

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

August 12, 2008  
**6:30 p.m.**

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

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

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

**I. CALL TO ORDER**

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

**II. 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.*

*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.*

PRESENTATIONS:

1.	Presentation by O'Reilly Public Relations regarding the Liberty Quarry Project . . . . .	1
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CORRESPONDENCE: Items received under this category may be received and filed or referred to staff for future research or a future Agenda

ANNOUNCEMENTS/COUNCIL REPORTS:

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

**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 8**

**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 – 07/22/08 . . . . .	9
2.	Ordinance No. 1393– 2 <sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Amending the Municipal Code by Revising Table 17.40.030 in Order to Clarify the Number of Animals Permitted in Certain Residential Zoning Districts . . . . .	23
3.	Award the Construction Contract for Project No. 2008-01WW, Cleaning of Anaerobic Digesters to Wastewater Solids Management, Inc. of Yachats, Oregon, in the amount not to exceed \$34,500.00 . . . .	26
4.	Emergency Repair to the Roof of Digester #2 at the Wastewater Treatment Plant . . . . .	28
5.	Resolution No. 2008-92, Approving the Supplemental Agreement for the Use of the Community Development Block Grant (CDBG) Funds, Fiscal Year 2008-2009 . . . . .	33
6.	Resolution No. 2008-93, Approving the Local and System Resource Adequacy Capacity Purchase Agreement with Reliant Energy Services, Inc. for Calendar Year 2009. . . . .	66
7.	Resolution No. 2008-95, Authorizing the FY08 Gang Resistance Education and Training Grant with funding for a Portion of the G.R.E.A.T. Police Officer's Salary, along with Related Equipment, Training, Travel, and Supplies in the Amount of \$104,341.00 . . . .	83
8.	Resolution No. 2008-97, Authorizing the Director of Public Works To Procure Lockers, Spacesaving Equipment and Furniture for Project No. 2007-07, Construction of New Banning Police Station for an Amount Not to Exceed \$998,000.00. . . . .	87

- Open for Public Comments
- Make Motion

**IV. PUBLIC HEARINGS**

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

1. Ordinance No. 1394, Amendment to Section 8.12 of the Banning Municipal Code to Address Vacant and Distressed Buildings in the City of Banning.

Staff Report ..... 91  
 Recommendation: That the City Council approve Ordinance No. 1394

***Mayor asks the City Clerk to read the title of Ordinance No. 1394***

*“An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8.12 of the Banning Municipal Code Revising The Regulations Pertaining to the Maintenance of Vacant and Distressed Buildings.*

**Motion: I move to waive further reading of Ordinance No. 1394.**

(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1394 pass its first reading.**

(A minimum of three votes required)

**V. DISCUSSION ITEM**

1. Brian Nakamura, City Manager
  - A. Armory Lease (*Oral Report*)

**VI. RECESS CITY COUNCIL MEETING TO A JOINT MEETING OF THE CITY COUNCIL AND THE BANNING UTILITY AUTHORITY**

**Call to Order Joint Meeting**

**A. RESOLUTIONS**

- A-1. Adoption of City Council Resolution No. 2008-96 and Utility Authority Resolution No. 2008-04UA, Awarding the Construction Contract for Project No. 2008-01W, Brinton Reservoir.

Staff Report ..... 102

Recommended Motions:

- I. The City Council adopt Resolution No. 2008-96, awarding the Construction Contract for Project No. 2008-01W, Brinton Reservoir to Pacific Hydrotech Corp. of Perris, Calif., in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,095.50.
- II. The Utility Authority adopt Resolution No. 2008-04UA, awarding the Construction Contract for Project No. 2008-01W, Brinton Reservoir to Pacific Hydrotech Corp. of Perris, Calif., in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,095.50.
- III. The City Council and the Utility Authority Board approve an appropriation of \$1,145,995.00 from the Banning Water Utility Authority Reserves and authorizing the Finance Director to make the necessary budget adjustments to the BUA Water Capital Project Fund Account No. 663-6300-471.95-09 Reservoirs.

Adjourn Joint Meeting of City Council and The Banning Utility Authority

**VII. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (*ETA 9/23/08*)
2. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
3. Schedule Special Jt. Meeting the Banning Unified School District Board – (*Botts – 11/27/07*) (*City Mgr.*) (**Oct. 1, 2008 2x2 Meeting**)
4. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
5. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 9/23/08*)
6. Review of Ordinance regarding the selling of cars in shopping center parking lots – (*Salas – 9/9/08*)
7. Ordinance regarding smoke free parks (*Hanna – 8/12/08*)

**FUTURE MEETINGS**

## **VIII. CLOSED SESSION**

### **1. Existing 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:**

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 (1) matter of exposure to potential litigation.

### **3. The City Council will meet in closed session to confer with legal counsel pursuant to the provision of Government Code Section 54956.9(a) with regard to the following matter of pending litigation:**

Banning Airport Associates, et al v. City of Banning (RIC 497338)

- A. Opportunity for Public to address closed session items.
- B. Convene to Closed Session

## **IX. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.*

**NOTICE:** Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor 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].



## FACT SHEET

### Proposed Project

A 155-acre rock quarry located in Southwest Riverside County at the San Diego County line - generating over 270 million tons of high-quality granite rock, ideal for making concrete and asphalt materials. Granite Construction will set aside 250-acres of land, or about 60% of the site, as open space.

### Need

- The Inland Empire will experience a 72% shortage in permitted raw material reserves in the next 50 years according to the State Department of Conservation (2006).
- Western Riverside County currently uses over 9 million tons of aggregate per year. A 2% annual growth rate will increase the aggregate needs to over 14 million tons per year within 20 years, exhausting currently permitted reserves.
- Currently, over 1,000 trucks per day use the I-15 in Riverside County to transport construction aggregate material from the Corona, San Bernardino, Banning, Palm Springs and Irwindale areas to Temecula/Murrieta area and Northern San Diego County.
- The Department of Conservation has communicated the need for new local aggregate sources and demonstrated that transporting aggregate long distances has significant economic and environmental costs.

### Benefits of the Liberty Quarry to Riverside County

1. **Reduces Truck Traffic**
  - Site has direct access to I-15, meaning no trucks through local neighborhoods
  - Eliminates over 16 million truck-miles traveled each year along the I-15 corridor
  - Fewer truck miles traveled means less air pollution and safer highways
  - Fewer truck miles means lower NO<sub>x</sub> and PM<sub>10</sub> emissions in Riverside County
  - Reduces the number of trucks on I-15 in Riverside County by up to 1200 trucks per day
2. **Ideal Location**
  - Operation is hidden from Temecula Valley and the I-15 Freeway
  - Isolated from population centers, now and into the future
  - High quality material meeting State and local government specifications
3. **Meets Significant Need for New Capacity**
  - Western Riverside County will use 14 million tons of aggregate per year by 2024
  - Liberty Quarry would provide about 40% of the current aggregate needs for Western Riverside County for 75 years
4. **Positive Economic Impact (from Dr. John Husing)**
  - Riverside County taxes and fees - \$2.2 million per year
  - State of California taxes - \$6.1 million per year
  - Annual Highway Maintenance Savings - \$5.3 million per year
  - Lowers infrastructure costs and stretches Measure A and TUMF transportation dollars

It is anticipated that a draft of the EIR will be available for public review and comment in 2008.

Arrange for a tour of the Liberty Quarry site and Granite's Indio quarry, concrete and asphalt plants.

## California Department of Conservation (2006) Report Outlines Aggregate Shortages in CA

The Department of Conservation's California Geological Survey has released a updated report and map on February 7, 2007 that discusses aggregate supply and demand. It is designed as a tool to help local governments with land-use planning, especially in regards to future infrastructure needs.

The report - an update of a 2002 release - compares the anticipated 50-year demand for construction grade aggregate resources to the amount of resources currently permitted for mining by local lead agencies in 31 study areas throughout the state.

Construction sand and gravel are the leading non-fuel mineral commodities produced in the state as well as the nation. Californians consumed 235 million tons of construction-grade aggregate in 2005 – about 6½ tons per person. On average, 229 tons of aggregate are used in the construction of one house. California is the nation's leading producer of construction aggregate.

### **Key findings of the report include:**

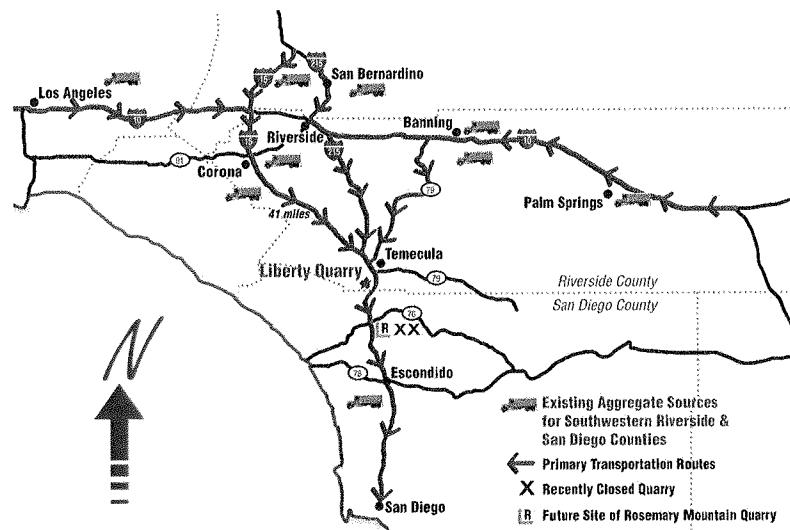
1. "Currently, transporting aggregate a distance of 30 miles will increase the FOB (Freight on Board) price by about \$4.50 per ton. For example, to construct one mile of a six-lane interstate highway requires about 113,505 tons of aggregate. Transporting this amount of aggregate 30 miles adds \$510,000 to the base cost of the material at the mine. In major metropolitan areas, this rate is often greater because of heavy traffic that increases the haul time. **Transporting aggregate from distant sources also results in increased fuel consumption, air pollution, traffic congestion, and road maintenance. Moreover, transportation cost is the principal constraint defining the market area for an aggregate mining operation.**" (pg. 15)
2. "The aggregate study areas with the greatest projected future need for aggregate are the South San Francisco Bay, San Gabriel Valley, **Temescal Valley-Orange County, Western San Diego County** and San Bernardino. Each is expected to require more than a **billion tons of aggregate by the end of 2055.**" (pg. 3)
3. "Northern San Diego County imports aggregate from the San Bernardino production area and from Temescal Valley." (pg. 16)
4. "Twenty-five of the 31 aggregate study areas have less than half of the permitted resources they are projected to need." (pg. 6)
5. "**Temescal Valley - Orange County Region** has only **32 percent** of the permitted reserves needed for the next 50 years." (Note: "OC's permitted reserves are nearly exhausted and now the county relies on Temescal Valley for much of its aggregate needs.") Temescal Valley has **less than 16 years** of permitted reserves left, assuming no export to San Diego County. (pg. 13)
6. "**Western San Diego County Region** has only 17 percent of the permitted reserves needed for the next 50 years." Western San Diego County has **less than 9 years** of permitted reserves left. (pg. 13)
7. "**The Temescal Valley-Orange County Region** has **lost 58%** of its permitted reserves in the last 5 years." (pg. 9)
8. "Aggregate is hauled from southwestern Imperial County into downtown San Diego, a distance of about 90 miles." (pg. 16)

# LIBERTY QUARRY

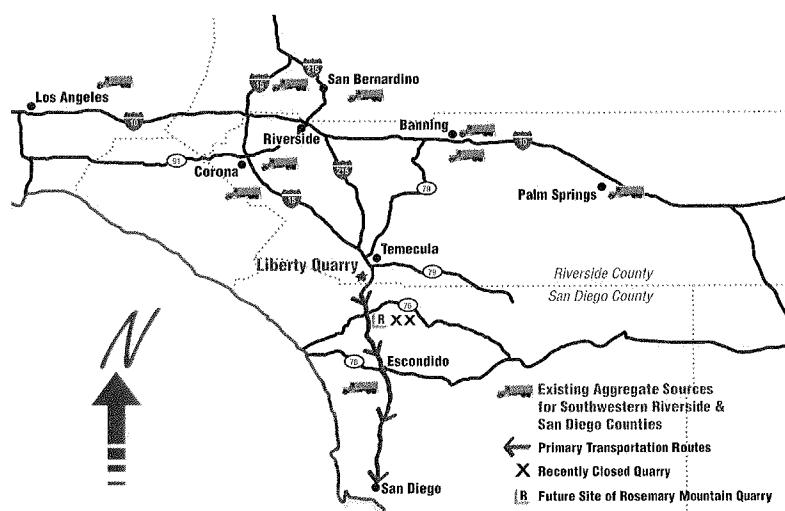
**GRANITE**  
CONSTRUCTION MATERIALS

## HOW LIBERTY QUARRY CAN REDUCE TRAFFIC IN SOUTHWEST RIVERSIDE COUNTY

### Before Liberty Quarry



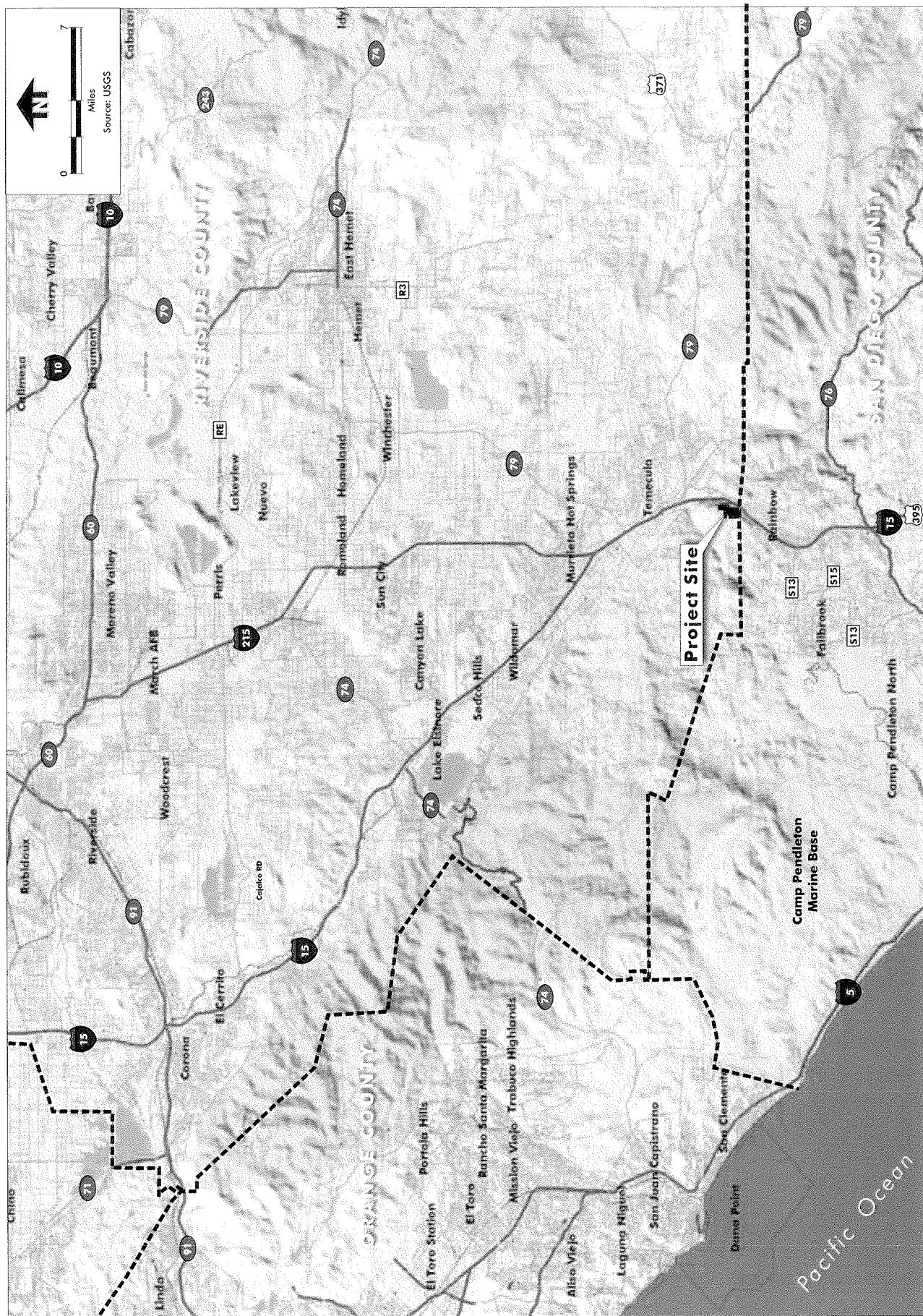
### After Liberty Quarry



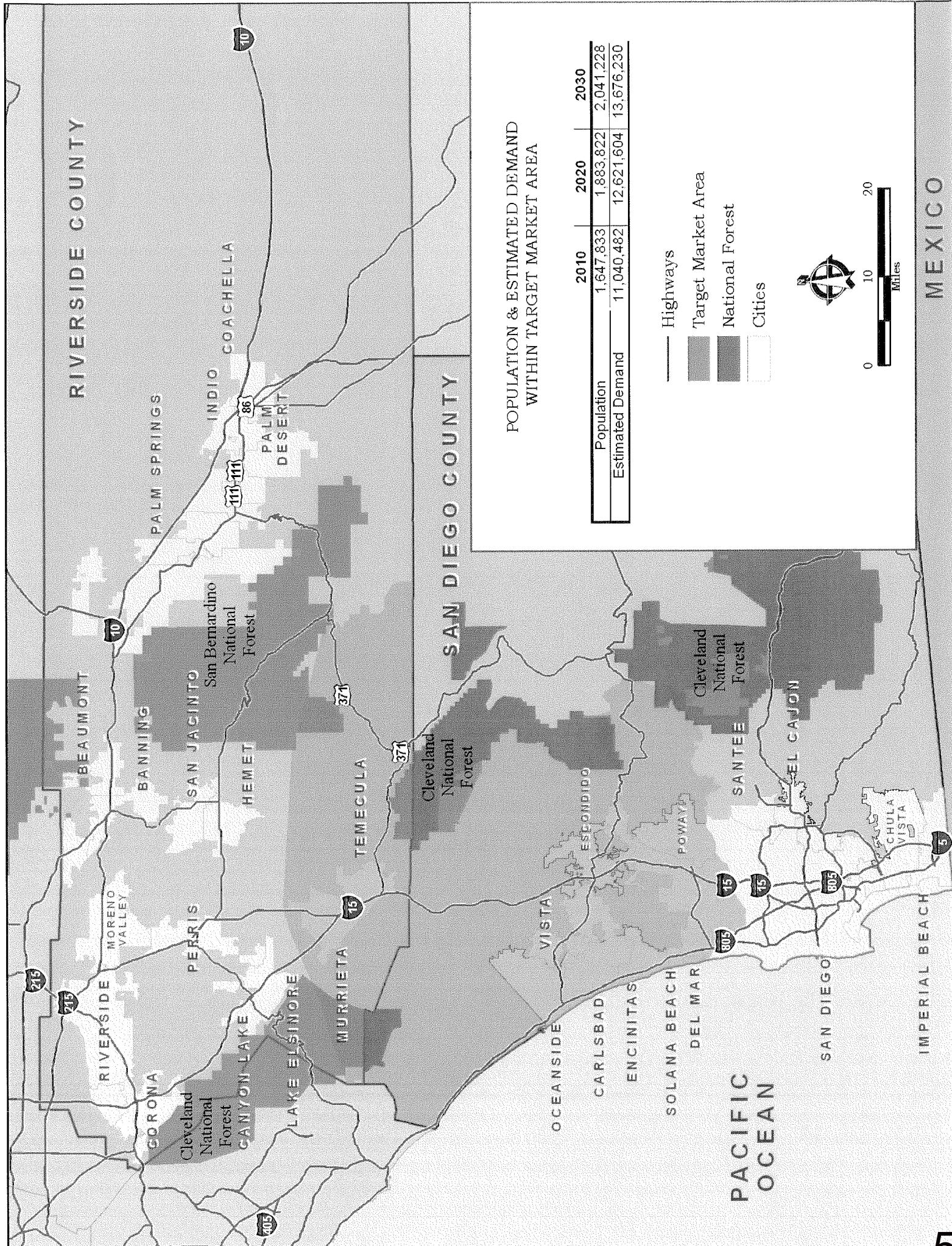
According to traffic studies, by locating Liberty Quarry at the Riverside/San Diego County line, it will cut off the existing supply route that currently serves San Diego, and remove hundreds of San Diego-bound trucks from I-15, SR 79, and the 215 Freeway per day:

- Temecula—449 fewer trucks per day
- Murrieta—1,063 fewer trucks per day
- Lake Elsinore—1,217 fewer trucks/day

This project can result in over 16 million fewer truck-miles on the I-15 per year, which means lower NOx and PM-10 emissions from diesel vehicles, and less congestion and wear and tear on area highways and freeways.



