

AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

October 14, 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 council members present and voting.

I. CALL TO ORDER

- Pledge of Allegiance
- Invocation
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Salas

II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

Report by City Manager

1. Awarding a Contract to Aleshire & Wynder, LLP to Provide City Attorney Services to the City of Banning 1
Recommendation: **That the City Council award a contact to Aleshire & Wynder, LLP to provide City Attorney Services to the City of Banning.**

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 or 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. Update on State Legislation – Assemblyman Paul Cook (*ORAL*)
2. Presentation from Inland Empire Resource Conservation District – Jennifer Ares, District Manager (*ORAL*)
3. Presentation of Certificates by Ted Yarbrough – Fire Marshal (*ORAL*)

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 Report 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 Items 1 through 13
Items to be pulled _____, _____, _____, _____ for discussion.**

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

1.	Approval of Minutes – Regular Meeting – 09-23-08	14
2.	Resolution No. 2008-110, Adopting a Disaster and Emergency Mutual Aid Agreement Between the City of Banning and the Morongo Band of Mission Indians	52
3.	Resolution No. 2008-112, Accepting and Authorizing the Expenditure of SB-821 Bicycle and Pedestrian Facilities Grant Program Funds for Fiscal Year 2008/09.	60
4.	Resolution No. 2008-115, Authorizing the Police Department to Enter Into an Agreement with the California Office of Traffic Safety to Receive \$19,773 in Overtime funds to be Used for Officers Participating In the California “Next Generation” Click It or Ticket Campaign	67
5.	Notice of Completion – city Council Chambers Upgrade Project	71
6.	Notice of Completion for Project No. 2008-05, Removal of an Underground Storage Tank and appurtenances at 311 E. Ramsey St.	75
7.	Accept the Right-of-Way Dedication from HDA Mortgage Fund, LLC for Street Improvements at Assessor’s Parcel Number 541-054-007 (1333 E. George Street).	80
8.	Accept the Right-of-Way Dedication from the Community Redevelopment Agency of the City of Banning for Street Improvements at Assessor’s Parcel Number 541-146-003, 154-150-023 and 541-15-024 (Ramsey Street, Martin Street and Williams Street).	85
9.	Amending the Existing Agreement for Consultant Services with Metcalf & Eddy, Inc. to Provide Additional Work for the Design and Construction of the Brinton Reservoir	91

10.	Interagency Service Agreement between the City of Banning and the Riverside Transit Agency	103
11.	Awarding a Contract to Burke, Williams and Sorensen for Special Counsel Services to the City of Banning.....	109
12.	Approval of Accounts Payable and Payroll Warrant for the Month of August 2008.....	115
13.	Approval of Accounts Payable and Payroll Warrant for the Month of September 2008.....	118

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

IV. ORDINANCES - INTRODUCTION

1.	Ordinance No. 1399, An Ordinance of the City Council of the City of Banning Accepting the “Fire Hazard Severity Zone” for the City of Banning as prepared by the Fire Department.	
	Staff Report	121
	Recommendation: That the City Council approve Ordinance No. 1399	

Mayor asks the City Clerk to read the title of Ordinance No. 1399

*“An Ordinance of the City Council of the City of Banning, California,
Adopting the “Fire Hazard Severity Zone Map” for the City of
Banning as Prepared by the Fire Department.*

Motion: I move to waive further reading of Ordinance No. 1399.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1399 pass its first reading.

(A minimum of three votes required)

V. REPORTS OF OFFICERS

1.	Marie Calderon, City Clerk	
A.	Conflict of Interest Code Update	126
	Recommendation: That the City Council adopt Resolution No. 2008-116, proposing an amended Conflict of Interest Code for the City.	

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

Call to Order Joint Meeting

A. CONSENT ITEMS

- A-1. Resolutions Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations and Associated Revenues. **147**
- 1) City Council adopt Resolution No. 2008-114, Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations and Associated Revenues.
 - 2) The Banning Utility Authority of the City of Banning adopt Resolution No. 2008-05UA, Authorizing the Amendments of the Fiscal Year 2008-09 Water and Wastewater Budgets to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations.
- B-1. Adopting of City Council Resolution No. 2008-118 and Utility Authority Resolution No. 2008-06UA, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26 **161**
- 1) City Council adopt Resolution No. 2008-118, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26.
 - 2) The Banning Utility Authority adopt Resolution No. 2008-06UA, Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26.
 - 3) Appropriate \$379,834.00 from the Water Division Operations reserves and authorize the Finance Director to make the necessary Budget adjustments.

B. Open for Public Comments

C. Make Motion

Adjourn Joint Meeting of City Council and The Banning Utility Authority

VII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Salas – 11/27/07*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Franklin – 11/27/07*)
4. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 10/28/08*)
5. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 10/28/08*)
6. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
7. Report on “One Stop Shop” (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/28/08*)
8. Bring back Riverside County Policy regarding animal rescue groups (*Salas*) (*Nakamura*) (*ETA 10/28/08*)
9. Report on “Request Partner” (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
10. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*)
11. Consideration of City Town Hall Meeting to hear what departments the City has and what kind of services the City offers. (*Franklin – 9/9/08*)
12. Update on Naming of Streets for Community Members (*Franklin – 9/23/08*)
13. Discussion regarding contingency fee percentages (*Franklin – 9/23/08*)
14. Need for Executive Session regarding potential litigation in regards to comments made by Councilmembers. (*Franklin – 9/23/08*)

FUTURE MEETINGS

1. Special Jt. City Council/ Banning School Board Meeting – October 16, 2008 at 5:30 p.m. - Banning School Board Chambers – Williams Street
2. Special City Council Meeting Budget Workshop – October 20, 2008 at 6:00 p.m. - Council Chambers

VIII. 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].

**CITY COUNCIL AGENDA
CITY MANAGER'S REPORTS**

Date: **October 14, 2008**

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

FROM: **Brian Nakamura, City Manager**

SUBJECT: **Awarding a Contract to Aleshire & Wynder, LLP to Provide City Attorney Services to the City of Banning**

RECOMMENDATION:

“That the City Council award a contract to Aleshire & Wynder, LLP to provide City Attorney services to the City of Banning.”

JUSTIFICATION:

The City Council directed the City Manager to solicit proposals from qualified firms.

BACKGROUND/ANALYSIS:

In April, the City sent out a request for proposal (RFP) to 24 firms. On May 8, 2008, the City received responses from the following firms:

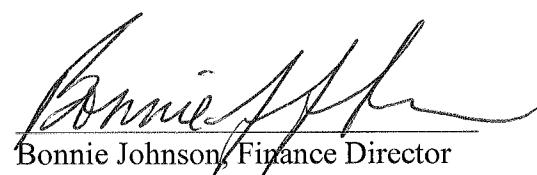
- Aleshire & Wynder, LLP
- Bacigalupi, Neufeld & Rowley
- Best, Best & Krieger, LLP
- Burke, Williams & Sorensen, LLP
- Lewis, Bribois, Bisgarrd & Smith, LLP
- Richards Watson Gershon

During the past several months, the City Council has conducted two sets of interviews with selected firms. At the conclusion of this process, the City Manager was directed, by the City Council, to proceed and negotiate a contract with the firm of Aleshire & Wynder. The attached contract reflects the result of that negotiation and is now being presented for the Council's consideration.

FISCAL DATA:

None. The existing 2008-09 budget includes an appropriation for City Attorney services.

PREPARED BY:



Bonnie Johnson

Bonnie Johnson, Finance Director

APPROVED BY:

Brian Nakamura, City Manager



**AGREEMENT FOR CITY ATTORNEY
SERVICES**

BETWEEN

**THE CITY OF BANNING
AND**

ALESHIRE & WYNDER, LLP

**CONTRACT SERVICES AGREEMENT FOR
CITY ATTORNEY SERVICES
CITY OF BANNING**

This CONTRACT SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES (the "Agreement") is effective as of the 14th day of October, 2008 by and between the law firm of ALESHIRE & WYNDER, LLP, a California limited liability partnership ("A&W"), and the CITY OF BANNING, a municipal corporation ("City"). The term "City" shall also include the Redevelopment Agency, Public Utilities Department, and all boards, commissions, financing authorities, and other bodies of City.

1. APPOINTMENT

City Council hereby appoints David J. Aleshire as the City Attorney, and hires A&W as its City Attorney, to render such legal services as are customarily rendered by such officials and as further specified herein, including attending meetings of the City Council, Planning Commission, Redevelopment Agency, Housing Authority, Public Utilities Department, if any, and other boards and bodies of City, and its affiliated agencies, as directed by the City. In addition, David J. Aleshire shall serve as Agency Counsel and General Counsel to the City Council and Public Utilities Department.

Notwithstanding the foregoing appointment, the designated City Attorney, Agency Counsel, and any Assistant City Attorney or Assistant Agency Counsel, may be established from time to time or modified by resolution of the City Council. A&W represents that it employs, or will employ at its own expense, all personnel required for the satisfactory performance of any and all tasks and services set forth herein. A&W shall not replace the designated City Attorney or Agency Counsel (or any successors to such person) without the City Council's prior approval, except from time to time necessary due to illness or vacation scheduling. Approval of any such temporary substitute, or of any Assistant City Attorney or Assistant Redevelopment Attorney shall be obtained from the City Manager. City Attorney may appoint various deputies as City Attorney deems appropriate, without the need for amendment hereof.

