, 2008) or the authorization would become void and of no effect. The January 13, 2008 deadline passed and the agreement was never executed.

The project applicant has nearly completed the building plan check process and would like to pull building and grading permits to begin construction of the project. However, since the deferral agreement was not executed, development impact fees would have to be paid by the applicant before the city issues building permits. The applicant would like the Council to reconsider deferral of the development impact fees; thus, staff has brought the item back to Council for formal approval. A copy of the updated agreement is provided for Council review (Attachment 1 of Resolution 2008-48).

ANALYSIS:

The following analysis is provided from the November 13, 2007 Council report.

Siddhi Development, LLC, is proposing to construct the La Quinta Inn & Suites, a 49,128 square foot hotel with 91 rooms, a swimming pool and 1,000 square feet of meeting space. The Hotel will be located on the north side of Joshua Palmer Way adjacent to the Farm House restaurant. The City has established a regular program of imposing the payment of certain Development Impact fees, Permit and Processing Fees ("Development Impact Fees") on the

construction of new development projects with respect to the connection to the City utility services as well as inspection and processing permits by various City departments. These Development Impact Fees are typically payable to the City prior to the issuance of building permits.

In Certain circumstances, however, it may be in the public's benefit to defer the payment of the Development Impact Fees, as long as adequate security is provided for future payment of the fees. Where a project involves significant capital investment, is located in a redevelopment area, and will serve to either encourage further development of an area where development has been stagnant or where the project will provide a needed service, the City Council may find that the project qualifies to have payment of the Development Impact Fees deferred.

Furthermore, many commercial enterprises and lenders regularly offer "deferred payment – same as cash" programs under which a person is permitted to receive the benefit of the product or service for a specified period of time without the need of paying interest, provided that the full cost is paid by a date certain. These "deferred payment-same as cash" arrangements are commercially available and considered market transactions.

This "deferred-payment-same as cash" arrangement will be used in this Agreement and Siddhi Development will be able to defer payment of its Development Impact Fees for a two (2) year period, then interest will begin to accrue for the remaining six (6) year period. As further evidence of Siddhi Development's obligation to pay the Development Impact Fees, Siddhi Development will execute a Promissory Note which will be secured by a Deed of Trust recorded against the property.

This Project is considered eligible for participation in the deferral of Development Impact Fees because it is located in a redevelopment area, provides a need to local and area residents and will serve to encourage further development in an area where development has been stagnant or slow in improving.

FISCAL DATA:

In accordance with the Agreement, Siddhi Development will pay TUMF, MSHCP and School Fees in the amount of \$309,135.73 prior to the issuance of building permits. The Development Impact Fees, in the amount of \$569,824.30, must be paid within two years in accordance with the "deferred-payment-same as cash" arrangement. If the Development Impact Fees are not paid by the Developer within this period, Siddhi Development will pay the Deferral Amount, plus accrued interest, which will be a variable rate equal to the most recently published Quarterly Apportionment Rate for the Local Agency Investment Fund (refer to Agreement). Siddhi Development will be required to pay the remaining balance of the Permit Processing fees in the amount of \$68,900.18 prior to the issuance of building permits.

RECOMMENDED BY:



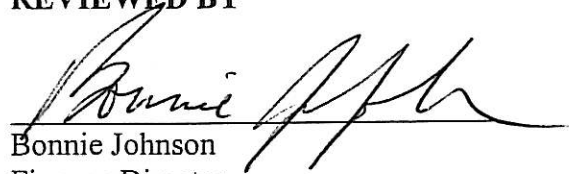
Matthew Bassi
Interim Community Development Director

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY



Bonnie Johnson
Finance Director

CC Exhibits:

1. Council Resolution No. 2008-48
Attachment 1 – Proposed Deferral Agreement (with exhibits)

COUNCIL EXHIBIT 1

City Council Resolution No. 2008-48

RESOLUTION NO. 2008-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT WITH SIDDHI DEVELOPMENT, LLC. FOR THE DEFERRAL OF REQUIRED DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$569,824.30 ASSOCIATED WITH THE DEVELOPMENT OF THE LA QUINTA HOTEL LOCATED ON THE NORTH SIDE OF JOSHUA PALMER WAY, EAST OF HIGHLAND SPRINGS AVENUE & WEST OF APEX AVENUE (APN: 419-120-020 & 419-120-022)

WHEREAS, Siddhi Development, LLC., has proposed the development of the La Quinta Inn & Suites, a 49,128 square foot hotel with 91 rooms, a swimming pool and 1,000 square feet of meeting space in the Redevelopment Project Area on the north side of Joshua Palmer Way, east of Highland Springs Avenue (APN: 419-120-020 & 419-120-022); and

WHEREAS, development of such a facility is consistent with the mission of the City of Banning Strategies for Economic Development to strengthen and expand the City's overall economic base; and

WHEREAS, Siddhi Development, LLC., will construct the referenced hotel facility in compliance with the approved development plans.

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

SECTION 1. The City of Banning and Siddhi Development LLC., enter into a Deferral Agreement for the deferral of Development Impact Fees in the amount of \$569,824.30 per the terms and conditions of the Deferral Agreement incorporated herein as Attachment 1.

SECTION 2. The Permit Processing Fees in the amount of \$77,044.68 (less credit for fees already paid as outlined in the Deferral Agreement) shall be paid by Siddhi Development, LLC prior to the issuance of building permits for the above referenced project.

SECTION 3. Authorizes the City Manager to execute the Deferral Agreement with Siddhi Development, LLC substantially in the form attached hereby and included as Attachment 1 by this reference made part hereto.

SECTION 4. If such agreement is not executed by all parties by June 27, 2008 (45 days from the effective date of this Resolution), such authorization shall become void and of no effect.

PASSED, APPROVED AND ADOPTED this 13th day of May, 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
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-48, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of May 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 1

La Quinta Hotel Deferral Agreement

**AGREEMENT FOR THE DEFERRAL
OF PAYMENT OF DEVELOPMENT
IMPACT FEES**

By and Between

CITY OF BANNING

and

Siddhi Development, LLC

DATED: _____, 2008

**AGREEMENT FOR PAYMENT OF
DEVELOPMENT IMPACT FEES**

This Agreement for Development Impact Fees ("Agreement"), dated for reference purposes as first indicated on the cover page, is entered into by and between the CITY OF BANNING, a California general law municipal corporation ("City") and Siddhi Development LLC, a California sole proprietorship ("Developer") on the following terms and conditions:

RECITALS

A. Developer is presently developing a Project on the Property located within the City of Banning, California. The Developer will need to obtain permits and approvals for the Project. A standard condition on the issuance of these permits will be the payment of City imposed Development Impact Fees. These Development Impact Fees are generally payable to the City at the time the project applicant submits an application to the City for these permits and approvals.

B. The City has established a regular program of the payment of specified Development Impact Fees to offset impacts on public services from new development within the City. These fees, listed below, are typically payable to the City at the time the project applicant submits an application to the City for permits and approvals.

C. In certain instances the City acknowledges that it may be to the public's benefit to defer the payment of Development Impact Fees until a specified time after the issuance of the permit or approval, provided adequate security for the future payment of the fees is provided. Generally where the project involves a significant capital investment by the developer, is located in a redevelopment project area, and will serve to either encourage further development of an area where development has been stagnant or where the project will provide a needed service, convenience, or accommodations to residents or visitors the City Council may find that the project qualifies to have the payment of Permit and Processing Fees and Development Impact Fees deferred.

D. Developer has requested that the Project be considered eligible for deferral of Development Impact Fees. The City Council has, based on the nature and location of the Project and the convenience it will provide to residents of the City that the Project qualifies for a deferral under the terms and conditions of this Agreement. Developer acknowledges and agrees that absent this Agreement it would be required to pay all Development Impact Fees at the time the Developer submits Project-related applications to the City.

E. Developer and City acknowledge that the California Prevailing Wage law normally applies to projects where public funds are used for construction or for the payment of fees that are mandatory conditions of construction. In this case, City is not paying fees but is instead deferring payment of them. Developer is absolutely bound to pay all required Development Impact fees, but will be allowed to pay them over time, with interest. Notwithstanding the foregoing, City will waive certain amounts of interest for the first two years of the payment period. Developer and City acknowledge that they have each and separately investigated California Prevailing Wage Law and have each and separately determined that the

City's assistance through waiver of interest constitutes a *de minimis* contribution of public funds, as defined by California Labor Code Section 1720(c)(3) and precedential decisions issued by the Department of Industrial Relations interpreting that Section. Notwithstanding the analysis and determination of the parties, Developer acknowledges that if the Department of Industrial Relations determines that the payment of public funds for the Project is not *de minimis*, then the construction and construction-related activities for the Project would be subject to the California Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project.

DEFINED TERMS

"Action" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (where administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument.

"City" shall mean the City of Banning, a general law, Municipal Corporation formed and existing under the laws of the State of California and any successor-in-interest to the rights, obligations, and powers of the City.

"Developer" shall mean Siddhi Development, LLC, a California sole proprietorship. The term "Developer" shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or equitable interest in the Property.

"Development Impact Fees" shall mean those development impact fees imposed and levied by the City to recover the cost of planned public facilities and to mitigate impacts of development on the City as are listed below. The Development Impact Fees include:

- Administrative Program Processing Fee
- Development Impact Fee
- Fire Protection Facilities & Equipment Fee (Fire Facilities Fee)
- General Facility & Equipment Fee
- General Plan
- Park Land Fee
- Police Facilities Fee
- Solid Waste Facility & Equipment Fee
- Traffic Control Facility Fee (Transportation-Signals Fee)
- Water Capital Facilities Fee

"Effective Date" shall mean the date the Agreement has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

"Local Agency Investment Fund (LAIF) Rate" shall mean a variable rate equal to the most recently published Quarterly Apportionment Rate for the Local Agency Investment Fund

(established and maintained pursuant to Government Code § 16429.1 *et seq.*) as published quarterly by the California State Treasurer's Office. During the Term of the Note, the Rate shall be adjusted quarterly to reflect the most recent rate published by the State Treasurer's Office for the LAIF.

"Litigation Expenses" shall mean all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action, including, but not related to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other cost or expense reasonably and necessarily incurred by the prevailing party in good faith and directly related to the Action. Where attorneys' fees are to be paid by Developer to the City's law firm on behalf of, or in defense of, City, the rate to be paid shall be the full litigation rate charged by the City's law firm to the City in accord with the City's contract with that law firm.

"Multiple Species Habitat Conservation Plan Fee" shall mean the impact fee imposed and levied under City of Banning Ordinance No. 1367 adopting the "Multiple Species Habitat Conservation Plan" ("MSHCP"). The MSHCP establishes a fee known as the "MSHCP-Fee, the purpose of which is to mitigate the incidental take of listed, threatened, and protected species and their habitats within areas of Western Riverside County, including the City of Banning. The City has decided to participate in the MSHCP through the adoption of Ordinance No. 1367.

"No-Payment Period" shall mean a period of two (2) years from and after the Effective Date of the Agreement.

"Payment Period" shall mean a period of Eight (8) years from and after the Effective Date of the Agreement for which Developer will have to pay the Deferral Amount, plus accrued interest, to the City as provided in section 3 [Terms of Payment].

"Permit and Processing Fees" shall mean those fees imposed and levied by the City with respect to the connection to City utility services as well as inspection, processing and granting of permits by various City departments. The Permit & Processing fees include:

- Block Wall Permit Fee
- Block Wall Plan Fee
- Building Permit Fee
- Computer Storage Fee
- Electrical Meter Installation Fee
- Electrical Permit Fee
- Energy Conservation Fee
- Engineering Plan Check Fee
- Fire Inspection Fee
- Fire Plan Check Fee
- Grading Fee
- Mechanical Permit
- Miscellaneous Fees

Multi Specifies Habitat Conservation Plan Fee (MSHCP)
New Construction Fee
Plan Check Fees
Plumbing/Gas Permit
Plan/Computer Storage Fee
Public Works Permit Fee
Public Works Inspection Fee
Retaining Wall Permit Fee
Retaining Wall Plan Check Fee
Sewer Lateral Permit Fee
Sewer Lateral Plan Check Fee
Strong Motion Implementation Plan (SMIP) Fee
Transportation Uniform Mitigation Fee (TUMF)
Traffic Control Facility Fee
Utility Connection Fee

“Project” shall mean the construction of a new building of approximate 49,123 square foot 91-unit hotel (La Quinta Inn & Suites) on the Property that is suitable for occupancy and use under General Commercial (G-C) of the City Zoning Ordinance.

“Property” shall mean those certain parcels of real property commonly known as Assessor’s Parcel Numbers 419-120-020 & 419-120-022 located at 6217 Joshua Palmer Street, City of Banning, State of California, as more particularly described in the legal description attached hereto and incorporated herein by reference as Exhibit 1 of this agreement.

“School Fee” shall mean any fee levied by a local school district as provided by law.

“Transportation Uniform Mitigation Fee” shall mean the development impact fee imposed and levied under City of Banning Ordinance No. 1344 adopting the “Transportation Uniform Mitigation Fee Program”. This program establishes a fee known as the Transportation Uniform Mitigation Fee (“TUMF”). The purpose of the TUMF is to mitigate the traffic impacts of local development on, and to provide funds for the improvement and expansion of, existing and planned regional transportation and circulation facilities (including, but not limited to, regionally significant state, county, and local, arterials, highways, and freeways) within Riverside County or such other sub-region of Riverside County, the boundaries of which exceed the boundaries of the City of Banning as they exist on the Effective Date of this Agreement and as they may hereafter be expanded by approved annexation. The City has decided to participate in this regional program through the adoption of Ordinance No. 1344.

OPERATIVE PROVISIONS

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

1. **Deferral And Payment.**

1.1 City's Deferral. The City agrees that Developer may defer payment of the Development Impact Fees in the amount of \$569,824.30 imposed on the Project by City for the Payment Period provided Developer remains in compliance with the terms, conditions, and covenants of this Agreement. The parties acknowledge that City normally requires the payment of all Development Impact Fees at the time the project applicant submits an application to the City for these permits and approvals. In this case, by virtue of this Agreement, the City will issue permits and approvals for the Project, provided all other requirements for the issuance of such permits have been met, even though the Developer will not have paid the Development Impact Fees.

1.2 Developer's Payment. Developer covenants and agrees to timely pay during the Payment Period the Development Impact Fees, together with all interest accrued thereon, as provided in this Agreement. Developer acknowledges that Developer's Property will be encumbered by a lien created by the recording of a Deed of Trust securing Developer's payment of the Development Impact Fees.

1.3 TUMF, MSHCP and School Fees. The total amount of TUMF, MSHCP and School Fees to be paid for the Project is \$309,135.73. Developer agrees to timely pay the TUMF, MSHCP and School Fees as required by the City prior to the issuance of building permits. The TUMF, MSHCP and School Fees are not subject to deferral pursuant to this Agreement.

1.4 Credit for Permit and Processing Fees Already Paid by Developer. The parties confirm that the Permit and Processing Fees total \$77,044.68 and Developer has already paid Permit and Processing Fees to the City in the amount of \$8,144.50. The remaining balance of \$68,900.18 shall be paid to the City prior to the issuance of building permits.

1.5 Prevailing Wage Law. California Prevailing Wage law applies to projects where public funds are used for construction or for the payment of fees that are mandatory conditions of construction. Pursuant to Section 1.1 [City's Deferral], City will defer payment of and Development Impact Fees, but will not itself pay any fees otherwise required to be paid by Developer. Where public assistance constitutes a *de minimis* contribution of public funds, as defined by California Labor Code Section 1720(c)(3) and precedential decisions issued by the Department of Industrial Relations interpreting that Section, an exception to Prevailing Wage Law applies. As agreed in Recital G, the parties understand that the amount of City assistance to the Project is *de minimis* as defined by the Department of Industrial Relations.

1.5.1 Deferral is not Payment of Public Funds. Developer is absolutely bound to pay all required fees, but pursuant to Section 3 [Terms of Payment] will be allowed to pay some of them over time, with interest pursuant to Section 3.2 [Payment Over Time]. The parties, having each researched California Prevailing Wage Law, agree that this deferral is not a payment of public funds pursuant to California Labor Code Section 1720(b). The deferral is instead a market transaction with the Developer paying market rate interest for the opportunity to pay the Development Impact Fees over time.