Gronite Construction Company  
Riverside County, California





**FOR IMMEDIATE RELEASE:**  
May 7, 2008

**CONTACT: Gary Johnson**  
(951) 304-9283

## **Granite Construction Introduces Model Clean-Air Truck Program Advancing Efforts to Reduce Diesel Emissions in Southwest Riverside County**

New, cleaner trucks for onsite equipment and California Air Resources Board (CARB)-verified clean air filters for highway trucks serving the proposed Liberty Quarry would reduce mobile source air quality impacts from the proposed project.

**MURRIETA, CA** — Granite Construction Company today announced a new clean-air truck program developed in cooperation with South Coast Air Quality Management District (AQMD) that would substantially reduce regional air quality impacts resulting from the proposed Liberty Quarry project in Southwest Riverside County.

The Liberty Quarry Clean-Air Truck Program is designed to reduce emissions from the heavy-duty trucks involved in transporting aggregate in the region. In spite of the fact that only thirteen trucks will be needed during the first year of operations, Granite has agreed to replace and/or retrofit ten times that many trucks, resulting in emissions reductions for over 13 million truck miles.

The accelerated mitigation results in significant reductions in particulate matter (PM10) and nitrogen oxide (NOx) emissions from the project, two key pollutants that must be significantly reduced in order for the region to meet federal health-based air quality standards. Granite will work with CARB and South Coast Air Quality Management District to determine the best technology available to retrofit truck engines before the project opens. As a result of the Granite program, individual truck emissions will be reduced 85% – 90% for particulate matter and, depending on the technology, an estimated 40% for NOx, according to Kleinfelder, air quality consultants for the project.

“Granite should be applauded for their leadership,” said San Bernardino County Supervisor and AQMD board member Gary Ovitt, “Their model for a clean-air truck program at Liberty Quarry is exactly the type of proactive action that companies should be emulating to help reduce local and regional air emissions and is a model for where we should be going.”

The clean-air truck program is unique and significant for the local area because it accelerates an aggressive reduction of diesel particulate emissions in advance of CARB regulations. The local area won't have to wait to receive the full benefit of improvements to local air – improvements that would otherwise not be realized until some time into the future when the project reaches its full capacity and depending on when the future CARB regulation becomes effective.

"Granite Construction has a proud history of leadership when it comes to supporting new technology for environmental improvement," Granite Chairman Bill Dorey stated. "In the case of Liberty Quarry we have the opportunity to incorporate new technology on day one of the project in order to accelerate clean air efforts in the region. We believe it is the right thing to do."

The AQMD was instrumental in the development of the innovative clean-air truck program.

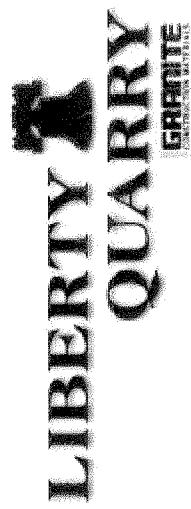
"We appreciate the ongoing cooperation and collaboration of AQMD and CARB staff in the creation of this program as well as their pledge to assist with the necessary technology to insure its implementation and monitoring," stated Gary Johnson, Liberty Quarry Project Manager.

Advancing new engines and clean air retrofits to the project's on-road truck fleet on day one exceeds current or contemplated regulatory requirements for the project or the industry overall. The California Air Resources Board is considering new regulatory requirements for fleet replacement that would require California truck owners to replace or upgrade older, dirtier diesel engines over time. But the accelerated Granite program commits the company to the accelerated air quality improvements from the first day the project opens.

"This program is yet another local benefit provided by Liberty Quarry and demonstrates the positive regional impact of a local aggregate source. It further addresses any health concerns related to air quality", said O. B. Johnson, chairman of the Friends of Liberty, a local organization supporting the quarry.

*Granite Construction Incorporated is a member of the S&P Midcap Index, the Domini 400 Social Index and the Russell 2000. Granite Construction Company, a wholly owned subsidiary, is one of the nation's largest diversified heavy civil contractors and construction materials producers. Granite Construction Company serves public and private sector clients through its offices nationwide. For more information about Granite, please visit their website at [www.graniteconstruction.com](http://www.graniteconstruction.com).*

# # #



## Liberty Quarry Air Quality Benefits

	PM <sub>10</sub>	NO <sub>X</sub>	
Liberty Quarry (compared to the No Project alternative)	13 tons/year removed	78 tons/year removed	
AQMID Pilot Program	112 tons/year removed		
Annual Total REDUCTION in Air Pollutants			<b><i>26 tons/year</i></b>
			<b><i>190 tons/year</i></b>

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

07/22/08  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on July 22, 2008 at 7:25 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Hanna  
Councilmember Machisic  
Mayor Salas

COUNCIL MEMBERS ABSENT: Councilmember Franklin

OTHERS PRESENT: Brian Nakamura, City Manager  
Julie Hayward Biggs, City Attorney  
Duane Burk, Public Works Director  
Jim Earhart, Public Utility Director  
Nicole Mihld, Purchasing Manager  
Leonard Purvis, Police Chief  
Ted Yarbrough, Fire Marshal/Emergency Services Coordinator  
Heidi Meraz, Recreation Director  
Kim Clinton, Senior Planner  
Marie A. Calderon, City Clerk

Mayor Salas invited the audience to join her in the Pledge of Allegiance to the Flag. The invocation was given by Muriel Woods, Praise Tabernacle Church.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS

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

Report by City Manager – reported on the Closed Session held on July 18<sup>th</sup> under Public Employment Government Code Section 54957 regarding the City Attorney Interviews and there was no reportable action.

#### **PUBLIC COMMENTS – *On Items Not on the Agenda***

Bill Dickson, 5700 W. Wilson addressed the Council stating that the Playhouse Bowl's 56 Annual Summer Concerts will be starting on August 7<sup>th</sup> with Color My World which is a 60's presentation of the band Chicago, August 14<sup>th</sup> is Ronny and the Classic, August 21<sup>st</sup> "The Concert that Never Was" (Streisand and Sinatra), and August 28<sup>th</sup> "The Highwaymen" (Johnny Cash, Waylon Jennings and Willie Nelson). These concerts are free and will be held on Thursday evenings.

Jack Holden, 1495 Paradise Island Lane addressed the Council representing the Banning Chamber of Commerce. He said that the Board of Directors of the Chamber would like to request that an emergency item be added to the agenda in regards to the bed tax (TOT) for discussion. The Chamber of Commerce would like to head a campaign to get this on the ballot in November and get it sold to the public and not put it off to a special election in 2009 or 2010. They believe by bringing all their efforts together they could get that issue approved. They think the City needs the money and they also need to do a little bit to help the hospitality industry by collecting that tax. Since it has to be on the ballot by August 8<sup>th</sup>..

**Motion Botts/Hanna to add the request from the Chamber of Commerce to discuss the TOT commonly called the bed tax to the agenda because obviously it is an emergency measure since we don't have a lot of time.**

Councilmember Machisic asked that it be the last item on the agenda. There was consensus.

**Motion carried, all in favor except for Councilmember Franklin who was absent.**

Ellen Carr, 471 W. George Street addressed the Council regarding Tender Loving Critters Animals. She said that need to be rescued and they are in dire need of a facility of their own because it is very hard to do what they do where they live. She said that she has frequent visits, not pleasant ones, from code enforcement and at this time it seems like nothing she does is right. These animals deserve a chance. They deserve to have a quality of life and she can provide that. If there is anyone in the community that has land with a house on it please, if you are not living in it, you could lease it to them. Of course, the lease would have to be like a \$1.00 a year because all of their funding comes from the public. She has never asked the Council for anything for TLC but she is asking tonight to please help them keep on rescuing the animals of this community. People think that they just work with cats and dogs and they don't. They work with the two-legged variety also. She has many people who come to her house asking for food for their cat or dog. She feels that TLC is an asset to the community and have been here a long time. They are in need of a facility of their own to rescue the animals.

Charlene Sakurai, 43000 Dillon Rd. addressed the Council regarding the Cool Summer Nights Marketplace this Friday and the theme is Fiesta Night and there will be Mariachi bands, folklorico dancing with the group from B.P.A.L., food and vendors. Also the classic cars will be displayed. It will be a wonderful evening.

Jeff Donahue, Solutions4Solar addressed the Council regarding a community home solar program for the city of Banning and also Sun Lakes Country Club. They have negotiated with several vendors low prices where pricing systems are about 15-20% below published prices for the community of Sun Lakes and anybody in the city of Banning who also wants to take advantage of this pricing. They are also further discounting those prices if the community reaches certain goals 50kW, 100kW, 150kW and 200kW. The brochure being passed out has information on this solar electric system and also pricing.

Their goal is to take advantage of Banning's spectacular rebate which is one of the best in California and green-up the homes here.

CORRESPONDENCE: There was none.

PRESENTATIONS

1. Presentations to B.P.A.L and the Boys and Girls Club

Art and Joanne Welch, 4952 Copper Creek addressed the Council stating that they have an opportunity tonight to help the kids in Banning. Their dear friend Glen Frances several years ago came to them putting his personal life in order with his will and wanted to leave something to the kids of Banning. Glen was a resident of Banning for almost 20 years so he asked them to speak on his behalf when that time came. Unfortunately they lost their good friend this past year and Glen left it to his and Jodie's discretion as how to extend these monies to be used in the community. They have chosen the Boys and Girls Club of the San Gorgonio Pass represented by their president Bob Botts and the B.P.A.L. Program represented by Doug Monte and Alex Diaz and it is their pleasure to award each of these programs on the behalf of the Estate of Glen Francis checks in the amount of \$12,500 to help the kids in Banning.

Mr. Botts thanked Art and Jodie and Glen on behalf of the Boys and Girls Club.

Alex Diaz said he is so proud of the community and the Council and Mayor because they have pulled through for them so much like showing up at their events or being part of the event or board for the Police Activities League. Our motto is "making a difference one kid at a time" and we are trying to save them all.

2. Presentation to Riverside County Volunteers of the Year – by Riverside County Dept. of Animal Services

Mayor and Council presented Certificates of Congratulations to Barbara Djordjevic and Mary Ellen Wilkins for their many countless hours of help to the Animal Shelter.

Ms. Wilkins reminded everybody to microchip your pets or at least put a collar and ID tags on them because it would make their job much easier.

Ms. Djordjevic thanked the City Council and the Mayor especially for making it possible for Riverside to be managing our local shelter because that is what has made it a pleasant place to volunteer.

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Hanna –

- In regards to the Concerts in the Park Bowl Series in August on August 7<sup>th</sup> the Banning Rotary Club and Habitat for Humanity are going to have an "Old Fashioned

Cajun Style Fish Fry" prior to the concert from 4 to 7:30 p.m. at the Community Center. The cost is \$10 per person and a child portion is \$7 and will include catfish, coleslaw, hushpuppies and drink and you can take you food with you to the concert.

- Last week's Record Gazette and other newspapers reported on a story of a former employee and Peach Queen, Shanice Wilson who was attacked in front of her Banning residence. This brutal attack has left Shanice to undergo facial reconstruction surgery. Unfortunately she has no medical insurance and a trust fund has been set up for donations to help pay for this costly procedure. We are asking for the public to open their hearts and help Shanice. You can make donations to the Bank of America and there is a Shanice Wilson Medical Fund. She will leave information with the City Clerk for anyone who needs additional information.
- Stagecoach Days will be held October 2<sup>nd</sup> through 5<sup>th</sup> and would like to encourage all companies and businesses across the Pass Area to consider being a sponsor to this great event and they can talk to Heidi Meraz from the City Park and Recreation Department.
- She attends the monthly meeting of the Local Government and Small Business Assistance Advisory Group to the South Coast Air Quality Management District and there were two interesting items. When we do environmental impact reports, CEQA reports, obviously we are looking at the impact of a project on the surrounding area but what they were talking about is that it is equally important to look on the impact of the surrounding development on that proposal. She thinks so often when looking at proposals we are kind of looking at it in a vacuum; just that specific proposal. We need to look at both sides of the equation. The other thing that is happening that is major in our state is the California Air Quality Management Board has come out with a plan to reduce greenhouse gases and at this point it is going to be voluntary on the part of local government but they will be looking to our Western Riverside Council of Governments to form a plan that will have each of the cities participating. Comments are due by August 1<sup>st</sup> on this plan and it would be good for the City to take a good look at it because we have our own electric utility it is really a drastic impact on us and she thinks that we need to be right in there and make our responses to whatever their voluntary requirements are going to be.

Councilman Machisic –

- Reported that the latest we hear from the League of California Cities is that the Governor and the Legislature is looking towards local funds to balance the budget so we may be short again this coming year. They are talking about taking 1A funds. He thinks that we should prepare a letter and forward it on to the Governor's Office, as well as, the Speaker of the Assembly and the Senate.

#### CONSENT ITEMS

##### 1. Approval of Minutes – Special Meeting – 05/30/08

Recommendation: That the minutes of the Special Meeting of May 30, 2008 be approved.

2. Approval of Minutes – Special Meeting – 06/10/08

Recommendation: That the minutes of the Special Meeting of June 10, 2008 be approved.

3. Approval of Minutes – Special Joint Meeting – 06/30/08

Recommendation: That the minutes of the Special Joint Meeting of June 30, 2008 be approved.

4. Approval of Minutes – Regular Meeting – 07/08/08

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

5. Ordinance No. 1390 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Amending Title 10 Vehicles and Traffic; Chapter 10:16 Vehicle Weight Limits of the City of Banning Municipal Code Relating to the Parking of Commercial and Other Vehicles Within the City of Banning; Providing a Penalty; Providing for Severability; and Providing an Effective Date.

Recommendation: That Ordinance No. 1390 pass its second reading and be adopted.

6. Ordinance No. 1392 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment No. 08-97504 Amending Sections 17.04.070, 17.08.020, 17.12.020 and 17.28.040, and Adding Sections 17.08.201 and 17.12.050(Q) to the Banning Municipal Code to Regulate Boarding Houses and Residential Care Facilities.

Recommendation: That Ordinance No. 1392 pass its second reading and be adopted.

7. Resolution No. 2008-89, Approving a Memorandum of Understanding Between the City of Banning and the City of Banning Association of Managers (CBAM).

Recommendation: That the City Council adopt Resolution No. 2008-89, approving a Memorandum of Understanding (MOU) with the City of Banning Association of Managers (CBAM) Unit and Amend the 2008-09 budget to incorporate necessary changes.

8. Resolution No. 2008-90, Authorizing the Submittal of the FY 2008-09 Local Transportation Fund (LTF) and State Transit Assistance Fund (STA) Public Transit Claims and Approving the FY 2008/09-2010/11 Short Range Transit Plan (SRTP).

Recommendation: that the City Council adopt Resolution No. 2008-90, authorizing the submittal of the FY 2008-09 Local Transportation fund (LTF) and State Transit

Assistance fund (STA) Public Transit Claims in the amount of \$1,138,537 and \$849,298, respectively, and approving the FY 2008/09 – 2010/11 Short Range Transit Plan (SRTP).

9. Performance/Labor and Material, and Monumentation Bond Releases for Tract No. 30774 (located between Westward Avenue and Bobcat Avenue; and between 16<sup>th</sup> Street and Sunset Avenue).

Recommendation: Release 100% of the Performance/Labor and Material bonds, and Monumentation Bond for Tract No. 20774.

**Motion Machisic/Hanna to approve Consent Item 1 through 9. Motion carried, all in favor except for Councilmember Franklin who was absent.**

#### PUBLIC HEARINGS

1. Zone Text Amendment #08-97503 – Amendment to Table 17.40.030 to Clarify the Number of Animals Permitted in Certain Residential Zoning Districts.  
(Staff Report – Kim Clinton, Senior Planner)

Ms. Clinton gave the staff report as contained in the agenda packet. This doesn't change any of the regulations regarding dogs and cats but merely clarifies something that has been questionable since the 2006 zoning update. Originally under "Types: dogs and cats," it said a maximum 8 each per lot which would make it 16. It takes out the "each" and clarifies a combination of 8 dogs and cats would be on each of these lots for rural/residential and then for very low density it would be 6 per 20,000 square feet and low density residential would be 3 per lot.

Mayor Salas said that most recently she spoke with Rob Miller, Director of Animal Services for Riverside County and Dr. Allen Drusey who is the veterinarian for Riverside County and she was told that the Board of Supervisors approved an ordinance for emergency homes that basically states that they are allowed a little bit more leeway, not a whole lot more, but in case there is an emergency and they are having them adopted out as a rescue groups and August 1<sup>st</sup> is when this ordinance is going to take place for Riverside County. So she would ask as a City Council that they consider doing the same thing since we work with them and their shelter services so there is consistency throughout the region in what they are doing.

There was discussion regarding this item and about going forward with the City's ordinance tonight and then consider a change to the ordinance when we have the proper wording. There was also some discussion in helping to get these animal adopted out and using Channel 10 for this purpose along with other venues the County may have.

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

Ellen Carr, 471 W. George Street addressed the Council stating that this ordinance puts a crimp in Tender Loving Critters and other rescue groups. Also you need to consider all the other people in the community that have more than the quoted number and what is going to

happen to their pets. At this time she doesn't believe the shelter is big enough to house all these extra animals and this is something we need to really consider because it is not just rescue groups but a lot of individuals with hearts of gold. What about those people who find animals and take them home and get them spayed and neutered and get them shots and keep them as pets. She understands about neighbors and she understands the feelings of some of her neighbors but we've got to think the many people who live in Banning who have more animals than they should and what is going to happen to them. What kind of quality of life are they going to have? It is really important and should be important to you and the community. Those animals belong to us and they are our responsibility and we need to take this responsibility seriously. We need to come together as a community and help one another with this serious problem. A lot of people think of their pets as part of their family and would you be able to look at your family and decide who should go and who should stay. Let's get together and work on this. It is not just a problem unique to Banning. She will do anything to help the Council with this problem and work together for a viable solution.

Mary Ellen Wilkins addressed the Council stating that something should be done to either grandfather the foster homes, the 501.3(c)'s, the animal care centers into your records where they are not being harassed by the code department. Mayor Salas said there is such a thing as customer satisfaction, etc. well personally she realized this week that a personal vendetta has been carried out against TLC and one of the City employees went over there and banged on the door and scared the elderly lady inside and when she opened the door he took her picture through the screen and he is terrorizing elderly citizens of Banning and something should be done to stop it.

Mayor Salas closed the public hearing.

Mayor Salas asked the Council's permission to work with the groups to get the animal pictures on Channel 10 every week to try to get them adopted out and also with the County to see if we can get these pictures on and get the animals out of the shelters and out of the rescue groups homes and into good homes.

There was more Council discussion on this item and trying to get animals adopted.

Bill Dickson addressed the Council stating that he lives in a senior community and they have a terrible problem with feral cats and to date they have captured 20, 3 possums, a rat and 3 dogs. They had to stop trying to catch them because there was no room at the shelter. This just means that they are going to be out there producing more cats so there is a serious problem and something that needs to be taken into consideration. Our shelter has been doing a great job but some rescue homes are maxed out and they do need some help.

There was some further discussion.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1393. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending the

Municipal Code by Revising Table 17.40.030 in Order to Clarify the Number of Animals Permitted in Certain Residential Zoning Districts.

**Motion Hanna/Machisic to waive further reading of Ordinance No. 1393. Motion carried, all in favor except for Councilmember Franklin who was absent.**

**Motion Machisic/Hanna that Ordinance No. 1393 pass its first reading. Motion carried, all in favor except for Councilmember Franklin who was absent.**

#### DIRECTOR'S REPORT

1. City of Banning License to Use and Maintain Premises Agreement granted to Banning Chamber of Commerce for use of the facilities described as bus shelters and bus benches with signs located throughout the City of Banning.  
(Staff Report - Brian Nakamura, Executive Director)

City Manager gave the staff report as contained in the agenda packet.

There was Council discussion in regards to costs involved in upgrading the bus shelters, lighting and advertising funds.

Jack Holden, Executive Director of the Banning Chamber of Commerce stated that they have had conversations with Duane Burk about what they really thought it would take to get the bus shelters into condition. In working incrementally he thinks the \$40,000 would get the program started. There are certain allocations where they have to make allocation for maintenance and an allocation for upgrading. So the \$40,000 would get the program started to get the basic major shelters taken care of and then they would start taking care of the rest and the benches would come last. He understood that when you were originally talking about the electrical there was a program available through the Electric Department where they made solar available and some of that funding could be available though funds and that would lessen that cost a little bit.