2. SCOPE OF WORK AND DUTIES

A. A&W shall perform any and all work necessary for the provision of City Attorney services to City, including without limitation of the following:

(i) Attendance at City Council, Planning Commission, or Redevelopment Agency meetings, unless excused by the City Manager or his/her designee, and other board and commission meetings on request of the City Manager or his/her designee; and

(ii) Provide legal advice, written legal opinions, and consultation on all matters affecting the City to the City Council, City Manager, boards, commissions, committees, officers, and employees of City and as requested by the City Council, the City Manager, or his/her designee, in accordance with such policies and procedures as may be established by City from time to time; and

(iii) Be available for telephone consultation with designated City staff, as needed on legal matters which are within their area of operation; and

(iv) Prepare or review necessary legal documents such as: ordinances, and resolutions; all agreements of any nature; all real property instruments of any nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bond size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memorandum of understanding; franchise agreements; and all similar documents; and

(v) Represent and advise City on pending and potential litigation; notwithstanding the foregoing, it is expressly understood that A&W shall not be responsible for any pending litigation matter(s) handled by attorneys previously or otherwise employed by the City until all files have been transferred to A&W and A&W has specifically appeared in the matter(s) as attorneys of record on behalf of City; and

(vi) Hold weekly office hours at City Hall at a time agreed to with City Manager; and

(vii) Attend weekly management staff and agenda review meetings at a time agreed to with City Manager; and

(viii) Monitor pending and current legislation and case law as appropriate; and

(ix) Supervise outside legal services, if any.

B. A&W, as a full-service law firm, is prepared to, and will, provide representation to City in all of its legal affairs, including, but not limited to, municipal law, land use, environmental, toxics, mining, water, tort defense, personnel, labor representation, code enforcement, criminal prosecution, redevelopment, housing, cable television, finance, franchising, contracts, enterprise and other matters, except where conflicts exist or where the City Council may otherwise direct. The City Attorney shall represent City in all of the foregoing legal matters, and in initiating and defending all litigation unless otherwise directed by the City Council.

C. The City Attorney will keep City informed as to the progress and status of all pending matters in accordance with such procedures as the City may establish from time to time. The City Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. All legal services shall be properly supervised and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained, unless otherwise directed by the City Council, such special counsel shall be supervised by the City Attorney.

D. All legal services shall be coordinated under the direction of the City Manager. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or City Manager. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matter of City from or to A&W.

3. CITY DUTIES

City agrees to provide such information, assistance, cooperation, and access to books, records, and other information, as is necessary for A&W to effectively render its professional services under this Agreement. To the extent City desires services to be rendered on site, City, at City's expense, will make available sufficient office space, furniture, telephones, computers, facsimile machines, and secretarial support, as approved by the City Manager, as may be necessary therefore. City further agrees to abide by this Agreement, and to timely pay A&W's bills for fees, costs, and expenses. In addition, City understands that the fee structure herein represents a blending of rates, with certain services offered at discounted rates, on the assumption that, due to the volume of work, other services will be rendered at higher rates. Therefore, insofar as possible and unless A&W lacks the experience, capability or resources, it is the intent of the parties hereto that all matters of City requiring the rendition of legal services shall be performed by A&W. However, nothing in this Section, or any other part of this Agreement, shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matters of City from or to A&W.

4. PERSONNEL

In addition to David J. Aleshire acting as City Attorney, A&W will provide the following additional attorneys to render the predominate legal services hereunder:

Christy Marie Lopez:	Assistant City Attorney: General, Planning, Land Use
Doug Haubert :	Assistant City Attorney: Elections/Conflicts
Colin Tanner:	Deputy City Attorney: Personnel
Glen Tucker:	Deputy City Attorney: Police and Defense
Anita Luck:	Deputy: Public Finance

Assignments may be modified as provided in Section 1 above and except as so provided, A&W will exercise its discretion to utilize whichever attorney(s) (and staff) it determines to be best suited to its rendition of legal services under this Agreement, consistent with the competent and efficient rendering of legal services, and with a view toward rendering such services in an economically efficient manner.

5. COMPENSATION

A&W's fees will be charged on an hourly basis for all time actually expended. The compensation schedules are set forth in Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Blended rates are computed based upon the hours of service irrespective of the rate of the attorney. Blended rates are also shown for legal assistants.

In general, the arrangement is that there is a base amount of hours which are significantly discounted and referred to as the general retainer hours. This includes general services, attending public meetings, preparing ordinances and resolutions, giving general advice to City departments and similar services. A higher blended rate is charged after the retainer hours are exceeded. Special services, including a broad range of categories (litigation, personnel, labor, redevelopment, housing, toxics, refuse, cable, enterprise, etc.), which would otherwise be likely to be contracted out as special services at higher rates, are billed at a higher blended rate. Public

finance matters are charged on a contingent basis based upon the size of the matter. The specific terms are set forth below in Section 6 and in the exhibits.

The foregoing arrangement would remain in effect for at least Fiscal Years 2008-2009 and 2009-2010 (July 1, 2010). However, the hourly rates of the attorneys at A&W are reviewed annually and, when appropriate, adjusted to reflect increases in expertise as well as other appropriate factors. Such increases are made on an annual basis, effective as of the beginning of each calendar year. While the hourly rates for services rendered by individual A&W attorneys may be adjusted as set forth herein, the "blended rates" established in this Agreement shall not be adjusted except as provided here, and only upon the approval of the City Council.

6. BOND OR FINANCIAL SERVICES

Bond or Financial Services shall mean those situations where A&W acts as Bond Counsel for City with regard to the issuance of securities by City; after review and accord of the proposed issue by independent review Counsel if selected by City, A&W shall be compensated for Bond or Financial Services on a flat fee non-contingent basis of Four Hundred Dollars (\$400) per hour or on a contingent finance option as shown on Exhibit "A". The choice of options shall be solely at the choice of City.

7. COSTS AND OTHER CHARGES

A&W may incur various costs and expenses in rendering the legal services required by this Agreement which, if customary and necessary for the performance of legal services hereunder, shall be reimbursable by City. These costs and expenses are described in more detail in Exhibit "B". City agrees to reimburse A&W for these costs and expenses in addition to the hourly fees for legal services. Reimbursable costs shall not include any overhead or administrative charge by A&W or A&W's cost of equipment or supplies except as provided herein.

A&W may determine it necessary or appropriate to use one or more outside investigators, consultants, or experts in rendering the legal services required (particularly if a matter goes into litigation). City will be responsible for paying such fees and charges. A&W will not, however, retain the services of any outside investigators, consultants, or experts without the prior agreement of City. A&W will select any investigators, consultants, or experts to be hired only after consultation with City.

The cost and expenses referred to herein include certain travel expenses; transportation, meals, and lodging; when incurred on behalf of the client. Generally, except in connection with litigation (travel costs to court and for discovery are chargeable), these will only be charged when outside of the area, and only with the prior agreement of City.

Finally, periodically, when on-site, A&W personnel may be required to make local and long-distance telephone calls, or make photocopies, or incur other expenses on behalf of the City as well as other clients. A&W will not be charged for such expenses and, in exchange, will not charge the City for calls made from our office or other locations to the City.

8. STATEMENTS AND PAYMENT

A&W shall render to City a statement for fees, costs, and expenses incurred on a periodic basis (generally monthly). Such statement(s) shall indicate the basis of the fees, including the hours worked, the hourly rate(s), and a brief description of the work performed. Separate billing categories can be established to track costs associated with City funding categories or to track project costs, or such other basis as the City may direct. Reimbursable costs shall be separately itemized.

Payments shall be made by City within thirty (30) days of receipt of the statement, except for those specific items on an invoice which are contested or questioned and are returned by City with a written explanation of the question or contest, within thirty (30) days of receipt of the invoice. Payments made more than thirty (30) days after the due date shall draw interest at the legal rate.

9. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of A&W, its partners, associates, and employees, was a substantial inducement for City to enter into this Agreement. Therefore, A&W shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of City. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of City. Adding attorneys to A&W, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of City or amendment hereof.

10. INDEPENDENT CONTRACTOR

A&W shall perform all legal services required under this Agreement as an independent contractor of City, and shall remain, at all times as to City, a wholly independent contractor with only such obligations as are required under this Agreement. Neither City, nor any of its employees, shall have any control over the manner, mode, or means by which A&W, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. City shall have no voice in the selection, discharge, supervision or control of A&W employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

11. INSURANCE

A&W shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than a combined single limit of One Million Dollars (\$1,000,000.00), Two Million Dollars (\$2,000,000.00) in general aggregate, and Two Million Dollars (\$2,000,000.00) products and completed operations.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both A&W and City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automobile Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than a combined single limit liability of One Million Dollars (\$1,000,000.00). Said policy shall include coverage for owner, non-owner, leased and hired cars.

(d) Errors and Omissions Insurance. A policy of professional liability issuance written on a claims made basis in an amount not less than Three Million Dollars (\$3,000,000.00).

Except for the policy of professional liability insurance, all of the above policies of insurance shall be primary insurance and shall name City, its officers, employers and agents as additionally insured. Except for the policy of professional liability insurance, the insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Except for the policy of professional liability insurance, all of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the attorney shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City. Failure to do so is cause for termination.

12. INDEMNIFICATION

A. A&W agrees to indemnify City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of A&W, its agents, employees, subcontractors, or invitees, provided for herein or arising from the acts or omissions of A&W hereunder, or arising from A&W's performance of or failure to perform any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arise from the negligence or willful misconduct of City, its officers, agents or employees.

B. City acknowledges that A&W is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees

to undertake its statutory duty and indemnify A&W, its officers, employees and agents against and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of A&W within the course and scope of its employment hereunder, but nothing herein shall require City to indemnify A&W for liability arising from its own negligence. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder;

(ii) In the event A&W, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to A&W, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

13. NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor; postage prepaid and addressed as follows:

CITY: City of Banning
99 E. Ramsey St.
Banning, California 92220
Attention: Brian Nakamura, City Manager

ATTORNEY: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612
(949) 223-1170 (office)
(949) 223-1180 (fax)
Attention: David J. Aleshire

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

14. NON-DISCRIMINATION

In connection with the execution of this Agreement, A&W shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. A&W shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, handicap, sexual persuasion, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

15. TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall continue in effect, subject to modification of fees as provided in Section 5, until terminated by either party hereto. City may discharge A&W at any time. The City Attorney shall have no right to hearing or notice, and may be discharged with or without notice. A&W may withdraw from City's representation at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon at least sixty (60) days' notice to City.