1.5.2 Basis for *de minimis* Contribution. In determining that City's contribution is *de minimis*, the parties took into account first the total City assistance by way of waiver of interest pursuant to Section 3.2.1 [No Payment Period]. The total assistance is sixty seven thousand twenty-nine dollars and eighty-one cents (\$67,029.81). The City then took into account the total cost of constructing the Project, which is approximately nine million seven hundred twenty-one thousand dollars (\$ 9,721,000.00). The anticipated City assistance by way of waiver of interest constitutes .69% of the total Project costs (\$67,029.81/ \$9,721,000.00). Based upon Department of Industrial Relations precedent, a public agency contribution of 1.64% was be deemed to be *de minimis* (See DIR Public Works Decision No. 2004-024) and so the City's contribution to the Project should also be deemed *de minimis*.

1.5.3 Developer's Agreement to Comply With Prevailing Wage Law. Notwithstanding this understanding, Developer acknowledges that if the Department of Industrial Relations determines either that the deferral of Permit and Processing Fees and Development Impact Fees constitutes the payment of public funds for the Project or that the payment of public funds for the Project by way of waiver of interest is not *de minimis*, then the construction and construction-related activities for the Project would be subject to the Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project.

2. Development Impact Fees

2.1 Total Development Impact Fees. The total amount of Development Impact Fees to be paid for the Project is \$569,824.30. Developer agrees to timely pay the Development Impact Fees as provided in this Agreement.

3. Terms of Payment

3.1 Absolute Payment Obligation. Developer has the absolute obligation to pay the entire outstanding balance of the Development Impact Fees. Notwithstanding the provisions of this Agreement granting Developer permission to pay the Development Impact Fees over time, such payment over time shall not be deemed to waive all or any portion of Developer's obligation to pay the entire outstanding balance of the Development Impact Fees. Failure to fully pay the Development Impact Fees as required shall be deemed a Default of this Agreement.

3.2 Payment Over Time. Developer shall pay the entire outstanding balance of the Development Impact Fees, plus accrued interest, by no later than the last business day of the Eighth (8th) year from and after the Effective Date of this Agreement. Developer shall make payment of regular monthly installments of principal and interest due on the first (1st) day of each month (and delinquent on the tenth (10th) day of each month). The installments shall be calculated in such a manner as to amortize the Development Impact Fees, plus accrued and capitalized interest over the remaining portion of the Repayment Period.

3.2.1 No-Payment Period. Developer shall commence payments of regular monthly installments of principal and interest on the first (1st) day of the third (3rd) year from and after the Effective Date. The period from the Effective Date through the first (1st) day of the third (3rd) year from and after the Effective Date shall be known as the "No-Payment Period" for purposes of this Agreement. No installment payments shall be due during the No-Payment Period, and no interest will accrue during that period.

3.2.2 Pre-Payment Option. At any time during the Payment Period, including but not limited to the No-Payment Period, Developer may pay the entire outstanding principal balance of the Development Impact Fees. Pre-payment shall include all principal amounts owed and all interest accrued as of that date. There shall be no penalty for pre-payment.

3.2.3 Interest Accrual and Payment. From and after the Effective Date until the outstanding principal balance on the Note has been repaid in full, the outstanding balance under this Agreement and the Promissory Note shall bear interest at a variable rate equal to Local Agency Investment Fund (LAIF) quarterly apportionment rate. Developer understands that the interest rate specified herein will fluctuate over the Repayment Period and that changes in such rate will not occur more often than on a quarterly basis, at the City's discretion. In no event shall the amount of interest paid or agreed to be paid to City exceed the maximum amount permissible under applicable laws.

3.3 Security. As further evidence of Developer's obligation to pay the Development Impact Fees, Developer shall execute and provide to the City a Promissory Note that is the same in all material respects to that attached hereto and incorporated herein by reference as Exhibit 2 of this Agreement. Developer's payment obligation under the Promissory Note and this Agreement shall be secured by a Deed of Trust recorded against the Property. The Deed of Trust shall be the same in all material responses as that attached hereto and incorporated herein by reference as Exhibit 3 of this Agreement.

3.4 Recordation of Agreement. Recordation of the Agreement is tied to the property in the form of the lien.

4. General Indemnity.

4.1 General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Developer expressly agrees to, and shall, indemnify, defend, release, and hold the City, and its respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, and lien, which arises out of, or are in any way related to, any act or omission of Developer, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the construction, use, or operation of the Project, notwithstanding that the City may have benefited therefrom, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Developer's officers, directors, employees, agents and contractors. The City shall not be responsible for any acts, errors or omissions of any person or entity except the City and its officers, agents, servants, employees or

contractors. The Parties expressly agree that the obligations of Developer under this Section shall survive the expiration or early termination of the Agreement.

5. Default And Remedies.

5.1 Default. Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

5.2 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

5.3 Legal Actions. In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

5.3.1 Jurisdiction and Venue. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, Central Branch, Civil Division, or if appropriate, in the United States District Court for the Central District of California, Eastern Division. Participant specifically waives any rights provided to it pursuant to California Code of Civil Procedure §394 and any federal statute or rule of similar effect.

5.3.2 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

5.3.3 Attorney's Fees. In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined here) in the Action shall be entitled to recover its Litigation Expenses from the other party in addition to whatever relief to which the prevailing party may be entitled. For the purpose of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a) (4) of the California Code of Civil Procedure.

5.4 Rights and Remedies are Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another Party.

6. General Provisions.

6.1 No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the City, and Developer. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties' obligations under this Agreement.

6.2 Recitals and Definitions. The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions of this Agreement.

6.3 Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. References to section numbers are to sections in this Agreement unless expressly stated otherwise.

6.4 Interpretation. The City and Developer acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction which provides the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

6.5 Severability. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

6.6 Amendments to Agreement. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the City and Developer.

6.7 Administration. Following approval of this Agreement by the City's Council, the City shall exercise its rights, perform its obligations, and otherwise administer this Agreement through the City Manager. The City Manager shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of the City, provided such actions do not materially increase the obligations of the City, make a commitment of additional funds to be paid by, or costs to be incurred by, the City, or result in a discretionary extension of time in excess of thirty (30) days. All other changes, modifications, and amendments shall require the prior approval of the City Council.

6.8 Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the parties shall be given in writing and

personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to the City:

City Manager
City of Banning
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3174

If notice is to be made to Developer:

Siddhi Development, LLC
Attn: Hina Jadav
1617 Maple Hill Road
Diamond Bar, California 91765

6.9 Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

6.10 Authority. The individuals executing this Agreement on behalf of Developer and the instruments referenced on behalf of Developer represent and warrant that they have the legal power, right and actual authority to bind Participant to the terms and conditions hereof and thereof.

6.11 Counterpart Originals. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

6.12 Effective date of Agreement. This Agreement shall not become effective until the date it has been formally approved by the City Council and executed by the appropriate authorities of the City and Developer.

6.13 Waiver of Actions. Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby

expressly waives any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or this Agreement.

IN WITNESS WHEREOFF, the parties hereto have executed this Agreement on the _____ day of _____, 2008.

CITY:
CITY OF BANNING

By: _____
Brian Nakamura
City Manager

ATTEST:

By: _____
Marie Calderon
City Clerk, City of Banning

APPROVED AS TO FORM:

By: _____
Burke, Williams & Sorensen, LLP

DEVELOPER:
Siddhi Development, LLC, a California Limited Liability
Company

Hina Jadav
Manager of Siddhi Development, LLC

EXHIBIT 1
Legal Description

LOT MERGER NO. 07-5102

EXHIBIT 'A'

BEFORE LOT MERGER

LEGAL DESCRIPTION

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

PARCEL 1

THE WESTERLY 100 FEET, AS MEASURED AT RIGHT ANGLES TO THE WEST LINE OF LOT 47 OF GRAND VIEW RANCHO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 23, PAGES 19 AND 20, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2

THE EAST HALF OF LOT 46 OF GRAND VIEW RANCHO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 23, PAGES 19 AND 20 OF MAPS, RECORDS OF SAID COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE WEST 40 FEET THEREOF;

ALSO EXCEPTING THEREFROM THAT PORTION AS DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED JANUARY 16, 1959 AS INSTRUMENT NO. 3956 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE EAST HALF OF LOT 46;
THENCE ALONG THE WESTERLY LINE OF SAID EAST HALF NORTH 02°14'49" EAST, 4.35 FEET;
THENCE SOUTH 81°48'12" EAST, 42.00 FEET TO THE SOUTHERLY LINE OF SAID EAST HALF, SAID SOUTHERLY LINE BEING ALSO THE NORTHERLY LINE OF FIFTH STREET, 50 FEET WIDE AS SHOWN ON SAID MAP, DISTANT ALONG SAID SOUTHERLY LINE SOUTH 87°45'11" EAST, 41.77 FEET FROM THE POINT OF BEGINNING;
THENCE ALONG SAID SOUTHERLY LINE NORTH 87°45'11" WEST, 41.77 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED SEPTEMBER 16, 1975 AS INSTRUMENT NO. 113489 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA DESCRIBED AS FOLLOWS:

THE SOUTHERLY RECTANGULAR 8 FEET OF THE EAST ONE-HALF OF SAID LOT 46;

ALSO EXCEPTING FROM ALL OF SAID PARCELS A ONE HALF UNDIVIDED INTEREST IN FEE IN AND TO ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN OR UNDERLYING SAID PROPERTY OR REVOCABLE THEREON OR THEREFROM, AS RESERVED IN THE DECLARATION OF ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS, RECORDED DECEMBER 9, 1948 IN BOOK 1033 PAGE 598 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

END OF DESCRIPTION

PREPARED BY:

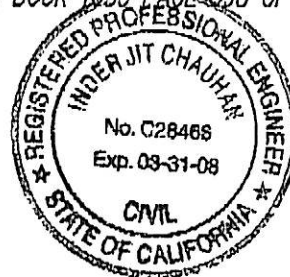
INDER ENGINEERING, INC.

2651 EAST CHAPMAN AVENUE STE 101

FULLERTON, CALIF. 92831-3738

Indarjit Chauhan 6.27.2007

INDER JIT CHAUHAN RCE 28466 EXP. 3-31-2008 DATE



CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

SEE EXHIBIT "B"

SHEET 1 OF 3

SCALE: 1"=60'

DRAWN BY: SATPAL

DATE 01-31-07

CHKD BY

DATE

SUBJECT: LOT MERGER NO. 07-5102

40

LOT MERGER NO. 07-5102

EXHIBIT 'A'

AFTER LOT MERGER

LEGAL DESCRIPTION

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

THAT PORTION OF LOT 46 AND 47 OF GRAND VIEW RANCHO, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 23 PAGES 19 AND 20, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 46;

THENCE NORTH 01°54'00" EAST, 8.00 FEET;

THENCE SOUTH 88°06'00" EAST, 190.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 01°54'00" EAST, 292.00 FEET TO THE NORTHERLY LINE OF SAID LOT 46;

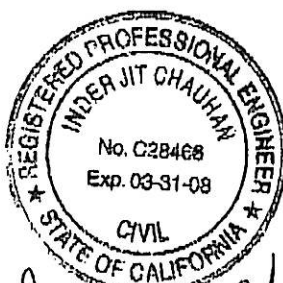
THENCE SOUTH 88°06'00" EAST, 210.00 FEET ALONG THE NORTHERLY LINE OF LOT 46 AND LOT 47;

THENCE SOUTH 01°54'00" WEST, 292.00 FEET;

THENCE NORTH 88°06'00" WEST, 210.00 FEET TO THE TRUE POINT OF BEGINNING.

END OF DESCRIPTION

AREA=61319 S.F. = 1.408 AC.



Inde Jit Chauhan 6-27-2007

CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

SEE EXHIBIT "B"

SHEET 2 OF 3

SCALE: 1"=60'

DRAWN BY: SATPAL
CHKD BY:

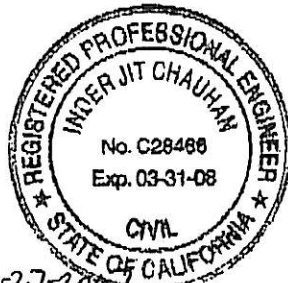
DATE 01-31-07
DATE

SUBJECT: LOT MERGER NO. 07-5102

41

PREPARED BY:

INDER ENGINEERING, INC.
2651 E CHAPMAN AVENUE
SUITE 101
FULLERTON, CALIF. 92831
PHONE: (714) 680-9641

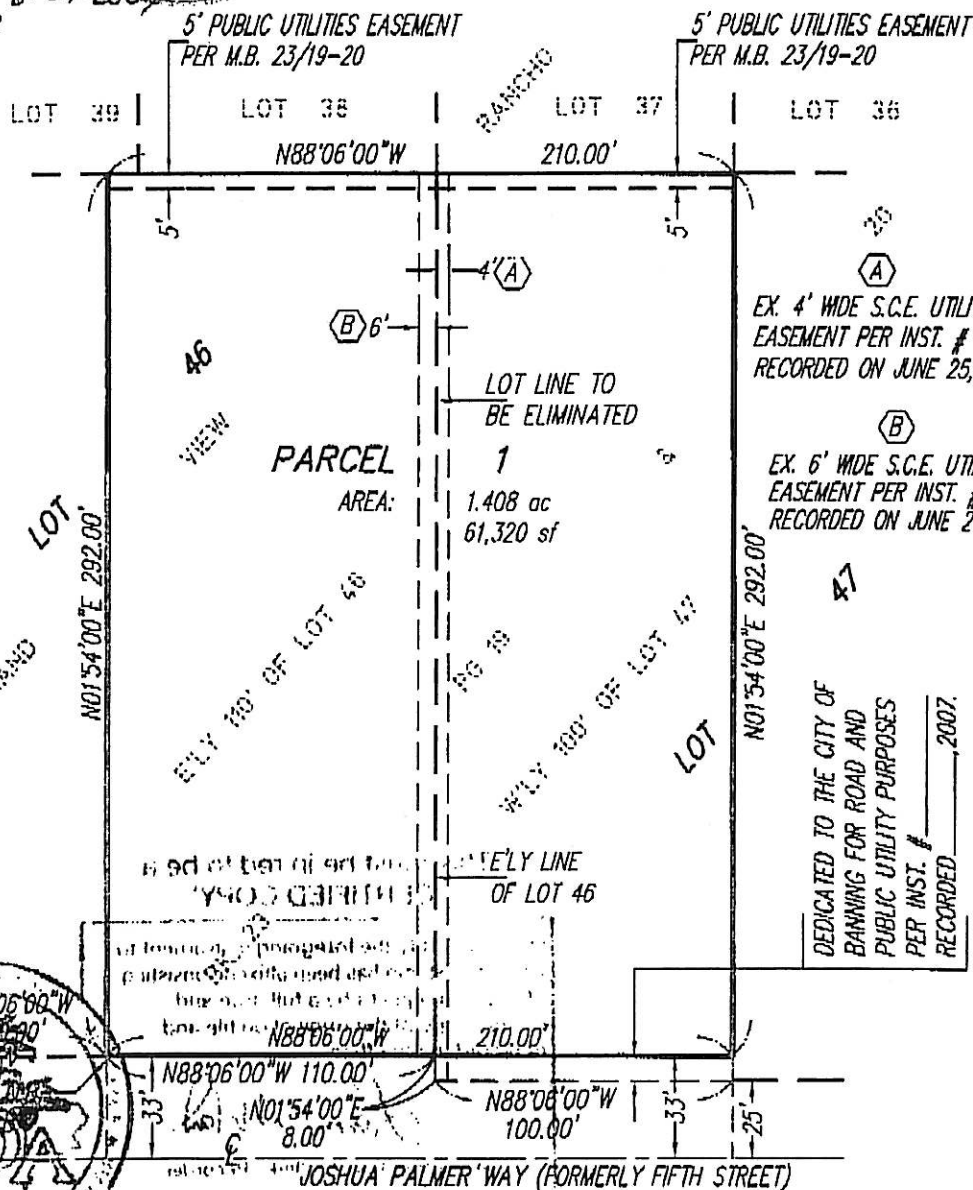
EXHIBIT 'B' PLATBASIS OF BEARINGS

THE BEARINGS OF NORTH 88° 06' 00" WEST
FOR CENTERLINE OF JOSHUA PALMER WAY,
(FORMERLY FIFTH STREET) AS SHOWN ON
GRAND VIEW RANCHO TRACT.