Councilmember Hanna said that appendix A talks about how it can and can't be used and it is not permitted for political advertising to promote any candidate for partisan office and she wondered if that was intended that way or should it include non-partisan.

Mr. Holden said when he spoke to the City Manager those were suggestions from RTA and was not hard and fast rules and could be done if we agree to do it.

There was more discussion between the Council and Mr. Holden in regards to funding, incremental upgrading of the bus shelters, getting out of the contract if needed by the Chamber, whether you can make money doing this, and advertising guidelines especially in regards to political advertising.

City Attorney said that this is a commercial venture so you can have greater restrictions than you usually would in terms of the forum. On the other hand to the extent that you

hold it open to the public for use for advertising and you are licensed by the City as a governmental agency there are some first amendment issues having to do with your regulation of time, manner and place being the primary thing and ordinarily being content neutral. So this is kind of a fine line because from a commercial standpoint and from the fact that this is not a public forum this is in fact a commercial venue instead there are some limitations that you can apply. But you are right the nature and character of the items here other than political is kind of odd and the real question is if the point of this is to raise revenue and political is not offensive to the community in the way that profanity or libelous speech or whatever is then there is some question if they are willing to pay for it why shouldn't they have it. In looking at the guidelines she has some concerns generally because this is the government licensing of private entity to take on some standards here but as she said the standards are much more liberal in a commercial venture and this is what it really is. The short answer is that she doesn't have an answer. Is there a possibility of challenge? There is always the possibility of challenge when you attempt to regulate the content of speech. She thinks this largely poses a lesser risk than most.

**Motion Botts/Hanna that the City Council enter into a License to Use and Maintain Premises Agreement granted to the Banning Chamber of Commerce for use of the facilities described as bus shelters and bus benches with signs located throughout the city of Banning, as more particularly described in attached Agreement Exhibit "A" and that the Chamber of Commerce be required to follow the attached marketing and advertising guidelines, Exhibit "B" with the deletion of No. 10 on the Guidelines prohibiting political advertising. Prior to transfer of entering into the Agreement that the City be able to utilize its RCTC funds to bring the bus shelters to an acceptable baseline standard for transfer to the Banning Chamber of Commerce.**

Councilmember Machisic said based on the assurance that Mr. Holden has given them that the Chamber will cover the expenses of the improvements he will also support the proposal. Mr. Holden said that it would be incrementally.

**Motion carried, all in favor except for Councilmember Franklin who was absent.**

**ITEMS FOR FUTURE AGENDAS**

**New Items –**

Councilmember Botts said he has had several people ask him about Stagecoach Days and his recollection was that there was going to be further discussion but that the direction was that Stagecoach Days would go to a non-profit and there was discussion about seed money. He needs some clarification if the City is running this or is it the non-profit and is the City contributing money.

Heidi Meraz, Recreation Director said that they were directed to begin forming a non-profit board to takeover Stagecoach Days which began immediately. That group is

working however, they are reinstating the A. C. Dysart Park Association reason being that is the simplest way to do it because it is still there and work is being done but it is not finalized. She is working with the group along with her secretary and there is a Board being formed and the paperwork is into the IRS. She said the A. C. Dysart Park Association has received \$7,000 to date and her recollection was that the City Council approved for \$20,000.

The Council said that they would like an update soon on Stagecoach Days.

Councilmember Hanna would like the ETA's updated on the pending items.

There was Council discussion on Item No 7 and the Council would still like an ordinance to address this issue.

City Manager said in regards to Item No. 3 he will be meeting with the School Superintendent tomorrow afternoon to discuss the joint meeting. Council selected a couple of dates for meetings (Sept. 17 or Sept. 29). Also these dates could be suggested to the Beaumont City Council to set up a meeting.

Pending Items –

1. Annual Review of General Plan (*Hanna- 10/9/07*) (*Comm. Dev.*) (*ETA 7/22/08*)
2. Schedule Meeting with the Beaumont City Council (*Salas- 11/27/07*) (*City Mgr.*)
3. Schedule Special Jt. Meeting the Banning Unified School District Board – (*Botts – 11/27/07*) (*City Mgr.*)
4. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
5. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 8/08*)
6. Ordinance regarding foreclosed housing and bank owned property (*Salas – 6/10/08*)
7. Review of Ordinance regarding the selling of cars in shopping center parking lots – (*Salas – 6/10/08*)
8. Ordinance regarding smoke free parks (*Hanna – 6/24/08*)

Emergency Add Item:

Mr. Holden said that the Board of Directors feels very strongly that since the City is in the position where it needs funds and it has been estimated that if you increase the TOT to at least 12% or up to 12%, you would probably raise around a half a million dollars. They think it is a no-brainer to sell because the tax is paid by people who do not live here and consequently they know that they can take the full resources of the Chamber of Commerce and work to get this sold to the public. They would like to have the opportunity to head up that campaign. That way staff can get it on the ballot by the 8<sup>th</sup> of August and the Chamber would have to start moving right away because they would have to take action before the absentee ballots are mailed out. The Chamber can meet with the various districts and Sun Lakes to get the word out and work with the other retirement communities and community at large. They would also work on specific details with the

City Manager so he is comfortable with what is going on. They believe if they get the responsibility to take the lead they can get it done and it can be a win, win situation. They also feel that a very small portion should be given to their tourist activities where they can spin that promoting tourism.

Councilmember Hanna said if the Council wants to proceed with this she would recommend that we also hire Godbe/Tramutola to do the educational component of the effort. She knows that you think it is a no-brainer but it has failed in Banning before. She knows that the Chamber will do a good job in educating people but we should back it up. It is worth it and the return on investment is significant and worth the pain then to do the educational component. It is all set up and all the Council has to do is to approve it.

There was Council discussion on this issue. City Manager said it would have to be a general tax. It couldn't have specific language in terms of a component for the Chamber because then you are looking at a specific use tax and it would require a 2/3rds vote. He would assume that this is a general election vote so they would want it not to be specific so any kind of funding arrangements would have to come subsequent to the that and at the discretion of the Council because it would be a General Fund issue. We would also have to put together ordinances very quickly meaning that if it has to be by August 8<sup>th</sup> you would have to entrust us to come up with the ordinances and the ballot language appropriate for August 8<sup>th</sup> because there are no Council meetings coming up before that time.

City Attorney said the difficultly that she sees is that there are no meetings unless you want to hold a special meeting. There is no opportunity for the Council to see what would be going on the ballot. But certainly you have a Transient Occupancy Tax now and you are merely amending it. It is a simply thing to draft an ordinance that amends it and it is a relatively simple thing to draft the ballot language that says simply, "Shall this ordinance be adopted." So those are not difficult things to do and can be done very quickly. You would not be adopting an ordinance. You are merely recommending an ordinance to the electorate and that it a little different.

There was further Council discussion on this item.

**Councilmember Botts called for the question.**

Mayor Salas opened the item for public comments.

Fred Sakurai, 43000 Dillon Rd. addressed the Council stating that this is not a thing that is decided in 15 minutes as Councilmember Machisic said. You have had two to three months to decide what you want to do on this thing. It has been studied and you have had recommendations from various consultants and you have put out big money for all this studies and for what. We are not inventing the wheel, we are enlarging the wheel. You have a large body, the Chamber of Commerce willing to take on the responsibility of promoting this so called bed tax. He thinks that we should stick with the bed tax and let's

get it on the ballot and let the voters decide what we want as additional income for the City.

Don Smith resident of Banning said that he doesn't think that this hearing meets the requirements of an emergency. The only fact that allegedly happened since the publishing of the agenda was that we discovered the date by which we have to give the ordinance to the County, a date which the City knew of two years ago. You are going to have to have public support to pass City tax. He can remember for the last dozen years a TOT tax losing, a public safety tax losing and a utility tax losing and three school bonds losing mainly because the public was not on board with the theory because he thinks the numbers were a lot higher than 20% are going to vote no. The number is about 70% that is going to vote no unless you convince them that you have done everything in your power to reasonably use the tax money you already have and he doesn't believe that you have even started to do that to the public. The TOT tax is probably going to be the easiest one to pass for the simple reason it is always easier, though not necessarily fair, to have a group of people vote to have some other group of people pay a tax so it would probably be the easiest one to pass but you are still going to have to do that education and get over the hurdle of what are you doing with that tax money I have already given you. He is not necessarily opposed to this but we are having a hearing in which the people that are opposed to it don't even know we are having a hearing. It is nice we are having a hearing but the hotel owners who would probably want to say something to you don't even know we are having this meeting and he doesn't think that is reasonable. He would have to agree with Councilmember Machisic and Mayor Salas that he doesn't know why tonight it is suddenly an emergency. You have been discussing this for six months and if you wanted it on the ballot, you should have done something sooner. Maybe you should have but the fact that you haven't doesn't make it an emergency tonight. There will be an election in the off year and he is sure the hospital and the school board is having one. There is going to be an election in 2009 that you could put this on and if you really want this to pass, you have to get the public more involved than they are now in his opinion, otherwise it is just you in a secret meeting deciding to put a tax on the ballot and if you don't think the opposition is going to use that one, he would assure the Council they will.

Mayor Salas closed the item for comments.

**Councilmember Hanna said if there is a call for the question you need to vote on that.**

**Councilmember Botts withdrew the call for the question.**

Councilmember Hanna said this was not a hearing and second of all it is an emergency because the Chamber of Commerce just brought forward the idea and it has never been proposed before so it was news to the Council and they were given the opportunity to consider it.

**Councilmember Botts called for the question. Councilmember Hanna said a call for the question requires a vote. Mayor Salas said the vote dies for a lack of majority.**

City Attorney said there should be some clarification on what you voted on. Councilmember Hanna said that was a vote on whether or not to call the question.

Councilmember Hanna said that this Council does not have a practice of voting on calling for the question. As she understands parliamentary procedure if you call for the question, there needs to be a vote on it so everybody agrees that yes, we should call the question and vote.

**Motion Hanna/Botts to have City Attorney develop proper language for a ballot measure increasing the Transient Occupancy Tax on an amount to be determined. Councilmembers Botts and Hanna voted yes and Councilmember Machisic and Mayor Salas voted no. Motion dies.**

#### FUTURE MEETINGS

1. Special City Council/RDA Meeting Workshop to be held on August 2, 2008 at 9:00 a.m. to finish vision statement and RDA funding opportunities.
2. Tour of Amphitheater in Vista on Friday, August 8.

Mayor Salas said that there will be a Special City Council Meeting on August 2<sup>nd</sup> at 9:00 a.m. and there will be a meeting with the City Council to tour the Redevelopment Agency in the City of Vista, as well as, the Brengle Terrace Moonlight Amphitheatre on Friday, August 8. City Manager will leave additional information in your mailboxes as well as email.

Chairman Botts reconvened the Redevelopment Agency Meeting at this time to go into closed session.

#### CLOSED SESSION

City Attorney said the City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation. The Redevelopment Agency will meet in closed session with regard to two matters of potential property acquisition pursuant to Government Code Section 54956.8 with regard to the San Gorgonio Inn property and the other in regards to West Coast Electric.

Meeting went into closed session at 9:05 p.m. and returned to regular session at 10:10 with no reportable action.

#### ADJOURNMENT

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

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Marie A. Calderon, City Clerk

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

*2nd Read.*

**ORDINANCE NO. 1393**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE MUNICIPAL CODE BY REVISING TABLE 17.40.030 IN ORDER TO CLARIFY THE NUMBER OF ANIMALS PERMITTED IN CERTAIN RESIDENTIAL ZONING DISTRICTS.**

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

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

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

2. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act ("CEQA"), and has determined that the zoning text amendment contained in Section Two of this ordinance is categorically exempt from CEQA per Section 15061(b)(3) of the CEQA Guidelines because this zoning text amendment does not have the potential for causing a significant effect on the environment.

**SECTION 2. Amendment of Table 17.40.030.** Table 17.40.030 in the Banning Municipal Code is hereby amended to read as follows:

**Table 17.40.030  
Animal Keeping Standards<sup>1</sup>**

Animal Type	R/A & R/A/H	RR & RR/H	VLDR	LDR	MDR	HDR & MHP
Dogs & Cats <sup>2</sup>	Max. 8/lot <sup>8</sup>	Max. 8/lot <sup>8</sup>	Max. 3/less than 20,000 s.f. <sup>5</sup> Max. 6/20,000 s.f. and greater <sup>6</sup>	Max. 3/lot <sup>7</sup>	3/unit	3/unit
Pot-Bellied Pigs	2/acre. Max. 8	2/acre. Max. 8	2 in lieu of 2 dogs	1 in lieu of 1 dog	Prohibited	Prohibited
Fowl	16/acre	16/acre	10	Prohibited	Prohibited	Prohibited
Fowl, Male	1/20,000 s.f.	1/20,000 s.f.	1/20,000 s.f.	Prohibited	Prohibited	Prohibited
Rabbits	20	20	10	5	2	2
Large Animals <sup>3</sup>	5/acre	5/acre	3/20,000 s.f. <sup>4</sup>	Prohibited	Prohibited	Prohibited

<sup>1</sup> Any animal not specifically listed shall be classified by the Director.

<sup>2</sup> Unweaned offspring shall not be counted in determining the number of dogs or cats.

<sup>3</sup> Large animals shall include goats, sheep, horses, cattle, llamas, swine, emus and ostriches. The total number allowed is cumulative.

<sup>4</sup> On substandard lots created prior to the adoption of this Zoning Ordinance in the VLDR district (lots of less than 20,000 s.f.), one large animal shall be permitted on lots of 12,000 s.f.-16,000 s.f., and two shall be permitted on lots of 16,001 s.f.-19,999 s.f.

<sup>5</sup> For any lot less than 20,000 s.f. a maximum of three (3) dogs and cats, or any combination thereof, not to exceed three (3), shall be permitted.

<sup>6</sup> For lot(s) 20,000 s.f. and larger a maximum of six (6) dogs and cats, or any combination thereof, not to exceed six (6), shall be permitted.

<sup>7</sup> A maximum of three (3) dogs or cats, or any combination thereof, not to exceed three (3), shall be permitted in the LDR zone district.

<sup>8</sup> A maximum combined total of eight (8) dogs and/or cats per lot shall be permitted in the R/A, R/A/H, RR & RR/H zone district.

**SECTION 3. 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 4. Non-Exclusivity.** Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

**SECTION 5. Effective Date.** This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

**SECTION 6. 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 22<sup>nd</sup> day of July, 2008.

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Brenda Salas, Mayor  
City of Banning

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

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Burke, Williams & Sorensen LLP  
City Attorney

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1393 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 22<sup>nd</sup> day of July, 2008, and was duly adopted at a regular meeting of said City Council on the 12th day of August, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** August 12, 2008

**TO:** City Council

**FROM:** George Thacker, Assistant Water/Wastewater Director

**SUBJECT:** Award the Construction Contract for “Project No. 2008-01WW, Cleaning of Anaerobic Digesters”

**Recommendation:** Award the Construction Contract for “Project No. 2008-01WW, Cleaning of Anaerobic Digesters” to Wastewater Solids Management, Inc. of Yachats, Oregon, in the amount of not to exceed \$34,500.00.

**JUSTIFICATION:** Wastewater Solids Management, Inc. is the lowest responsible bidder.

**BACKGROUND:** Project No. 2008-01WW, “Cleaning of Anaerobic Digesters” is a project to remove the sludge, scum, grease, and settlement solids from the three anaerobic digesters at the Wastewater Treatment Plant to increase the volume in the tanks for improving the treatment of solids from the sewerage stream.

This project was advertised for bids on June 21, 2008, and three bids were received and opened on July 22, 2008, with the following results:

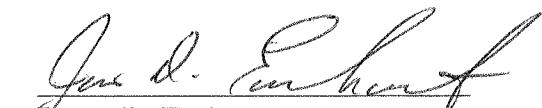
	<u>Firm</u>	<u>Bid Amount</u>
1.)	Wastewater Solids Management, Inc. – Yachats, OR	\$ 34,500.00
2.)	Industrial Coating and Restoration Corp. – Oceanside, CA	\$ 82,000.00
3.)	American Process Group, Inc. – Camas, WA	\$226,000.76

Wastewater Solids Management, Inc. is a reputable firm in the Digester Cleaning Industry and has extensive experience with the cleaning of digester tanks.

If approved, the project will commence immediately and it is anticipated that the project will be completed in October, 2008.

**FISCAL DATA:** Funding for the proposed project with Wastewater Solids Management, Inc. is available in the Wastewater Operations Division Fiscal Year 2008-09 Budget, Account No. 680-8000-454.3004 Repair/Maint.-Plant.

**REVIEWED BY:**



James D. Earhart  
Director of Public Utilities

**APPROVED BY:**



Bonnie Johnson  
Finance Director/  
Assistant City Manager

**APPROVED BY:**



Brian Nakamura  
City Manager

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** August 12, 2008

**TO:** City Council

**FROM:** George Thacker, Assistant Water/Wastewater Director

**SUBJECT:** Emergency Repair to the Roof of Digester # 2 at the Wastewater Treatment Plant

**RECOMMENDATION:** Approve the emergency repair to the roof of Digester # 2 at the WWTP damaged by the high wind storms this past December, 2007, in the amount of \$9,104.00 and direct the City Clerk to record the *Notice of Completion*.

**JUSTIFICATION:** To prevent further damage to the roof of the digester and stop the leakage of digester gas to the atmosphere.

**BACKGROUND:** The City is the provider of Wastewater Treatment and collection of sewerage in the Sanitary Sewer System for the service area of the City of Banning. The high wind storms in December, 2007, tore a portion of the Aluminum Roof of Digester # 2 at the Wastewater Treatment Plant exposing the Digester to leakage of gas from the tank, adding rain water into the tank, and increases the chances of further damage to the roof.

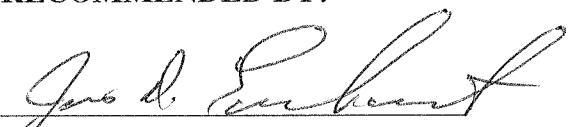
Staff requested proposals from three firms who could immediately start work replacing the aluminum roof torn off by the winds in December of 2007 to prevent further damage to the roof. J.R. Filanc Construction Company submitted a proposal in the amount of \$9,104.00 to do the Work. The other two did not submit proposals.

Filanc Construction Company started work and completed the project on May 30, 2008. This company has successfully completed other projects with the City of Banning at the WWTP.

Authorization for this repair work is consistent with the City Policy as set forth in Ordinance No. 1266 for emergency pipeline repairs.

**FISCAL DATA:** The funds for the repair of the damaged Digester # 2 roof shall be utilized from the FY 07-08 Wastewater Division Operation Budget, Repair/Maint-Plant Account No. 680-8000-454-3004.

**RECOMMENDED BY:**

  
Jim Earhart  
Electric Utility Director

**REVIEWED BY:**

  
Bonnie J. Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

WHEN RECORDED MAIL TO:

City Clerk's Office  
City of Banning  
City Hall, 99 E. Ramsey Street  
Banning, California 92220

## FREE RECORDING:

Exempt Pursuant to  
Government Code §6103

## NOTICE OF COMPLETION

## Construction of Emergency Repair to the Roof of Digester # 2 at the Wastewater Treatment Plant

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

(1) That the City of Banning and J.R. Filanc Construction Company entered into a written Agreement dated February 29, 2008, for the Construction of Emergency Repair to the Roof of Digester # 2 at the Wastewater Treatment Plant ("Work of Repair").

(2) That the Work of Repair was substantially completed on May 30, 2008.

(3) That the City of Banning, a municipal corporation, whose address is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is the owner of said Work of Repair.

(4) That the said Work of Repair was performed on the roof of Digester # 2 at the Wastewater Treatment Plant in the City of Banning.

(5) That the original contractor for said repair was J.R. Filanc Construction Company, State Contractor's License No. 134877.

(6) Performance and payment bonds where not required for this emergency work.

Dated: August 12, 2008

**CITY OF BANNING**  
A Municipal Corporation

By Brian Nakamura, City Manager

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP  
City Attorney

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

4

5

6 MARIE A. CALDERON, being duly sworn, deposes and says:

7

8 That she is the City Clerk of the City of Banning, which City caused the work to  
9 be performed on the real property hereinabove described, and is authorized to execute  
10 this Notice of Completion on behalf of said City; that she has read the foregoing Notice  
11 and knows the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that she makes this verification on  
13 behalf of said City of Banning.

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17 City Clerk of the City of Banning

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21 Subscribed and sworn to before me this 12 day of August 2008.