In the event of such discharge or withdrawal, City will pay A&W professional fees and costs, in accordance with this Agreement, for all work done (and costs incurred) through the date of cessation of legal representation. City agrees to execute, upon request, a stipulation in such form as to permit A&W to withdraw as City's attorneys of record in any legal action then pending. A&W shall deliver all documents and records of City to City, or to counsel designated by City, and assist to the fullest extent possible in the orderly transition of all pending matters to City's new counsel.

16. CONFLICTS

A&W has no present or contemplated employment which is adverse to the City. A&W agrees that it shall not represent clients in matters either litigation or non-litigation against the City. However, A&W may have past and present clients or may have future clients, which, from time to time, may have interests adverse to City, and A&W reserves the right to represent such clients in matters not connected with its representation of the City.

If a potential conflict of interest arises in A&W's representation of two clients, if such conflict is only speculative or minor, A&W shall seek waivers from each client with regards to such representation. However, if real conflicts exist, A&W would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

17. INTERPRETATION OF AGREEMENT AND FORUM

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. In the event of any dispute hereunder, forum shall be the Superior Court, Riverside County.

18. INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreement of the parties and cannot be amended or modified except by written agreement. This Agreement shall supercede that certain agreement for special counsel services previously entered into between the parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

19. CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the City.

Dated: October , 2008

“CITY”

CITY OF BANNING,
a municipal corporation

By: _____
Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

Dated: October , 2008

“ALESHIRE & WYNDER, LLP”

By: _____
David J. Aleshire, Esq.

EXHIBIT "A"
FEES ARRANGEMENT

(1) The payment for **up to** fifty (50) hours of general legal service (Monthly Hour Limit) shall be a maximum of Seven Thousand Dollars (\$7,000) per month (billed at One Hundred Forty Dollars (\$140) per hour). Notwithstanding the foregoing, in view of the likelihood for the need to ramp up services, until January 1, 2009, the discounted rate shall apply to 80 hours of legal services, and until January 1, 2010, it shall apply to 60 hours of legal services.

(2) General legal services over the Monthly Hour Limit will be billed at the rate of One Hundred Fifty-Five Dollars (\$155) per hour.¹

(3) Special legal services shall include litigation matters, public finance, disciplinary actions or hearings, labor negotiations, redevelopment, housing, cable television, water, toxics, refuse, franchising, enterprise activities and any major contract negotiation involving more than 10 hours (with City Manager approval). Except for insurance defense, code enforcement, and public finance, all such matters shall be billed at the rate of One Hundred Ninety Dollars (\$190) per hour until January 1, 2009 and One Hundred Ninety-Five Dollars (\$195) per hour thereafter.

(4) Insurance defense litigation and code enforcement will be billed at a reduced rate of One Hundred Seventy Dollars (\$170) per hour.

(5) Where there is an opportunity to obtain cost recovery through a private party such as a developer, the hourly rate will be Two Hundred Fifty Dollars (\$250) per hour.

(6) For public finance the fee structure shall be as follows: (i) For land based issues (i.e. CFD, Assessment or Improvement Districts) one and one-half (1 ½) percent of the first \$1 million executed and delivered; three-quarters percent of the next \$4 million executed and delivered; one-third percent of the next \$10 million; one-eighth percent of the next \$10 million; and one-tenth percent of any amount over \$25 million; subject to a minimum fee of Forty Thousand Dollars (\$40,000); or (ii) For all other financings the above schedule applies with a 25% discount. In the event that multiple series of bonds or notes are issued, the foregoing fee schedule would be applied to each issue. Fees shall be contingent unless otherwise directed by the client. If contingent, payment of the fees is entirely contingent upon the successful execution and delivery of the bonds or notes to be payable on or after delivery except for out-of-pocket expenses. In addition to the foregoing, a fee of \$6,000 may be charged if a tax opinion is required. At the discretion of the City, City may choose a non-contingent structure in lieu of the above schedule at the rate of \$400 per hour on a blended rate for all attorney time incurred.

(7) In addition to the foregoing, the Firm would be reimbursed for out-of-pocket expenses including telecopier, messenger, courier, and other communication costs; reproduction expense; computer research services; court reporters; mileage cost to court and administrative proceedings; travel expenses outside of Riverside and Orange Counties; and other costs and expenses incurred on your behalf. Notwithstanding the foregoing, we do not charge for word processing, routine computer-assisted legal research, local calls or mileage to City Hall or City offices. In exchange, when on-site, we would have the ability to use City copiers and telephones without charge.

(8) The blended rate for legal assistants (Paralegal), irrespective of matter, shall be One Hundred Dollars (\$100) per hour, and for document clerks shall be Fifty Dollars (\$50) per hour.

The foregoing fee arrangement would remain in effect until July 1, 2010, and thereafter until adjusted.

¹ In the first year these rates shall be \$10 per hour lower.

EXHIBIT "B"
STATEMENT OF BILLING PRACTICES

The Firm's fees are charged on an hourly basis for all time actually expended and are generally billed monthly with payment due within thirty (30) days after the date of the bill. However, where contract rates are established, they prevail over design rates. The current hourly design rate for the attorneys and staff working on this matter will be set forth in the billing statement. Annually, you will be provided with the prevailing hourly design rates for the attorneys who will spend the predominate amount of time on this matter. It should be understood that hourly rates are reviewed, and when appropriate, adjusted to reflect increases in seniority and experience as well as inflationary factors. These increases are generally made on an annual basis effective at the beginning of each calendar year.

The Firm will incur various costs and expenses in performing legal services. These costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying (charge of twenty cents (\$.20) per page) and other reproduction costs, staff overtime when necessitated and authorized by the client, and computer-assisted research fees when authorized by the client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with the Firm's actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged in connection with administrative or judicial proceedings, or when traveling outside of Riverside or Orange Counties. Travel time may also be charged in connection with such proceedings. In addition, the client will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

It is understood that Firm will generally not charge for mileage or travel time between our office and City facilities, nor for local telephone calls or calls made to the City. In exchange, Firm shall not be charged for calls made or received at the City, whether local or long-distance, or for copying charges since copying onsite will reduce the charge to the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged and description of the work performed. All bills are expected to be paid within thirty (30) days of the date of the billing statement. In the event any statement remains unpaid for more than thirty (30) days after the date of the statement, interest thereon at the rate of ten percent (10%) per annum shall be due and payable thereafter on the unpaid balance.

Registration fees for attorneys attending conferences and seminars are paid by the Firm and are never charged to the City (unless expressly requested by the City).

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

09/23/08
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on September 23, 2008 at 6:50 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Machisic

OTHERS PRESENT: Brian Nakamura, City Manager
Julie Hayward Biggs, City Attorney
Bonnie Johnson, Finance Director
Duane Burk, Public Works Director
Jim Earhart, Public Utility Director
Nicole Mihld, Purchasing Manager
Leonard Purvis, Police Chief
George Hansen, Community Development Dir.
Matt Bassi, Consultant – Planning Department
Ted Yarbrough, Fire Marshal/Emergency Services Coordinator
Heidi Meraz, Recreation Director
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 Pastor Norman, Praise Tabernacle Church.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney

City Attorney Biggs said she hoped the Council all received the memo that she sent in regard to concerns expressed at the last meeting with regard to activities in the election process this year. If the Council has any questions she would be happy to address those. The memo was specifically in regard to the question of bias and participation in the election process in terms of taking positions.

Councilmember Hanna said she would like further elaboration. At the last Council meeting our Assistant City Attorney made some very definitive kinds of remarks that people should not take positions and she asked the City Attorney to elaborate on that from her perspective and what the law says.

City Attorney Biggs said that she and Mr. Vail who was here last time are in accord in terms of the advice that he gave which is that from a standpoint of the City it is best always that the Council Members take a position that is relatively neutral. She says "relatively" meaning that it is not written in stone and you do not say to the public that nothing can change your mind that your mind is made up on a project before it comes before you. That said, however the standard really in terms of what the courts have said and in terms of what the law is, is that you are political animals, if you will. You are leaders, you are representatives of the community and as a result when controversial and important matters come before the community you do have the right individually to speak your mind on that so long as you are not setting up the situation that says nothing will change my mind or I will not pay attention to evidence that is presented and so on. Because when matters come before you ultimately you will have to judge them on what they are at that time. Obviously projects change and evolve and develop over time and it is one thing to support in concept a project that is coming along early on in the process. It is something else when it comes before you and you need to have the flexibility to address the actual project when it actually comes before you. That said it is certainly valuable to both applicants and the community to express your views on what is important to you in terms of what will be coming before you so the applicant knows that this is a difficult issue for one of the members of the Council or for perhaps all of you. Or the applicant knows that this is solid and will be taken well by the Council. Just as a caveat from the standpoint of the City, certainly if there is a potential challenge that from the City Attorney's perspective means that there is potential litigation and we want to prevent that if we can so we caution the Council to be careful in your comments and certainly to be careful in terms of your evaluation of the evidence that actually comes before you. Also, as a last matter, to be sure to disclose when you are in the hearing process the contacts, ex-party communications, all of the things that have gone on before that might in fact be influencing you. Just so that is in the record so that everyone knows what is on the table and what has occurred and that then encourages transparency in government.