Indarjit Chauhan
INDER JIT CHAUHAN
RCE 28466 EXP. 3-31-2008

OWNER

SIDDHI DEVELOPMENT, INC.
1617 MAPLE HILL ROAD
DIAMOND BAR, CA. 91765
PHONE: (909) 396-7214



CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 3 OF 3

SCALE: 1"=60'

DRAWN BY: SAIPAL
CHKD BY:

DATE 01-31-07
DATE

SUBJECT: LOT MERGER NO. 07-5102

42



CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (951) 922-3128

July 26, 2007

ATTEST:

Virginia Sorenson
Virginia Sorenson
Development Project Coordinator

CERTIFICATION:

I, Virginia Sorenson, Development Project Coordinator for the City of Banning Planning Department, Banning, California, do hereby certify that the signatures on the attached page are those of the City Engineer, Kahono Oci and Community Development Director, Oscar W. Orci.

Virginia Sorenson
Virginia Sorenson
Development Project Coordinator

LLM # 07-5102

Our Mission as a City is to provide citizens 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.

43

DOC # 2007-0502223

08/03/2007 08:00A Fee:22.00

Page 1 of 6

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

Recording Requested By:
and when recorded, mail to:Planning Department
City of Banning
P.O. Box 998
Banning, CA 92220

APN 419-120-020

APN 419-120-022

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LOT MERGER

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA



CERTIFICATE OF APPROVAL FOR LOT MERGER NO. 07-5102

Pursuant to Section 66451.11 of the Government Code of the State of California, the following described property has been reviewed for a lot merger by the City of Banning in accordance with the ordinances of the City of Banning and the Subdivision Map Act.

Description of affected property (see attached sheets):

Description of change(s) authorized-merged lots (see attached sheets):

Owner's Certificate:

The undersigned hereby certifies to being the present fee owner(s) of the property affected by this lot merger, and consents to the preparation and recordation of this certificate.

Hina Jadav.
Signature (Siddhi Development, LLC)

7-13-07
Date

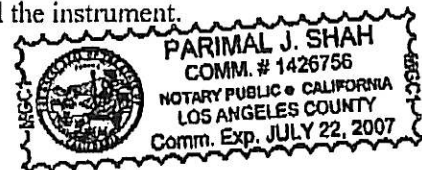
STATE OF CALIFORNIA

COUNTY OF LOS ANGELESOn JULY 13th, 2007, before me PARIMAL J. SHAH personally

appeared HINA JADAV 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 acknowledge 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] (Seal)
Signature

CERTIFICATE OF CITY ENGINEER AND COMMUNITY DEVELOPMENT DIRECTOR:By: [Signature] Date: 7/26/07By: [Signature] Date: 7/26/07

44

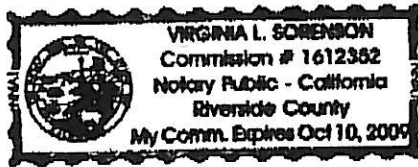
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of RIVERSIDE

} ss.

On JULY 26, 2007 before me, VIRGINIA L. SORENSON NOTARY PUBLIC,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared KAHONO OEI & OSCAR W. ORCI
Name(s) of Signer(s)



☒ personally known to me
 I 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.

Virginia L. Sorenson
Signature of Notary Public

OPTIONAL

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

Description of Attached DocumentTitle or Type of Document: LOT MERGER #07-5102

Document Date: _____ Number of Pages: _____

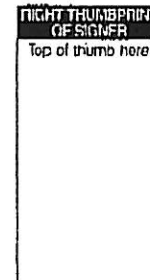
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



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EXHIBIT 2

Promissory Note

PROMISSARY NOTE

5-1-08.

SIDHI DEVELOPMENT, LLC
1617 Maple Hill Road,
Diamond Bar, CA. 91765

City Manager
City of Banning
99 east Ramsey Street
Banning, CA. 92220

Sub: Payment of eligible Deferral Fees and County Fees.

To,

Respected Mr. Matthew Bassi and Mr. Brian Nakamura,

We Siddhi Development, LLC honored to City of Banning support to build our hotel project La Quinta inn and Suites.

We will follow City Guide line for payment of eligible deferral fees.

We will pay remaining Permit and Processing fees in two payment:

1. First half when we pull the building permit and
2. Second half after two months.

We request to Mr. Oscar Orci regarding County fees payment (TUMF, MSHCP & School Fees) that City of Banning can wait till completion of the construction and we will pay before certificate of occupancy.

We will request county fees payment as we mention above to City of Banning Mayor and City Council members on May 13, 08 meeting and we will be agree and follow decision of Mayor and council members makes.

This agreement will be recorded by the Bank during the processing of construction loan.

Once again, Thanks to City of Banning Mayor, council members and staff to giving us an opportunity to build our hotel project.

Hina V. Jadav.

Hina V. Jadav.
Manager
Siddhi Development, LLC

EXHIBIT 3

Deed of Trust

OLD REPUBLIC TITLE CO. - RIV

RECORDATION REQUESTED BY:

Far East National Bank
Alhambra Financial Center
105 East Valley Blvd
2nd-Floor
Alhambra, CA 91801

WHEN RECORDED MAIL TO:

Far East National Bank
Alhambra Financial Center
105 East Valley Blvd
2nd Floor
Alhambra, CA 91801

SEND TAX NOTICES TO:

Siddhi Development, LLC
1617 Maple Hills Road
Diamond Bar, CA 91765

2807031614-99

DOC # 2007-0654075

10/24/2007 08:00A Fee:42.00

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Recorded in Official Records

County of Riverside

Larry M. Ward

Assessor, County Clerk & Recorder



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DEED OF TRUST

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THIS DEED OF TRUST is dated September 27, 2007, among Siddhi Development, LLC, whose address is 1617 Maple Hills Road, Diamond Bar, CA 91765 ("Trustor"); Far East National Bank, whose address is Alhambra Financial Center, 105 East Valley Blvd, 2nd Floor, Alhambra, CA 91801 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Old Republic Title Company, whose address is 3400 Central Avenue, Suite 100, Riverside, CA 92506 (referred to below as "Trustee").

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CONVEYANCE AND GRANT. For valuable consideration, Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, for the benefit of Lender as Beneficiary, all of Trustor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Riverside County, State of California:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF THIS REFERENCE.

The Real Property or its address is commonly known as Vacant Land, Banning, CA 92220. The Assessor's Parcel Number for the Real Property is 419-120-020-9, 052-245-902-1, 052-438-005-7, 052-509-404-3, 419-120-022-1, 052-245-903-2, 052-436-289-3 & 052-509-405-4.

Trustor presently assigns to Lender (also known as Beneficiary in this Deed of Trust) all of Trustor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. This is an absolute assignment of Rents made in connection with an obligation secured by real property pursuant to California Civil Code Section 2938. In addition, Trustor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE TRUSTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Deed of Trust, Trustor shall pay to Lender all amounts secured by this Deed of Trust as they become due, and shall strictly and in a timely manner perform all of Trustor's obligations under the Note, this Deed of Trust, and the Related Documents.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Trustor agrees that Trustor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Trustor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Trustor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and



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DEED OF TRUST (Continued)

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ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Trustor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Trustor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Trustor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Trustor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Trustor's compliance with the terms and conditions of this Deed of Trust.

Compliance with Governmental Requirements. Trustor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Trustor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Trustor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Trustor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Trustor agrees neither to abandon or leave unattended the Property. Trustor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Trustor. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Deed of Trust:

Payment. Trustor shall pay when due (and in all events at least ten (10) days prior to delinquency) all taxes, special taxes, assessments, charges (including water and sewer), fines and impositions levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Trustor shall maintain the Property free of all liens having priority over or equal to the interest of Lender under this Deed of Trust, except for the lien of taxes and assessments not due and except as otherwise provided in this Deed of Trust.

Right to Contest. Trustor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Trustor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Trustor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Trustor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Trustor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Trustor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialman's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$10,000.00. Trustor will upon request of Lender furnish to Lender evidence satisfactory to Lender that Trustor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Deed of Trust.

Maintenance of Insurance. Trustor shall procure and maintain policies of fire insurance with standard extended coverage



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endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustor and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least ten (10) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$10,000.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. If in Lender's sole judgment Lender's security interest in the Property has been impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

Trustor's Report on Insurance. Upon request of Lender, however not more than once a year, Trustor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Trustor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Trustor fails to comply with any provision of this Deed of Trust or any Related Documents, including but not limited to Trustor's failure to discharge or pay when due any amounts Trustor is required to discharge or pay under this Deed of Trust or any Related Documents, Lender on Trustor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Trustor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Deed of Trust also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Deed of Trust:

Title. Trustor warrants that: (a) Trustor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Deed of Trust, and (b) Trustor has the full right, power, and authority to execute and deliver this Deed of Trust to Lender.

Defense of Title. Subject to the exception in the paragraph above, Trustor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Trustor's title or the interest of Trustor or Lender under this Deed of Trust, Trustor shall defend the action at Trustor's expense. Trustor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Trustor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Trustor warrants that the Property and Trustor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Trustor in this Deed of Trust shall survive the execution and delivery of this Deed of Trust, shall be continuing in nature, and shall remain in full force and effect until such time as Trustor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to eminent domain and inverse condemnation proceedings are a part of this Deed of Trust:

Proceedings. If any eminent domain or inverse condemnation proceeding is commenced affecting the Property, Trustor shall promptly notify Lender in writing, and Trustor shall promptly take such steps as may be necessary to pursue or defend the action and obtain the award. Trustor may be the nominal party in any such proceeding, but Lender shall be entitled, at its election, to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Trustor will deliver or cause to be delivered to

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DEED OF TRUST (Continued)

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Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If any award is made or settlement entered into in any condemnation proceedings affecting all or any part of the Property or by any proceeding or purchase in lieu of condemnation, Lender may at its election, and to the extent permitted by law, require that all or any portion of the award or settlement be applied to the indebtedness and to the repayment of all reasonable costs, expenses, and attorneys' fees incurred by Trustee or Lender in connection with the condemnation proceedings.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Deed of Trust:

Current Taxes, Fees and Charges. Upon request by Lender, Trustor shall execute such documents in addition to this Deed of Trust and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Trustor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Deed of Trust, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Deed of Trust.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Deed of Trust or upon all or any part of the indebtedness secured by this Deed of Trust; (2) a specific tax on Trustor which Trustor is authorized or required to deduct from payments on the indebtedness secured by this type of Deed of Trust; (3) a tax on this type of Deed of Trust chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Trustor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Deed of Trust, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Trustor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Trustor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. Trustor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Trustor shall not remove, sever or detach the Personal Property from the Property. Upon default, Trustor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Trustor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Trustor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Deed of Trust may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Deed of Trust.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Deed of Trust:

Further Assurances. At any time, and from time to time, upon request of Lender, Trustor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Trustor's obligations under the Note, this Deed of Trust, and the Related Documents, and (2) the liens and security interests created by this Deed of Trust as first and prior liens on the Property, whether now owned or hereafter acquired by Trustor. Unless prohibited by law or Lender agrees to the contrary in writing, Trustor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Trustor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Trustor and at Trustor's expense. For such purposes, Trustor hereby irrevocably appoints Lender as Trustor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Trustor pays all the indebtedness when due, and otherwise performs all the obligations imposed upon Trustor under this Deed of Trust, Lender shall execute and deliver to Trustee a request for full reconveyance and shall execute and deliver to Trustor suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Lender may charge Trustor a reasonable reconveyance fee at the time of reconveyance.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Deed of Trust:

Payment Default. Trustor fails to make any payment when due under the Indebtedness.

Other Defaults. Trustor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Deed of Trust or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Trustor.

Compliance Default. Failure to comply with any other term, obligation, covenant or condition contained in this Deed of Trust, the Note or in any of the Related Documents.

Default on Other Payments. Failure of Trustor within the time required by this Deed of Trust to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.



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DEED OF TRUST (Continued)

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Environmental Default. Failure of any party to comply with or perform when due any term, obligation, covenant or condition contained in any environmental agreement executed in connection with the Property.

Default in Favor of Third Parties. Should Trustor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Trustor's property or Trustor's ability to repay the indebtedness or perform their respective obligations under this Deed of Trust or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Trustor or on Trustor's behalf under this Deed of Trust or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Deed of Trust or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Trustor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Trustor's existence as a going business or the death of any member, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Trustor or by any governmental agency against any property securing the indebtedness. This includes a garnishment of any of Trustor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Trustor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Trustor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Trustor under the terms of any other agreement between Trustor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Trustor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Trustor's financial condition, or Lender believes the prospect of payment or performance of the indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Trustor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within ten (10) days; or (2) if the cure requires more than ten (10) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Deed of Trust, at any time thereafter, Trustee or Lender may exercise any one or more of the following rights and remedies:

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Trustor under this Deed of Trust, after Trustor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Foreclosure by Sale. Upon an Event of Default under this Deed of Trust, Beneficiary may declare the entire indebtedness secured by this Deed of Trust immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, other documents requested by Trustee, and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement in accordance with applicable law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

Judicial Foreclosure. With respect to all or any part of the Real Property, Lender shall have the right in lieu of foreclosure by power of sale to foreclose by judicial foreclosure in accordance with and to the full extent provided by California law.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code, including without limitation the right to recover any deficiency in the manner and to the full

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DEED OF TRUST (Continued)

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extent provided by California law.

Collect Rents. Lender shall have the right, without notice to Trustor to take possession of and manage the Property and collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Trustor irrevocably designates Lender as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Tenancy at Sufferance. If Trustor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Trustor, Trustor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Trustee or Lender shall have any other right or remedy provided in this Deed of Trust or the Note or available at law or in equity.

Notice of Sale. Lender shall give Trustor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Sale of the Property. To the extent permitted by applicable law, Trustor hereby waives any and all rights to have the Property marshalled. In exercising its rights and remedies, the Trustee or Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, title insurance, and fees for the Trustee, to the extent permitted by applicable law. Trustor also will pay any court costs, in addition to all other sums provided by law.

Rights of Trustee. Trustee shall have all of the rights and duties of Lender as set forth in this section.

POWERS AND OBLIGATIONS OF TRUSTEE. The following provisions relating to the powers and obligations of Trustee are part of this Deed of Trust:

Powers of Trustee. In addition to all powers of Trustee arising as a matter of law, Trustee shall have the power to take the following actions with respect to the Property upon the written request of Lender and Trustor: (a) join in preparing and filing a map or plat of the Real Property, including the dedication of streets or other rights to the public; (b) join in granting any easement or creating any restriction on the Real Property; and (c) join in any subordination or other agreement affecting this Deed of Trust or the interest of Lender under this Deed of Trust.

Obligations to Notify. Trustee shall not be obligated to notify any other party of a pending sale under any other trust deed or lien, or of any action or proceeding in which Trustor, Lender, or Trustee shall be a party, unless the action or proceeding is brought by Trustee.

Trustee. Trustee shall meet all qualifications required for Trustee under applicable law. In addition to the rights and remedies set forth above, with respect to all or any part of the Property, the Trustee shall have the right to foreclose by notice and sale, and Lender shall have the right to foreclose by judicial foreclosure, in either case in accordance with and to the full extent provided by applicable law.

Successor Trustee. Lender, at Lender's option, may from time to time appoint a successor Trustee to any Trustee appointed under this Deed of Trust by an instrument executed and acknowledged by Lender and recorded in the office of the recorder of Riverside County, State of California. The instrument shall contain, in addition to all other matters required by state law, the names of the original Lender, Trustee, and Trustor, the book and page where this Deed of Trust is recorded, and the name and address of the successor trustee, and the instrument shall be executed and acknowledged by Lender or its successors in interest. The successor trustee, without conveyance of the Property, shall succeed to all the title, power, and duties conferred upon the Trustee in this Deed of Trust and by applicable law. This procedure for substitution of Trustee shall govern to the exclusion of all other provisions for substitution.

Acceptance by Trustee. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.



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DEED OF TRUST (Continued)

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NOTICES. Any notice required to be given under this Deed of Trust shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Deed of Trust. Trustor requests that copies of any notices of default and sale be directed to Trustor's address shown near the beginning of this Deed of Trust. All copies of notices of foreclosure from the holder of any lien which has priority over this Deed of Trust shall be sent to Lender's address, as shown near the beginning of this Deed of Trust. Any party may change its address for notices under this Deed of Trust by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Trustor agrees to keep Lender informed at all times of Trustor's current address. Unless otherwise provided or required by law, if there is more than one Trustor, any notice given by Lender to any Trustor is deemed to be notice given to all Trustors.