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25 Notary Public in and for said County  
26 and State

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**CITY COUNCIL MEETING  
CONSENT ITEM**

**DATE:** August 12, 2008

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer 

**SUBJECT:** Resolution No. 2008-92, "Approving the Supplemental Agreement for the Use of the Community Development Block Grant (CDBG) Funds, Fiscal Year 2008-2009"

**RECOMMENDATION:** Adopt Resolution No. 2008-92, "Approving the Supplemental Agreement for the Use of the Community Development Block Grant (CDBG) Funds, Fiscal Year 2008-2009."

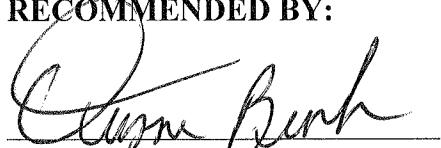
**JUSTIFICATION:** This Supplemental Agreement is essential in order for the City to obtain and utilize funds for CDBG projects.

**BACKGROUND:** On an annual basis, the City of Banning has participated in the federally funded Community Development Block Grant (CDBG) Program. The City Council adopted Resolution No. 2008-21, approving the projects as shown in the attached Exhibit "A" for funding by the Community Development Block Grant (CDBG), Fiscal Year 2008-2009. The City submitted these projects to the Riverside County Economic Development Agency (EDA) and was approved in an amount of \$175,896.00.

In order to utilize these funds for Fiscal Year 2008-2009, the City is required to execute a Supplemental Agreement. The approval letter and proposed Supplemental Agreement are attached herein as Exhibit "B". A copy of the Supplemental Agreement will also be available at the City Clerk's Office for review by the public and other interested parties.

**FISCAL DATA:** These projects are funded through the Community Development Block Grant (CDBG) Funds, Fiscal Year 2008-2009, and the City anticipates receiving \$175,896.00.

**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2008-92**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, APPROVING THE SUPPLEMENTAL AGREEMENT FOR USE OF  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS, FOR FISCAL  
YEAR 2008-2009**

**WHEREAS**, on an annual basis, the City of Banning has participated in the federally funded Community Development Block Grant (CDBG) Program; and

**WHEREAS**, the proposed projects for Fiscal Year 2008-2009 were approved by the City Council under Resolution No. 2008-21 on February 12, 2008; and

**WHEREAS**, in order to utilize the CDBG funds, the City Council is required to execute the Supplemental Agreement, as attached herein, for the Community Development Block Grant (CDBG) funds, for the 2008-2009 Fiscal Year.

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

**Section I.** The City Council of the City of Banning hereby approves the Supplemental Agreement and authorizes the Mayor to execute said Supplemental Agreement, covering the use of Community Development Block Grant (CDBG) funds for the 2008-2009 Fiscal Year, from the Riverside County Economic Development Agency.

**Section II.** This authority is rescinded if the Supplemental Agreement is not executed within Sixty (60) days of the effective date of this Resolution.

**PASSED, APPROVED AND ADOPTED** this 12<sup>th</sup> day of August, 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. 2008-92, was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 12<sup>th</sup> day of August, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon  
City Clerk of the City of Banning

**EXHIBIT “A”**  
**FISCAL YEAR 2008-2009 APPROVED PROJECTS**

**RESOLUTION NO. 2008-92**  
**Approving Project for FY 2008-2009**  
**Community Development Block Grant (CDBG) Program**

**SERVICE RELATED PROJECTS**

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 EDA APPROVED
4.	Banning Police Activities League	“At-Risk” Youth Programs Involving Sports Activities, Art Programs, and Community Participation	\$12,312.00
6.	San Gorgonio Child Care Consortium	Providing Miscellaneous Services to Special Needs Children	12,313.00
	Totals		\$24,625.00

**RESOLUTION NO. 2008-92**  
**Approving Projects for FY 2008-2009**  
**Community Development Block Grant (CDBG) Program**

**CITY PROJECTS**

NO.	PROJECT NAME	DESCRIPTION	FY 08-09 EDA APPROVED
1.	Replier Park Bowl Rehabilitation	Project will include design, facade, stage repair, provide additional bathrooms, improvements to the superstructure, landscaping, walkways, etc.	\$151,271.00
	<b>Totals</b>		<b>\$151,271.00</b>

**EXHIBIT “B”  
APPROVAL LETTER AND  
PROPOSED SUPPLEMENTAL AGREEMENT**



FILE: 5.BN.06-08, 5.BN.07-08, 0.37-08

July 18, 2008

Kahano Oei, City Engineer  
City of Banning  
99 E. Ramsey St.  
Banning, CA 92220

RE: SUPPLEMENTAL AGREEMENT FOR THE 2008-2009  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
PROGRAM YEAR

Dear Mr. Oei:

Enclosed please find two (2) copies of the above referenced Supplemental Agreement for your city's 2008-2009 CDBG program year. This agreement covers the following activities:

5.BN.06-08	Banning Police Activities League-Youth Program	\$12,312
5.BN.07-08	Repllier Park Bowl Improvement Project	\$151,271
0.37-08	Scholarships For Youth With Special Needs	\$12,313

Upon review of the agreement, have both copies executed and returned to this office together with proper documentation of your City Council's approval of the agreement. The executed agreements must be returned to this office no later than forty-five (45) days from the date of this letter.

A fully-executed Supplemental Agreement will be forwarded to you as well as the authorization to incur costs. Please be advised that this is not a notice to proceed. The County will not reimburse the City of for any expenditure prior to the issuance of the *Authorization to Incur Costs*.

Should you have any questions, please contact Melissa Valdivia at (951) 955-9803.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Thurman'.

John Thurman  
CDBG Program Administrator

SH:JT:

ECONOMIC DEVELOPMENT/MARKETING • REDEVELOPMENT • HOUSING • WORKFORCE DEVELOPMENT • HOUSING AUTHORITY  
AVIATION • RIVERSIDE COUNTY FAIR & NATIONAL DATE FESTIVAL • EDWARD-DEAN MUSEUM & GARDENS • COMMUNITY SERVICES



5 **SUPPLEMENTAL AGREEMENT FOR THE USE OF  
6 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

7 The COUNTY OF RIVERSIDE of the State of California, herein called, "COUNTY,"  
8 and the CITY OF BANNING, herein called "CITY," mutually agree as follows:

9 1. GENERAL. COUNTY and CITY have executed a Cooperation Agreement, dated  
10 July 12, 2005, whereby CITY elected to participate with COUNTY, which has qualified as an  
11 "Urban County" for purposes of receiving Community Development Block Grant (CDBG)  
12 funds, and to assist and undertake essential community development and housing assistance  
13 activities pursuant to the Housing and Community Development Act of 1974, Title 1, as  
14 amended, Public Law 93-383 hereinafter referred to as "Act". Said Cooperation Agreement,  
15 dated July 12, 2005, is incorporated herein by reference and made a part of this Agreement as if  
16 each and every provision was set forth herein.

17 2. PURPOSE. CITY promises and agrees to undertake and assist with the  
18 community development activities, within its jurisdiction, by utilizing the sum of **\$175,896**,  
19 CDBG Entitlement Funds, as specifically identified in Exhibits A, B, and C are attached hereto  
20 and by this reference are incorporated herein, for the projects:

21 **A. 5.BN.06-08 Banning Police Activities League-Youth Program, \$12,312.**

22 **B. 5.BN.07-08 Repplier Park Bowl Improvement Project, \$151,271.**

23 **C. 0.37-08 Scholarships For Youth With Special Needs, \$12,313.**

24 3. TERM OF AGREEMENT. The term of this Agreement for the projects shall  
25 be for a period of one (1) year from July 1, 2008 to June 30, 2009, and proceed consistent with  
26 the completion schedule set forth in Exhibits A, B, and C. In the event that the projects are not  
27 substantially completed by the time set forth in the completion schedule due to unforeseen or  
28 uncontrollable causes, the COUNTY may consider extending the schedule for the completion of  
the project. Times of performance for other activities may also be extended in writing by  
COUNTY. If substantial progress toward completion in conformance with the completion

1 schedule, as determined by COUNTY, of the projects are not made during the term of the  
2 Supplemental Agreement, COUNTY may suspend or terminate this agreement by the  
3 procedures set forth in the Section titled "Termination", of this agreement and the entitlement  
4 funds associated with the projects may be reprogrammed by COUNTY after appropriate notice  
5 is given.

6       4.     DISPOSITION OF FUNDS.

7           a.     COUNTY's Board of Supervisors shall determine the final disposition and  
8 distribution of all funds received by COUNTY under the Act consistent with the provisions of  
9 Paragraphs 2 and 3 of this Agreement. COUNTY, through its Economic Development Agency,  
10 shall: (1) Make payment of the grant funds to CITY as designated in Exhibits A, B, and C; and  
11 (2) It is the CITY's responsibility to monitor all project activities of Exhibits A, B, and C to  
12 ensure compliance with applicable federal regulations and the terms of this Agreement.

13           b.     CITY shall comply with timely drawdown of CDBG funds by  
14 expeditiously implementing and completing County-approved, CDBG-funded projects. CITY  
15 acknowledges that CITY's drawdown performance directly impacts the COUNTY's overall  
16 program drawdown rate. If the CITY's unobligated CDBG fund balance, as of January 15,  
17 2009, exceeds two-times (200%) the CITY's 2008-2009 CDBG allocation, the COUNTY may  
18 take the necessary administrative actions to reduce the CITY's CDBG fund balance. Necessary  
19 actions include reprogramming the excess CDBG fund balance to other eligible activities as  
20 selected by COUNTY. COUNTY may authorize CITY in writing, prior to January 15, 2009, to  
21 exceed the CDBG fund balance requirement.

22           c.     CITY shall comply with timely drawdown of funds by submitting  
23 monthly requests for reimbursement or other County-approved reimbursement schedule. All  
24 disbursements of grant funds will be on a reimbursement basis and made within thirty (30) days  
25 after the CITY has submitted its letter identifying payments and documentation supporting  
26 expenditures.

27       ///

28       ///

d. All authorized obligations incurred in the performance of the Agreement for projects eligible under the following regulations must be reported to COUNTY no later than by June 15, 2009:

- a. Public Services [24 CFR 570.201 (e)]
- b. Acquisition [24 CFR 570.201 (a)]
- c. Clearance Activities [24 CFR 570.201 (d)]
- d. Interim Assistance [24 CFR 570.201 (f)]
- e. Code Enforcement [24 CFR 570.202 (c)]

All other eligible activities under this Agreement must be implemented, completed, and obligations reported by the CITY no later than the completion schedules set forth in the Exhibits to this Agreement.

The COUNTY will directly manage and monitor projects identified in Exhibits C. These projects have been determined to be of Countywide benefit, receiving grant funding from multiple sources; therefore, these projects will be managed and monitored by the COUNTY.

5. COOPERATION WITH HOUSING ACTIVITIES. CITY shall cooperate with COUNTY in undertaking essential community development and housing assistance activities, specifically urban renewal and public assistance housing, and shall assist COUNTY in carrying out its Strategic Plan of the Consolidated Plan and other requirements of the Community Development Block Grant Program.

6. LEAD AGENCY FOR COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to Section 15051(d) of Title 14 of the California Administrative Code, CITY is designated as the lead agency for the projects that are the subject matter of this Agreement.

7. HOLD HARMLESS AND INDEMNIFICATION. CITY shall comply with all applicable laws, rules and regulations, and shall indemnify, save and hold harmless COUNTY and its agency members and their respective agents, servants and employees of and from any and all liabilities, claims, debt, damages, demands, suits, actions and causes of action of whatsoever kind, nature or sort including, but not by way of limitation, wrongful death, expenses of the

1 defense of said parties, and the payment of attorney's fees, arising out of or in any manner  
2 connected with the performance by CITY under this Agreement.

3       8.     RECORDS AND INSPECTIONS.

4           a.     CITY shall establish and maintain records in accordance with 24 CFR Part  
5 570, Part 85, OMB Circular A-87, and 24 CFR 91.105, as applicable, and as they relate to the  
6 acceptance and use of federal funds under this Agreement.

7           b.     CITY shall maintain a separate account for CDBG Entitlement funds  
8 received as set forth in Exhibits (A, B, and C).

9           c.     CITY shall, during the normal business hours, make available to  
10 COUNTY, the U.S. Department of Housing and Urban Development (HUD), or other authorized  
11 representative, for the examination and copying, all of its records and other materials with  
12 respect to matters covered by this Agreement.

13           d.     CITY shall not retain any program income as defined in Section 570.500  
14 of Title 24 of the Federal Code of Regulations. Said program income shall be used only for the  
15 activities that are the subject of this Agreement. Further, all provisions of this Agreement shall  
16 apply to such activities.

17           e.     The CITY shall ensure that at least fifty-one percent (51%) of the persons  
18 benefiting from all CDBG-funded activities or projects designated as serving limited clientele  
19 [570.208(a)(2)(i)] are of low and moderate-income and meet the program income guidelines  
20 attached as Exhibits (A, B, and C). The CITY and City's Sub-recipients must provide the  
21 required income certification and direct benefit documentation.

22       9.     FEDERAL REQUIREMENTS. CITY shall comply with all applicable federal,  
23 state, and local laws, regulations, and ordinances and any amendments thereto and the federal  
24 regulations and guidelines now or hereafter enacted pursuant to the Act. More particularly, CITY  
25 is to comply with those regulations found in Part 85 and Part 570 of Title 24 of the Code of  
26 Federal Regulations. CITY is to comply with OMB Circular A-87, or any subsequent  
27 replacement. CITY is to abide by the provisions of the Community Development Block Grant  
28 Manual, prepared by COUNTY and cited in the above-mentioned Cooperation Agreement.

1 CITY will comply with Section 3 of the Housing & Urban Development Act of 1968, as  
2 amended, attached hereto as Exhibit "S". CITY will comply with the provisions of 24 CFR Part  
3 570.200 (j), attached as Exhibit "R," pertaining to inherently religious activities.

4       10. INDEPENDENT CONTRACTOR. CITY and its agents, servants, and employees  
5 shall act at all times in an independent capacity during the term of this Agreement, and shall not  
6 act as, shall not be, nor shall they in any manner be construed to be agents, officers, or  
7 employees of the COUNTY.

8       11. TERMINATION.

9           a. CITY. CITY may not terminate this Agreement except upon express  
10 written consent of COUNTY.

11           b. COUNTY. Notwithstanding the provisions of Paragraph 11a, COUNTY  
12 may suspend or terminate this Agreement upon written notice to CITY of action being taken and  
13 the reason for such action:

14                  (1) In the event CITY fails to perform the covenants herein contained  
15 at such times and in such manner as provided in this Agreement; and

16                  (2) In the event there is a conflict with any federal, state or local law,  
17 ordinance, regulation or rule rendering any of the provisions of this Agreement invalid or  
18 untenable; or

19                  (3) In the event the funding from the Department of Housing and  
20 Urban Development referred to in Paragraphs 1 and 2 above is terminated or otherwise becomes  
21 unavailable.

22           c. Upon suspension of this Agreement, CITY agrees to return any  
23 unencumbered funds which it has been provided by COUNTY. In accepting said funds,  
24 COUNTY does not waive any claim or cause of action it may have against CITY for breach of  
25 this Agreement.

26           d. Reversion of Assets

27                  1. Upon expiration of this Agreement, the CITY shall transfer to the  
28 COUNTY any CDBG funds on hand at the time of expiration of the Agreement as well as any

1 accounts receivable held by CITY which are attributable to the use of CDBG funds awarded  
2 pursuant to this Agreement.

3                   2. Any real property under the CITY'S control that was acquired or  
4 improved in whole or in part with CDBG funds (including CDBG funds provided to the  
5 SPONSOR in the form of a loan) in excess of \$25,000 is either:

6                   (i)    Used to meet one of the National Objectives in Sec.  
7 570.208 until five years after expiration of this agreement, or for such longer period of time as  
8 determined to be appropriate by the COUNTY; or

9                   (ii)   Not used in accordance with Section (i) above, in which  
10 event the SPONSOR shall pay to the COUNTY an amount equal to the current market value of  
11 the property less any portion of the value attributable to expenditures of non-CDBG funds for the  
12 acquisition of, or improvement to, the property.

13                12. NONDISCRIMINATION. CITY shall abide by Sections 570.601 and 570.602 of  
14 Title 24 of the Federal Code of Regulations which requires that no person in the United States  
15 shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be  
16 denied the benefits of, or be subjected to discrimination under any program or activity funded in  
17 whole or in part with Community Development funds.

18                13. PROHIBITION AGAINST CONFLICTS OF INTEREST

19                a.     CITY and its assigns, employees, agents, consultants, officers and elected  
20 and appointed officials shall become familiar with and shall comply with the CDBG regulations  
21 prohibiting conflicts of interest contained in 24 CFR 570.611, attached hereto as Exhibit "CI"  
22 and by this reference incorporated herein.

23                b.     CITY and its assigns, employees, agents, consultants, officers, and elected  
24 and appointed officials shall become familiar with and shall comply with Section A-11 of the  
25 County's CDBG Policy manual, attached hereto as Exhibit "CI" and by this reference  
26 incorporated herein.

27                c.     CITY understands and agrees that no waiver of exception can be granted  
28 to the prohibition against conflict of interest except upon written approval of HUD pursuant to

1 24 CFR 570.611 (d). Any request by CITY for an exception shall first be reviewed by COUNTY  
2 to determine whether such request is appropriate for submission to HUD. In determining whether  
3 such request is appropriate for submission to HUD, COUNTY will consider the factors listed in  
4 24 CFR 570.611 (e).

5 d. Prior to any funding under this Agreement, CITY shall provide COUNTY  
6 with a list of all employees, agents, consultants, officers and elected and appointed officials who  
7 are in a position to participate in a decision making process, exercise any functions or  
8 responsibilities, or gain inside information with respect to the CDBG activities funded under this  
9 Agreement. CITY shall also promptly disclose to COUNTY any potential conflict, including  
10 even the appearance of conflict that may arise with respect to the CDBG activities funded under  
11 this Agreement.

12 e. Any violation of this section shall be deemed a material breach of this  
13 Agreement, and the Agreement shall be immediately terminated by the COUNTY.

14 14. PROJECT ELIGIBILITY. As to CITY or its claimants, COUNTY shall bear no  
15 liability for any later determination by the United States Government, the Department of  
16 Housing and Urban Development or any other person or entity that CITY is or is not eligible  
17 under 24 CFR Part 570 to receive CDBG funds.

18 15. USE OF PROPERTY. Whenever federal CDBG funds or program income are  
19 used, in whole or in part, for the purchase of equipment or personal property, the property shall  
20 not be transferred from its originally funded use, by CITY or sub-recipient, for a period of five  
21 (5) years from the close-out date of the grant from which CDBG assistance was provided. The  
22 CITY shall maintain a current inventory for COUNTY monitoring and review.

23 16. EMPLOYMENT OPPORTUNITIES TO BE CAUSED BY PROJECT. CITY  
24 agrees to notify and to require any lessee or assignee to notify Riverside County Workforce  
25 Development Center of any and all job openings that are caused by this project.

26 17. PUBLICITY. Any publicity generated by CITY for the project funded pursuant to  
27 this Agreement, during the term of this Agreement, will make reference to the Contribution of  
28 the County of Riverside, the Economic Development Agency, and the Community Development

1 Block Grant Program in making the project possible.

2       18. PROGRAM MONITORING AND EVALUATION. CITY and its sub-recipients  
3 shall be monitored and evaluated in terms of its effectiveness and timely compliance with the  
4 provisions of this Agreement and the effective and efficient achievement of the Program  
5 Objectives. Quarterly reports shall be due on the last day of the month immediately following the  
6 end of the quarter being reported. The quarterly written reports shall include, but shall not be  
7 limited to, the following data elements:

8           a. Title of program, listing of components, description of  
9 activities/operations.

10           b. The projected goals, indicated numerically, and also the goals achieved  
11 (for each report period). In addition, identify by percentage and description, the progress  
12 achieved towards meeting the specified goals and identify any problems encountered in meeting  
13 goals.

14           c. If the CDBG-funded Activity meets a National Objective under 24 CFR  
15 570.208 (a)(2)(i), CITY will report the following:

16           1) Total number of direct beneficiaries (clientele served) with  
17 household incomes at:

- 18                   • Above 80% MHI
- 19                   • Between 50% and 80% MHI (Low-Income)
- 20                   • Between 30% and 50% MHI (Very Low-Income)
- 21                   • Less than 30% MHI (Extremely Low-Income)

22           2) Total number and percent (%) of the clientele served that have  
23 household incomes at or below 80% MHI

- 24           3) Racial ethnicity of clientele
- 25           4) Number of Female-Headed Households

26       CITY and its sub-recipients shall report beneficiary statistics monthly to EDA on the pre-  
27 approved *Direct Benefit Form* and *Self-Certification Form* (certifying income, family size, and  
28

1 racial ethnicity) as required by HUD. Updated forms are to be provided to CITY by EDA should  
2 HUD implement changes during the term of this agreement.