Councilmember Botts said that he has gotten any number of calls on this and said he appreciates your willingness to stand up and say your name and state your position most of you being opposed to the project. The comments that he is getting are from those that are saying we thought you were an objective City Council. That we elect you to have a formal hearing; we elect you to gather the data/the evidence and listen to everyone and at some point after you have had a public hearing then you close that public hearing and then you start discussing and start issuing our opinions and he is trying to explain to people that he believes we still have that process. Again, he will say he appreciates your willingness to come. The folks that he is very unhappy with are those that are writing the poison pen letters and flyers. He has had people say is there a mob running this City with the fear and intimidation being placed on Council Members and on candidates that are running. He guesses that candidates have every right in advance to state their opinion and he said he is not an attorney but he totally disagrees with our City Attorney. She gave us one opinion publicly and privately and then at the last meeting another attorney just absolutely said you shouldn't be stating your opinion in advance. If you are really a legislative body, listen to the facts, listen to everyone and then when all of the data is in make that decision. Each Councilmember has the right to do what they did but for the record there is a lot of good benefits to this project for the City of Banning but in order for that to move forward he would have to be convinced that it is not going to degrade the air, the water and it is not going to smell and we can handle the traffic. He said that is his position today and he thinks that the people elected him and

it is incumbent upon him and the rest of this Council to be open and listen. The next project that comes down the line you might be unhappy with and for us to say let's shut this process off now is simply inappropriate. He wants everyone to know that he is open to listen and he also lives here and he doesn't want to smell anything and he doesn't want bad air or water but he is open to listening and go through the process when we have a formal process. He will weigh this very carefully but the intimidation going around is just unacceptable. He said he has only been here ten years and many of you have been around a lot longer but he is embarrassed.

Councilmember Hanna said personally she is taking the attorney's advice very seriously and everything she says is done very deliberatively. And she would say that we are in a democracy and that this is a public policy issue. She is go glad in effect that this is a public policy issue and is a campaign issue and that people who are running for office should express opinions on those public policy issues. Not putting anyone down for their gender or for their race or for anything else. This is a public policy issue. This is what candidates do. She will be open to the public comment process but for now given what she understands, given her reading of the EIR, given her listening to the various experts she does have an opinion and she thinks that is appropriate. She doesn't know of a campaign in the United States where candidates are not stating their opinions giving some leadership based on the knowledge that they have at that time. She will continue to do so. She has been threatened as well and told what she is doing is illegal and that there is an investigation, etc. and it is not going to stop her and she thinks it is appropriate. Again, she does it very deliberatively and she will not just speak off the cuff on this matter and she thinks it is important for the residents of Banning and this is not an isolated issue and not an issue that concerns 65 people. This is an issue that she if finding going door to door throughout the community and in every coffee that this is the issue of this campaign and to expect that candidates will not speak to it is not being respectful of the voters.

Councilmember Botts said he appreciates her position but this is not personal but finds it unacceptable that she is taking out ads opposing this project when you are a sitting Council person and his opinion has nothing to do with legality it is simply what we are doing to the system. He doesn't think that folks have a real high opinion of politicians to start with and the legislative process and they are looking for someone they can trust. He believes that trusts goes when you have public hearings and gather all the data and then the Council is asked to make a decision. Obviously you are disagreeing with that but he can tell you that he thinks that we are just embarrassing ourselves, you are embarrassing me and this Council and you just need to know how he feels.

Councilmember Hanna said she doesn't care how he feels because this is an important campaign issue. The advertisement is a simplistic little way of saying to folks that at this time given what she understands she is against his project and she is sorry that he doesn't like the ad. Again, it is a form of communication and she will do everything in her power since she hopes to be reelected to be in a position to vote on the project and be fair for the public hearing when it occurs.

Councilmember Machisic said that Councilmember Botts has pretty much summarized his position on it but one of the things as a elected official you're expected to take all of the evidence when all of the evidence is in and all of the evidence is not in at this time and it is a long way from being in considering there is going to be a revision of the EIR at some point in time. If you had

him make a decision now based on the information and at some point in time other information comes in, you would expect that I would weigh everything and anything that anyone said before he made up his mind whether it is yes or no. For instance, if he was sitting in this City Council and somebody here was saying to him, "John, why don't you spend \$10 million dollars for this project," and all of a sudden he decides that he is going to spend the \$10 million dollars. Now, three weeks later some extenuating circumstance comes up and he made a mistake, he can't afford to make mistakes. He has to wait until all of the data is in, all of the information is in, and all the hearings are done. Everyone that applies for a project in this City gets his due diligence. He has due process whether you hate the project or you love the project it doesn't matter. They have a right to come to this City and the City has to guarantee them a fair hearing. That is true of Council people too. You have the right to give them that right to come to the Council. After these public hearings where you talk to Liberty Energy it is going to eventually come to the Planning Commission and the Planning Commission is going to make a recommendation to the Council and he doesn't think the Planning Commission has the slightest idea of how they are going to rule because they haven't heard the facts in the case yet. They will at some time and at that time they are going to say to the Council I recommend yes or I recommend no and then it is going to come to the Council and then there will be another public hearing. Everyone will have an opportunity to say whether he loves the project, he hates it or adds to it. At that time the Council will make a decision whatever it is. In regards to the EIR it is about three inches thick and some of you have read it. He has to read some of those pages two or three times because they are written by biologist and hydrologist to understand what it means. And when he talks to people he asks them have they been to some of these meetings and how do you take your position and was told, "My friend told me it was bad." That is not the way to be an intelligent voter to listen what your friends say. You need to research it for yourself because that is how you get in trouble. He said that he is planning to walk through the process as long as it takes and then he will make a decision on what is best for the City of Banning and all of its people. He lives in this community and he plans to stay here forever. He will do nothing to harm this community but at the same time he has to remain neutral until he has all of the information presented to him.

Mayor Pro Tem Franklin said that she has just one thing she wants to make sure that we clarify. If she is correct in what our attorney says tonight in reading what our counsel told us at our last meeting it states in our minutes, "State law generally requires that we don't predetermine the outcome of the project. You are supposed to be fair and impartial judges when a project comes to you." "So at this point in time you cannot take a position on this particular project." And as some of the members of the audience had requested that night, "that we stop the project and State law actually prohibits us from stopping the processing of projects" and the recommendation was that the Council is not going to espouse a position. If you are saying that is correct and that is what she is hearing, that means to her that we don't give an opinion until after all of the information is in.

City Attorney said that is definitely correct and it is the advice that we are giving you. The concern has been not so much about the Council taking a position but about individuals taking a position. And it is also true that we advise against that because it does offer some exposure to the City of potential challenge later on. That said, we advise you in the memo with regard to the kinds of things that usually come up when you talk about bias and it is a pretty high standard. So yes, the conservative advice and our conservative advice is not always welcomed by this Council she

might say, but the conservative advice is not to take a position, not to state a position on any matter that is coming before you so that there is no question of your impartiality with regard to that.

Mayor Pro Tem Franklin said the second part to that is from what she is hearing tonight too is a person could say tonight I am against the project and then turn around and vote for it later on.

City Attorney said absolutely. Nothing you say this evening binds any of you to a position later on. The concern however, that to the extent you say or do anything based on the partial information you have that you do not create the appearance of bias when the time comes to make a decision and that it is clear at the hearing when you make a decision that you are listening to the evidence, that you are considering it, that any preconceptions that you have about a particular outcome are addressed. It may be that the evidence confirms your preconceptions. It may be that it refutes them. But you won't know until you ultimately get to that final hearing.

Mayor Pro Tem Franklin said if for some reason a project was not passed because a person may be precluded from being able to vote because they stated a position in advance or because there isn't enough support for a project then that opens the City for possible litigation at that point which could cost the City money which would be coming from taxpayers.

City Attorney Biggs said that is correct. Similarly if the project were approved and members of the public chose to challenge on the basis that it was a rubber stamp or somebody in advance had already decided that this was going to go forward and so on those people could sue as well. There is always the chance of litigation. Which is why, as she said, the general advice is don't take a position because then there won't be litigation. The secondary advice is if there is litigation then the bar is pretty high to prove that there is bias. It is a two-fold kind of thing. On that issue if by taking a position you're going to expose us to litigation that is going to cost money, that is bad enough in itself to say please don't do that and that is why our advice is generally don't do that. The secondary question though is if you do that, then what is the risk to the entity that there would be a ruling in the court against the entity and that is where the law in California is pretty strong that there has to be something more than just a position taken that it has to be personal animus, or has to be a financial interest or has to be some other kind of interest that goes beyond just a public policy position. So it is not an easy area of the law and there is the cross over between the first amendment rights that each of you continue to have. Just because you were elected to office doesn't mean that you cannot speak your mind and your representative role in terms of the community so all of that is woven into it. Our advice is don't take a position because that exposes the City to litigation and we would always prefer that there be no risk of litigation so that is where it comes down.

Mayor Pro Tem Franklin said if a Council member individually takes action against what we have been advised by legal counsel can that person be the one that is personally responsible for any litigation that may arise from their actions or does it have to come to the City.

City Attorney Biggs said all of you to the extent that you are operating as elected officials in making decisions and speaking on civic actions are indemnified by the City and therefore it becomes a City problem. If the actions go beyond the scope of your roles as public officials, then

it may be that it is an individual issue. But ordinarily particularly public forum kinds of circumstances where you are talking about City business or whatever those would be considered within the scope and therefore the City would have to defend.

Councilmember Botts said what he is reading is that any of the Council can take a position for or against, take out ads and if it ever gets to the Council then none of us would have to reclude our self.

City Attorney Biggs said that is not exactly correct in that again, if you read the memo, what she has outlined there is what the courts have done in response to questions of bias. And what the courts have done is to say is to balance, if you will, this public role that you have as politicians against the issue of due process in the public hearing process and so it is not a black and white kind of thing. Can you say anything, no; you truly can't. You probably can; you cannot be compelled to reclude yourself but you have undoubtedly, depending on what you have said, expose the City to potential litigation. It is not an illegal thing. It is not like a Fair Political Practices Commission violation where you have a source of income and you vote on something and there is a penalty associated with doing that because that is a conflict of interest. The question comes down to what happens in the public hearing and whether that public hearing in fact is conducted fairly and so on. The cases that come down and the most recent one was the Nasha Case that is somewhat out of line with the cases that have historically come down. In that case a person who had made public statements against a project and had associated with a group that was actively opposing the project and who was on the Council concealed that information and did not reveal it in terms of disclosure and therefore the court said there was evidence in their mind of bias and it was something more than just a statement. It was the concealing of the statement that convinced the court that there was bias there. That is one case that came down basically invalidating the action. But there are not many cases on this. It is not well litigated. The California Supreme Court Case, the Fairfield Case, is very open in terms of what it says can go on and talks about the process and talks about the fact that there is this dynamic between the politician and the due process and that it takes a lot in the public forum for bias to actually create a violation of due process and that is what you are talking about. It is not absolute.