STATEMENT OF OBLIGATION FEE. Lender may collect a fee, not to exceed the maximum amount permitted by law, for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

JUDICIAL REFERENCE. In the event the jury trial waiver provisions set forth herein are not permitted for any reason, the parties hereby agree:

Claims Subject to Judicial Reference Agreement; Conduct of Referee. Any action, proceedings or hearing (hereinafter, "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of California Code of Civil Procedure Sections 638 et seq., as such statutes may be amended or modified from time to time. Upon a written request, or upon an appropriate motion by either party, any pending action relating to any Claim and every Claim shall be heard by a single Referee who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The parties agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before him/her. The parties shall promptly and diligently cooperate with one another and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this paragraph. Either party may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it. The parties will each have such rights to assert such objections as are set forth in California Code of Civil Procedure Section 638 et seq. All proceedings shall be closed to the public and shall be confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

Selection of Referee; Powers. The parties shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten years of judicial experience in civil matters. The Referee shall be appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties cannot agree upon a Referee, either party may request or move that the Referee be appointed by the Presiding Judge of the Superior Court or of the U.S. District Court for the Central District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this paragraph.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Deed of Trust:

Amendments. This Deed of Trust, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Deed of Trust. No alteration of or amendment to this Deed of Trust shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Trustor's residence, Trustor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Trustor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Caption Headings. Caption headings in this Deed of Trust are for convenience purposes only and are not to be used to interpret or define the provisions of this Deed of Trust.

Merger. There shall be no merger of the interest or estate created by this Deed of Trust with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Governing Law. This Deed of Trust will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Deed of Trust has been accepted by Lender in the State of California.

Choice of Venue. If there is a lawsuit, Trustor agrees upon Lender's request to submit to the jurisdiction of the courts of Los Angeles County, State of California.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Deed of Trust unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Deed of Trust shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Deed of Trust. No prior waiver by Lender, nor any course of dealing between Lender and Trustor, shall constitute a waiver of any of Lender's rights or of any of Trustor's obligations as to any future transactions. Whenever the consent of Lender is required under this Deed of Trust, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the



DEED OF TRUST (Continued)

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illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

Successors and Assigns. Subject to any limitations stated in this Deed of Trust on transfer of Trustor's interest, this Deed of Trust shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Trustor, Lender, without notice to Trustor, may deal with Trustor's successors with reference to this Deed of Trust and the Indebtedness by way of forbearance or extension without releasing Trustor from the obligations of this Deed of Trust or liability under the Indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Deed of Trust.

Waive Jury. To the extent permitted by applicable law, all parties to this Deed of Trust hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Deed of Trust. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Deed of Trust shall have the meanings attributed to such terms in the Uniform Commercial Code:

Beneficiary. The word "Beneficiary" means Far East National Bank, and its successors and assigns.

Borrower. The word "Borrower" means Siddhi Development, LLC and includes all co-signors and co-makers signing the Note and all their successors and assigns.

Deed of Trust. The words "Deed of Trust" mean this Deed of Trust among Trustor, Lender, and Trustee, and includes without limitation all assignment and security interest provisions relating to the Personal Property and Rents.

Default. The word "Default" means the Default set forth in this Deed of Trust in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Deed of Trust in the events of default section of this Deed of Trust.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Trustor's obligations or expenses incurred by Trustee or Lender to enforce Trustor's obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

Lender. The word "Lender" means Far East National Bank, its successors and assigns.

Note. The word "Note" means the promissory note dated September 27, 2007, in the original principal amount of \$405,000.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accretions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Deed of Trust.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; except that the words do not mean any guaranty or environmental agreement, whether now or hereafter existing, executed in connection with the Indebtedness.



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DEED OF TRUST (Continued)

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Rents. The word "Rents" means all present and future leases, rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property together with the cash proceeds of the Rents.

Trustee. The word "Trustee" means Old Republic Title Company, whose address is 3400 Central Avenue, Suite 100, Riverside, CA 92506 and any substitute or successor trustees.

Trustor. The word "Trustor" means Siddhi Development, LLC.

TRUSTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS DEED OF TRUST, AND TRUSTOR AGREES TO ITS TERMS, INCLUDING THE VARIABLE RATE PROVISIONS OF THE NOTE SECURED BY THIS DEED OF TRUST.

TRUSTOR:

SIDDHI DEVELOPMENT, LLC

By: Hina V. Jadav
Hina V. Jadav, Manager of Siddhi Development, LLC

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF California)
COUNTY OF Los Angeles) SS
On September 27, 2007, before me, Terry W. Leung Notary Public
(Here insert name and title of the officer)

personally appeared Hina V. Jadav, 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 _____



(Seal)

(DO NOT RECORD) REQUEST FOR FULL RECONVEYANCE (To be used only when obligations have been paid in full)

To: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by this Deed of Trust. All sums secured by this Deed of Trust have been fully paid and satisfied. You are hereby directed, upon payment to you of any sums owing to you under the terms of this Deed of Trust or pursuant to any applicable statute, to cancel the Note secured by this Deed of Trust (which is delivered to you together with this Deed of Trust), and to reconvey, without warranty, to the parties designated by the terms of this Deed of Trust, the estate now held by you under this Deed of Trust. Please mail the reconveyance and Related Documents to:

Date: _____

Beneficiary: _____

By: _____

Its: _____

ORDER NO. : 2807031614-99

EXHIBIT A

The land referred to is situated in the County of Riverside, City of Banning, State of California, and is described as follows:

Parcel 1:

The Westerly 100 feet, as measured at a right angle to the West line, of Lot 47 of Grand View Ranch, in the City of Banning, County of Riverside, State of California, as shown by Map on file in Book 23, Pages 19 and 20, Records of said County, California.

Parcel 2:

The East half of Lot 46 of Grant View Rancho, in the City of Banning, County of Riverside, State of California, as shown by Map on file in Book 23, Pages 19 and 20 of Maps, Records of said County, California.

Excepting therefrom the West 40 feet thereof;

Also excepting therefrom that portion as described in the Deed to the State of California of California, recorded January 16, 1959 as Instrument No. 3956 of Official Records of Riverside County, California, described as follows:

Beginning at the Southwest corner of the East half of Lot 46;

Thence along the Westerly line of said East half North $2^{\circ} 14' 49''$ East, 4.35 feet;

Thence South $81^{\circ} 48' 12''$ East, 42.00 feet to the Southerly line of said East half, said Southerly line being also the Northerly line of Fifth Street, 50 feet wide as shown on said Map, distant along said Southerly line South $87^{\circ} 45' 11''$ East, 41.77 feet from the Point of Beginning;

Thence along said Southerly line North $87^{\circ} 45' 11''$ West, 41.77 feet to the Point of Beginning;

Also excepting therefrom that portion conveyed to the County of Riverside by Deed recorded September 16, 1975, as Instrument No. 113489 of Official Records of Riverside County, California described as follows:

The Southerly rectangular 8 feet of the East one-half of said Lot 46;

Also excepting from all of said Parcels A one half undivided interest in fee in and to all oil, gas and other hydrocarbon substances in or underlying said Property or revocable thereon or therefrom, as reserved in the Declaration of Establishment of Conditions and Restrictions, recorded December 9, 1948 in Book 1033 Page 598 of Official Records of Riverside County, California.



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Said legal description is based upon Certificate of Compliance recorded November 4, 1986 as Instrument No. 278657 and re-recorded January 29, 1988 as Instrument No. 88-26224, Official Records.



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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: May 13, 2008

TO: Honorable Mayor and City Council

FROM: Duane Burk, Public Works Director

SUBJECT: Resolution No. 2008-51, "Approving the NPDES Storm Water Discharge Permit Implementation Agreement"

RECOMMENDATION: Adopt Resolution No. 2008-51 "Approving the NPDES Storm Water Discharge Permit Implementation Agreement"

JUSTIFICATION: The NPDES Storm Water Discharge Permit (Permit) requires that all of the permittees enter into an Implementation Agreement (as attached here to as Exhibit "A") to remain in force during the term of the Permit.

BACKGROUND: The National Pollutant Discharge Elimination System (NPDES) is a federally mandated program to control non-point sources of runoff pollution. The NPDES program is part of the Clean Water Act enacted by Congress in 1987. The California Regional Water Quality Control Board, Colorado River Basin, Region No. 7, in implementing the U.S. Environmental Protection Agency's storm water National Pollutant Discharge Elimination System (NPDES) permit program, requires that the Districts and Incorporated Cities within the Whitewater River Basin obtain a joint permit to discharge storm water into the various storm channels and washes throughout the Whitewater River Watershed area. The last permit was adopted by the Regional Board on September 5, 2001, as Order No. 01-077, and expired on September 5, 2006. A new permit is currently being negotiated with the Regional Board and it is in the Public Hearing Process. It is anticipated to be adopted by May or June of 2008. Thus, a new Implementation Agreement must be signed and adopted by each City and District within the Whitewater River Basin. The term of this agreement shall remain in effect for five years, from the date the Regional Board approves the NPDES Permit.

The Riverside County Flood Control and Water Conservation District (RCFC&WCD) is acting as the Lead Agency with the City of Banning being a co-permittee, along with the various other agencies and municipalities located within the Whitewater River Basin.

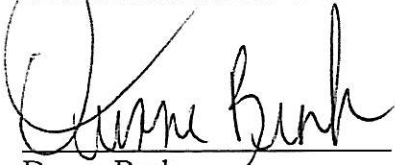
The City of Banning is required through the Best Management Practices (BMPs), to implement practices within our community, which reduce pollutants entering into the storm drain system to the maximum extent practicable. These BMPs include but are not limited to: public education; material disposal (Bulky Item Pick Up, Household Hazardous Waste, and recycling programs; spill prevention and clean up programs and Haz-Mat Team; the Riverside County Flood Control and Water Conservation District's (RCFC&WCD) illegal dumping controls; illicit connection controls; and storm drain and drainage channels inspection and maintenance; informing

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contractors, engineers, inspection and maintenance staff and land developers about site erosion control and construction BMPs, implementing development and approval plan review procedures as required by Supplement "A," and enforcing Ordinance No. 1212 with respect to storm water management and discharge controls. Other provisions of the permit include adopting and maintaining adequate legal authority, source tracking and updating, leash law enforcement, and various other items, such as maintaining adequate fiscal resources to implement the permit. Failure by the City of Banning to implement a Best Management Practices program and meet the numerous other requirements of the NPDES permit, will result in a violation of State and Federal Law, making the City subject to the associated penalties.

FISCAL DATA: On May 13, 1993, the City Council approved Resolution No. 1993-64, requesting that LAFCO annex the City of Banning into CSA 152 (County Service Area 152), which would provide a funding mechanism for the NPDES program. The following budget year, the City Council elected not to participate in CSA 152; therefore, the funding mechanism for the NPDES program is now absorbed by City of Banning funds. The estimated cost to implement this program is calculated annually, and shared amongst the permittees based on each Agencies' population. All associated costs for this Permit are charged to the Public Works Department, Street Division account. Engineering Division staff manages the program in house. However, once the new Permit and more stringent requirements (Water Quality Management Plans, know as WQMPs) are adopted, consultants will likely be needed to review developer's WQMPs, inspect the drainage facilities, plan check, etc. Once these regulations are in effect in 2009, staff will look into funding mechanisms, including charging developers WQMP fees, annual inspection fees, etc. The Permit Fee for 2008/2009 is estimated to be \$40,000.00.

RECOMMENDED BY:



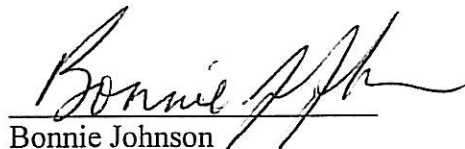
Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

REVIEWED BY:



Bonnie Johnson
Director of Finance

RESOLUTION NO. 2008-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT IMPLEMENTATION AGREEMENT

WHEREAS, Section 402(p) of the Federal Clean Water Act requires municipalities to obtain a National Pollutant Discharge Elimination System (NPDES) Permit before discharging storm water into the United States; and

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region No. 7 issued a NPDES Permit by Regional Board Order No. 01-077 to all of the permittees within the Whitewater River Watershed area; and

WHEREAS, the City of Banning is one of the permittees that has a Whitewater River Municipal Storm Water NPDES Permit; and

WHEREAS, the NPDES Permit requires that all of the permittees enter into an Implementation Agreement to remain in force during the term of the Board Order, which expired on September 5, 2006; and

WHEREAS, the Riverside County Flood Control and Water Conservation District (RCFC&WCD) is the lead agency and therefore has prepared the attached Implementation Agreement; and

WHEREAS, the Riverside County Flood Control and Water Conservation District, the County of Riverside, the Coachella Valley Water District, and the following cities: Banning, Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs and Rancho Mirage, are to meet the requirements as stated in the Implementation Agreement and as required by the NPDES Permit; and

WHEREAS, funding for the annual NPDES Permit fee, which includes the public education program, monitoring program, consultant's services required by the RCFC&WCD for the Permit, and RCFC&WCD personnel cost as outlined in the Implementation Agreement, is budgeted in the Street Division Capital Account for Fiscal Year 2008-2009.

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

Section I. Adopt Resolution No. 2008-51, "Approving the NPDES Storm Water Discharge Permit Implementation Agreement" in substantially the form attached herein to this resolution as Exhibit "A."

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Section II. The Mayor is authorized to execute the NPDES Storm Water Discharge Permit Implementation Agreement with the Riverside County Flood Control and Water Conservation District, and this authorization will be rescinded if the parties do not execute the contract agreement within sixty (60) days of the date of this resolution.

PASSED, ADOPTED AND APPROVED this 13th day of May, 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. 2008-51, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of May, 2008.

AYES:
NOES:
ABSTAIN:
ABSENT:

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

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EXHIBIT "A"
IMPLEMENTATION AGREEMENT

AGREEMENT

National Pollutant Discharge Elimination System
Stormwater Discharge Permit
Implementation Agreement
(California Regional Water Quality Control Board -
Colorado River Basin Region)

This Agreement, entered into by the RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (DISTRICT), the COUNTY OF RIVERSIDE (COUNTY), the COACHELLA VALLEY WATER DISTRICT (CVWD), and the CITIES OF BANNING, CATHEDRAL CITY, COACHELLA, DESERT HOT SPRINGS, INDIAN WELLS, INDIO, LA QUINTA, PALM DESERT, PALM SPRINGS and RANCHO MIRAGE (CITIES), establishes the responsibilities of each party concerning compliance with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit (NPDES Permit) issued by the California Regional Water Quality Control Board - Colorado River Basin Region (CRWQCB-CRB) pursuant to Order No. 01-077.

RECITALS

- A. WHEREAS, Congress in 1987 added Section 402(p) to the Federal Clean Water Act (CWA) (33 U.S.C. §1342(p)); and
- B. WHEREAS, Section 402(p) of the CWA requires certain operators of MS4s, industrial facilities and persons conducting certain construction activities to obtain NPDES Permits before discharging stormwater into navigable waters; and
- C. WHEREAS, Section 402(p) further requires the Federal Environmental Protection Agency (EPA) to promulgate regulations for NPDES Permit applications; and
- D. WHEREAS, EPA promulgated such regulations and adopted them in November 1990; and
- E. WHEREAS, pursuant to the CWA, EPA has delegated authority to the California State Water Resources Control Board (SWRCB) to administer the NPDES Permit process within the State; and
- F. WHEREAS, SWRCB has in turn delegated its NPDES permitting authority to

the Regional Water Quality Control Boards to administer the NPDES Permit process within the boundaries of their respective regions; and

G. WHEREAS, DISTRICT and CVWD are authorized to provide for the control of flood and stormwaters within their respective jurisdictions and are empowered to investigate, examine, measure, analyze, study and inspect matters pertaining to flood and stormwaters; and

H. WHEREAS, on March 9, 2006, DISTRICT, COUNTY, CVWD and CITIES reapplied for an area-wide NPDES Permit in accordance with the current NPDES Permit (Order No. 01-077, NPDES No. CAS617002) which expired on September 5, 2006; and

I. WHEREAS, it is anticipated that CRWQCB-CRB will issue a new NPDES Permit to DISTRICT, COUNTY, CVWD and CITIES on May 21, 2008 pursuant to Section 402(p) of the CWA; and

J. WHEREAS, the NPDES Permit designates DISTRICT and COUNTY as Principal Permittees and DISTRICT, COUNTY, CVWD and CITIES as Permittees; and

K. WHEREAS, DISTRICT, COUNTY, CVWD and CITIES are to perform and/or execute certain activities and responsibilities prescribed in the NPDES Permit; and

L. WHEREAS, DISTRICT and COUNTY, as PRINCIPAL PERMITTEES, are willing to undertake certain activities in order to facilitate implementation of the NPDES Permit requirements; and

M. WHEREAS, cooperation between DISTRICT, COUNTY, CVWD and CITIES in the administration and implementation of the NPDES Permit and resulting programs and actions is in the best interest of all parties; and

N. WHEREAS, DISTRICT established the Whitewater Watershed Benefit Assessment Area (BENEFIT ASSESSMENT) pursuant to DISTRICT Ordinance No. 14 on May 14, 1991 to offset DISTRICT's program and administrative costs associated with the development, implementation and management of the Federally mandated NPDES program and DISTRICT is willing to utilize BENEFIT ASSESSMENT funds to support DISTRICT's role as PRINCIPAL PERMITTEE and to support regional program costs to the extent BENEFIT ASSESSMENT funds

are available.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1. NPDES Permit. A true and correct copy of the existing NPDES Permit issued to DISTRICT, COUNTY, CVWD and CITIES by CRWQCB-CRB pursuant to Order No. 01-077 is attached to this Agreement as Exhibit A and is hereby incorporated by reference in its entirety and made a part of this Agreement. Order No. 01-077 will be replaced in 2008 with a new NPDES Permit pursuant to Order No. R7-2008-0001. This Agreement shall also apply to Order No. R7-2008-0001, the contents of which shall be incorporated by reference in its entirety and made a part of this Agreement once Order No. R7-2008-0001 is finally adopted by CRWQCB-CRB. Order Nos. 01-077 and R7-2008-0001 shall each be known as "the NPDES Permit" for the purpose of interpreting this Agreement.