3 CITY and sub-recipients will collect and provide all necessary data required by HUD  
4 pertaining to the Specific Outcome Indicators as identified in the CPD Outcome Performance  
5 Measurement System.

6 19. SOURCE OF FUNDING. CITY acknowledges that the source of funding  
7 pursuant to this Agreement is Community Development Block Grant (CFDA 14.218).

8 20. ENTIRE AGREEMENT. It is expressly agreed that this Agreement together with  
9 the cooperation Agreement between the parties, embodies the entire agreement of the parties in  
10 relation to the subject matter thereof, and that no other Agreement or understanding, verbal or  
11 otherwise, relative to this subject matter, exists between the parties at the time of execution.

12 21. MINISTERIAL ACTS. The Assistant County Executive Officer/EDA or  
13 designee(s) are authorized to take such ministerial actions as may be necessary or appropriate to  
14 implement the terms, provisions, and conditions of this Agreement as it may be amended from  
15 time to time by COUNTY.

16  
17 22. PRIOR AUTHORIZATION. CITY shall obtain COUNTY's written approval  
18 from the Economic Development Agency prior to implementing the following "high risk"  
19 activities funded with CDBG assistance:

- 20 a. Construction of public facilities (project plans and specifications);
- 21 b. Acquisition of real property;
- 22 c. Historic Preservation;
- 23 d. Relocation; and
- 24 e. Economic Development

25 23. MODIFICATION OF AGREEMENT. This Agreement may be  
26 modified or amended only by a writing signed by the duly authorized and empowered  
27 representative of COUNTY and CITY respectively.

28 SIGNATURE ON NEXT PAGE

1 DATED: \_\_\_\_\_  
2  
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4

5 COUNTY OF RIVERSIDE  
6

CITY OF BANNING  
7

8 By: \_\_\_\_\_  
9 Deputy Director  
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By: \_\_\_\_\_  
11 Mayor  
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## References

<u>Citation</u>	<u>Page</u>	<u>Description</u>
24 CFR 570.201 (e)	pg. 3	Provision of Public Services
24 CFR 570.201 (a)	pg. 3	Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property for any public purpose, subject to the limitations of Sec. 570.207.
24 CFR 570.201 (d)	pg. 3	Clearance Activities. Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites.
24 CFR 570.201 (f)	pg. 3	Interim Assistance. The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings. The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns.
24 CFR 570.202 (c)	pg. 3	Code enforcement. Costs incurred for inspection for code violations and enforcement of codes.
24 CFR 570 part 85	pg. 4	Administrative requirements for grants and cooperative agreements to state, local, and federally recognized Indian Tribal Governments.
Circular No. A-87	pg. 4	Cost Principles for State, Local, and Indian Tribal Governments.
24 CFR 91.105	pg. 4	Standards for local government citizen participation plans applicable to the CDBG program and other formula grant programs.
24 CFR 570.500	pg. 4	Definitions
24 CFR 570.200	pg. 5	General policies

24 CFR 570.601	pg. 6	Public Law 88-352, which is Title VI of the Civil Rights Act of 1964; outlawed segregation in schools, public places, and employment. Public Law 90-284, which is the Fair Housing Act.
24 CFR 570.602	pg. 6	Section 109 of the Act requires that no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance made available pursuant to the Act.
24 CFR 570.611	pg. 6	Conflict of Interest.
24 CFR 570.611 (d)	pg. 7	Exceptions. Upon the written request of the recipient, HUD may grant an exception.
24 CFR 570.611(e)	pg. 7	Factors that HUD may consider for requested exceptions to Conflict of Interest prohibitions.
24 CFR 570	pg. 7	Community Development Block Grant Regulations.
24 CFR 570.208(a)(2)(i)	pg. 8	Criteria for national objectives. Activities benefiting low and moderate income persons, an activity that benefits a limited clientele, at least 51 percent of whom are low or moderate income persons.

**CDBG SUPPLEMENTAL AGREEMENT  
SCOPE OF WORK – PUBLIC SERVICE**

**I. GENERAL INFORMATION**

CITY NAME: City of Banning

ADDRESS: 321 W. Ramsey Street  
Banning, CA 92220

CITY PROGRAM CONTACTS: Douglas Monte, Detective/Secretary

SUBRECIPIENT NAME: City of Banning

ADDRESS: 321 W. Ramsey Street, Banning, CA 92220

PROGRAM CONTACT: Douglas Monte, Detective/Secretary

PHONE: 951.840.8562 FAX: (951) 922-3162

E-MAIL: \_\_\_\_\_

PROJECT NAME: Banning Police Activities League-Youth Program

PROJECT LOCATION: Banning 321 W. Ramsey Street Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: **EXEMPT [24 CFR 58.34 (a)(4)]**

CDBG ELIGIBILITY CODE: **24 CFR 570.201 (e) Public Services**

PROJECT FUNDING SUMMARY: \_\_\_\_\_

City Funding \$12,312

Project to be administered by County (EDA) on behalf of CITY: YES  NO

**II. SCOPE OF SERVICE**

**A. Activities**

City will be responsible for administering a 2008-2009 Community Development Block Grant for the **Banning Police Activities League-Youth Program** in a manner satisfactory to the County of Riverside and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Activity #1 *The Banning Police Activities League provides enrichment, development, and community service opportunity to at-risk youth. Activities will include soccer, basketball, tennis, dancing and art. CDBG funds will be used for supplies and equipment for the program.*

**B. National Objective**

All activities funded with CDBG funds must comply with one of more of the CDBG program's National Objective Criteria as required under 24 CFR 570.200(a)(2). CITY certifies that the activity (ies) carried out under this Agreement will meet the following National Objective:

National Objective Criteria: 570.208 (a)(2)(i)(B)

CFR Reference: Low Mod Limited Clientele Income Certification

**C. Levels of Accomplishment – Goals and Performance Measures**

The City agrees to provide the following levels of program services:

Activity	Units <u>per Month</u>	Total <u>Units/Year</u>	Total <u>Unduplicated Persons</u>
Activity #1	22	220	220

Unit of Service is defined as: Youth served by program.

**CPD OUTCOME PERFORMANCE MEASUREMENT**

**Objectives (select one):**  Creating Suitable Living Environments  
 Providing Decent Affordable Housing  
 Creating Economic Opportunities

**Outcome (select one):**  Availability/Accessibility  
 Affordability  
 Sustainability (promoting livable or viable communities)

**D. City Capacity**

By executing this Supplemental Agreement, the City certifies that it and its subrecipients have the appropriate number of trained and knowledgeable staff, adequate facilities, proper equipment, required licensing and permitting, and sufficient amount of financial resources necessary to implement and carry out the activities funded with CDBG funds.

City will immediately notify County of any significant changes in organizational management, assigned staff, change in facilities, loss or change in matching funds, or any other event that could potentially impact City's performance under this Agreement.

Any changes in the above items are subject to the prior approval of the County.

**E. Performance Monitoring**

The County of Riverside will monitor the performance of the City and its subrecipients against goals and performance standards as stated above. Substandard performance as determined by the County will constitute noncompliance with this Agreement. If action to correct such substandard

performance is not taken by the City within a reasonable period of time after being notified by the County, contract suspension or termination procedures will be initiated.

#### F. Program Budget

It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed \$12,312. Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in this Section and in accordance with performance. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

The County may require a more detailed budget breakdown than the one contained herein, and the City shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the County. Any amendments to the budget must be approved in writing by both the County and City.

<u>Line Item</u>	<u>Amount</u>
Direct Program Expenses	
Salaries	_____
Fringe	_____
Office Space (Program Only)	_____
Utilities	_____
Communications	_____
Reproduction/Printing	_____
Supplies and Materials	\$ <u>12,312</u>
Mileage	_____
Equipment (Program Only)	_____
Audit	_____
Transportation	_____
Other (Specify)	_____
<b>Total Direct Program Costs</b>	\$ <u>12,312</u>
Indirect Costs (Specify)*	_____
<b>Total Indirect Costs</b>	_____
<b>TOTAL CDBG BUDGET</b>	\$ <u>12,312</u>

\* All indirect costs must be pre-approved by the County. City must submit an Indirect Cost Allocation Plan to County, in a form specified by County, demonstrating the appropriate share of general and administrative costs.

### III. ADMINISTRATIVE REQUIREMENTS

#### A. Accounting Standards

The City agrees to comply with 24 CFR 84 or 85 as applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### B. Cost Principles

The City shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis

#### C. Documentation and Record Keeping

##### 1. Records to be Maintained

The City and its subrecipients will maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- i. Records providing a full description of each activity undertaken;
- ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- iii. Records required to determine the eligibility of activities;
- iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- vi. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

##### 2. Records Retention

The City shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The City shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.

4. Disclosure

The City understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the County's or City's responsibilities with respect to services provided under this contract, is prohibited by applicable federal and State law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The City's obligation to the County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the City has control over CDBG funds, including program income.

6. Audits & Inspections

All City records with respect to any matters covered by this Agreement shall be made available to the County, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within 30 days after receipt by the City. Failure of the City to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The City hereby agrees to have an annual agency audit conducted in accordance with current County policy concerning subrecipient audits and OMB Circular A-133.

#### IV. PROJECT IMPLEMENTATION AND SCHEDULE

Unless pre-approved by County, CITY will perform and complete the activities described in Section II in conformance with the schedule of tasks and milestones listed below:

<u>Tasks / Milestone</u>	<u>Start Date</u>	<u>Completion Date</u>
Attend Mandatory Cooperating City Training	July 2008	July 2008
Execute Subrecipient Agreements (EDA must approve)	July 1, 2008	---
Implement Program Activities	July 1, 2008	TBD
Execute Supplemental Agreement & Notice to Incur Cost	August 2008	September 2008
City Submit Quarterly Performance Reports to County		October 15, 2008 January 15, 2009 April 15, 2009 July 31, 2009
County Monitoring of City Performance	TBD	TBD
City submit Monthly Direct Benefit Reports	September 2008	July 2009
City Submits Reimbursement Requests		
Monthly Submittal <input type="checkbox"/>	September 2008	<u>May 15, 2009</u>
Other Schedule <input type="checkbox"/>		
CDBG Program Services Complete		June 30, 2009

#### V. SPECIAL CONDITIONS /PERFORMANCE REQUIREMENTS

Sponsor must collect **income self-certifications** from every the parent of legal guardian or every child participating in CDBG-funded activities. This includes family income, family size, and ethnicity. Sponsor is required to collect **income verification** documentation from at least 10% of the persons submitting the certifications. All of this documentation must be submitted to EDA on a monthly basis.

**CDBG SUPPLEMENTAL AGREEMENT  
SCOPE OF WORK – NON-PUBLIC SERVICE**

**I. GENERAL INFORMATION**

CITY NAME: City of Banning

ADDRESS: P.O. Box 998  
Banning, CA 92220

PROGRAM CONTACTS: Kahono Oei, Program Manager

PHONE: 9519223105 FAX: (951) 922-3141

E-MAIL: \_\_\_\_\_

PROJECT NAME: Repplier Park Bowl Improvement Project

PROJECT LOCATION: 201 West George Street Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: \_\_\_\_\_

CDBG ELIGIBILITY CODE: \_\_\_\_\_

PROJECT FUNDING SUMMARY:

City Funding \$151,271

Project to be administered by County (EDA) on behalf of City: YES  NO

**II. SCOPE OF SERVICE**

**A. Activities**

City will be responsible for administering a 2008-2009 Community Development Block Grant for the **Repplier Park Bowl Improvement Project** in a manner satisfactory to the County of Riverside and consistent with any standards required as a condition of providing these funds. Such program will include the following activities eligible under the Community Development Block Grant program:

Activity #1 *The City of Banning will use CDBG funds for the design and construction improvements at the Repplier Park Bowl. Renovations include the stage area, stairs, walkways, additional restrooms, landscaping, and security lighting.*

**B. National Objective**

All activities funded with CDBG funds must comply with one of more of the CDBG program's National Objective Criteria as required under 24 CFR 570.200(a)(2). City certifies that the activity(ies) carried out under this Agreement will meet the following National Objective:

National Objective Criteria: 570.208 (a)(1)(i)

CFR Reference: Low Mod Area

**C. Levels of Accomplishment – Goals and Performance Measures**

The City agrees to implement and complete the following activity (ies):

Activity #1: Design improvements for Repplier Park Bowl

Activity #2: Renovate stage area, stairs, walkways, security lighting.

**CPD OUTCOME PERFORMANCE MEASUREMENT**

**Objectives (select one):**  Creating Suitable Living Environments  
 Providing Decent Affordable Housing  
 Creating Economic Opportunities

**Outcome (select one):**  Availability/Accessibility  
 Affordability  
 Sustainability (promoting livable or viable communities)

**D. City Capacity**

By executing this Supplemental Agreement, the City certifies that it has the appropriate number of trained and knowledgeable staff, adequate facilities, proper equipment, required licensing and permitting, and sufficient amount of financial resources necessary to implement and carry out the activities funded with CDBG funds.

City will immediately notify County of any significant changes in organizational management, assigned staff, change in facilities, loss or change in matching funds, or any other event that could potentially impact the City or subrecipient's performance under this Agreement.

Any changes in the above items are subject to the prior approval of the County.

#### **E. Performance Monitoring**

The County of Riverside will monitor the performance of the City and its subrecipients against goals and performance standards as stated above. Substandard performance as determined by the

County will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the City within a reasonable period of time after being notified by the County, contract suspension or termination procedures will be initiated.

#### **F. Program Budget**

It is expressly agreed and understood that the total amount to be paid by the County under this Agreement shall not exceed \$151,271 Drawdowns for the payment of eligible expenses shall be made against the line item budgets specified in this Section and in accordance with performance. Payments may be contingent upon certification of the Subrecipient's financial management system in accordance with the standards specified in 24 CFR 84.21.

The County may require a more detailed budget breakdown than the one contained herein, and the City shall provide such supplementary budget information in a timely fashion in the form and content prescribed by the County. Any amendments to the budget must be approved in writing by both the County and City.

<u>Line Item</u>	<u>Amount</u>
Design/Engineering Costs	\$ <u>151,271</u>
Project Administration Costs	_____
Construction Costs	_____
Acquisition Costs	_____
Relocation Costs	_____
Capital Equipment Costs	_____
Code Enforcement	_____
Clearance	_____
Interim Assistance	_____
Other	_____
<b>TOTAL CDBG BUDGET</b>	<b>\$ <u>151,271</u></b>

### III. ADMINISTRATIVE REQUIREMENTS

#### A. Accounting Standards

The City agrees to comply with 24 CFR 84 or 85 as applicable and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

#### B. Cost Principles

The City shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," A-21, "Cost Principles for Educational Institutions," or OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis

#### C. Documentation and Record Keeping

##### 1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506, that are pertinent to the activities to be funded under this Agreement. Such records shall include but not be limited to:

- i. Records providing a full description of each activity undertaken;
- ii. Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- iii. Records required to determine the eligibility of activities;
- iv. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;
- v. Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- vi. Financial records as required by 24 CFR 570.502, and 24 CFR 84.21-28; and
- vii. Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

##### 2. Records Retention

The City shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the County's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have

started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five-year period, whichever occurs later.

3. Client Data

The City shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to County monitors or their designees for review upon request.

4. Disclosure

The City understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the County's or City's responsibilities with respect to services provided under this contract, is prohibited by applicable federal and State law unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Close-outs

The City's obligation to the County shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the County), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the City has control over CDBG funds, including program income.

6. Audits & Inspections

All City records with respect to any matters covered by this Agreement shall be made available to the County, HUD, and the Comptroller General of the United States or any of their authorized representatives, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the City within 30 days after receipt by the City. Failure of the City to comply with the above audit requirements will constitute a violation of this contract and may result in the withholding of future payments. The City hereby agrees to have an annual agency audit conducted in accordance with current County policy concerning subrecipient audits and OMB Circular A-133.

#### IV. PROJECT IMPLEMENTATION AND SCHEDULE

Unless pre-approved by County, City will perform and complete the activities described in Section II in conformance with the schedule of tasks and milestones listed below:

<u>Tasks / Milestone</u>	<u>Start Date</u>	<u>Completion Date</u>
Attend Mandatory Cooperating City Training	July 2008	July 2008
Implement Project Activities	Upon Notification from EDA	
Execute Supplemental Agreement & Notice to Incur Cost	August 2008	September 2008
<u>Tasks / Milestone</u>	<u>Start Date</u>	<u>Completion Date</u>
Submit Quarterly Performance Reports to County		October 15, 2008
		January 15, 2009
		April 15, 2009
		July 31, 2009
		October 31, 2009
County Monitoring of City Program/Performance		January 31, 2010
Specific Project Activities		April 30, 2010
City Submits Reimbursement Requests		July 15, 2010
Monthly Submittal <input type="checkbox"/>		
Other Schedule <input checked="" type="checkbox"/>		<u>May 15, 2010</u>
CDBG-funded Project Complete	TBD	May 30, 2010

---

#### V. SPECIAL CONDITIONS /PERFORMANCE REQUIREMENTS

**CDBG SUPPLEMENTAL AGREEMENT  
SCOPE OF WORK – PUBLIC SERVICE**

**I. GENERAL INFORMATION**

SPONSOR NAME: San Gorgonio Child Care Consortium

ADDRESS: P.O. Box 1629  
Banning, CA 92220

PROGRAM CONTACTS: Linda Phillips, Executive/Program Director

PHONE: (951) 849-2930 FAX: (951) 849-2262

E-MAIL: \_\_\_\_\_

PROJECT NAME: Scholarships For Youth With Special Needs

PROJECT LOCATION: 671 N. Florida St., Ste. A, Banning, CA 92220

LEVEL OF ENVIRONMENTAL CLEARANCE: **EXEMPT [24 CFR 58.34 (a)(4)]**

CDBG ELIGIBILITY CODE: **24 CFR 570.201 (e) Public Services**

**PROJECT FUNDING SUMMARY:**

5<sup>th</sup> District **\$10,000**  
City Funding **\$12,313 (Banning-\$12,313)**

**I. SCOPE OF SERVICE**

Project to be administered by County (EDA) on behalf of CITY: YES  NO

**A. Activities**

This project provides a County-wide benefit and will be administered by EDA.

Activity #1 *The program provides special services from trained staff to increase the social/emotional well being of Special Needs Children. CDBG funds will provide 21 scholarships to youth from low-mod income families.*



**CITY COUNCIL AGENDA  
CONSENT**

**Date:** August 12, 2008  
**TO:** Honorable Mayor and City Council  
**FROM:** James D. Earhart, Public Utilities Director  
**SUBJECT:** Resolution No. 2008-93 Approving the Local and System Resource Adequacy Capacity Purchase Agreement with Reliant Energy Services, Inc. for Calendar Year 2009

**RECOMMENDATION:** The City Council approve the local and system resource adequacy capacity purchase with Reliant Energy Services, Inc. (“Reliant”) for calendar year 2009, attached herewith as Exhibit “A”.

**JUSTIFICATION:** It is a requirement of all California Independent System Operator (“CAISO”) participants to have a minimum of fifteen percent (15%) capacity reserves. Additionally, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO. Banning is a Participating Transmission Owner (“PTO”) with the CAISO.

**BACKGROUND:** After the California energy crisis the CAISO has been developing market modifications to ensure that all Load Serving Entities (“LSE”) have acquired sufficient electricity / capacity to serve their peak demand. The CAISO has determined that each LSE must maintain capacity reserves of at least 15% above its projected peak demand, and has implemented policy changes to that affect. Additionally, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO. Banning’s allocated Local Area Reliability (“LAR”) requirement for 2009 is 25 megawatts (“MW”).

The current Resource Adequacy (“RA”) requirements of 115% are applicable during the interim period until the Market Redesign Technology Update (MRTU) takes effect. The implementation date for MRTU has been moved multiple times and currently is projected for February 2009. Under MRTU each participant will still have the same RA and LAR requirements, but the source of the authority will be the CAISO’s MRTU Tariff.

Banning has negotiated a capacity reserve deal with Reliant that fulfills both the CAISO RA and LAR requirements for calendar year 2009. Staff recommends the approval of this agreement by the City Council.

**FISCAL DATA:** The cost of this transaction is \$3.15/kilowatt month, for a total cost of \$945,000 over the twelve month contract period. Funds have been allocated in the FY 2008-10 Budget to cover the cost of this expense.