Councilmember Botts said he is not trying to get to the bias but to your statement in an email that said based upon my understanding Councilmember Hanna you do not have to reclude yourself. That is what you told her. So a Council person can oppose something and come back in support after the election is over.

Councilmember Hanna said absolutely. The important thing is to understand that this is a public policy issue of great concern. What our attorney is saying is that on the purest end it would best if our mouths were closed and we never said anything. However, we live in a democracy where people want to know who they are electing and how they stand on positions, public policy issues of importance. She said she will never address this issue in terms of a definitive statement for all time. What she is speaking on and her position is based on the facts as she understands them at this time and her understanding having read the environmental impact report and listening to various experts and so forth. So it's a very time limited time frame to say that we should make no statement of opinion is unfair to the residents and she understands what the Council is trying to do is to put her into an extreme position but she thinks that she is not there and won't be and she will

be fair and open to the full information as it comes to the Council overtime. At this point in time she is against the Liberty Energy proposal.

Mayor Salas thanked the public for the letters that they have received along with emails and we appreciate all the new information. This is not just a south side issue or a particular side of town issue or just a Banning issue. She has received questions from people in Cabazon and Whitewater and throughout the Pass Area in regards to this issue and a lot of people are concerned. As we move we also need to keep in mind that the business community is definitely watching this and it is how we handle it so we need to make sure that everyone is informed and not just within a particular mile radius and also as a Council and a City how we handle this matter. Our public has done a great job in showing professionalism in the emails and letters and occasionally we get some that are pretty extreme and maybe on the verge of rude but she can understand that you have passion for this issue. You have elected the Council to represent you and she thinks for the most part that they have done a good job in keeping an open mind to all projects and making sure that we keep the City in a light where we do not use taxpayer dollars for frivolous lawsuits. There have been many times when this City has had to suffer hundreds of thousands of dollars from lawsuits that have happened for maybe a thing or two that have been said that maybe should not have been said. She said she cannot speak for those matters but can say the way we handle this is really important and she is not in any way supporting this project or saying that at all. What she is saying is let's be careful and straight and narrow when we move forward. She knows that this has become an election issue and that is okay because you need the information as voters for every project that is coming forward and is heated and that is the public process and you need to know where they stand. Also keep in mind history because it is important to know where people stand on things but also know where they were in the past and how credible and how you can count on them to continue forward with what they say to you because more importantly than where they stand today is where they are going to stand tomorrow and that they are going to keep an open mind to things that are important to the community. Most city council's won't vote for a project if the public doesn't want it and she is not speaking specifically to this project. She is saying in general if there is a project out there that the community doesn't want she knows she will not support it because we all live here and this is our backyard and what is built in our backyard we need to make sure that this is something we can live with not just today or tomorrow and not just speaking to this project; it could be anything. When you are voting this election season and when you are moving forward with any issues keep in mind the credibility of the Council members and how they long standing has been and she can say that they are very open-minded but they listen to the public's concerns.

PUBLIC COMMENTS – On Items Not on the Agenda

Bill Dickson, 5700 W. Wilson addressed the Council reminding everyone about Stagecoach Days which is something positive for this community and something that he would like everyone in this room to attend. Some changes have been made and there will be a \$5 admission and parking is free. There will be a tremendous amount of activities going on. They are also in dire need of volunteers and you can contact the Community Center to do that. He also needs some convertibles for the parade to carry some of our dignitaries. Come out and support this very positive event that has been going on for 51 years.

Melvin Mulder, 5096 Breckenridge addressed the Council in regards to his opposition to the Liberty Energy Proposal. He read portions of a letter he prepared (see Exhibit "A").

Don Smith resident of Banning for over 40 years addressed the Council stating that he agrees with the City Attorney and he would certainly say that you have already reached a decision would be incorrect. But perhaps telling people how you are going to reach the decision and telling the applicant what hurdles he has to overcome to get your vote could be helpful for him deciding whether to spend hundreds of thousand of dollars on new EIR's. He said that he would like to congratulate our Stagecoach Days Grand Marshall, Bud Mathewson who will be honored later. He thinks that Bud has probably been to more Stagecoach Days than anybody usually filming them. He would encourage the Council to move that forward and do it now while everybody is still here and in a good mood.

Lyndon Taylor, 1702 Fairway Oaks addressed the Council stating that he was here to present a letter from the Law Offices of Benson Goldstein and has provided copies of this letter to the City Clerk (see Exhibit "B").

Dick Thorne resident of Banning for 18 years living in Sun Lakes addressed the Council stating that we have heard a lot of the technical items involved in the pollutants and the distribution of bad gasses, etc into the atmosphere including noise, odors and so forth. He said the fact is and has already been mentioned that animal and human waste is going to be coming in by truck and going out and also hospital waste, medical waste and waste from funeral homes. The supposed increase in revenue to the City is nice to think about but it is going to offset, if at all, by the downfall of the city. It will really be a terrible thing. The development, influx of people, housing and businesses are going to have trouble coming in here. Who is going to come into Banning? When they get here they are going to find out through disclosure that this thing exists and it is throwing all this stuff into the air and everywhere. It is a contamination of the whole city. Who is going to move here; who is going to come in and see you home when it is for sale and find out about this and offer you 35 cents. Real estate values in the city; commercial, residential and industrial are going to tank. There is no reason for them to go up and there are a lot of reasons for them to go down. This is a hazardous thing and it is hazardous for everybody's health let alone families that want to come in with children or seniors. He has heard reliably that the Council has had this information and maybe they didn't have all the facts but they have had this information for 27 months. If that is not true, he stand corrected but if so, why haven't us citizens heard about this and been told about it in one form or another. You people are very respectful and he appreciates their integrity and respects it. When you boil it right down what do the people with the plant really care if there will be emissions, they are not concerned and they do not live here. We live here and we love the city. We don't want it to become worse than the city dump.

Ruil Douglas citizen of Banning since 1976 addressed the Council. He said he had the opportunity to take his little granddaughter to school the other day and turned the corner at San Gorgonio and Nicolet and there is no crossing guard and our citizens are acting beneath themselves. He went to the police department and asked where is the crossing guard and was told that it was not their responsibility but it was the school's responsibility. He went to the school and was told it was not their responsibility but the police department's responsibility. He went to City Hall and met a friend of his and she investigated it. There has been a crossing guard there since

1976 that he knows of and likely before then. He has been informed that it was part of the budget cut in the amount of about \$4,500 to balance the budget and put our children in the community health at risk because of the way our citizens drive. He would like the Council to think seriously about putting that crossing guard back in place to look after the children of this community safety at that particular corner.

Mayor Salas asked Mr. Douglas to give his phone number to our police chief to handle the matter and get a report back to the City Council at the next City Council meeting.

Maureen File, 4824 Rolling Hills addressed the Council stating that they have been here for two years and love Banning very much and are definitely opposed to the Liberty Energy project. The reason she wanted to speak today is that you started talking about it earlier questioning the integrity and the credibility of the people who are making these decisions. She attended the August 7th meeting and she has done business over the last 34 years with probably hundreds of different entities and a red flag went up to her when she heard Mr. Bracken begin speaking. He introduced himself as the president of the company and she found out later that he was appointed the president of the company just a few days before and this is a Limited Liability Corporation No. 23 for this group and a limited liability corporation is just that, they always have a limited liability. They handed out some green sheets at that meeting and this was their promotion to the public to tell them about their progress and we already know that the Imperial County situation was not because of high diesel but in fact, those people rose up, went to the ballot and made it not feasible for them to do and conduct their business in Imperial County. They were not forthright about that information. The other mention on this green sheet said that Liberty Energy Canada has been permitted secured permits and there was overwhelming support of the project. She called in September to Hamilton, Ontario and a reply was sent to her on September 12th saying that while they have received site plan approval and are currently seeking certificates of approval from the Ministry of Environment they have not received anything except this building permit approval for the location. She asked if it was going to be the same type of facility that we are going to have here the bubbling fuel facility and they do not know that and referred her to their website. She asked if they would be using biosolids and they said no and thinks it is only yard waste and biomass compost that the City does not pick up so they will be using apparently for fueling this facility just items from their own city. She asked if there was overwhelming support in the community which they said on the green sheet that there was and the one word answer to her was no. She questions the credibility of this company. They have indicated on several occasions that they are not building an incinerator here and if it is not an incinerator then she would question why they are referring us to the Hamilton, Ontario Project because on August 29th the president of the company indicated that they were building an incinerator there. She asks the Council to consider who you are doing business with and she questions that the information that they provide to us and she is not saying that they are lying but they have a way of changing the truth just a little bit. The bottom line is if this project is put through we will be the site for their plant to advertise and bring in shit from other cities with an end destination here in Banning. She hopes that we do not decide to do that.