2. Incorporation of Federal and State Laws. All applicable Federal and State laws and regulations in effect at the time of issuance of the NPDES Permit, as then written, and as they may be amended during the term of this Agreement, shall govern in the event they conflict with any provision of this Agreement.

3. Delegation of Responsibilities. The responsibilities of each of the parties to this agreement shall be as follows:

- A. Public Education Program. DISTRICT shall conduct public education activities on a regional basis that focus on reducing non-point source pollution within the NPDES Permit area. DISTRICT shall be reimbursed for its costs by COUNTY, CVWD and CITIES in accordance with the cost sharing provisions set forth in Section 4 of this Agreement.
- B. Monitoring Program. DISTRICT and CVWD shall perform or coordinate sampling of surface water and urban runoff in accordance with the provisions of the NPDES Permit Monitoring and Reporting Program contained therein. The location of the sampling sites (Sites) shall be determined by DISTRICT and CVWD, subject to approval by CRWQCB-

CRB. More specifically:

1. DISTRICT and CVWD shall perform such sampling for all Sites located within the respective limits of their jurisdictions. DISTRICT and CVWD may implement alternative approaches to sample collection, including use of consultants, reassigning Sites between the agencies, or other alternative approaches that may ensure improved permit compliance. Said alternative approaches may be implemented upon the mutual agreement of CVWD and DISTRICT.
2. DISTRICT shall reimburse CVWD for all of its costs associated with sample collection and laboratory analysis.
3. DISTRICT shall be reimbursed by CVWD, COUNTY and CITIES for implementation of the NPDES Permit Monitoring and Reporting Program in accordance with the cost sharing provisions set forth in Section 4 of this Agreement.

C. Consultant's Services and Cooperative Agreements. In the event DISTRICT requires the services of an agency, consultant or consultants to implement NPDES program requirements, prepare manuals, develop programs or perform studies relevant to the entire permitted area pursuant to this Agreement, the cost of said consultant services shall be shared by DISTRICT, COUNTY, CVWD and CITIES in accordance with the cost sharing provisions set forth in Section 4 of this Agreement. COUNTY, CVWD and CITIES shall be notified in writing of DISTRICT's request for proposals from consultants, selection of a consultant, consultant's fee, contract timetable and payment schedule, and be allowed the opportunity to participate in decisions related to consultant's services

D. Principal Permittee Duties. DISTRICT shall coordinate, implement and,

when required, contribute to regional NPDES Permit compliance activities; establish and update a uniform data submittal format; prepare annual reports; forward information received from CRWQCB-CRB to COUNTY, CVWD and CITIES; inform COUNTY, CVWD and CITIES of State and Federal regulations pertaining to the MS4; and chair Desert Task Force meetings. DISTRICT shall be reimbursed for said duties by COUNTY, CVWD and CITIES in accordance with Section 4. Cost Sharing of this Agreement.

- E. Desert Task Force. Each Permittee shall designate staff representatives to the Desert Task Force in writing to DISTRICT. The Desert Task Force shall be responsible for coordinating regional NPDES Permit and Monitoring and Reporting Program compliance activities, including related communications with CRWQCB-CRB, updates to this Implementation Agreement and compliance with Total Maximum Daily Loads (TMDLs), and other compliance orders issued by CRWQCB-CRB affecting the MS4 Permit, NPDES MS4 Monitoring and Reporting Program and/or the Whitewater River Watershed Municipal Stormwater Program Stormwater Management Plan. In addition, the Desert Task Force, or sub-committees thereof, shall be the forum for distribution, discussion and decision-making of items related to agreements and consultant selection related to regional compliance with the NPDES Permit.
- F. Regulation and Enforcement. COUNTY and CITIES shall be responsible for the adoption and enforcement of their ordinances and regulations within their respective jurisdictions to ensure compliance with the NPDES Permit. This includes the exercise of land use controls, the exercise of police powers and the enforcement of ordinances that COUNTY or

CITIES presently have adopted or will adopt in the future, provided, however, nothing in this Agreement shall be construed as requiring COUNTY or CITIES to exercise such powers, controls or authorities in any particular manner.

- G. Inspection of MS4 facilities (consisting primarily of storm sewer pipe and channel infrastructure). DISTRICT, COUNTY, CVWD and CITIES shall perform reconnaissance surveys of their MS4 facilities as required by the NPDES Permit. Any wet weather or dry weather sampling or field screening for the reconnaissance surveys shall be the responsibility of COUNTY or CITIES, depending on where the discharge originates. Each Permittee shall be responsible for maintaining any records, tables or other data that are needed to support the reporting of the survey results to CRWQCB-CRB.
- H. Submittals to CRWQCB-CRB. DISTRICT shall coordinate and submit all required reports and information related to the regional compliance program to CRWQCB-CRB. COUNTY, CVWD and CITIES shall maintain sufficiently adequate records, information and/or data concerning their program development and implementation activities to enable DISTRICT to provide all required reports and submittals in a timely manner. COUNTY, CVWD and CITIES shall produce or supply such records, information and/or data in a reasonable manner upon request of CRWQCB-CRB or DISTRICT. DISTRICT shall also keep adequate records, information and/or data concerning its program development and implementation activities and produce or supply same in a reasonable manner upon request of CRWQCB-CRB.
- I. Best Management Practices (BMPs) and Programs. Unless otherwise specified in this Agreement, DISTRICT, COUNTY, CVWD and CITIES

shall be responsible for implementing each of the BMPs and/or other programs and activities required by the NPDES Permit in accordance with their authority.

4. Cost Sharing. Costs for services to be performed in accordance with Sections 3.A., 3.B., 3.C. and 3.D. of this Agreement shall be shared in accordance with the following formula:

$$IC = (TC - \text{DISTRICT} - \text{CVWD}) \times (IP/TP)$$

Where,

IC = Individual Cost

TC = Total Cost

DISTRICT = DISTRICT Cost-Shared Amount

CVWD = CVWD Cost-Shared Amount

IP = Individual Population

TP = Total Population

The Total Cost (TC) shall be determined based on the following formula

$$TC = \text{Shared Costs} + \text{Credits} - \text{Debits}$$

Where,

Shared Costs = Estimation of upcoming fiscal year's cost for services to be performed in accordance with Sections 3.A., 3.B., 3.C. and 3.D of this Agreement.

Credits = Portion of estimated Shared Costs for the previous fiscal year that were not expended.

Debits = Portion of actual Shared Costs which exceeded estimated Shared Costs for the previous fiscal year.

DISTRICT's share shall be 7% of the Total Cost.

CVWD's share shall be 7% of the Total Cost.

The population of CITIES shall be based on the latest California State Department of Finance population figures issued in May of each year. COUNTY population shall be based on the most current Tax Rate Area (TRA) information best fitting the NPDES Permit area.

If DISTRICT's compliance costs for administering and complying with the NPDES MS4 Permit and this agreement are less than available BENEFIT ASSESSMENT Revenues for that fiscal year and DISTRICT's BENEFIT ASSESSMENT fund has sufficient reserves, DISTRICT may opt to use the excess BENEFIT ASSESSMENT revenues to offset the compliance costs for the portions of COUNTY and CITIES of BANNING, DESERT HOT SPRINGS, PALM SPRINGS and CATHEDRAL CITY within the BENEFIT ASSESSMENT based on each aforementioned party's population within the BENEFIT ASSESSMENT AREA. Population shall be based on the most current TRA and/or California Department of Finance information best fitting the BENEFIT ASSESSMENT boundary.

5. Term of the Agreement. The term of this Agreement shall commence on the date the last duly authorized representative of DISTRICT, COUNTY, CVWD or CITIES executes it. The Agreement shall remain in effect until the date that CRWQCB-CRB issues a new NPDES Permit, unless each of the parties withdraws sooner in accordance with the provisions of this Agreement.

6. Additional Parties. Any public agency (Agency) which incorporates after the date of issuance of the NPDES Permit and/or after the date of execution of this Agreement may file a written request with Principal Permittees asking to be added as a party. Upon receipt of such a request, Principal Permittees shall solicit the approval or denial of each Permittee. If a majority of the Permittees, each having one, co-equal vote, approves the addition of the Agency, the Principal Permittees shall ask CRWQCB-CRB to add the Agency to the NPDES Permit as an additional Permittee. Once the Agency is made an additional Permittee to the NPDES Permit, this Agreement shall be amended to reflect the addition, and the Agency shall, thereafter, comply with all provisions of the NPDES Permit and this Agreement. Upon execution of the amended Agreement, the Agency shall be responsible for the shared costs in accordance with Section 4 of this Agreement for the current and any subsequent fiscal year.

7. Withdrawal from the Agreement. Any party may withdraw from this Agreement 60 days after giving written notice to the Principal Permittees and CRWQCB-CRB. The withdrawing party shall agree in such notice to file for a separate NPDES Permit and to comply with

all of the requirements established by CRWQCB-CRB. Withdrawal from the Agreement shall constitute forfeiture by the withdrawing party of its share of any costs paid as described in Section 4. Cost Sharing, of this Agreement and is conditioned on the payment of all costs accrued in accordance with Section 4. Cost Sharing. The withdrawing party shall be responsible for all lawfully assessed penalties as a consequence of its withdrawal. The cost allocations to the remaining parties shall be recalculated in the following fiscal year, in accordance with Section 4. Cost Sharing.

8. Non-compliance with Permit Requirements. Any party found to be in non-compliance with the conditions of the NPDES Permit shall be solely liable for any lawfully assessed penalties resulting from such non-compliance. Common or joint penalties shall be calculated and allocated among the responsible parties as determined by the CRWQCB-CRB and any related proceedings and according to the formula outlined in Section 4 of this Agreement.

9. Amendments to the Agreement. Except as provided in Section 6, this Agreement may be amended only by consent of all parties to the Agreement. No amendment to this Agreement shall be effective unless it is in writing and duly signed by the authorized representatives of all parties to the Agreement.

10. Authorized Signatories. The General Manager-Chief Engineer of DISTRICT, General Manager-Chief Engineer of CVWD, the Executive Officer of COUNTY and the City Managers of CITIES (or their designees) are authorized to execute this Agreement and all amendments hereto, to take all other procedural steps necessary to carry out the terms of this Agreement and to file for and obtain an NPDES Permit(s) or amendments thereto.

11. Notices. All notices shall be deemed duly given when delivered to the designated Desert Task Force representative by hand; or three (3) days after deposit in the U.S. Mail, postage prepaid.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired hereby.

13. Consent to Waiver and Breach. No provision hereof shall be deemed waived and no breach excused, unless the waiver or breach is consented to in writing and signed by the party or parties affected. Consent by any party to a waiver or breach by any other party shall not constitute consent to any different or subsequent waiver or breach.

14. Applicability of Prior Agreements. This Agreement and the exhibits attached hereto constitute the entire Agreement between the parties with respect to the subject matter; all prior agreements, representations, statements, negotiations and undertakings concerning the NPDES Permit within the limits of CRWQCB-CRB's jurisdictional area are superseded hereby.

15. Execution in Counterparts. This Agreement may be executed and delivered in any number of counterparts or copies (counterparts) by the parties hereto. When each party has signed and delivered at least one counterpart to the other parties hereto, each counterpart shall be deemed an original and, taken together, shall constitute one and the same Agreement, which shall be binding and effective as to the parties hereto.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date the last duly authorized representative executed it. This Agreement will only become effective when fully executed by each of the parties hereto.

RECOMMENDED FOR APPROVAL:

By _____
WARREN D. WILLIAMS
General Manager-Chief Engineer

Dated: _____

APPROVED AS TO FORM:

JOE RANK
County Counsel

By _____
David H. K. Huff, Deputy

Dated: _____

RECOMMENDED FOR APPROVAL:

By _____
LARRY PARRISH
County Executive Officer

Dated: _____
ATTEST:

JEU:cw
P8/117865
02/08/08

**RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

By _____
MARION ASHLEY, Chairman
Board of Supervisors, Riverside County Flood
Control and Water Conservation District

ATTEST:

NANCY ROMERO
Clerk to the Board

By _____
Deputy

(SEAL)

COUNTY OF RIVERSIDE

By _____
ROY WILSON, Chairman
Board of Supervisors, County of Riverside

NANCY ROMERO
Clerk to the Board

By _____
Deputy

(SEAL)

APPROVED AS TO FORM:

**COACHELLA VALLEY WATER
DISTRICT**

By _____

By _____
STEVE ROBBINS
General Manager-Chief Engineer

By _____
PETER NELSON
President

Dated: _____

APPROVED AS TO FORM:

CITY OF BANNING

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF CATHEDRAL CITY

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF COACHELLA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF DESERT HOT SPRINGS

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF INDIAN WELLS

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF INDIO

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF LA QUINTA

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF PALM DESERT

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF PALM SPRINGS

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

APPROVED AS TO FORM:

CITY OF RANCHO MIRAGE

By _____
City Attorney

By _____
Mayor

ATTEST:

By _____
City Clerk

Dated: _____

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: May 13, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: Western Riverside County Clean Cities Coalition and Participation in ICLEI – Local Governments for Sustainability U.S.A.

RECOMMENDATION:

That the City Council join the Western Riverside Council of Governments (WRCOG) and member agencies in participation in ICLEI (known as Local Governments for Sustainability) and the California Climate Action Registry (CCAR) and adopt Resolution No. 2008- 54 recognizing the Green Valley Initiative as a means of becoming a Center of Green Technology.

BACKGROUND:

The Western Riverside County Clean Cities Coalition is moving forward in implementing its 10-year strategic plan that was endorsed by the WRCOG Executive Committee in February 2007. One of the short-term objectives is for the Coalition to partner with ICLEI, as known as the Local Governments for Sustainability, to examine climate change pollution prevention tactics. And with increasing pressure being applied to jurisdictions to reduce greenhouse gas emissions, pursuant to AB 32 and the Global Warming Act of 2006, the link between the Coalition members, ICLEI, and CCAR is important.

In order for jurisdictions to reduce their greenhouse gas emissions, they first need to know emissions sources in their jurisdictions. By becoming members of ICLEI and CCAR and listing the Coalition as a contact, the Coalition (as well as the member jurisdiction) will have access to software tools that can be used to determine baseline emissions. The Coalition will dedicate staff time to assist member jurisdictions with determining their baseline emissions.

To receive this benefit, jurisdictions must: 1) complete the membership forms; and 2) for ICLEI membership, pass a resolution that outlines the jurisdiction's emission reduction goals.

WRCOG recommends its member jurisdictions to take part in this unique opportunity. By gathering data that determines baseline emissions for greenhouse gases, communities will be "in front of the curve" and able to implement sound policies to reduce emissions. In addition, participating cities will be in a position to track reductions based on policies implemented.

FISCAL DATA:

Western Riverside Council of Governments has paid the City of Banning's first year dues, which for government agencies of our size is \$850.