**RECOMMENDED BY:**



James D. Earhart  
Public Utilities Director

**APPROVED BY:**



Brian Nakamura  
City Manager



Bonnie J. Johnson  
Finance Director

Report Prepared By: Fred Mason, Power Resource & Revenue Administrator

## **RESOLUTION NO. 2008-93**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE LOCAL AND SYSTEM RESOURCE ADEQUACY CAPACITY PURCHASE AGREEMENT WITH RELIANT ENERGY SERVICES, INC. FOR CALENDAR YEAR 2009**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, the City is a Participating Transmission Owner (“PTO”) with the California Independent System Operator (“CAISO”); and

**WHEREAS**, the CAISO has implemented Resource Adequacy (“RA”) requirements of 115% requiring a minimum of 15% reserves for all Load Serving Entities (“LSE”); and

**WHEREAS**, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO; and

**WHEREAS**, the City has negotiated an agreement with Reliant Energy Services, Inc. to supply energy capacity to meet the CAISO Local Area Reliability (“LAR”) and RA requirements, attached herewith as Exhibit “A”;

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

1. Adopt Resolution No. 2008-93 approving the energy capacity agreement between the City of Banning and Reliant Energy Services, Inc., and authorize the City Manager or his/her designee to administer said agreement.
2. Authorize the Mayor to execute Resolution No. 2008-93. Said authorization shall become void if not executed within 60 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 12<sup>th</sup> day of August 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. 2008-93 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 12th day of August 2008 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

## **Exhibit “A”**

**CONFIRMATION LETTER  
BETWEEN  
RELIANT ENERGY SERVICES, INC.  
AND  
CITY OF BANNING**

This confirmation letter ("Confirmation") confirms the Transaction between Reliant Energy Services, Inc. ("Seller") and City of Banning ("Buyer"), each individually a "Party" and together the "Parties", dated as of August 12, 2008 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the resource adequacy capacity product described herein (the "Product"). This Transaction is governed by the Western Systems Power Pool Agreement (Effective Version: March 16, 2007) to which both Seller and Buyer are members along with any amendments and annexes thereto (the "Master Agreement"). Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement and the Tariff.

**ARTICLE 1  
DEFINITIONS**

- 1.1 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.3 "CAISO" means the California Independent System Operator, or its successor.
- 1.4 "CAISO Control Area" has the meaning specified in the Tariff.
- 1.5 "CAISO Controlled Grid" has the meaning specified in the Tariff.
- 1.6 "Capacity Replacement Price" means (a) the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4.16a of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.7 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.8 "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.
- 1.9 "Contract Price" means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape Factor for such period.
- 1.10 "Contract Quantity" means the total Unit Contract Quantity for all Units.
- 1.11 "CPUC" means the California Public Utilities Commission or any successor thereto.
- 1.12 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.13 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.14 "Designated RA Capacity" means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable LAR Showings, in each case as determined pursuant to Section 3.1 hereof. Designated RA Capacity shall include those attributes associated with the capacity identified in Article 2 and Article 3 hereof.
- 1.15 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.16 "Firm RA Product" has the meaning specified in the Section 3.2 hereof.
- 1.17 "Forced Outage" means an outage that is designated "forced" according to CAISO's outage coordination rules and procedures.

1.18 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

1.19 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSE's by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.20 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that the LAR Attributes associated with a Unit by virtue of its location or point of electrical interconnection may change as the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas and such change will not result in a change in payments made pursuant to this transaction.

1.21 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.22 "LRA" means a Local Regulatory Authority, as defined in the Tariff.

1.23 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.24 "Maintenance Outage" has the meaning specified in the NERC/GADS Protocols.

1.25 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.26 "Monthly Delivery Period" means each calendar month during the Period of Delivery.

1.27 "Monthly RA Capacity Payment" has the meaning specified in Section 4.4 hereof.

1.28 "NERC/GADS Protocols" means the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) protocols, as may be updated from time to time.

1.29 "Non-Excusable Event" means an event which prevents Buyer's ability to use Designated RA Capacity for its RAR Showing or LAR Showing as a result of Seller's (a) negligence, (b) failure to perform its obligations under this Confirmation, including, without limitation, the failure to cause the owner, operator or SC of a Unit to comply with the operations and maintenance standards specified in Section 8.2(f), or (c) failure to comply, or cause the owner, operator or SC of the Units to comply, with the Tariff with respect to the Units providing RAR Attributes and LAR Attributes, as applicable.

1.30 "Period of Delivery" has the meaning specified in Section 4.1 hereof.

1.31 "Planned/Scheduled Outage" means any outage, including Maintenance Outages, that are designated "Approved Planned" in the SLIC System.

1.32 "Price Shape Factor" means the Price Shape Factor specified in the Monthly Payment Price Shape Table in Section 4.4 hereof.

1.33 "Product" has the meaning specified in the introductory paragraph hereof.

1.34 "Prorated Percentage of Unit Factor" means the percentage of RA Capacity, as specified in Article 2 hereof, from the Unit that is dedicated to Buyer pursuant to this Confirmation.

1.35 "RA Availability" means, for each Unit, expressed as a decimal value rounded to the nearest hundredth, (a) the Unit's RA Capacity, divided by (b) the Unit's CAISO Net Qualifying Capacity shown in Article 2, provided that a Unit's RA Availability shall not exceed 1.00.

1.36 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and LAR purposes for the Period of Delivery, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses both the RAR Attributes and LAR Attributes of the capacity provided by a Unit.

1.37 "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.4 hereof.

1.38 "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

1.39 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, LRA, or Governmental Body having jurisdiction, that can be counted toward RAR, exclusive of any LAR Attributes.

1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having jurisdiction.

1.41 "Replacement Capacity" has the meaning specified in Section 5.3 hereof.

1.42 "Replacement Unit" means a generating unit meeting the requirements specified in Section 5.2 hereof.

1.43 "Resource Top Down Category" means the resource classification as described in CPUC Decision 05-10-042, and as may be amended from time to time by the CPUC.

1.44 "RMR Agreement" has the meaning specified in Section 8.2(b) hereof.

1.45 "Scheduling Coordinator" or "SC" has the meaning defined in the Tariff.

1.46 "Seller" has the meaning specified in the introductory paragraph hereof.

1.47 "SLIC System" means the scheduling and logging system for the CAISO, which is a web-enabled interface for transmission and generation owners and operators to communicate outage information to the CAISO.

1.48 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.

1.49 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

1.50 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.51 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.52 "Unit Contract Quantity" means the quantity of RA Capacity for a Unit as of the Confirmation Effective Date, as specified in Section 4.3 hereof.

## **ARTICLE 2 UNIT INFORMATION<sup>1</sup>**

Unit: Ormond Beach Unit 1

Location: Ventura County, CA

CAISO Resource ID: ORMOND\_7\_UNIT 1

SCID: NES1

CAISO Net Qualifying Capacity as determined by CAISO for such Unit: 741.27 MW

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<sup>1</sup> To be repeated for each Unit if more than one.

Prorated Percentage of Unit Factor: 0.0337

Resource Type: Natural Gas Conventional Steam Turbine

Resource Top Down Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid ("Substation"): Moorpark

Current CAISO Zone (NP15, ZP26, or SP15) in which Substation resides: SP15

LAR Region (if any, as of Confirmation Effective Date): Big Creek/Ventura

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None known by Seller as of the Confirmation Effective Date.

Run Hour Restrictions: None

### **ARTICLE 3 RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Period of Delivery, Seller shall provide the Product to Buyer pursuant to the terms of this Confirmation. The Product shall (a) include both RAR Attributes and, if any, LAR Attributes, and (b) be either a Firm RA Product or a Contingent Firm RA Product, as selected below. The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity, and any RAR Attributes or LAR Attributes not otherwise sold under this Confirmation.

#### **3.1 RAR and LAR Attributes**

Seller shall provide Buyer with the Designated RA Capacity and the RAR Attributes and, if any, LAR Attributes from each Unit associated with such Designated RA Capacity, as expressed in MWs. For each Monthly Delivery Period, a Unit's Designated RA Capacity shall be equal to the product of (x) the Unit's RA Capacity, and (y) the Unit's Prorated Percentage of Unit Factor, subject to adjustments for Planned/Scheduled Outages at the time of the RAR Showings and, if applicable, LAR Showings, if any, as determined pursuant to Article 7 below; provided that the total amount of Designated RA Capacity from all Units shall not exceed the Contract Quantity.

#### **3.2 [X] Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period solely as a result of Planned/Scheduled Outages resulting in adjustments to RA Capacity of a Unit at the time of the RAR Showings and, if applicable, LAR Showings pursuant to Article 7 below, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer's sole and exclusive remedy for such failure, (a) Seller shall be liable for damages pursuant to Section 5.4 hereof, or (b) Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof if Seller is not able to replace the Designated RA Capacity. For clarity, if, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period as a result of a Forced Outage or a Force Majeure, Seller shall have no obligation to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2 with respect thereto, or to pay Buyer any damages pursuant to Section 5.4 or indemnify Buyer for any penalties pursuant to Section 5.5 in connection therewith.

### **3.3 11 Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity because of a Non-Excusable Event, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. In such case, if Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer's sole and exclusive remedy for such failure, (a) Seller shall be liable for damages pursuant to Section 5.4 hereof, or (b) Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof. For clarity, if the Units provide less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event, Seller is not obligated to provide Buyer with replacement Designated RA Capacity or to indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof.

## **ARTICLE 4 DELIVERY AND PAYMENT**

### **4.1 Period of Delivery**

The Period of Delivery shall be: January 1, 2009 through December 31, 2009, inclusive.

### **4.2 Delivery Point**

The Delivery Point for each Unit shall be the CAISO Control Area and, if applicable, the LAR region in which the Unit is electrically interconnected.

### **4.3 Unit Contract Quantity<sup>2</sup>**

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

**Unit Contract Quantity (MWs)**

<b>Month</b>	<b>MW</b>
January	25
February	25
March	25
April	25
May	25
June	25
July	25
August	25
September	25
October	25
November	25
December	25

<sup>2</sup> To be repeated for each Unit if more than one.

If any portion of the Unit Contract Quantity of any Unit providing a Contingent Firm RA Product is not countable in Buyer's RAR Showings or, if applicable, LAR Showings after the Confirmation Effective Date for reasons other than a Non-Excusable Event, the Unit Contract Quantity shall be adjusted to the product of the Unit's (a) RA Capacity following adjustment, and (b) Prorated Percentage of Unit Factor, provided that the resulting Unit Contract Quantity shall not exceed the original Unit Contract Quantity on the Confirmation Effective Date.

#### **4.4 Monthly RA Capacity Payment**

In accordance with the terms of Section Nine of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, following each Monthly Delivery Period. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Each Monthly RA Capacity Payment may be subject to reduction in accordance with Section 4.5 hereof.

**RA CAPACITY FLAT PRICE TABLE**

<b>Contract Year</b>	<b>RA Capacity Flat Price (\$/kW-month)</b>
2009	\$3.15

The respective monthly Price Shape Factor, set forth in the Monthly Payment Price Shape Factor Table below, shall apply throughout the entire Period of Delivery.

**MONTHLY PAYMENT PRICE SHAPE FACTOR TABLE**

<b>Contract Month</b>	<b>Price Shape Factor</b>
Jan	100%
Feb	100%
Mar	100%
Apr	100%
May	100%
Jun	100%
Jul	100%
Aug	100%
Sep	100%
Oct	100%
Nov	100%
Dec	100%

#### **4.5 Reduction of Monthly RA Capacity Payment (Contingent Firm RA Product only)**

For any Contingent Firm RA Product, the Monthly RA Capacity Payment for each Unit shall be reduced by its RA Availability Adjustment, which is calculated as follows:

- (a) When the Unit's RA Availability for the Monthly Delivery Period is greater than or equal to 80 percent, the Unit's RA Availability Adjustment shall be zero.

- (b) When the Unit's RA Availability is greater than or equal to 50 percent, but less than 80 percent, the Unit's RA Availability Adjustment shall be equal to:  

$$(0.80 - \text{RA Availability}) * 0.50 * \text{the applicable Contract Price for that Monthly Delivery Period} * \text{Unit Contract Quantity} * 1,000.$$
- (c) When the Unit's RA Availability is less than 50 percent, the Unit's RA Availability Adjustment shall be equal to:  

$$(((0.80 - 0.50) * 0.50) + ((0.50 - \text{RA Availability}) * 1.00)) * \text{the applicable Contract Price for that Monthly Delivery Period} * \text{Unit Contract Quantity} * 1,000.$$

The final product of this RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e., two decimal places). The RA Availability Adjustment for each Unit shall be subtracted from the Monthly RA Capacity Payment determined in Section 4.4 to determine the amount due to the Seller for Designated RA Capacity provided hereunder from each Unit. In no case shall a Unit's Monthly RA Capacity Payment be less than zero.

#### **4.6 Allocation of Other Payments and Costs**

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, and (d) any revenues for black start or reactive power services. However, Buyer shall be entitled to receive and retain all revenues associated with and arising from the Designated RA Capacity of any Unit during the Period of Delivery (including any capacity or availability revenues from RMR Agreements for any Unit, and Reliability Capacity Services Tariff capacity payments, but excluding payments described in clauses (a) and (b) above). In accordance with Section 4.4 of this Confirmation and Section Nine of the Master Agreement, all such revenues received by Seller, a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. Without limiting the foregoing, if Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for these revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

### **ARTICLE 5 SELLER'S FAILURE TO DELIVER CONTRACT QUANTITY**

#### **5.1 Notices and Filings**

If the Units will not be available to provide Designated RA Capacity in the full amount of the Contract Quantity for any RAR and/or LAR Showings for the Period of Delivery, Seller shall, no later than the earlier of (a) twenty (20) Business Days after the loss of any Designated RA Capacity, or (b) fifteen (15) Business Days before the relevant deadline for such RAR or LAR Showing, notify Buyer of the Designated RA Capacity of each Unit which can be included in such Showings. Seller shall, on a timely basis, submit, or cause each Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity of each Unit sold to Buyer. Seller shall cause the Unit's Scheduling Coordinator to certify to Buyer, no later than the earlier of (a) twenty (20) Business Days after the Confirmation Effective Date, or (b) fifteen (15) Business Days before the relevant deadline for any applicable RAR or LAR Showing, that Buyer will be credited with the Designated RA Capacity for the Period of Delivery in the Unit's Scheduling Coordinator's Supply Plan. Seller shall indemnify and hold harmless Buyer from any costs, monetary penalties or fines Buyer may incur in the event any Unit's Scheduling Coordinator fails to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder. Without limiting the foregoing, if Seller fails to pay those costs, monetary penalties or fines, or fails to reimburse Buyer for those, monetary penalties or fines, then Buyer may offset any amounts owing to it under this Section 5.1 against any future amounts it may owe to Seller under this Confirmation.

## **5.2 RA Capacity from Replacement Units**

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, Seller shall, at no cost to Buyer, provide Buyer with replacement RA Capacity from one or more Replacement Units, such that the total amount of Designated RA Capacity provided to Buyer from all Units and Replacement Units equals the Contract Quantity. The designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. For clarity, in the aggregate all Units and Replacement Units must provide to Buyer RAR Attributes and LAR Attributes equivalent to those that were provided by the original Units and that were sold under this Confirmation. Seller shall identify Replacement Units meeting the above requirements no later than the earlier of twenty (20) Business Days after the loss of any Designated RA Capacity, or fifteen (15) Business Days before the relevant deadline for Buyer's RAR Showing and/or LAR Showing. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.2, any such Replacement Unit shall be automatically deemed to be a Unit for purposes of this Confirmation until Seller notifies Buyer, in writing, of the availability of the original Units.

For purposes of this Confirmation, Seller shall be deemed to have failed to provide Buyer with Designated RA Capacity in the full amount of the Contract Quantity if the Units and Replacement Units providing such Designated RA Capacity do not in the aggregate provide to Buyer the RAR Attributes and LAR Attributes contracted for pursuant to this Confirmation.

## **5.3 Purchase of Replacement Capacity**

If Seller fails to provide any portion of Designated RA Capacity from Replacement Units as required by Section 5.2 hereof, Buyer may, but shall not be required to, replace any Designated RA Capacity not provided by Seller with capacity (such replacement capacity being referred to as "Replacement Capacity") having equivalent RAR and LAR Attributes compared to the Designated RA Capacity not provided by Seller. Buyer may enter into purchase transactions with one or more other parties to replace Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the Product to another party, and such arrangements shall be considered to be the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.

## **5.4 Damages for Failure to Deliver**

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, and fails to do so pursuant to Section 5.2 hereof, then, for purposes of determining the damages due to Buyer under Section 21 of the Master Agreement, Seller shall pay to Buyer an amount equal to the positive difference, if any, between (a) the sum of (i) the Capacity Replacement Price for each Replacement Capacity transaction entered into by Buyer times its applicable RA Capacity quantity, plus (ii) absent a purchase of Replacement Capacity, each Capacity Replacement Price times the Designated RA Capacity not provided by Seller (adjusted for any quantity purchased by Buyer in (i) above), and (b) the Designated RA Capacity not provided for each Monthly Delivery Period multiplied by the Contract Price for that month. Without limiting the foregoing, if Seller fails to pay those damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation.

## **5.5 Indemnities for Failure to Deliver Designated RA Capacity**

Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO, or an LRA having jurisdiction, resulting from: (a) Seller's failure to provide Buyer with any portion of the Designated RA Capacity pursuant to Sections 3.2, 3.3, and 5.2 (including, without limitation, meeting the time requirements for designating any Replacement Units); (b) Seller's failure to provide notice of the non-availability of any portion of the Designated RA Capacity as required under Section 5.1 hereof; or (c) any other failure by Seller to perform its obligations under this Confirmation. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines, provided that in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. Seller will have no obligation to Buyer under this Section 5.5 in respect of the portion of Contract Quantity for which Seller has paid damages pursuant to Section 5.4 hereof. Without limiting the foregoing, if Seller fails to pay those penalties or fines, or fails to reimburse Buyer for those penalties and fines, then Buyer may offset

the cost of those penalties and fines against any future amounts it may owe to Seller under this Confirmation.

## ARTICLE 6 CAISO OFFER REQUIREMENTS

During the Period of Delivery, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## ARTICLE 7 PLANNED/SCHEDULED OUTAGES

In the event of a Planned/Scheduled Outage, the Unit's Designated RA Capacity will be deemed to be adjusted under the following circumstances:

Time Period	Adjustment to the Unit's Designated RA Capacity at the Time of Showing
<b>Summer</b> May through September	Any month where days of Planned/Scheduled Outages exceed 25% of days in the month, the Unit's Designated RA Capacity will be equal to zero (0) for the month. If Planned/Scheduled Outages are less than or equal to 25%, the Unit's Designated RA Capacity will be deemed to equal the Contract Quantity.
<b>Non-Summer Months</b> October through April	(i) For Planned/Scheduled Outages less than 1 week, the Unit's Designated RA Capacity will be deemed to equal the Contract Quantity  (ii) For Planned/Scheduled Outages 1 week to 2 weeks, the Unit's Designated RA Capacity will be calculated using the following formula: $[1 - (\text{days of Planned/Scheduled Outage}/\text{days in month}) - 0.25] * \text{Unit's Designated RA Capacity}$ (iii) For Planned/Scheduled Outages over 2 weeks, the Designated RA Capacity will be deemed to equal zero for that month.

## ARTICLE 8 OTHER BUYER AND SELLER COVENANTS

**8.1** Buyer and Seller shall, throughout the Period of Delivery, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR if applicable. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Period of Delivery the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the

minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR or LAR, so as to maintain the benefits of the bargain struck by the Parties.

**8.2** Seller represents, warrants and covenants to Buyer that, throughout the Period of Delivery:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or LAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR or LAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (e) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's Scheduling Coordinator schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO;
- (f) The owner or operator of each Unit is obligated to maintain and operate each Unit using "Good Utility Practice," as defined in the Tariff, and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit, provided that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (g) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;
- (h) If Seller is the owner of any Unit, the aggregation of all amounts of LAR Attributes and RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (i) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;
- (j) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## ARTICLE 9 CONFIDENTIALITY

Notwithstanding Section 30.1 of the Master Agreement, the Parties agree that either Party may disclose the sale of the Designated RA Capacity under this Confirmation to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable Governmental Body, CAISO, LRA or SC to further disclose such information.

## ARTICLE 10 BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product delivered to Buyer hereunder.

## ARTICLE 11 CALIFORNIA CLIMATE ACTION REGISTRY

In accordance with CPUC Rulemaking 06-04-009, upon modification of the protocols of the California Climate Action Registry to allow generation facility-specific registration, Seller shall promptly (i) register with the California Climate Action Registry and (ii) send Buyer notice of such registration.