Edward Miller, 5088 Breckenridge Avenue addressed the Council stating that he has a Doctorate in Engineering Science and he has looked at the EIR very carefully. Before he looked at it he was interested in the project because it is an interesting engineering concept but after looking at the

EIR this is absolutely not appropriate for Banning. When it comes to the Council and whether or not you should say anything all we have to do is remember President Bush's statement before the election "read my lips no more taxes" and after the election he found he had to raise taxes. So he does not feel that any member of the City Council has to say I cannot talk about that because somewhere along the line it is going to come to our attention. Secondly, he is talking here because you say there is going to be a public hearing and from what he can read in the record there was a public hearing on June 23rd and he heard nothing about it and nobody here he is sure heard about it. There was a scoping meeting where this was first discussed and he didn't hear about it and nobody here heard about it. So if we are going to have public comment, that public comment he is sure has to be here when he speaks to you at the City Council because that is the only time he is going to be able to do so. He said he has much more than three minutes and he will proceed and when he is done he will come back next week and give the Council more technical information. That is what he is here for. (See Exhibit "C")

Mayor Salas said before they allow any further comments we will move into presentations.

PRESENTATIONS

2. Proclamation – Congratulations to Bud Mathewson – Stagecoach Days Grand Marshal

At this time Mayor Salas and the City Council presented the proclamation to Bud Mathewson on being named the Stagecoach Days Grand Marshal. Mayor Salas said that this gentleman has given us many years and years of his time devoted to the city of Banning so she is very happy to be able to present this proclamation to Bud Mathewson. She read the proclamation for the benefit of the audience.

Mr. Mathewson addressed the Council thanking them for the proclamation and said he appreciated it.

Councilmember Hanna said that every year Bud is faithful in giving Perfect Attendance Awards to our students in the schools. He has been doing this for many, many years and she thinks it is wonderful that he is so committed to our youth.

1. Proclamation – Proclaiming October, 2008 as Fire Prevention Month

Mayor Salas and the City Council presented the proclamation to Chris Cox and Ted Yarbrough proclaiming October, 2008 as Fire Prevention Month. Mayor Salas read the proclamation for the benefit of the audience.

Chris Cox said their purpose in doing this is to bring more awareness of the serious issues involved in a fire. They are planning some good programs for the month and also has provided some public service announcements to the local radio stations. There will also be some programs presented to the schools and will also provide some good practical information that will be available at City Hall and library.

PUBLIC COMMENTS (cont.)

Sherman Gallas, 1302 Riviera Avenue addressed the Council urging them to withdraw the letters of intent agreements with Liberty Energy. (See Exhibit "D")

Joan Kapan, 5197 Riviera Avenue said that they understand that Mr. Bracken has asked the City to permit a community advisory panel for renewable energy. In addition, they find it quite interesting that he has offered to put his technical team available to this panel.

Mayor Salas said if she is speaking to the panel discussion that is on our agenda and will have public comments during that time. If you have items that are not on our agenda, then you can continue.

Ms. Kapan said that as Mr. Bracken referenced in his letter that we are a community divided with less than honorable outside interests. Mr. Bracken thinks he can bring us all together and show us the light. This is not the truth. We are not divided but united to stop pollution and the destruction of Banning. They are not against clean renewable energy. They are not misled and we know that there is a better way than to burn toxic sludge. The establishment of this committee if it is not elected and public law, will allow for undercover members of lobbying groups affiliated with the sludge incineration industry as proclaimed sludge experts the same as Maureen Riley the proposed sludge queen from Canada who testified before the City Council. This committee should consider affiliates of Liberty Energy or any other one who have business relationships with the sludge. Any member of this committee should have to file statements of economic interests from Form 700 to show what their financial holdings are. This will eliminate any members of this committee from being a silent partner of Liberty Energy to be appointed. Finally such a panel of this is not necessary and we do not want this committee and do not need this committee as this is a way to bypass and influence the proper decision making process provided by law. You as Council members have had this proposal for 27 months. You have listened to Mr. Bracken's expert techniques for this period of time. You say that you don't have enough information, well the public has had approximately four weeks and they were able to comprehend the devastating impact this will have on the entire Pass Area. You as Council members took an oath to serve the people and not the special interests. If you do not listen to the people and open your eyes to the destruction and the devastation to the lives of this community, you are not serving the people but the special interests.

Galina Dwyer, 864 Wesley addressed the Council informing them of her two-day trip to Romoland. Today she saw their alternative energy plant built by International Environmental Solutions and it bakes rather than burns biosolids and biomass. When she spoke to the President of the company, Karen Bertram on the phone and she asked what was the difference between burning and baking she was told there was a big difference. In burning mercury and dioxin is released in the air and in baking it doesn't. When she told Ms. Bertram about the Liberty Energy Plant in our city and the high school only a mile and half away she said, "are you serious." She said that our City Council is pretty serious about this project. Mrs. Dwyer said that she looked at the plant and it is horrible, it's huge and it is an eyesore. When she spoke to the residents and she asked them how they felt about the plant she was told that they do not like how it looks and they don't like the noise that happens when they clean the stacks with high-pressure steam a few times a day. In regards to smell they couldn't say too much because it stinks so bad in Romoland that it wasn't a big difference. In regards to making energy by this power plant the electric generating

turbines are not in operation yet. The South Coast Air Quality Management District would have to issue permits for generation and this is something they haven't done for power plants in the last decade because of the tight environmental restrictions. So far this plant is functioning just baking the pies from biosolids and biomass. She said in regards to an email that was sent to Los Angeles Sanitation District the question was asked, "In lieu of trucking away or burning biosolids, why is the city no burning it as a wastewater treatment plant and converting the heat from the process into electricity?" and the answer was, "The City of Los Angeles is keeping a close eye on the process to convert our biosolids into beneficial energy. However, the City does not consider this process as a viable option because it is not a proven technology at this time." She said her final point is that if you try to put lipstick on an incineration by calling it a power plant, it is still an incinerator and should be treated like one and we will prove it.

Janice Mackey, 1471 Wesley Street addressed the Council thanking them for giving them the City Council Chambers on October 2nd at 6:30 p.m. for Citizens Against Toxic Sludge professional panel speaking against the Liberty Energy project and they welcome and invite all of the public here to hear the panel of experts ask questions why the red flags went up.

Maria Fremell, 1623 Riviera Avenue addressed the Council said she has lived here four years and today she received a letter by someone which was produced by one of the homeowners. It says, "Regarding Liberty Energy Company sewer sludge is composed of some or all of the following substance human animal solid waste materials, chemical waste from business, hospitals, chemical plants, homes, mortuaries, meat packing plants and variety of sources, human hormones, chemical secrets from the human body, pharmaceutical chemicals from any different sources, heavy metal poisons such as lead, mercury, arsenic and zinc and the radio active material. She said if she is correct, no one can dispose of radio active material in any city area. She is asking the Council to send out a survey to all of the taxpayers who have homes here and take a survey to see and she is sure everybody would be against Liberty Energy Company and tell the Liberty Energy people to continue dumping their waste wherever they have dumped it up to now and not in Banning.

Barbara Nieblas, 4282 Autumn Gold and she thinks this is a horrible idea and she doesn't know why it is even being considered. No one has even mentioned the flies and the terrible diseases that are going to come around. We live in a pretty cool town and there are nicer towns to live in but why bring in such a horrible thing. She said that Wal-Mart goes to Beaumont and we get poop. She doesn't understand this. We should be talking about amusement parks or something. She hears that you have to put it on the table but why. Has the property been purchased? She said if she was one of the Council she wouldn't even be considering this. She does appreciate knowing where the Council stands and understands the political views. Why are you making me feel like I want to move and everybody is going to feel the same way. How much vote do we have?

Charles Katz, 1101 N. First Street addressed the Council opposing this project (See Exhibit "E"). He also said he only found out about this August 7th and we get bills from the City for our utilities and it would have been nice to get a letter in our utility bill mentioning about this situation to give them a little idea of what agenda is going to be happening. In the last two meetings he attended with Liberty they give a lot of technical information but they show the slides and talk about using reclaimed water from our sewage area and in small little letters they also show that they are going to use 40 gallons of water, fresh water, a minute, 57,600 gallons a day, 24 hours a day, 7 days a

week. We need water; we are in the desert. He would suggest that the Council think about that because when they first presented this they stated that it was going to be reclaimed water from the sewerage facility that we already have.

Angelo Lesti, 686 Weather Way addressed the Council stating that he was not here to criticize anyone; this is just how he feels. He is a concerned registered voter and moved to Banning approximately four and a half years ago and he enjoys living here and he is not planning on moving in any way. His concern is that the Council is considering Liberty Energy plant that uses an incinerator to burn biomass and biosolids. Also he understands that they are in the sludge business and he doesn't really want them in our great city of Stagecoach USA. He deeply encourages all of the Council to let your true conscience be your guide on this decision. You must consider the health issues this puts upon our entire community and surrounding cities which is the whole Riverside county plus yourself. Look into healthier solutions like Gods free gift of sun and wind which Banning has plenty off. If we do this we will have a lot of traffic congestion and a water concern that we have to look at. May God bless each one of you in your decision making. Truly let your conscience be your guide for the people of Banning.

Jerry Bailey, 1242 Wyte Way addressed the Council stating that something happened on San Gorgonio and he is not sure exactly what it is but if you get on San Gorgonio just north of Ramsey there is a construction site there that perhaps in the excitement pushed way out into the sidewalk and consumed the sidewalk and fenced it off. And you look at it for a while and you think how the kids walk home and you realize that they walk out in the gutter. Well there is a car parked there and then they are out in the street. So you might want to look at that and we ought to take that sidewalk back and throw down a plywood sidewalk and maybe the code should say that you don't eat up a sidewalk because on the south side of San Gorgonio we have this huge building that is limbo and we blocked off all pedestrian traffic there so it puts them on the right side and they get on the north side of San Gorgonio and now there is no sidewalk there. For the kids we ought to get that sidewalk back and make it really safe for them. Secondly, as he mentioned last time think Banning, America's first solar and wind powered city. He went online and there is 4,500,000 sites discussing the latest development in solar. People will have to sign up on a waiting list to buy a house in this town. Real estate will go up. The reputation will be sterling and we will be the gold standard of America.