Each year, thereafter the City will be required to pay its dues to continue its CA Registry membership

RECOMMENDED AND APPROVED BY:

Brian S. Nakamura, City Manager

REVIEWED BY:

Bonnie Johnson, Finance Director

RESOLUTION NO. 2008-54

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
RECOGNIZING THE GREEN VALLEY INITIATIVE AS A MEANS TO
BECOMING A CENTER OF GREEN TECHNOLOGY**

WHEREAS, the Green Valley Initiative is a project of the Green Institute for Village Empowerment (GIVE) which seeks to empower, encourage and promote principles of sustainability through education, training, and leading by example; and

WHEREAS, the vision of the Green Valley Initiative is to see the Inland Empire Region become a center of green technology with balanced economic and community development; and

WHEREAS, its mission is to transform Riverside and San Bernardino Counties into a region that integrates people and business with natural resources to create jobs, new ventures, greater opportunities and a higher quality of life; and

WHEREAS, the Green Valley Initiative endeavors to work with the two Counties and all jurisdictions, civic, business, economic development, educational and tribal groups, to develop non-binding model policy and programs to facilitate the goal of becoming a center of green technology with balanced economic and community development; and

WHEREAS, Regional organizations, counties and cities and business will endeavor to work together with Green Valley Coordinators to further the goal of creating a healthy economic and environmental future by establishing the region as a center of green technology; and

WHEREAS, the efforts of this initiative benefit all Green Valley participants and the public; and

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

Section I. The City of Banning supports the Green Valley Initiative and its efforts to establish western Riverside County and the Inland Empire as a hub for green technologies and economic advancement; and

Section II. The City of Banning desires for the Inland Empire Region to become a Green Valley center of green technology and to that effect it will continue to participate in the development and implementation of non-binding model policy programs to achieve said goal.

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Section III. The City of Banning supports the Green Valley Initiative and agrees to participate in future activities that can achieve the initiatives, goals and objectives.

PASSED, APPROVED, AND ADOPTED this 13th day of May, 2008.

Brenda Salas, Mayor

ATTEST:

Marie A. Calderon, City Clerk

**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. 2008-54 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 13th day of May, 2008.

AYES:
NOES:
ABSENT:
ABSTAIN:

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

Join the CA Registry & Annual Fee Structure



Statement of Intent Form

_____ will participate in the California Climate Action Registry.

We will:

- Inventory entity-wide direct and indirect greenhouse gas (GHG) emissions, using guidance provided by the CA Registry, including the General Reporting Protocol. We agree to report GHG emissions in the State of California and we may elect to report national emissions as well.
- Certify our emissions through a State- and CA Registry-approved certifier.
- Report our total emissions through the Climate Action Registry Reporting Online Tool (CARROT).

Signed: _____
Name: _____
Title: _____
Organization: _____
Address: _____
Email: _____
Date: ____/____/20____

Financial Documentation:

- ☐ Audited Financial Statement
- ☐ Statement from Owner/Officer
- ☐ Current Annual Budget

Type of Organization:

- ☐ Academic
- ☐ Commercial/Industrial
- ☐ Government
- ☐ Non-profit

1st year of data to be reported for certification:

- ☐ 2007
- ☐ 2008
- ☐ Prior Year* _____
(*Historic Reporting fees apply)

General Contact Person for Registry

Name: _____
Phone: _____
Email: _____

Technical Contact (if different)

Name: _____
Phone: _____
Email: _____

Join the CA Registry & Annual Fee Structure

Annual Fee Structure* (Effective January 1, 2008)

To qualify for fees based on the sliding scale below, financial documentation is **REQUIRED**.

Commercial and Industrial Organizations with Revenues:

Over \$2 billion	\$10,000
From \$500 million - \$2 billion	\$6,000
From \$100 million - \$500 million	\$3,500
From \$20 million - \$100 million	\$1,700
Under \$20 million	\$600

Commercial and industrial organizations, i.e. publicly-held companies **must** provide a copy of their most recently audited financial statements. Privately-held companies may submit a statement from an owner or officer stating annual revenues, if a financial statement is not available.

Non-profit, Government, and Academic Organizations:

Over \$2 billion	\$5,000
From \$500 million - \$2 billion	\$3,500
From \$100 million - \$500 million	\$2,500
From \$20 million - \$100 million	\$850
Under \$20 million	\$450

Non-profit, government, and academic organizations **must** provide a copy of their most recently audited financial statements or budget and proof of exempt status (IRS tax exemption letter or State tax exemption letter).

*A new member reporting data for the calendar year in which it joins will be assessed the full fee for that year. Members who do not report emissions for the year they join will be assessed a prorated annual fee based upon the month in which they join.

Reporting Historic Data: If a member wishes to register historic data, they will be charged 50% of the current annual fee for each year of historic data registered.

NOTE: Financial statements are considered confidential.

Supporter** \$600

Supporter status is **only available for membership organizations. It is intended for business associations, coalitions, and industry groups that represent member organizations who are interested in the CA Registry's work and programs, and who support the mission of the California Climate Action Registry.

Return to:
California Climate Action Registry, 523 West 6th Street, Suite 428, Los Angeles, CA 90014 or Fax to 213-623-6716

Application for Membership

Jurisdiction Name		State	
Website		Population	
1. Name of Chief Executive Official		Title	
E-mail		Telephone	
2. Name of elected official liaison to ICLEI		Title	
Address			
City		County, State, ZIP	
E-mail		Telephone	
Date last elected / Last day of term			
3. Name of staff liaison to ICLEI		Title	
Address			
City		State, ZIP	
E-mail		Telephone	
Key Contact Person on ICLEI Matters (Check either Staff or Elected for each)		Staff	Elected
Voting		<input type="checkbox"/>	<input type="checkbox"/>
Regular contact		<input type="checkbox"/>	<input type="checkbox"/>
4. Name of press/media contact		Title	
Address			
City		State, ZIP	
E-mail		Telephone	
5. Name of person to receive invoice		Title	
E-mail		Telephone	
6. Name of person completing form		Title	
E-mail		Telephone	
7. Date of CCP program resolution adoption or proclamation			

Upon receipt of membership fees and an adopted program resolution, your jurisdiction will be considered a full ICLEI Member. All ICLEI Council Members are governed by the ICLEI Charter. A copy of the Charter will be sent to the primary contact indicated above.

Signature: _____ Date: _____

Please take a moment to complete the questions on the reverse side.

Please send completed form to:
ICLEI – Local Governments for Sustainability U.S.A.
436 14th Street, Suite 1520
Oakland, CA 94612

Telephone: (510) 844-0699
Fax: (510) 844-0698
E-mail: iclei-usa@iclei.org
Website: www.iclei.org/usa

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Application for Membership



7. Please list other local governmental associations of which your local government is a member:

8. Please list any local governments that are twin or sister cities with your local government:

9. In general, how can ICLEI best help your local government with climate protection and sustainability goals?

10. If you are a new member, how did you learn about ICLEI?

Thank you for your interest in joining ICLEI – Local Governments for Sustainability.

Please send completed form to:
ICLEI – Local Governments for Sustainability U.S.A.
436 14th Street, Suite 1520
Oakland, CA 94612

Telephone: (510) 844-0699
Fax: (510) 844-0698
E-mail: iclei-usa@iclei.org
Website: www.iclei.org/usa

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Benefits of ICLEI Membership

Networking & Events

Networking is one of ICLEI's greatest strengths. ICLEI Members enjoy invitations to exclusive regional, national, and international events as well as direct access and referrals to ICLEI's global network of more than 770 local government Members.

Tools & Resources

Because every local government has unique needs, ICLEI Members have access to password-protected Internet sites that offer the latest information and resources on sustainable development and climate protection—including case studies and best practice reports; ICLEI publications such as Initiatives; customizable presentation materials; templates for press releases, policies, and internship activities; a CCP methodology toolkit; specialized tools for energy management, forestry, land-use planning, and transportation; and additional resources continually in development.

Technical Support & Professional Development

A hallmark of ICLEI is hands-on assistance. A designated ICLEI staff liaison will help local government Members get the support they need, such as training tailored for elected officials and staff on communitywide education, implementation of specific measures, program assistance, media relations, grant seeking, and use of ICLEI's greenhouse gas emissions software that helps quantify and track reductions.

Financial Support & Discounts

In order to help Members find the resources necessary to realize their sustainability projects, ICLEI helps match Members with funding sources, offers Member discounts on ICLEI events, and provides access to grant-seeking resources and funding alerts.

Recognition & Awards

Celebrating progress and success inspires others. Through outreach, media, and public relations efforts, ICLEI Members are recognized for achievements and noteworthy progress such as milestone accomplishments and outstanding efforts made by individuals, communities, and local government Members.

Representation

Members are assured a voice at the table at top-level international meetings through ICLEI's official role as local government representative at the United Nations Framework Convention on Climate Change and as Local Government Major Group Coordinator at the United Nations Commission on Sustainable Development.

ICLEI U.S.A., Inc.
436 14th Street, Suite 1520
Oakland, CA 94612
U.S.A.

Phone: +1-510/844-0699
Fax: +1-510/844-0698
E-mail: iclei-usa@iclei.org
Web: www.iclei.org/usa

U.S. Regional Capacity Centers
Northeast RCC
Boston, MA

Pacific Northwest RCC
Seattle, WA

Western States RCC
Fort Collins, CO

ICLEI U.S.A. Policy Institute
Washington, DC

Governance

As an association of local governments, invitations to elect, and to seek position on, ICLEI's international Executive Committee and the ICLEI U.S.A. Board of Directors are extended to Members. ICLEI Council membership and the opportunity to evaluate, shape, and adopt ICLEI policies and practices are extended to every ICLEI Member.

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: May 13, 2008

TO: City Council

FROM: Bonnie J. Johnson, Finance Director

SUBJECT: Approve Amendment to Original Agreement with Civic Solutions, Inc for Interim Community Development Director Services for the City of Banning Community Development Department.

RECOMMENDATION: "The City Council approve the first amendment to the Original Agreement with Civic Solutions, Inc for Interim Community Development Director Services for the City of Banning Community Development Department."

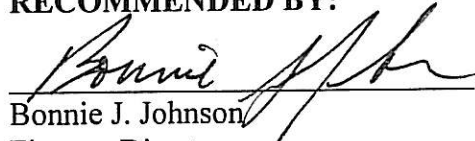
JUSTIFICATION: Amendment of this contract allows the Community Development Department to continue to move forward with projects while recruiting for a permanent Director.

BACKGROUND & ANALYSIS: In March of 2008 the City's Community Development Director resigned from the City of Banning. This vacancy left the City without a professional liaison to conduct City business for the Community Development Department. The City has budgeted for a Director although the position is currently vacant.


On April 7, 2008 the City of Banning entered into an agreement with Civic Solutions, Inc to provide the necessary professional services to conduct business for the City's Community Development Department. This agreement is for the period April 7, 2008 through September 30, 2008 in the amount of \$25,000. The City has benefited by having a professional liaison to conduct business for the Community Development Department. Staff feels it is necessary to continue to have a Interim Director available to work fulltime and conduct City business. Staff is recommending that the City Council approve an amendment to increase the current contract for an additional \$65,000. The City Manager has initiated the recruitment of a permanent Director and it is anticipated that this position will be filled no later than September 30, 2008. The amendment will allow the Community Development Department to continue with its current projects without interruption.

FISCAL DATA None. The funds are available in the budget savings from the unfilled Director position and will be used until the permanent appointment is made.

RECOMMENDED BY:


Bonnie J. Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: May 13, 2008

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Recommendation for the installation of "speed humps" on Wesley Street between San Gorgonio Avenue and Hargrave Street.

RECOMMENDATIONS: "The City Council receive and place on file this report as a recommendation from the Banning Police Department regarding traffic issues on Wesley Street between San Gorgonio Avenue and Hargrave Street."

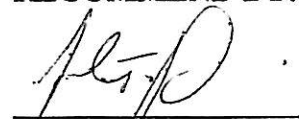
BACKGROUND: Presently the County of Riverside is in the process of increasing the size of the Larry D. Smith Correctional Facility, located at the dead-end of South Hargrave Street, in the the City of Banning. Riverside County representatives have met with local citizens to discuss their concerns with the expansion of the correctional facility.

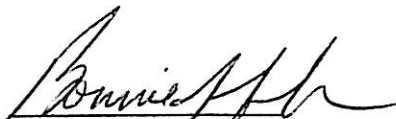
One of the concerns, with citizens living on and adjacent to Wesley Street, is the anticipated increase of vehicular traffic from employees and visitors who are traveling to and from the correctional facility. The citizens believe the uninterrupted length of Wesley Street from San Gorgonio Avenue to Hargrave Street (0.5 miles), which is narrow and has no sidewalks, is conducive to speeding drivers. County representatives have informed the concerned citizens they will work with the City to resolve this issue and have informed City Staff the County of Riverside will cover the cost of installing "speed humps" in the noted area.

The Banning Police Department has reviewed the issue and supports the placement of "speed humps" on Wesley Street between San Gorgonio Avenue and Hargrave Street, with specific locations and numbers to be determined by the Public Works Department. The added "speed humps" will help to ensure passing vehicles are operating within the posted speed limit in the residential area.

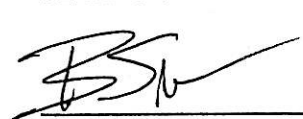
FISCAL DATA: Riverside County has agreed to reimburse the City of Banning for the materials and construction of the "speed humps."

RECOMMEND BY:


Leonard Purvis
Chief of Police


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: May 13, 2008

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer



SUBJECT: Approve Final Tract Map No. 34330, Butterfield/Deutsch Specific Plans

RECOMMENDATION: Approve Final Tract Map No. 34330, Butterfield/Deutsch Specific Plans and authorize the City Clerk and the City Engineer to sign said map.

JUSTIFICATION: The final map, attached as Exhibit "A", has been examined and is found to be in substantial conformity with the tentative map.

BACKGROUND: Tract 34330, Butterfield/Deutsch Specific Plans, consists of 20 subdivision lots and is located at the northeast corner of Highland Springs Avenue and Wilson Street.

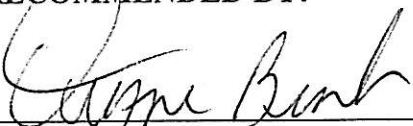
The Tentative Tract Map was approved by the City Council at its regular meeting of June 26, 2007. The final map has minor changes from the original Tentative Tract Map; however, staff found it is to be in substantive conformity with the approved Tentative Tract Map.

As it was discussed during the Tentative Tract Map approval, this Tract Map was intended for financial purposes and no development entitlement nor improvements of any portion of this map shall be permitted until the specific plans is amended and subdivision map is recorded in accordance with Government Code Section 66411 et al.

Because the map was intended for financial purposes, the developer was not required to provide any improvements or monumentation bonds until such time that developer submitted a subdivision map.