## ARTICLE 12 COLLATERAL REQUIREMENTS

[INTENTIONALLY LEFT BLANK]

## Article 13 WSPP Agreement Amendments

**13. WSPP Agreement Amendments:** For purposes of this Transaction only, the WSPP Agreement shall be amended as follows:

- (a) Sections 22.1(d) and 27 of the WSPP Agreement shall not apply to either Party with respect to this Transaction.
- (b) The following phrase is inserted at the beginning of Section 37: "On the date of entering into this Confirmation,".
- (c) Section 24 of the WSPP Agreement is deleted and replaced with the following:  
"This Master Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law or contrary provisions of the WSPP Agreement, if any.
- (d) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:

34.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT, PROVIDED, HOWEVER, THE PARTIES DO NOT WAIVE JURY TRIAL IF ANY PROCEEDING RELATED TO THIS AGREEMENT IS BROUGHT IN THE STATE OF TEXAS."

The rest of Section 34 of the WSPP Agreement shall be re-numbered accordingly.

(e) LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.

(f) Section 41 "Witness" of the WSPP Agreement shall become Section 42 and the following "Standard of Review" Section substituted in its place:

"The Parties agree as follows:

From the date of entering into a Transaction under this Master Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this WSPP Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this WSPP Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

ACKNOWLEDGED AND AGREED TO AS OF AUGUST 12, 2008:

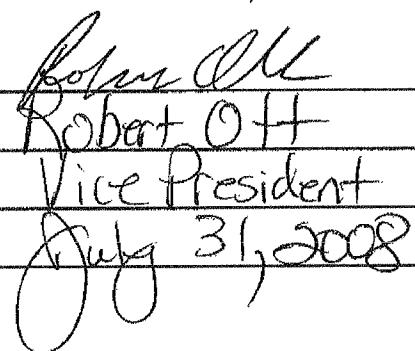
RELIANT ENERGY SERVICES, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

  
Robert O'Halloran

CITY OF BANNING

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** August 12, 2008

**TO:** City Council

**FROM:** Phil Holder, Lieutenant

**SUBJECT:** Resolution No. 2008-95 Accepting the 2008 G.R.E.A.T. Grant

**RECOMMENDATION:** "Adopt Resolution No. 2008-95 authorizing the Banning Police Department to accept the 2008 G.R.E.A.T. Grant in the amount of \$104,371 which will be used to fund the Banning Police Department's G.R.E.A.T. Programs."

**JUSTIFICATION:** Continuation of the G.R.E.A.T. program places a sworn police officer in a classroom setting teaching elementary and middle school students how to avoid becoming involved in gangs and other deviant behavior. The program complements the police department's strategy to address the current gang problem through prevention, intervention, and suppression. Additionally, the G.R.E.A.T. Officer is responsible for coordinating the G.R.E.A.T. Summer Program, which reinforces the G.R.E.A.T. curriculum through sports and other extracurricular activities.

During the 2008-2009 school year, the G.R.E.A.T. Officer will implement the G.R.E.A.T. Families Component, which uses group interaction, activities, and skills practice to engage parents and children ages, 10 to 14, in order to foster positive family functioning. Each session is facilitated under the guidance of a specifically trained G.R.E.A.T. Families Lead Facilitator.

**BACKGROUND:** On December 13, 2008, the Banning Police Department submitted a grant proposal to the United States Bureau of Justice Assistance, under the FY08 G.R.E.A.T. Grant Program in the amount of \$104,371. The grant provides \$70,679 for the G.R.E.A.T. Officer's salary and an additional \$33,692 for equipment, supplies, training, and travel expenses related to the program.

In a partnership with the City of Banning, the Banning Unified School District has agreed to provide \$38,552 towards the FY08-09 G.R.E.A.T. Officer's salary.

It should be noted the Banning Police Department was not officially notified until July 17, 2008, that it was going to receive the G.R.E.A.T. Grant for a third year in a row. Subsequently, anticipating receipt of the grant, the finance department temporarily re-assigned Detective Monte's salary (\$139,473) to the general fund in order to keep the successful G.R.E.A.T. Summer Program operational.

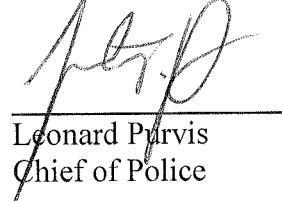
The combined funding for the G.R.E.A.T. Officer's salary, made available through the G.R.E.A.T. Grant and the Banning Unified School District, reduces the city's liability in the general fund by \$109,231.

**STRATEGIC PLAN INTEGRATION:** Council approval of this recommendation will help facilitate the police department's goals of better serving the community and the citizens who live here through increased services and working in a partnership with the Banning Unified School District.

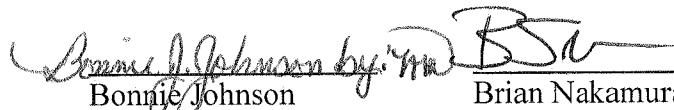
**FISCAL DATA:** This grant requires a 10% match of funding. The portion of Detective Monte's salary from the general fund (\$30,242) will satisfy this grant requirement.

Reimbursements for G.R.E.A.T. Program costs are retroactive to July 1, 2008. No additional funds are required from the City's General Account.

**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2008-95**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF THE FY08 GANG RESISTANCE EDUCATION AND TRAINING GRANT WITH FUNDING FOR A PORTION OF THE G.R.E.A.T POLICE OFFICER'S SALARY, ALONG WITH RELATED EQUIPMENT, TRAINING, TRAVEL, AND SUPPLIES IN THE AMOUNT OF \$104,341.00.**

**WHEREAS**, the City of Banning Police Department is responsible for the security and safety of the Citizens of the City; and

**WHEREAS**, the Police Department is proactive in its efforts to ensure the safety of children while they are attending school; and

**WHEREAS**, the Police Department is proactive in its efforts to stop children from becoming involved in gangs; and

**WHEREAS**, the Police Department promotes working in a partnership with the Banning Unified School District to provide assistance to 'at risk youth;'' and

**WHEREAS**, the City's procedures requires the City Council to adopt a resolution authorizing the acceptance and expenditure of grant funds.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning authorizes City Staff to accept the FY08 G.R.E.A.T. Grant in the amount of \$104,341.00 and authorizes expenditures of these funds to pay \$70,679 towards the G.R.E.A.T. Officer's salary and \$38,552 for related equipment, supplies, training, and travel expenses.

The Finance Department is authorized to make necessary budget adjustments related to these funds. Additionally, City Staff is authorized to enter into a contractual agreement with the Banning Unified School District regarding the administration of these grant funds. Furthermore, City Staff is authorized to enter into a contractual agreement with the United States Bureau of Justice Assistance for the 2008 G.R.E.A.T. Grant Award.

**PASSED, APPROVED, AND ADOPTED** this 12<sup>th</sup> day of August, 2008.

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Brenda Salas, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

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Burke, Williams, & Sorensen, LLP  
City Attorney

ATTEST

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Marie A. Calderon, City Clerk  
City of Banning

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-95 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of August 2008, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** August 12, 2008

**TO:** Honorable Mayor and City Council

**FROM:** Leonard Purvis, Chief of Police

**SUBJECT:** Resolution No. 2008-97, "Authorizing the Director of Public Works to Procure Lockers, Spacesaving Equipment and Furniture for Project No. 2006-07, 'Construction of the New Banning Police Station'"

**RECOMMENDATION:** Adopt Resolution No. 2008-97:

- I. Authorizing the Director of Public Works to Procure Lockers, Spacesaving Equipment and Furniture for Project No. 2006-07, "Construction of the New Banning Police Station" for an amount "Not to Exceed" \$998,000.00.
- II. Authorizing the Director of Finance to make necessary budget appropriations from the City's Capital Improvement Fund (BUA lease payment monies) to Account No. 470-2200-413.90-45 as reflected in City Council Resolution No. 2008-97.

**JUSTIFICATION:** In order for the occupants to function efficiently and to best utilize the available square footage, it is necessary to provide spacesaving equipment and furnishings for the new Banning Police Station.

**BACKGROUND:** On June 24, 2008, the City Council adopted Resolution No. 2008-55, "Awarding the Construction Contract, Approving the Professional Services Agreements for the Construction Inspection Services and Miscellaneous Construction Services for Project No. 2006-07, 'Construction of the New Banning Police Station.'"

In an effort to secure prices and product availability for the furnishing phase of said project, staff is requesting that the procurement of lockers, spacesaving equipment and furniture be approved at this time by City Council. This approval will also enable staff to responsibly plan and schedule delivery and installation of the lockers, equipment and furniture to meet the estimated project completion timeline.

Per City of Banning Ordinance No.1329, Section 18A-13 "Exceptions to Bidding Requirements," Subsection (d), a purchase may be exempt from a bidding process when the City is participating in an established Cooperative Purchasing Agreement. Examples include procurements through agencies such as California Multiple Awards Schedule (CMAS), General Services Administration (GSA ) and US Communities. The City is able to take advantage of this government bid process and meet the City's purchasing requirements without going through a separate bid process. Prices awarded to the City must be equal to or better than the prices afforded to public agencies.



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** August 12, 2008

**TO:** Honorable Mayor and City Council

**FROM:** Leonard Purvis, Chief of Police

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If approved, in order to take advantage of volume discount pricing, save administrative time, and expedite the ordering of a large quantity of furniture, staff has elected to utilize the City's participation in a Cooperative Purchasing Agreement. This process will also enable the City to receive competitive pricing along with reasonable discounts.

In consideration of the above, staff has been involved in a series of meetings with representatives from the City of Banning, Banning Police Department, Holt Architects, Inc., and suppliers to discuss the design and specifications of the storage systems and solutions, and furniture for the new Police Station. As a result, a proposal was obtained from McMurray Stern for lockers and spacesaving equipment for approximately \$504,000.00. McMurry Stern is available through US Communities and CMAS. Additionally, staff has researched the procurement of the furniture and has established that this portion of the procurement can be obtained through a Cooperative Purchasing Agreement for approximately \$494,000.00. The total cost for lockers, spacesaving equipment and furniture combined is for an amount "Not to Exceed" \$998,000.00.

**FISCAL DATA:** An appropriation of funds from the City's Capital Improvement Fund (BUA lease payment monies) to Account No. 470-2200-413.90-45 in the amount of \$998,000.00 is necessary to cover the costs of the above mentioned procurement. The Capital Improvement Fund balance allocated to the new police facility is \$1,933,463.00 prior to approval of Resolution No. 2008-97.

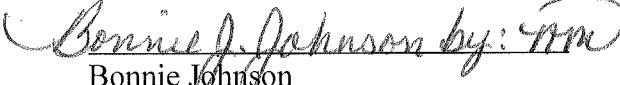
**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2008-97**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO PROCURE LOCKERS, SPACESAVING EQUIPMENT AND FURNITURE FOR PROJECT NO. 2006-07, "CONSTRUCTION OF THE NEW BANNING POLICE STATION"**

**WHEREAS**, on June 24, 2008, the City Council adopted Resolution No. 2008-55, "Awarding the Construction Contract, Approving the Professional Services Agreements for the Construction Inspection Services and Miscellaneous Construction Services for Project No. 2006-07, 'Construction of the New Banning Police Station;'" and

**WHEREAS**, City Council approval of the procurement of lockers, spacesaving equipment and furniture will secure prices and product availability for the furnishing phase of said project and will enable staff to responsibly plan and schedule delivery and installation of the lockers, equipment and furniture to meet the estimated project completion timeline; and

**WHEREAS**, per City of Banning Ordinance No.1329, Section 18A-13 "Exceptions to Bidding Requirements" Subsection (d), a purchase may be exempt from a bidding process when the City is participating in an established Cooperative Purchasing Agreement; and

**WHEREAS**, the City is able to take advantage of this government bid process and meet the City's purchasing requirements without going through a separate bid process and prices awarded to the City must will be equal to or better than the prices afforded to public agencies; and

**WHEREAS**, staff has been involved in a series of meetings with suppliers to discuss the design and specifications of the storage systems and solutions; and furniture for the new Police Station and as a result, obtained a proposal was from McMurray Stern, a company available through a Cooperative Purchasing Agreement, for the lockers and spacesaving equipment for approximately \$504,000.00; and

**WHEREAS**, staff has also researched the procurement of the furniture and has established that this portion of the procurement can be obtained through a Cooperative Purchasing Agreement for approximately \$494,000.00.

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

**Section I.** Authorize the Director of Public Works to Procure Lockers, Spacesaving Equipment and Furniture for the Project No. 2006-07, "Construction of the New Banning Police Station" for an amount "Not to Exceed" \$998,000.00.

**Section II.** Authorize the Director of Finance to make the necessary budget adjustments and appropriations to Account No. 470-2200-413.90-45 for an amount “Not to Exceed” \$998,000.00.

**Section III.** Authorize the City Manager to execute all agreements related to the procurement of lockers, spacesaving equipment and furniture for Project No. 2006-07, “Construction of the New Banning Police Station.” This authorization will be rescinded upon completion of said project.

**PASSED, ADOPTED AND APPROVED** this 12<sup>th</sup> day of August, 2008.

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Brenda Salas, Mayor

**ATTEST:**

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

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

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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. 2008-97 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12<sup>th</sup> day of August, 2008.

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

**CITY COUNCIL  
PUBLIC HEARING**

**DATE:** August 12, 2008

**TO:** Honorable Mayor and City Council Members

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

**SUBJECT:** **Adoption of Ordinance No. 1394 - Amendment to Section 8.12 of the Banning Municipal Code to Address Vacant and Distressed Buildings in the City of Banning**

**RECOMMENDATION:**

That the City Council introduce, read by title, waive further reading and adopt Ordinance No. 1394 addressing vacant and distressed buildings in the City of Banning.

**BACKGROUND:**

The recent spike in home foreclosures has resulted in an increase in vacant and distressed buildings in the City. Chapter 8.12 of the Banning Municipal Code currently imposes maintenance standards on vacant buildings and establishes a vacant property monitoring program. The existing regulations are insufficient to adequately address the problems the City faces (as well as other cities in the region) as a result of the increased number of foreclosures and vacant buildings. The existing regulations allow buildings to sit vacant for up to three (3) months without having to comply with the maintenance standards. Furthermore, the existing regulations put the burden on the City to identify what buildings in the City are vacant and in need of monitoring. Therefore, staff is bringing forward an amendment to Chapter 8.12 to add regulations that will better address abandoned and distressed buildings in the City of Banning.

**ANALYSIS:**

Ordinance No. 1394 (Attachment 1) proposes to amend Chapter 8.12 of the Banning Municipal Code in two key ways. First, the proposed Ordinance eliminates the three (3) month grace period and requires all vacant buildings to be maintained in accordance with City standards at all times. This change will decrease blight conditions sooner in the City by eliminating the provision that legally allowed the owners of vacant buildings to neglect the buildings for the three (3) month period.

Second, the proposed Ordinance shifts the burden of identifying what buildings are vacant from the City to the financial institutions that have commenced foreclosure proceedings on abandoned

and distressed homes. Upon the filing of a Notice of Default for a particular property, the holder of the deed of trust for the property will be required to inspect the property and determine whether it is vacant or if it is legally occupied. If the property is vacant, the holder of the deed of trust must register the property with the City and pay a registration fee. If the property is not vacant, the holder of the deed of trust must make monthly inspections of the property until the default is remedied or the property becomes vacant, at which point the property must be registered with the City. The deed of trust holder must also register the vacant property annually.

Staff believes that amending Chapter 8.12 to include these two (2) new provisions/regulations will significantly assist the City to better identify the vacant buildings located in the City and to ensure that the owners of the vacant buildings are adequately maintaining their buildings so as to prevent blight resulting from the foreclosure situation facing the Banning community.

**FISCAL IMPACT:**

There is no fiscal impact resulting from adoption of this Ordinance.

**RECOMMENDED BY:**



Matthew Bassi  
Interim Community Development Director

**REVIEWED/APPROVED BY:**



Brian Nakamura  
City Manager

Attachments:

1. Ordinance No. 1394 - Vacant and Distressed Buildings

**ATTACHMENT 1**

**ORDINANCE 1394**

## ORDINANCE NO. 1394

### AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING CHAPTER 8.12 OF THE BANNING MUNICIPAL CODE REVISING THE REGULATIONS PERTAINING TO THE MAINTENANCE OF VACANT AND DISTRESSED BUILDINGS.

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

**SECTION 1. Amendment of Chapter 8.12 of the Banning Municipal Code.** Chapter 8.12, "Boarded or Vacant Buildings," is hereby amended and shall read as shown in Exhibit "A" to this Ordinance.

**SECTION 2. Declaration of Facts Constituting Urgency.** Vacant and distressed residential properties pose an immediate risk to the public peace, health and safety of the citizens of the City of Banning because the detrimental effects from the lack of security and maintenance of vacant and distressed residential properties endangers children unprotected from unsecured pools and other attractive nuisances, and further endangers neighborhoods affected by the resulting squatting, vandalism, burglaries, other crimes and physical and economic blight.

**SECTION 3. Severability.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted 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 4. Effective Date.** This Ordinance shall take immediate effect upon its passage by the City Council.

**SECTION 5. 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 12th day of August, 2008.

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Brenda Salas, Mayor  
City of Banning

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

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

**ATTEST:**

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Marie A. Calderon, City Clerk  
City of Banning

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1394 was duly adopted by the City Council of the City of Banning at a regular meeting, held on the 12th day of August, 2008, by the following vote of the Council:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## EXHIBIT “A”

### Chapter 8.12

#### VACANT AND DISTRESSED BUILDINGS

##### Sections:

- 8.12.010 Purpose
- 8.12.020 Definitions
- 8.12.030 Registration/Fees
- 8.12.040 Maintenance Requirements
- 8.12.050 Signage Requirements
- 8.12.060 Enforcement, Violations and Penalties
- 8.12.070 Additional Authority

8.12.010 Purpose. Vacant buildings are a major cause and source of blight in both residential and non-residential neighborhoods, especially when the owner of the building fails to actively maintain and manage the building. Vacant buildings discourage economic development, retard appreciation of property values, are potential fire hazards, and can jeopardize the ability of owners of neighboring property from securing or maintaining affordable fire insurance, among other things. The purpose of this Chapter is to establish uniform and reasonable regulations to prevent the immediate risks and detrimental effects associated with vacant and distressed residential properties.

8.12.020 Definitions. As used in this Chapter, the following terms shall have the following meanings:

- (a) Abandoned property. A residential property that is vacant and is under a current Notice of Default and/or Notice of Trustee's Sale, pending Tax Assessors Lien Sale, or a property that has been the subject of a foreclosure sale where the title was retained by or transferred to the beneficiary of the deed of trust involved in the foreclosure, or a property transferred under a deed in lieu of foreclosure/sale.
- (b) Beneficiary. A lender under a note secured by a deed of trust.
- (c) Building Official. The development services manager of the City's building and safety department.
- (d) Days. Consecutive calendar days.
- (e) Deed of Trust. An instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. (This type of instrument is used in California instead of a mortgage.) This definition

applies to any and all subsequent deeds of trust, i.e.: second deed of trust, third deed of trust, etc.

- (f) Deed in lieu of foreclosure/sale. A recorded document that transfers ownership of a property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.
- (g) Default. The failure to fulfill a contractual obligation, monetary or conditional.
- (h) Evidence of vacancy. Any condition that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is vacant. Such conditions include but are not limited to, overgrown and/or dead vegetation, dry brush, weeds, accumulation of newspapers, circulars, flyers, notices and/or mail (except those required by federal, state or local law), abandoned automobiles not properly stored within a building, past due utility notices and/or disconnected utilities, accumulation of trash, junk, building materials and/or debris, discarded personal items including but not limited to furniture, clothing, large and small appliances, the absence of window coverings such as curtains, blinds and/or shutters, the absence of furnishings and/or personal items consistent with residential habitation, observations by neighbors, passersby, delivery agents, government employees or others that the property is vacant.
- (i) Foreclosure. The process by which a property, placed as security for a real estate loan, is sold to satisfy the debt if the trustor (borrower) defaults.
- (j) Local. Within forty (40) road/driving miles distance of the subject property.
- (k) Notice of Default. A recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.
- (l) Owner. Any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.
- (m) Property. Any improved real property, or portion thereof, situated in the incorporated territory of the City of Banning, including any buildings or structures located on such improved real property.
- (n) Secured. Treated with such measures as may be directed by the Director of Community Development or his or her designee that assist in rendering the property inaccessible to unauthorized persons, including, but not limited to, the closure, locking, padlocking, chaining, repair and/or boarding of fences, walls, windows, door(s) (walk-through, sliding and garage), and/or other openings of such size that may allow a child access to the interior of the accessible property. In the case of broken windows, secured includes

the re-glazing or boarding of the window. Boarding shall be completed to a minimum of the current HUD securing standards set at the time the boarding is completed or required, and shall additionally require painting the boards with an exterior grade paint that matches the color of the accessible property.