Councilmember Botts said he appreciates Mr. Bailey's comments. One of the problems we have is that we are digging up all of those sidewalks and replacing not only the asphalt but the sidewalks and maybe we need to figure out how to do it better and that is the reason why the fences are there. We can certainly take a look at it and make sure that the children are safe but that is why they are covered.

Mr. Bailey said perhaps we could have crossing guards or just supervisory assistance.

CORRESPONDENCE: There was none.

Meeting recessed at 8:23 p.m. and reconvened at 8:35 p.m.

ANNOUNCEMENTS/COUNCIL REPORTS:

Mayor Salas asked for a moment of silence because just a few minutes ago she found out that a good friend of ours passed away – Otis Clever of the Banning Rotary Club. He will be missed. He was an icon in the city and community.

Mayor Pro Tem Franklin –

- Said that our first female Mayor, Brigitte Page, had a room dedicated in her honor at the Community Action Partnership for Riverside County and it was really well received by the whole County. Several people where in attendance and they were really recognizing her efforts in the community because she not only helped to start the Community Action Partnership which is part of a nationwide organization but she also started the San Gorgonio Child Care Consortium which is a model for Riverside County child care.
- She had the opportunity to attend the Serrano Del Vista Emergency Preparation Drill. This was a really well thought out drill and there was a lot of energy put into it and the community came together in that neighborhood to actually practice what could happen in the event of any kind of emergency in our area and they were also recognized by Riverside County Office of Emergency Services because they did such a good job. She commended our Fire Department again because our Fire Marshal Ted Yarbrough has helped not only that community but many different areas of our community to let people know how to prepare for any kind of emergency or disaster. He goes out during the day, during the evening and even on his days off to help our community.
- She said that last Saturday was the United Way Day of Caring and that was a time when 80 people across Banning and Beaumont came out and participated in a Day of Caring and helping not only to refurbish the House of Hope which is sponsored by the Soroptimist but also to help weed and cleanup the San Gorgonio Child Care landscaping. Also there was a play day for BPAL and the Boys and Girls Club and everybody that participated in that should also be commended because it was a really good community effort and at the end of the day people were happy and just really relaxed in terms of a job well done in terms of really community together as a community and caring about other people.
- The people who work on Support the Troops came out last week and they packed 75 boxes for our troops. People came and made donations or came in and said they wanted to help especially, the Women's Auxiliary No. 233 of the VFW. The coordinator was Dorothy Mc Lean and she really appreciated the fact that anybody who knew anyone who was serving overseas we know that they are going to get boxes because people came together and participated.
- There is now available to our public on-line billing for utilities so that means you can go on line to our City website and you can pay your bill on-line. If you have any questions, you can call or email staff and they can help you walk through the process.
- RTA will be holding public hearings regarding fare increases in the month of November in Beaumont and one in downtown Riverside. For those people who ride the bus it is not Pass Transit and there will be separate hearing for what we will be doing.

Councilmember Hanna –

- This City is a member of the League of California Cities which deals with the issues related to City government and they just formed a new Ad Hoc Committee on water and she will be attending the meeting and will be letting the Council know what is going on. They are trying

to come up with a comprehensive set of policies that will be guidance for the cities and the League in terms of water issues over the next few years.

- October 4th is the Stagecoach Days Parade and this Saturday, September 27th there will be a Banning Kiwanis Club Pancake Breakfast. Tickets are \$4 and will be held at the Banning Community Center, 789 N. San Gorgonio from 7 to 11 a.m. On Wednesday, October 1st the Banning Rotary Club in cooperation with Habitat for Humanity there will be a Spaghetti Dinner and Grandmother and Grandfather of the Year Contest and tickets are \$6.00 with children 5 and under free with a paid adult. This Saturday, Sept. 27th at 7:30 p.m. there will be a dance at the Armory for Stagecoach Days.

Councilmember Botts –

- Said as your representative to the Riverside County Transportation Commission there are three items he would like to share. The good news is that Prop 1A and Prop 42 related to transportation escaped the State Legislature's and Governor's budget. In regards to the bad news the Transportation Commission enters into some complex financial transactions called Interest Rates, Swaps and Derivatives but the intent with those kinds of transactions in normal economic times is to protect the interest rate and as you all know we voted to approve taxing ourselves for transportation in Riverside County but that money comes in over time so we issued debt in advance of that and backed up that debt with anticipated revenues from sales tax, etc. but there is an instrument called an Interest Rate Swap that tries to protect Riverside County Transportation Commission against significant increases and interest rates and if they go up it cost us the taxpayers more to build highways. No one really knew what was coming and you know what has happened to Wall Street and one of those transactions was with Lehman Brothers and they filed bankruptcy and the interesting thing was that they filed bankruptcy and we get a \$3 million dollar penalty. So they had an emergency meeting yesterday and the bottom line was why do we have to pay but we do but the good news to that is because interest rates have come down with all that is going on is that we will go out with a similar kind of instrument with Bank of America with criteria that they are okay and with interest rates down we will probably recoup the \$3 million dollars. It does have a real impact on a lot of our projects. The last piece of good news is that Dwight D. Eisenhower when he was President formed the Federal Highway Transportation Fund and said we ought to build freeways all over America and we did that but unfortunately the fund was broke and two weeks ago Congress appropriated \$9 billion dollars to fund that. The importance here is that a lot of that money is coming back to California and Riverside to help with our transportation issues.

Mayor Salas –

- The Banning Chamber of Commerce has upcoming ribbon cuttings and mixers as follows:
September 25th – Mixer at B Wholesale Flooring, 166 W. Ramsey – 5:30 to 7:00 p.m.
October 9th – Jt. Mixer at the Canyon Lanes at Morongo at 5:30 to 7:00 p.m.
October 16th – Habitat for Humanity Groundbreaking at 1563 E. Nicolet St. starting at 12:00 Noon
October 23rd – Mixer at Citibank, 3170 W. Ramsey - 5:30 to 7:00 p.m.
- Transportation Now Chapters will meet on October 24th and you can get more information from Riverside Transit Agency

- Palm Desert Campus of Cal State San Bernardino will be having a groundbreaking of their Science Building on October 16th at 8 a.m.

CONSENT ITEMS

Councilmember Hanna pulled Consent Item No. 20 and Councilmember Botts pulled Consent Item No. 19 for discussion.

1. Approval of Minutes – Regular Meeting – 09-09-08

Recommendation: That the City Council approve the minutes of the Regular Meeting of September 9, 2008.

2. Ordinance No. 1397 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving General Plan Amendment #08-2501 and Zone Change #08-3501 to Amend the General Plan Land Use Map and Zoning Map from Industrial (I) to General Commercial (GC) for the Properties Generally Located at the Southwest Corner of San Gorgonio Avenue and Lincoln Street. (APN: 540-250-008 & 061).

Recommendation: That Ordinance No. 1397 pass its second reading and be adopted.

3. Ordinance No. 1398 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving General Plan Amendment #08-2502 and Zone Change #08-3503 to Amend the General Plan Land Use Map and Zoning Map from General Commercial (GC) to Business Park (BP) for the Property Located at 2909 W. Lincoln Street (APN: 538-190-015).

Recommendation: That Ordinance No. 1398 pass its second reading and be adopted.

4. Resolution No. 2008-99, Adopting Environmental Review Guidelines for the Implementation of the Provisions of the California Environmental Quality Act (CEQA).

Recommendation: That the City Council adopt Resolution No. 2008-99, Approving the attached Local CEQA Guidelines for the City of Banning.

5. Resolution No. 2008-107, Awarding the Construction Contract for Project No. 2007-07 Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street from 8th Street to 20th Street to Cooley Construction, Inc. for an amount of Not to Exceed \$733,925.00, which includes an approximate 10% construction contingency.

Recommendation: That the City Council: I) adopt Resolution No. 2008-107, Awarding the Construction Contract for Project No. 2007-07, Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, from 8th Street to 20th Street to Cooley Construction, Inc. for an amount of “Not to Exceed” \$733,925.00, which includes an approximate 10% construction contingency; and II) authorize the appropriation of \$454,735.87 from the AB 196/Proposition 1B funds, \$150,000.00 from the CIWMB Grant and \$129,189.13 from Measure

“A” Funds (for a total of \$733,925.00) to the Street Fund, account No. 101-4900-431-9316, and authorize the Director of Finance to make the necessary budget adjustments and transfers related to these funds.

6. Resolution No. 2008-108, Awarding Contract for Operation and Maintenance of the City of Banning’s Landscape Maintenance District (LMD) No. 1 to Artistic Maintenance, Inc. of Lake Forest, California, for a monthly amount of \$3,327.52.

Recommendation: That the City Council adopt Resolution No. 2008-108.

7. Resolution No. 2008-109, Approving Change Order No. 2 to the Construction Contract awarded to West Tek, Inc. for Project No. 2008-05, Removal of an Underground Storage Tank and Appurtenances at 311 E. Ramsey Street and Authorizing the necessary budget Appropriations from the 2007 Tax Allocation Bond Proceeds.

Recommendation: That the City Council adopt Resolution No. 2008-109 and authorize the Director of Finance to make the necessary budget appropriations from the 2007 Tax Allocation Bond Proceeds to Account No. 855-9500-490.90-01.

8. Resolution No. 2008-111, Authorizing the Appropriation of General Account funds for the P.O.S.T. Team Building Workshop in the Amount of \$8,799.00, Which Will Be Reimbursed to the City of Banning Through the California Commission on Peace Office Standards and Training Upon Completion of the Workshop.

Recommendation: That the City Council adopt Resolution No. 2008-111.

9. Notice of Completion for Project No. 2008-06, Replacement of Flooring at the Banning Community Center and Senior Center.

Recommendation: That the City Council accept project No. 2008-06, Replacement of Flooring at the Banning Community Center and Senior Center as complete and direct the City Clerk to record the Notice of Completion.