FISCAL DATA: Not applicable

RECOMMENDED BY:



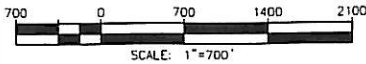
Duane Burk
Director of Public Works

APPROVED BY:



Brian Nakamura
City Manager

EXHIBIT "A"



IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

SHEET 3 OF 20 SHEETS

TRACT NO. 34330

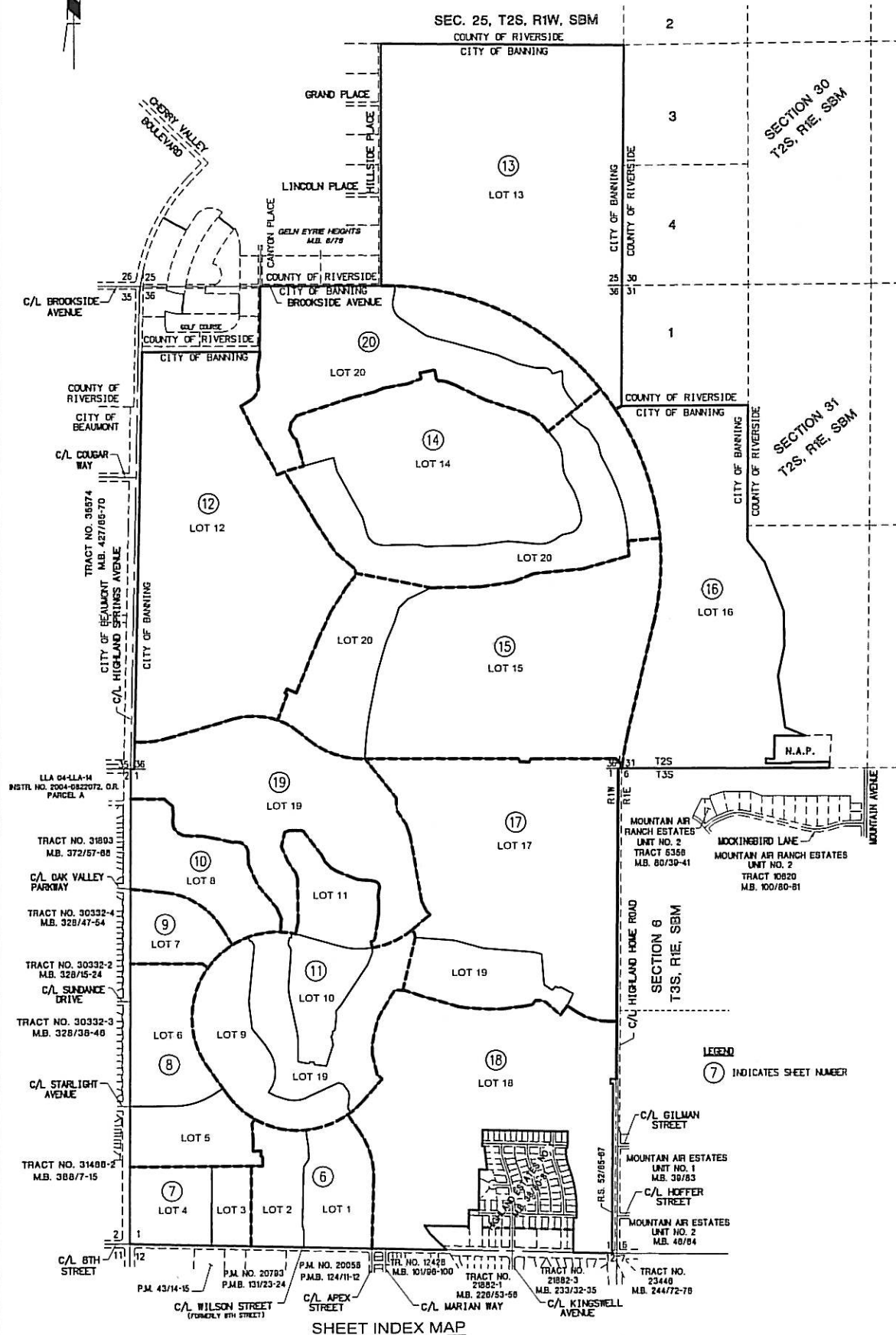
BEING A SUBDIVISION OF PORTION OF LOT 1 AS SHOWN ON EXCLUSION MAP RECORDED JUNE 9, 1960 AS INSTRUMENT NO. 51500 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, PORTION OF SECTION 31, TOWNSHIP 2 SOUTH, RANGE 1 EAST, AND PORTION OF SECTION 1, TOWNSHIP 3 SOUTH, RANGE 1 WEST, BOTH SAN BERNARDINO MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF.

WILLIAM L. GREEN, L.S. 4547



JANUARY 2008

FOR CONVEYANCE AND FINANCE PURPOSES



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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: May 13, 2008

TO: Honorable Mayor and Members of the City Council

FROM: Brian S. Nakamura, City Manager

SUBJECT: Sponsorship of Western Riverside Council of Governments (WRCOG) 17th Annual General Assembly

RECOMMENDATION:

That the City Council consider as a member agency being an Innovative Sponsor for the Western Riverside Council of Governments 17th Annual General Assembly in the amount of \$2,500.

BACKGROUND:

During the summer of each year WRCOG holds a general assembly to review work accomplished and look ahead to the many issues that face us in the future. This year's speaker is George Stephanopoulos, who has a distinguished career in politics and currently serves as the Chief Washington Correspondent for ABC News as well as anchor of ABC's Sunday morning program, This Week with George Stephanopoulos.

The topic of this year's event is: Politics and the Economy: What's in Store for 2008? Innovative Sponsorship will provide recognition to the City of Banning as jurisdiction supportive of improving the quality of life for residents and businesses and the Inland Empire region. The political and economic future for the City and Pass area will clearly be impacted by Federal, State, and local level politics.

The City Council also sponsored this event in 2007


FISCAL DATA:

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

REVIEWED BY:


Bonnie Johnson
Finance Director

**RECOMMENDED AND
APPROVED BY:**


Brian S. Nakamura
City Manager

2008 General Assembly

The Western Riverside Council of Governments (WRCOG) proudly presents its 17th Annual General Assembly, to be held at the Morongo Casino Resort & Spa. We encourage you to join us for this enlightening and engaging event.

The topic of this year's event is: Politics & the Economy: What's in Store for 2008? With an exciting race for the Presidency, 2008 is a pivotal year when it comes to shaping the political and economic future of the



2007 Keynote Speaker,
Sam Donaldson

region, as well as the nation, for years to come. Building on this topic, George Stephanopoulos will be sharing his perspective on the current Presidential candidates and examining how their policy decisions will define the state of the nation for the next four years.

WRCOG works with 14 cities, the County of Riverside, and two water districts on numerous regional issues, including air quality, planning, transportation, and solid waste. WRCOG provides a voluntary forum and structure to facilitate local governments to plan, coordinate, advocate, and when appropriate, implement cooperative programs of a regional nature.

Who should attend..

Seating for this extraordinary event will be limited to 700 people. The region's top elected officials, business and community leaders are expected to attend. This event will sell out.

Cost

Presale tickets for this event are \$75 per person until June 2, 2008. After June 2 and at the door, tickets will cost \$85 per person. Please note that V.I.P. Reception tickets are only provided with sponsorships; they cannot be purchased.



2008 Keynote Speaker,
Oliver North

to plan, coordinate, advocate, and when appropriate, implement cooperative programs of a regional nature.

2008 Keynote Speaker



WRCOG is pleased to announce George Stephanopoulos as the Keynote Speaker for the 2008 General Assembly. Mr. Stephanopoulos is the Chief Washington Correspondent for ABC News and anchor of ABC's Sunday morning program, *This Week* with George Stephanopoulos.

Mr. Stephanopoulos was named White House Correspondent in December 2005 and began anchoring *This Week*, *World News Tonight*, *Good Morning America*, and other ABC News programs and special event broadcasts. Mr. Stephanopoulos joined ABC News in 1997 as a news analyst for *This Week*.

Prior to joining ABC News, Mr. Stephanopoulos served in the Clinton administration as the senior advisor to the president for policy and strategy. He is also the author of "All Too Human," a No. 1 New York Times best seller on President Clinton's first term and the 1992 and 1996 Clinton/Gore campaigns.

Mr. Stephanopoulos received his Master's degree in theology at Balliol College, Oxford University, England, where he studied as a Rhodes Scholar. He also holds a Bachelor of Arts degree from Columbia University.

The Program

A V.I.P. reception will be held for sponsors and local elected representatives at 4:30 p.m., with registration and a general reception for the General Assembly starting at 5:00 p.m. Mr. Stephanopoulos will provide the keynote presentation during the General Assembly meeting which will start at 6:15 p.m.

Contact

If you would like to sponsor the General Assembly or R.S.V.P. to attend this event, please contact Danielle Coats at (951) 955-8432 or coats@wrcog.ca.us. Seating is limited. This event will sell out.

2008 General Assembly Opportunities

Dinner Sponsorship (1)

The dinner and venue has generously been sponsored by the Morongo Band of Mission Indians.

Speaker Sponsor - \$20,000

- All items listed for V.I.P. Reception Sponsor, excluding reception remarks;
- Special thank-you by the Keynote Speaker;
- Premier seating at or by the head table; and
- A suite at Morongo Casino, Resort & Spa.

V.I.P. Reception Sponsor - \$10,000

- All items listed for Pioneer Sponsor plus 4 additional V.I.P. Reception Tickets (10 Total);
- Company logo at all food and beverage stations;
- 10 dinner tickets with corporate signage; and
- Option to provide remarks at V.I.P. Reception.

Pioneer Sponsor - \$7,500

- All items listed for Visionary Sponsor plus 2 additional V.I.P. Reception Tickets (6 Total);
- Placement of company banner in the ballroom;
- Special thank you announcement at the V.I.P. Reception; and
- Full page ad space in the event program.

Visionary Sponsor - \$5,000

- All items listed for Innovator Sponsor plus 2 additional V.I.P. Reception Tickets (4 Total);
- Company logo on WRCOG website for 1 full year;
- 6 foot table top display with white linen;
- Half page ad space in the event program; and
- Company logo on all printed promotional items.

Innovator Sponsor - \$2,500

- Two (2) V.I.P. Reception tickets;
- 10 dinner tickets with reserved seating at corporate table with signage;
- Company logo on WRCOG website for 6 months;
- Announcement of sponsorship at the event;
- Presentation of plaque of recognition; and
- Quarter page ad in the WRCOG event program.

*WRCOG
17th Annual
General Assembly*

*Politics
&
the Economy:*

*What's In Store For
2008?*

*Morongo Casino Resort
& Spa*

June 19, 2008



Western Riverside Council of
Governments
4080 Lemon Street, 3rd Floor, MS 1032
Riverside, CA 92501
Ph. (951) 955-7985
Fax (951) 787-7991
www.wrcog.cog.ca.us

Western Riverside Council of Governments

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General Assembly 2008

June 19, 2008

CITY OF BANNING

M E M O R A N D U M



DATE: April 8, 2008

TO: CITY OF BANNING COUNCIL MEMBERS

FROM: Economic Development Committee (EDC)


RE: EDC Take the Lead to Establish a Pass Area Tourism Council

The EDC discussed Tourism at a meeting on November 15, 2007. The EDC recommends that a separate Tourism Council be developed involving multiple entities such as: The Banning Chamber of Commerce, Banning Mural Council, Banning Cultural Alliance, Morongo, Gilman Ranch, Desert Hills/Cabazon Outlets, Pass EDA, Beaumont Chamber and others. The Council will include entities in our region that could be instrumental in marketing and supporting tourism.

It is our understanding that the direction from the City Council was for the EDC to do something with tourism, not run it; but take the lead to make it happen. Thus, a representative from the EDC can chair the Tourism Council and lead its members to review the assets of Banning and the Pass Area to look at tourism from a regional perspective.

If this meets Council approval, we will discuss organizing the Tourism Council at our April 17, 2008 EDC meeting.

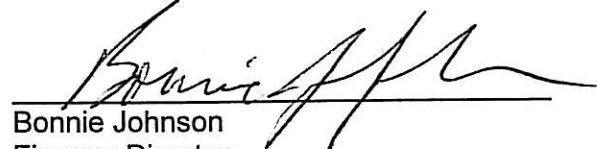
RECOMMENDED BY:


John Klimkiewicz, Chairman
Economic Development Committee

APPROVED BY:


Brian Nakamura
City Manager

REVIEWED BY:


Bonnie Johnson
Finance Director

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: May 13, 2008

TO: City Council

FROM: Bonnie Johnson, Finance Director

SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of
March 2008

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of March 2008

The reports are:

Expenditure approval lists

March 6, 2008	341,665.38
March 13, 2008	471,564.95
March 20, 2008	723,491.76
March 27, 2008	523,441.95

April 2, 2008	3,537,235.63 (March Month End)
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Payroll check registers

Manual check dated March 14, 2008	1,909.32
March 14, 2008	11,567.58
March 28, 2008	9,171.56
Manual check dated March 28, 2008	2,655.27

Payroll direct deposits*

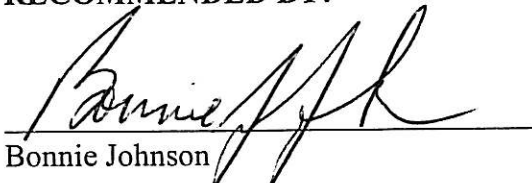
March 14, 2008	389,512.14
March 28, 2008	369,494.13

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

* Included on the MARCH month end expenditure approval list of 04/02/2008.


Report Prepared by: Michelle Green, Accounting Manager

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:




Brian Nakamura
City Manager

**CITY COUNCIL AGENDA
REPORTS OF OFFICERS**

DATE: May 13, 2008

TO: Honorable Mayor and City Council Members

FROM: Matthew Bassi, Interim Community Development Director 
Julie Hayward Biggs, City Attorney

SUBJECT: Draft Ordinance Regulating Boarding Houses and Residential Care Facilities

BACKGROUND:

At the City Council's request, the Planning Department and City Attorney's office have been working together to prepare a draft ordinance regulating group homes. The attached draft proposed ordinance is the product of this collaboration and is presented to the City Council for feedback and further direction.

RECOMMENDATION:

That the City Council provide staff with direction on the attached draft ordinance so that a final draft can be prepared and brought to the Planning Commission for action and recommendation to the City Council.

ANALYSIS:

For the purposes of local zoning regulations, "group homes" can be divided into two basic categories: those that cater to protected classes of individuals and those that don't. State and federal laws regarding discrimination and licensing impact how the City may regulate group homes that cater to certain protected groups, specifically group homes for the disabled or children. Accordingly, the proposed ordinance regulates "Boarding Houses," which do not cater to any specific class of people, and "Residential Care Facilities," which cater to individuals with a disability and children. The proposed ordinance also cleans up the definition section of the Zoning Ordinance to eliminate overlapping and inconsistent definitions.

A. Boarding Houses

California case law recognizes that boarding houses are a commercial use of property that may be restricted or prohibited in residential zones. (*City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 133; Attorney General Opinion No. 01-402 (2003).) However, there is no universally accepted definition of a boarding house. The Zoning Ordinance currently defines a boarding house as "structure where lodging and meals for 7 or more boarders is provided for compensation" and allows this use in the Highway Serving Commercial (HSC) zone with a Conditional Use Permit (CUP). The proposed ordinance substantially broadens the definition of a boarding house to "a dwelling unit, or part thereof, wherein a room or rooms, with or without individual or group cooking facilities, are rented, leased or subleased under two or more separate written or oral rental agreements, leases or subleases, whether or

not the owner, agent or rental manager resides within the dwelling unit,” and allows boarding houses subject to a CUP in the Medium-Density Residential (MDR) and High-Density Residential (HDR) zones, as well as the HSC zone. For ease of reference, the entries in the land use matrixes that have been changed by the proposed ordinance are in bold and italics.

B. Residential Care Facilities

The California Community Care Facilities Act (Health & Safety Code §§ 1500 *et seq.*) restricts the City’s ability to prohibit or require a use permit for certain residential care facilities. Specifically, residential care facilities that serve six (6) or fewer children or individuals with a disability that are licensed by the State must be treated as a residential use of property, and the facility’s residents must be treated as a family. No CUP, variance, or other zoning clearance can be required of these facilities which is not required of a family dwelling of the same type in the same zone.

The Community Care Facilities Act does not speak to the scope of the City’s power to regulate residential care facilities that serve more than six (6) children or individuals with a disability or residential care facilities that serve six (6) or fewer children or individuals with a disability that are not licensed by the State. However, state and federal law prohibit disability discrimination, and the federal government interprets the federal Fair Housing Act (42 U.S.C. §§ 3601 *et seq.*) to prohibit zoning regulations that treat group homes for persons with disabilities or children less favorably than group homes for non-disabled adults. In other words, the City must treat residential care facilities the same or better than boarding houses. The proposed ordinance treats large and small, unlicensed residential care facilities identically to boarding houses by allowing all of these uses in the same zones subject to a CUP. The proposed ordinance treats small, licensed residential care facilities more favorably than boarding houses by permitting them in all residential zones.

The Fair Housing Act requires that the City make a “reasonable accommodation” in its zoning policies if requested and if the accommodation is necessary to afford the disabled or children equal access to housing. Accordingly, the proposed ordinance includes a section detailing with how an individual may request a reasonable accommodation and providing the criteria for determining if a requested accommodation is reasonable.

Summary

In short, the City is prohibited from regulating licensed group homes that serve six or fewer children or disabled individuals. The City’s ability to regulate unlicensed group homes that serve six or fewer children or disabled individuals is unsettled at this time. There is case law in other jurisdictions holding that licensed and unlicensed facilities of the same size must be treated the same, and case law holding the opposite. As for licensed and unlicensed group homes that serve seven or more children or disabled individuals and group homes that serve non-disabled adults, the City is free to regulate these uses. However, group homes for children and the disabled must be treated the same or better than group homes for non-disabled adults.