- (o) Trustee. The person, firm or corporation holding a Deed of Trust on a property.
- (p) Trustor. The borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.
- (q) Vacant. A building that is not legally occupied.

8.12.030 Registration/Fees.

- (a) Any beneficiary/trustee who holds a deed of trust on a property located within the City of Banning shall perform an inspection of the property that is the security for the deed of trust upon default by the trustor and prior to recording a Notice of Default with the Riverside County Recorders Office.
  - (i) If the property is found to be vacant, the beneficiary/trustee shall, within ten (10) days of the inspection, register the property with the City of Banning Building & Safety Department on forms provided by the City of Banning.
  - (ii) If the property is legally occupied, the beneficiary/trustee or his designee shall inspect the property monthly until either 1) the trustor or other party remedies the default, or 2) it is found to be vacant, at which time the beneficiary/trustee is required to register the property with the City of Banning Building & Safety Department on forms provided by the City of Banning within ten (10) days of finding the property to be vacant.
- (b) The registration shall contain the name of the beneficiary/trustee (corporation or individual), the direct street/office mailing address of the beneficiary/trustee (no postal boxes), a direct contact name and phone number for the beneficiary/trustee, and, in the case of a corporation or non-local beneficiary/trustee, the local property maintenance company and/or real estate agency responsible for the security, maintenance and marketing of the property. Any change of the information in the registration required under this paragraph shall be reported within ten (10) days of the change.
- (c) The City Council shall establish a registration fee by resolution. An annual registration fee shall accompany the registration form. The fee and registration shall be valid for the calendar year, or remaining portion of the

calendar year, in which the registration was initially required. Subsequent registrations and fees are due January 1st of each year and must be received no later than January 31 of the year due. Registration fees will not be prorated.

- (d) A vacant property subject to this section shall be registered annually for as long as it remains vacant.

8.12.040 Maintenance Requirements. Vacant buildings and property shall be maintained in compliance with the following:

- (a) The property is kept free of evidence of vacancy.
- (b) The exterior of any building, including but not limited to paints and finishes, is maintained in good condition and in accordance with previously approved plans, if any;
- (c) The landscaping of visible front and side yards is maintained in good condition and in accordance with previously approved plans, if any.
- (d) Exterior trash, debris, abandoned automobiles and graffiti are promptly and regularly removed.
- (e) Pools and spas shall either (a) be kept in working order so the water remains clear and free of pollutants and debris or (b) drained and kept dry. In either case, properties with pools and/or spas must comply with the minimum security fencing requirements of the State of California.
- (f) The property is secured.
- (g) The building is maintained in compliance with all applicable codes and regulations.

Adherence to this section does not relieve the beneficiary/trustee or owner of any obligations set forth in any Covenants Conditions and Restrictions and/or Home Owners Association rules and regulations which may apply to the vacant property.

8.12.050 Signage Requirements. Vacant property that is under a Notice of Default or has been foreclosed upon shall be posted with the name and 24-hour contact phone number of the local property maintenance company and/or real estate agency retained by the beneficiary/trustee. The posting shall be no less than 18" X 24" and shall be of a font that is legible from a distance of forty-five (45) feet and shall contain, along with the name and 24-hour contact number, the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL." The posting shall be placed on the interior of a window facing the street to the front of the property so that it is visible from the street, or secured to the exterior of the building/structure facing the street to the front of the property so it is visible from the street; if no such area exists, on a stake of sufficient size to support the posting in a location that is visible from the street to the front of the property but not readily accessible to

vandals. The exterior posting must be constructed of and printed with weather resistant materials.

8.12.60        Enforcement, Violations And Penalties.

- (a) *Penalty.* The City of Banning Code Enforcement Division shall have the primary responsibility for enforcing this Chapter. In addition to any other remedies provided by law, any property owner or beneficiary/trustee who violates this Chapter shall be liable for an administrative penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each calendar month, or portion thereof, the violation exists. The administrative penalty shall be waived if the building official or hearing officer finds that imposition of the penalty would cause a substantial economic hardship on the owner or would hinder the rehabilitation of the building.
- (b) *Procedure.* The administrative penalty shall be imposed by a hearing officer upon the recommendation of the building official and after the owner or trustee/beneficiary shall have been afforded a hearing before the hearing officer. The hearing shall be conducted in accordance with the provisions of Section 8.48.470 of this title. In setting the penalty, the hearing officer shall consider the severity of the blighting conditions of the property and the owner's efforts, or lack thereof, to remedy the problem. The decision of the hearing officer shall be final;
  - (i) The administrative penalty shall be due and payable within thirty days after the decision of the hearing officer. If the penalty is not paid within forty-five days after the decision of the hearing officer, the City Council may thereupon order that the penalty be a personal obligation of the property owner, the beneficiary/trustee or that it be specially assessed against the property involved. If the City Council orders that the penalty be specially assessed against the property, it shall confirm the assessment and thereafter said assessment may be collected at the same time and in the same manner as ordinary real property taxes are collected and shall be subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary real property taxes. All laws applicable to the levy, collection, and enforcement of real property taxes are applicable to the special assessment;
  - (ii) The City Council may also cause a notice of lien to be recorded. The notice shall, at a minimum, identify the record owner or possessor of the property and set forth the last known address of the record owner or possessor, the date on which the penalty was imposed, a description of the real property subject to the lien, and the amount of the penalty

- (c) Nothing in either this Chapter or any other provision of this Code shall prevent the City of Banning Code Enforcement Division from engaging in efforts to obtain voluntary compliance by means of warnings, notices, educational programs, administrative citations or any other administrative remedy.
- (d) Payment of a penalty for violation of this Chapter shall not excuse the failure to correct the violation nor shall it bar further enforcement action.
- (e) This section provides a civil penalty remedy that is in addition to all other legal remedies, criminal or civil, which may be pursued by the city to address any violation of this chapter. The administrative penalty imposed pursuant to the provisions of this section may be imposed concurrently with any administrative citation penalties imposed pursuant to Section 1.20.030 of this Code.

8.12.070 Additional Authority. In addition to the enforcement remedies established in Chapters 1.20 and 1.28 of this Code, the City of Banning Code Enforcement Division shall have the authority to require the beneficiary/trustee/owner and/or owner of record of any property affected by this Chapter to implement additional maintenance and/or security measures including, but not limited to, securing any/all door, window or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard, or other measures as may be reasonably required to arrest the decline of the property.



**CITY COUNCIL/UTILITY AUTHORITY AGENDA**  
**JOINT MEETING**  
**RESOLUTIONS**

**Date:** **August 12, 2008**

**TO:** **City Council and Utility Authority Board**

**FROM:** **George Thacker, Assistant Water/Wastewater Director**

**SUBJECT:** **Adoption of City Council Resolution No. 2008-96 and Utility Authority Resolution No. 2008-04UA, Awarding the Construction Contract for “Project No. 2008-01W, Brinton Reservoir”**

**Recommendation:**

- I.** The City Council adopt Resolution No. 2008-96, awarding the Construction Contract for “Project No. 2008-01W, Brinton Reservoir” to Pacific Hydrotech Corp. of Perris, California, in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,091.50.
- II.** The Utility Authority adopt Resolution No. 2008-04UA, awarding the Construction Contract for “Project No. 2008-01W, Brinton Reservoir” to Pacific Hydrotech Corp. of Perris, California, in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,091.50.
- III.** The City Council and the Utility Authority Board approve an appropriation of \$1,145,995.00 from the Banning Water Utility Authority reserves and authorizing the Finance Director to make the necessary budget adjustments to the BUA Water Capital Project Fund Account No. 663-6300-471.95-09 Reservoirs.

**JUSTIFICATION:** Pacific Hydrotech Corp. is the lowest responsible bidder.

**BACKGROUND:** The City is the Urban Water Supplier for the water service area of the City of Banning. The water system Hydraulic Model Report prepared by MWH, the City’s consultant, in May of 2002 had identified a water system storage deficiency. The new 8 million gallon (MG) Brinton Reservoir will enhance water supply reliability to the utility customers as well as provide additional storage for fire suppression purposes.

“Project No. 2008-01W, Brinton Reservoir” is a project consisting of an 8 MG buried 2 cell rectangular trapezoidal reinforced concrete reservoir and two 30” steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue. This will make it possible to transfer water supply east and west for a more balanced water demand.

This project was advertised for bids on June 6 and June 27, 2008, and nine bids were received for the construction of the reinforce concrete Brinton Reservoir and opened on July 31, 2008, with the following lowest responsive and responsible bid results (Summary of Bids attached for review):

	<u>Firm</u>	<u>Bid Amount</u>
1.)	Pacific Hydrotech Corp.-Perris, CA	\$10,458,265.00
2.)	Griffith Company-Santa Fe Springs, CA	\$10,846,509.00
3.)	Macro-Z-Technology-Santa Ana, CA	\$10,869,698.00
4.)	SSC Construction, Inc.-Corona, CA	\$11,280,744.00
5.)	Pascal & Ludwig Contractors-Ontario, CA	\$11,462,854.00
6.)	TC Construction Company, Inc.-Santee, CA	\$11,553,879.60
7.)	T.B. Penick & Sons-Ontario, CA	\$12,053,000.00
8.)	Spiess Construction Company-Santa Maria, CA	\$12,235,975.00
9.)	Sema Construction-Lake Forest, CA	\$12,437,761.90

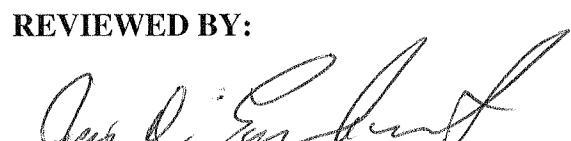
Pacific Hydrotech Corp. is a reputable firm in the Water Utility industry and has extensive experience with construction of Reinforced Concrete Reservoirs.

If approved, the project will commence immediately and it is anticipated that the project will be completed in February, 2010. Also, the 10% construction contingency is needed to cover costs for unknown conditions evolving the whole project area.

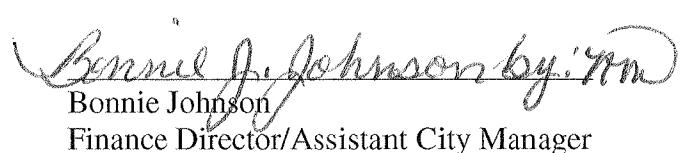
Also, it should be mentioned this project has received a \$1,400,000.00 EPA Grant and these funds will be received as the project is constructed.

**FISCAL DATA:** It is recommended that an appropriation in the amount of \$1,145,995.00 be made from the Banning Water Utility Authority reserve funds to the BUA Water Capital Project Fund Account No. 663-6300-471.95-09 Reservoirs to provide the necessary funding for construction of the Brinton Reservoir. \$10,358,097.00 is already appropriated in the BUA Water Capital Project Fund.

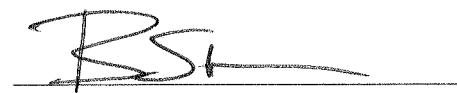
**REVIEWED BY:**

  
James D. Earhart  
Director of Public Utilities

**APPROVED BY:**

  
Bonnie Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2008-96**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
AWARDING A CONSTRUCTION CONTRACT FOR “PROJECT NO. 2008-01W,  
BRINTON RESERVOIR” TO PACIFIC HYDROTECH CORP. OF PERRIS,  
CALIFORNIA**

**WHEREAS**, the City of Banning owns and operates its own water system throughout the City; and

**WHEREAS**, the City Council approved “Project No. 2008-01W, Brinton Reservoir” construction of an 8 MG buried two cell rectangular trapezoidal reinforced concrete reservoir and two 30” steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue; and

**WHEREAS**, the water system Hydraulic Model Report prepared by MWH, the City’s consultant, in May of 2002 had identified a water system storage deficiency; and

**WHEREAS**, the project will provide additional water system storage, which will enhance water supply reliability to the utility customers as well as provide increased storage for fire suppression purposes; and

**WHEREAS**, the subject project was advertised on June 6 and June 27, 2008 and bids were received and opened on July 21, 2008, with nine contractors bidding the project; and

**WHEREAS**, Pacific Hydrotech Corp. of Perris, California, is the lowest responsible bidder; and

**WHEREAS**, this project has received a \$1,400,000.00 EPA Grant and these funds will be received as the project is constructed; and

**WHEREAS**, the funding for the project is available in the Banning Utility Authority Water Bond reserves and proceeds, Account No. 663-6300-471.95-09 Reservoirs; and

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

**Section I.** Adopt Resolution No. 2008-96, awarding the Construction Contract for “Project No. 2008-01W, Brinton Reservoir” to Pacific Hydrotech Corp. of Perris, California, in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,091.50. The Contract Agreement is substantially the form attached herein to this resolution as Exhibit “A.”

**Section II.** Approve an appropriation of \$1,145,995.00 from the Banning Water Utility Authority reserves and authorizing the Finance Director to make the necessary budget adjustments to the BUA Water Capital Project Fund Account No. 663-6300-471.95-09 Reservoirs.

**Section III.** The Mayor is authorized to execute the contract agreement with Pacific Hydrotech Corp. of Perris, California, and this authorization will be rescinded if the parties do not execute the contract agreement within thirty (30) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 12<sup>th</sup> day of August, 2008.

---

Brenda Salas, Mayor

ATTEST

---

Marie A Calderon, City Clerk  
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. 200-96 was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12<sup>th</sup> day of August, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon  
City Clerk of the City of Banning

**RESOLUTION NO. 2008-04UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDING A CONSTRUCTION CONTRACT FOR "PROJECT NO. 2008-01W, BRINTON RESERVOIR" TO PACIFIC HYDROTECH CORP. OF PERRIS, CALIFORNIA**

**WHEREAS**, the City of Banning owns and operates its own water system throughout the City; and

**WHEREAS**, the City Council approved "Project No. 2008-01W, Brinton Reservoir" construction of an 8 MG buried two cell rectangular trapezoidal reinforced concrete reservoir and two 30" steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue; and

**WHEREAS**, the water system Hydraulic Model Report prepared by MWH, the City's consultant, in May of 2002 had identified a water system storage deficiency; and

**WHEREAS**, the project will provide additional water system storage, which will enhance water supply reliability to the utility customers as well as provide increased storage for fire suppression purposes; and

**WHEREAS**, the subject project was advertised on June 6 and June 27, 2008 and bids were received and opened on July 21, 2008, with nine contractors bidding the project; and

**WHEREAS**, Pacific Hydrotech Corp. of Perris, California, is the lowest responsible bidder; and

**WHEREAS**, this project has received a \$1,400,000.00 EPA Grant and these funds will be received as the project is constructed; and

**WHEREAS**, the funding for the project is available in the Banning Utility Authority Water Bond reserves and proceeds, Account No. 663-6300-471.95-09 Reservoirs; and

**NOW THEREFORE, BE IT RESOLVED** by the Utility Authority of the City of Banning as follows:

**Section I.** Adopt Resolution No. 2008-04UA, awarding the Construction Contract for "Project No. 2008-01W, Brinton Reservoir" to Pacific Hydrotech Corp. of Perris, California, in the amount of not to exceed \$10,458,265.00 with a 10% construction contingency fund in the amount of \$1,045,826.50 for a total construction budget of \$11,504,091.50. The Contract Agreement is substantially the form attached herein to this resolution as Exhibit "A."

**Section II.** Approve an appropriation of \$1,145,995.00 from the Banning Water Utility Authority reserves and authorizing the Finance Director to make the necessary budget adjustments to the BUA Water Capital Project Fund Account No. 663-6300-471.95-09 Reservoirs.

**Section III.** The Chairman is authorized to execute the contract agreement with Pacific Hydrotech Corp. of Perris, California, and this authorization will be rescinded if the parties do not execute the contract agreement within thirty (30) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 12<sup>th</sup> day of August, 2008.

---

Brenda Salas, Chairman  
Banning Utility Authority

ATTEST

---

Marie A Calderon, Secretary  
Banning Utility Authority

APPROVED AS TO FORM  
AND LEGAL CONTENT

---

Burke, Williams & Sorensen, LLP  
City Attorney

**CERTIFICATION:**

I, Marie A. Calderon, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2008-04UA was adopted by the Board of the Banning Utility Authority at a regular meeting thereof held on the 12<sup>th</sup> day of August, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon  
Banning Utility Authority

**EXHIBIT “A”**  
**CONTRACT AGREEMENT**

SECTION 1.5  
OF  
PROCEDURAL DOCUMENTS

## AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2008 by and between the CITY OF BANNING, hereinafter called "Owner", and \_\_\_\_\_  
\_\_\_\_\_, doing business as \_\_\_\_\_  
\* hereinafter called "Contractor". \* Insert "a corporation," "a partnership," or "an individual," as applicable.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, it is agreed that:

1. The Contractor will commence and complete Project No. **2008-01W, Brinton Reservoir**, as per the plan and specifications.
2. The Contractor will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein.
3. The Contractor will commence the Work required by the Contract Documents on or before the date specified to commence Work in the Notice to Proceed and will complete the same within **360 calendar days** unless the period for completion is extended otherwise by the Contract Documents.
4. Owner and Contractor have discussed the provisions of Civil Code 1671 and the damages, which may be incurred by Owner if the Work is not completed within the time specified in this Agreement. Owner and Contractor hereby represent that at the time of signing this Agreement, it is impractical and extremely difficult to fix the actual damage which will be incurred by owner if the Work is not completed within the number of calendar days allowed.
5. The Contractor hereby acknowledges that the plans and specifications are made as a part of this contract.
6. The Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$ \_\_\_\_\_ or as shown in the Notice of Award; subject to additions and deductions, if any, in accordance with said documents. Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion. Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank acceptable to owner as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.
7. The term "Contract Documents" means and includes the following:
  - a. Invitation for Bids
  - b. Instruction to Bidders

- d. Bid Bond
- e. Agreement
- f. Payment Bond
- g. Contract Performance Bond
- h. Certificates of Insurance and Endorsements
- I. Notice of Award
- j. Notice to Proceed
- k. Change Orders
- l. General Conditions
- m. Supplemental General Conditions
- n. Special Conditions, Technical Specification  
Provisions and Standard Drawings and Details
- o. Drawings prepared by the City of Banning or consultant  
and specifications
- p. Addenda:

No. \_\_\_\_\_, dated \_\_\_\_\_, 2008

8. The owner will pay to the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Contract Documents.

9. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

10. Should any litigation or arbitration be commenced between the parties hereto concerning said project, any provisions of this Contract, or the rights and obligations of either in relation thereto the party, Owner or Contractor, prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for his attorney's fees in such litigation, and court costs.

11. Pursuant to Section 1770 et. seq., the following, of the California Labor Code, the successful bidder shall pay not less than the higher of State or Federal prevailing rate of per diem wages. The owner has obtained the State Prevailing wage rates from the California Department of Industrial Relations. Copies of such prevailing rate of per diem wages are on file at the office of the owner, which copies shall be made available for review to any interested party on request.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in copies each of which shall be deemed an original on the date first above written.

OWNER:

CITY OF BANNING

By: \_\_\_\_\_

Name: \_\_\_\_\_

Please Type

Title: \_\_\_\_\_

CITY OF BANNING

By: \_\_\_\_\_

Name: \_\_\_\_\_

Please Type

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CONTRACTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please Type

Address: \_\_\_\_\_

Contractor's License No. \_\_\_\_\_

CONTRACTOR:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Please Type

Address: \_\_\_\_\_

Contractor's License No. \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

All signatures on this Contract Agreement on behalf of the Contractor must be acknowledged before a Notary Public. In the event that the Contractor is a corporation, the President/Vice President and the corporate secretary of the corporation must sign and the corporate seal must be affixed thereto.

CORPORATE CERTIFICATE  
**Brinton Reservoir**

I, \_\_\_\_\_, certify that I am the Corporate Secretary of the \_\_\_\_\_ Corporation named as CONTRACTOR in the foregoing contract; that \_\_\_\_\_, who signed said contract on behalf of the CONTRACTOR was then \_\_\_\_\_ of said corporation; and that said contract was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

Name: \_\_\_\_\_

(SEAL)

ATTEST:

\_\_\_\_\_  
Name \_\_\_\_\_  
(Please Print)

Title \_\_\_\_\_

✓

✓