CC Attachments:

1. Draft Group home Ordinance

ATTACHMENT 1

Draft Ordinance for Boarding Homes and Residential Care Facilities

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTIONS 17.04.070, 17.08.020, 17.12.020 AND 17.28.040 OF THE BANNING MUNICIPAL CODE, AND ADDING SECTIONS 17.08.201 AND 17.12.050(Q) TO THE BANNING MUNICIPAL CODE, REGULATING BOARDING HOUSES AND RESIDENTIAL CARE FACILITIES.

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

SECTION 1. Section 17.04.070 (Definitions) of the Banning Municipal Code is hereby amended as follows:

1. Amend the definition of "Family" to read as follows:

"Family is a Single Housekeeping Unit."

2. Add the following definition of "Single Housekeeping Unit."

"Single Housekeeping Unit is one or more individuals, whether related by blood, marriage, legal adoption or not, jointly occupying a dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities such as meals, chores, household maintenance, and expenses, and where, if the unit is rented, all adult residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager."

3. Amend the definition of "Boarding House" to read as follows:

"Boarding House is a dwelling unit, or part thereof, wherein a room or rooms, with or without individual or group cooking facilities, are rented, leased or subleased under two or more separate written or oral rental agreements, leases or subleases, whether or not the owner, agent or rental manager resides within the dwelling unit."

4. Amend the definition of "Residential Care Facility" to read as follows:

"Residential Care Facility is a building or group of buildings that provide temporary or permanent housing to children or individuals with a disability, as defined by State or Federal law, where the residents do not live together as a single housekeeping unit, and where every person residing in the facility (excluding the operator of the facility, the operator's family,

and the facility's staff) is a child or an individual with a disability. A residential care facility shall not be considered a boarding house.

Residential Care Facility, Large, is a residential care facility in which seven (7) or more children or individuals with a disability reside, which is either licensed by the State or unlicensed and not required by law to be licensed by the State.

Residential Care Facility, Small, Licensed, is a State-licensed residential care facility in which six (6) or fewer children or individuals with a disability reside, and which is required by State law to be treated as a residential use of property for zoning purposes. Licensed small residential care facilities that are required by State law to be treated as a residential use of property include, without limitation: Intermediate care facilities for the developmentally disabled (Health & Safety Code § 1267.8(c)); Congregate living health facilities (Health & Safety Code §§ 1267.8(c); 1267.16(a)); Residential community care facilities, including foster family homes, small family homes, social rehabilitation facilities, community treatment facilities, and transitional shelter care facilities (Health & Safety Code §§ 1502, 1566.3); Residential care facilities for persons with chronic life-threatening illness (Health & Safety Code § 1568.0831); Residential care facilities for the elderly (Health & Safety Code § 1569.85); Pediatric day health and respite care facilities (Health & Safety Code § 1761.4).

Residential Care Facility, Small, Unlicensed, is a residential care facility in which six (6) or fewer children or individuals with a disability reside, and which is not licensed by the State and is not required by law to be licensed by the State."

5. Amend the definition of "Multi-Family" to read as follows:

"Multi-Family Dwelling is a building containing two or more dwelling units."

6. Add a definition of "Single-Family Dwelling" to read as follows:

"Single-Family Dwelling is a building containing one dwelling unit."

7. Amend the definition of "Apartment" to read as follows:

"Apartment is a dwelling unit in a multi-family building."

8. Amend the definition of "Bed and Breakfast" to read as follows:

"Bed and Breakfast is a lodging establishment in which no more than ten (10) rooms are provided to the general public for lodging on a transient basis, and which may provide meals to the extent otherwise permitted by law."

9. Delete the definition of "Special Needs Housing."

10. Delete the definition of "Convalescent Center."

11. Amend the definition of "Day Care Center, Children" to read as follows:

"Day Care Center is a facility which provides non-residential, non-medical care to twelve (12) or more children under eighteen (18) years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four (24) hour basis. The definition of day care center includes infant centers, pre-schools, and extended day care facilities, but does not include day care homes."

12. Amend the definition of "Day Care Home, Children" to read as follows:

"Day Care Home is a single-family dwelling where an occupant of the residence provides non-residential, non-medical care to children that are under eighteen (18) years of age and in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a twenty-four (24) hour basis.

Day Care Home, Large is a day care home where care is provided to up to twelve (12) children, or up to fourteen (14) children if allowed by State law, and which is not a small day care home.

Day Care Home, Small is a day care home where care is provided to up to six (6) children, or up to eight (8) children if allowed by State law."

13. Amend the definition of "Dormitory" to read as follows:

"Dormitory is a building owned or operated by a public or educational institution which provides private or semi-private sleeping quarters, common cooking facilities and common restrooms for its residents."

14. Add a definition of "Single Room Occupancy Residential Hotel" to read as follows:

"Single Room Occupancy Facility is a building or group of buildings with one or more guest rooms without kitchen and/or sanitary facilities in individual guest rooms, and which is also the primary residence of the guests."

SECTION 2. Section 17.08.020 is hereby amended to read as follows:

ZONE	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Residential Uses									
Condominiums & Townhomes	X	X	X	X	C	C	P	P	X
Congregate Care Facility	X	X	X	X	X	P	P	P	X
Day Care Center	P	P	X	X	X	C	C	C	C
Day Care Home, Small¹	P	P	P	P	P	P	P	P	P
Day Care Home, Large²	C	C	C	C	C	C	C	C	C
Dormitory	X	X	X	X	X	C	C	C	X
Homeless Shelter	X	X	X	X	X	X	X	C	C
Mobile Home Parks or Subdivisions	X	X	X	X	X	X	C	C	P
Multi-Family Dwelling	X	X	X	X	X	C	P	P	X
Planned Unit Development	X	X	X	P	P	P	P	P	X
Residential Care Facility, Large	X	X	X	X	X	X	C	C	X
Residential Care Facility, Small, Licensed	P	P	P	P	P	P	P	P	P
Residential Care Facility, Small, Unlicensed	X	X	X	X	X	X	C	C	X
Second Dwelling Unit	P	P	P	P	P	P	X	X	X
Single Family Dwelling	P	P	P	P	P	P	C	C	X
Single Room Occupancy	X	X	X	X	X	X	X	C	X

ZONE	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Equestrian Uses									
Stables, Private	P	P	P	P	P	X	X	X	X
Stables, Commercial	P	C	P	C	C	X	X	X	X
Tack & Feed Stores	C	C	C	X	X	X	X	X	X
Veterinary Offices and Hospitals	C	X	C	X	C	X	X	X	X
Agricultural Uses									
Grazing of Animals	P	P	P	P	P	P	X	X	X
Kennels and Catteries, commercial	C	C	C	C	C	C	X	X	X
Locally Adaptive Farming	P	P	C	C	X	X	X	X	X
Factory Farms with Genetic Monocultures	X	X	X	X	X	X	X	X	X
Ranching	P	P	C	C	X	X	X	X	X
Recreational Uses									
Clubhouses	C	X	C	X	C	C	C	C	C
Golf Courses and Related Facilities	C	X	C	X	C	C	C	C	C
Swimming Pool/Sports Club	X	X	X	X	C	C	C	C	C
Sports Courts and Fields	C	X	C	X	C	C	C	C	X
Accessory Uses									
Telecommunications Antennae	C	X	X	X	X	X	X	X	X
Garages(for storage of vehicles only, in excess to that required under Chapter 17.28 (Parking	C	X	C	X	C	C	X	X	X

ZONE	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Regulations)									
Other Uses									
<i>Bed & Breakfast</i>	C	C	C	C	C	C	C	X	X
<i>Boarding House</i>	X	X	X	X	X	X	C	C	X
Cemeteries	C	X	C	X	C	C	X	X	X
Churches	C	X	C	X	C	C	C	C	C
Utility Facilities	C	C	C	C	C	C	C	C	C
Private Schools	C	C	C	C	C	C	C	C	C
Neighborhood Oriented Retail Stores ³	X	X	X	X	X	X	C	X	X
Temporary Uses ⁴	T	T	T	T	T	T	T	T	T

¹ Small family day care homes are permitted by right in single-family residences located in any residential zone. Small family day care homes are not permitted in multiple-family residences.

² Large family day care homes are conditionally permitted in single-family residences located in any residential zone. Large family day care homes are not permitted in multiple-family residences.

³ Neighborhood-oriented retail stores, as defined in the General Plan, consist of "corner store" type development such as convenience stores, grocery or green grocer, video rental, drug stores, sit down restaurants, coffee shops or coffee bars or similar uses, less than 5,000 square feet in total square footage.

⁴ Temporary Uses require Temporary Use Permit. See Chapter 17.108 for provisions.

SECTION 3. Section 17.12.020 is hereby amended to read as follows:

ZONE	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	X	C	X	X	X	X	X	C

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ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
on-site sales								
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

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
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	P	P	P	X	X	X	P	X

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
liquor sales								
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	C	C	C	C	X	P	C	X
Restaurants, drive-in, take-out, fast food	C	P	P	C	X	X	C	X

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ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
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
Boarding House	X	X	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 services	X	P	P	C	X	X	C	X

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
Dry cleaning, retail	C	P	P	C	X	X	P	X
Equipment rental yards	X	X	C	X	P	C	C	X
Government offices	X	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	X	C ⁴	X	X	P	P	P	X

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
prefabricated parts or products								
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, ancillary to a bar or restaurant	C	C	C	X	X	P	C	X
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	X	X	X	X	P	P	C	C

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
blacksmithing								
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	C	X	X	X	C	C	C	C

ZONE	DC	GC	HSC	PO	I	AI	BP	IMR
dwelling								
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
Residential accessory uses and structures	C	X	X	X	X	X	X	X
Residential care facility, large	X	X	C	X	X	X	X	X
Residential care facility, small, licensed	X	X	C	X	X	X	X	X
Residential care facility, small, unlicensed	X	X	C	X	X	X	X	X
Congregate Care Housing	C	X	X	C	X	X	C	X
Single room occupancy facility	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

SECTION 4. Table 17.28.040C ("Institutional Parking Requirements") in Section 17.28.040 is hereby amended to read as follows:

USE	NUMBER OF REQUIRED PARKING SPACES
Boarding houses, dormitories, single room occupancies and similar facilities	One (1) space per room, or one (1) space per two (2) beds, whichever is greater.
Churches, conference/ meeting facilities, mortuaries, theaters, auditoriums	One (1) space for each four (4) fixed seats, or one space for each thirty-five (35) square feet of non-fixed seating area in the principal sanctuary, conference space or auditorium, whichever is greater.
Community college/ university	Twelve (12) spaces for each classroom
Day care centers	One (1) space for each staff member, plus one (1) space for each eight (8) children
Elementary school/ junior high	Three (3) spaces for each classroom
High school	Eight (8) spaces for each classroom
Hospitals	Three (3) spaces for each two (2) patient beds, or as determined in the development review process.
Libraries, Museums, art galleries	One (1) space for each three hundred (300) sq ft of gross floor area, or as determined in the development review process.
Sanitariums/ nursing homes	One (1) space for each five (5) beds, plus one (1) space for each employee on the largest shift, plus one (1) space for each staff doctor
Senior Congregate Care Housing	Two (2) spaces for each three (3) living units.

SECTION 5. Section 17.08.201 is hereby added to the Banning Municipal Code, and shall read as follows:

"17.08.201. Boarding Houses, Single Room Occupancies and Residential Care Facilities.

Any person who seeks to own, manage, or operate a boarding house, single room occupancy, a large residential care facility or a small, unlicensed residential care facility shall obtain a conditional use permit from the City. A boarding house, single room occupancy, large residential care facility or small, unlicensed residential care facility may only be allowed to operate with a conditional use permit in the zones indicated in sections 17.08.020 and 17.12.020 of this Zoning Ordinance. No person shall own, manage, or operate a boarding house, single room occupancy, large residential care facility or small, unlicensed residential care facility without a valid conditional use permit.

A. Application for a Conditional Use Permit

In addition to the findings for a conditional use permit required by section 17.52.050 of this Zoning Ordinance, no conditional use permit for a boarding house, single room occupancy, large residential care facility or small, unlicensed residential care facility shall be granted unless the following findings are made:

1. The Fire Chief and Building Official have determined that the premises complies with all applicable laws, ordinances and regulations.
2. All persons directly or indirectly interested in use as an owner, partner officer, manager, employee or other person to be in charge of the use have not been convicted of a felony or any crime of moral turpitude.

B. Operational Standards

The following standards shall apply to boarding houses, single room occupancies, large residential care facilities and small, unlicensed residential care facilities:

1. The use shall not result in adverse effects to the health, welfare, peace, or safety of persons in the surrounding area;
2. The use shall not jeopardize or endanger the public health, safety, or welfare of persons in the surrounding area;
3. The use shall not adversely affect the livability of the surrounding neighborhood as a result of inadequate maintenance, prohibited activities, and/or operating characteristics;
4. The use shall not result in nuisance activities, including, without limitation, disturbance of the peace, illegal drug activity, public drunkenness, public consumption of alcohol, harassment of passers-by, gambling, public urination, theft, assault, battery,

vandalism, littering, loitering, illegal parking, loud noises, lewd conduct, or police detentions and/or arrests;

5. The use shall not result in violation of any applicable provision of any other city, state, or federal law;

6. The use shall not be located within three hundred (300) feet, measured from the property lines, of any other boarding house, single room occupancy, large residential care facility or small, unlicensed residential care facility, or within three hundred (300) feet of any elementary or secondary school, or any day care center;

7. The use shall comply with the parking requirements in Section 17.28.040(A)-(C);

C. Revocation of Conditional Use Permit

Violations of any of the provisions of this section shall be grounds for revocation of the Conditional Use Permit authorizing the use. Violation of any local, state or federal laws by individual boarder, tenant or occupant while on the premises of the boarding house, single room occupancy or residential care facility shall be grounds for revocation of the permit. The revocation procedures contain in Section 17.52.100 of this Zoning Ordinance shall be followed.

D. Non-conforming uses

All boarding houses, single room occupancies, large residential care facilities and small, unlicensed residential care facilities existing illegally prior to the effective date of the ordinance creating this section shall be required to comply with the requirements of this section within six (6) months of the effective date. All boarding houses, single room occupancies, large residential care facilities and small, unlicensed residential care facilities existing legally prior to the effective date of the ordinance creating this section shall comply with Chapter 17.88 of the Zoning Ordinance.

E. Reasonable Accommodation.

Any person who seeks to operate a residential care facility in a zone where such use is not permitted, either by right or subject to conditional use permit pursuant to sections 17.08.020 and 17.12.020 of this Zoning Ordinance, may request that the City allow the residential care facility to locate in such a zone as a reasonable accommodation under the federal Fair Housing Act by applying for a Conditional Use Permit. The City shall grant the Conditional Use Permit as a reasonable accommodation if it finds:

1. The request for a reasonable accommodation will not impose an undue burden or expense on the City, and

2. The proposed use will not create a fundamental alteration in the City's zoning scheme. The factors that shall be considered in making this determination include, but are not limited to, the following:

(i) Whether the proposed use is in accord with the operational standards identified in subsection B of this section.

(ii) Whether the proposed location of the use is in accord with the requirements of the zone in which the site is located and complies with other relevant City regulations, policies, and guidelines.

(iii) Whether the proposed location of the use and the conditions under which it will be operated and maintained will not be detrimental to the public health, safety or welfare, or to existing land uses, the operation of established sensitive land uses as defined in this chapter, the character of established neighborhood, or planned residential development in the vicinity.

(iv) Whether the proposed use is consistent with the General Plan.

(v) Whether the type, intensity, sensitivity, and operating characteristics of the proposed use, and the manner in which it is located on its site, are compatible with existing land uses, the character of established neighborhoods, or planned residential development in the vicinity.

(vi) Whether the site is physically suitable for the type, sensitivity, and intensity of the use as proposed, including access, utilities and absence of physical constraints.

SECTION 6. Section 17.12.050(Q) is hereby added to the Banning Municipal Code, and shall read as follows:

"Q. Boarding Houses and Single Room Occupancies

1. All requirements outlined in Section 17.08.201 shall be complied with."

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 limited 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 ____ day of _____, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF BANNING)

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. _____ was introduced at a regular meeting of the City Council of the City of Banning, California, held on the ____ day of _____, 2008 and was duly adopted at a regular meeting of the City Council held on the ____ day of _____, 2008, by the following roll-call vote, to wit:

AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

ABSTAIN: COUNCILMEMBERS: _____

CITY CLERK, CITY OF BANNING