10. Notice of Completion for Project No. 2008-07, Cabinet and Countertop Replacement at the Banning Senior Center.

Recommendation: That the City Council accept Project No. 2008-07, “Cabinet and Countertop Replacement at the Banning Senior Center,” as complete and direct the City Clerk to record the Notice of Completion.

11. Public Improvements Acceptance and Performance/Labor and Material Bond Release for Barbour Street Industrial Park located at the southwest corner of the intersection of Hathaway Street and Barbour Street.

Recommendation: Accept the public improvements and release portion of the Faithful Performance/Labor and Material bond for Barbour Street Industrial Park.

12. Accept the Right-of-Way Dedication from Ann Smith for Street Improvements at 770 W. Ramsey Street.

Recommendation: Accept the Right-of-Way dedications from Ann Smith for Street Improvements at 770 W. Ramsey Street, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

13. Accept the Right-of-Way Dedication from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-011 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-011, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

14. Accept the Right-of-Way Dedication from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-012 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-012, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

15. Accept the Right-of-Way Dedication from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-013 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Robert D. Little and John Walls for Street Improvements at Assessor's Parcel Number 540-125-013, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

16. Accept the Right-of-Way Dedication from Leticia A. Martinez for Street Improvements at Assessor's Parcel Number 540-125-014 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Leticia A. Martinez for Street Improvements at Assessor's Parcel Number 540-125-014, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

17. Accept the Right-of-Way Dedication from Uyming Ling for Street Improvements at Assessor's Parcel Number 540-125-015 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Uyming Ling for Street Improvements at Assessor's Parcel Number 540-125-015, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

18. Accept the Right-of-Way Dedication from Uyming Ling for Street Improvements at Assessor's Parcel Number 540-125-016 (Ramsey St.).

Recommendation: Accept the Right-of-Way dedications from Uyming Ling for Street Improvements at Assessor's Parcel Number 540-125-016 as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedications.

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

Motion Franklin/Hanna to approve Consent Items 1 through 18. Motion carried, all in favor with Councilmember Machisic abstaining on Consent Item No. 1.

19. Recommendation from Parks & Recreation Advisory Committee to Award the Contract for the Parks Master Plan Update to RJM Design Group, Inc. for an amount not to exceed \$125,000.

Councilmember Botts said that this comes up at nearly every Council meeting as to where they are with parks and the master plan and this is one those things that sometimes he hates to see just go through on consent without letting people know what we are doing. He said his only question is how will we go about this and the root of his question is the methodology and will we just be talking to ourselves versus talking to the Banning Chamber of Commerce who has a committee on parks and will there be input into the consultants from a variety of sources.

Heidi Meraz, Recreation Director said that the one reason that this firm was chosen over the others was because the Parks and Recreation Committee did feel that they were far more aware of the need for the community involvement with the development of the parks facilities that we currently have, as well as, future needs. So with this firm part of the proposal was actually even some telephone polling of the community, as well as, community groups to meet and also some dedicated groups strictly to work on this master plan. Those would be made up of the school district, chamber of commerce and even the faith groups that sometimes want to use the facilities and they have a need but we don't have facilities available. All the groups that really do have a desire to use, as well as, the general community.

Mayor Pro Tem Franklin asked if she could also tell the Council what the time frame is for completion of the master plan.

Mrs. Meraz said they anticipate eight months to one year.

Councilmember Machisic said he mentioned earlier about not having the plans from the school district and he thinks that this is a vital place where the school district needs to be involved. If we are going to talk about a master plan for parks, we need to know what they are going to do and we need to know the objectives and what groups we are going to service such as young people, middle aged, teenagers, etc. He thinks it is vital that they are involved rather heavily and by the same token we need to know what they are planning. If we are going to spend \$125,000, he thinks it is important that they become our partners. He doesn't want to spend this amount of money and plan a park system for just the city and then all of sudden there is a gap of some kind. This is a prime example of getting all of the information before you make a decision.

Mrs. Meraz said she can assure him that his sentiments have been echoed by the Parks and Recreation Committee as well. That was a very strong desire that they expressed with each of the firms when they were interviewing them that we have the community involvement and the school district because of the lack of space that we actually have.

Councilmember Botts said that they alluded to the meeting that he and Mayor Pro Tem Franklin and City Manager had with the new superintendent and two members of the school board and it was a great meeting. We share the same constituency and he just sensed some real excitement coming out of that meeting and talking to each other and saying that we don't want to duplicate and how can we help each other. They were very open to work with the City.

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

Motion Hanna/Machisic that the City Council approve Consent Item No. 19 to award the contract for the development of a Parks Master Plan Update to RJM Design Group, Inc. for an amount not to exceed \$125,000. Motion carried, all in favor.

20. General Plan Annual Progress Report (February 2006 to June 2008).

Councilmember Hanna said that the General Plan is a major document for the City. It is our vision statement with programs of how we are going to achieve that vision. We are supposed to review it annually and we haven't done it since it was approved in January 2006. She would like a brief presentation on what is going on. She doesn't think this is an issue appropriate for the Consent calendar and something the community needs to know about, as well as, the Council.

Matthew Bassi presented a power-point presentation in regards to the General Plan. He said that State law requires each local agency in California to prepare an Annual General Plan Progress Report. It is intended to provide an update on the implementation status of the General Plan action programs of which the City Council adopted back 2006. It is also intended to provide an update on how the city is doing in meeting its regional housing needs as outlined in the Housing Element. In addition to that the Progress Report is required to be submitted to the State Housing and Community Development Department (HCD), as well as the Office of Planning and Research and is used to identify state-wide trends in land use decision making at the local level. With the 2006 adoption of the General Plan the City of Banning did adopt 21 General Plan Elements ranging from air quality to water resources. State law only requires seven mandated Elements. So this is a reflection of the importance that the Banning community, the Planning Commission and the City Council placed on the General Plan. Within the General Plan Elements there are 265 implementation action programs that were adopted and these are being implemented by each City department. Of those 265 action programs, the City has completed and/or is in the process and actively implementing 220 of those action programs. That brings us to an 83% archival rate on those action programs within the first two years. With regard to the Housing Element Planning staff is currently working with Lauren and Associates to update the Housing Element. They should have a draft Housing Element to the Council before they submit to HCD within the 30 to 45 days. Staff is recommending that the Council receive and file the General Plan Progress Report and direct staff to forward the Progress Report to HCD and OPR for their processing.

Mayor Pro Tem Franklin said it is her understanding that we are probably going to have a workshop to really go over more in depth the information that was provided in the agenda packet at a future date.

Mr. Bassi said that they do not have a workshop planned for the General Annual Progress Report but they do have the update on the Housing Element planned as a workshop for the Council. They can certainly bring back a workshop on the Progress Report but this is really a report card that says how we are doing on the implementation status. It is not a proposal to amend the General Plan or anything like that but whatever the Council desires staff can prepare for that.

City Manager said that they wanted to bring back the Housing Element and in that they can put together a report for the additional items that they had discussion about and then he would ask the Council to provide questions to staff so that they could answer those and be included in that workshop.

Councilmember Botts said he sees no place in here that deals with Hargrave Underpass or Overpass and whether Liberty Energy ever goes or not but that would be a major issue.

Mr. Bassi said that is something they can report on. He doesn't recall that being an action program in the General Plan. That was part of the CIP program but with those 265 programs he cannot recall if that was included.

Councilmember Botts said the only other issue is for public information for those folks not in the room but Item 15 - the City shall develop a golf cart plan compliant with State requirement and Item 16 – Golf cart paths and facilities shall be funded to the greatest extent possible by new development. There are any number of folks that have called him and of course, Beaumont has already implemented the plan and are building their golf cart lanes but he wants the public to know that is in fact in our General Plan.

Councilmember Hanna said she likes the idea of their submitting questions because she has a lot of questions in different areas. She asked if they could edit it without doing a big amendment. There are some things throughout that need minor adjustments.

Mr. Bassi said he doesn't think so and anytime you amend the General Plan you have to go through the General Plan amendment process. The fact that it is City initiated probably would take a lot less time if it were applicant driven.

Councilmember Hanna said she would like to point out that Air Quality is the number 1 issue and in Report Goal 1, Policy 1, Policy 2 – the City shall continue to coordinate and cooperate with local regional and federal efforts to monitor and manage and reduce levels of major pollutants affecting the city and region. On 3A it talks about that we need to locate pollution point sources at an appropriate distance from sensitive receptors including hospitals, schools, hotels and residential neighborhoods. She thinks that they should also add "recreational facilities" when we do that major rewrite.

Councilmember Machisic said in the Housing Element it talks about between 2006 and 2014 we are supposed to building 3,841 units. And then he sees from 2006 to 2008 we built 71 houses. That is a far cry from the 3,841. Do they make an allotment for the housing market collapsing?

Mr. Bassi said he is sure that as part of the Housing Element process every city is dealing with those numbers and the reality is if there is no market, how can you build houses and why should cities be penalized. Staff will be working with HCD and SCAG on how to address that and maybe refine those numbers to more realistic numbers.

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

Mayor Pro Tem Franklin asked if we could have this back once they have a chance to get all of their questions to staff and if we could have it come back in a workshop format where they could actually get answers and have dialogue about some of the issues that they all have.

Motion Hanna/Botts to approve Consent Item No. 20, that the City Council review the General Plan Annual Progress Report and direct staff to submit the report to the Governors Office of Planning and Research (OPR) and the Department of Housing and Community Development (HCD). Motion carried, all in favor.

REPORTS OF OFFICERS

1. Stagecoach Days Update
(Staff Report – Heidi Meraz, Recreation Director)

Mrs. Meraz went over the events that will be coming up for Stagecoach Days starting on Saturday, September 27 through Sunday, October 4th. There will also be a new event this year that will be put on by the Banning Cultural Alliance called “On Board with Stagecoach Days” where they will be having interactive booths and activities relative to the Old West period to be held on First Street between Ramsey and Hays from 10 a.m. to 1 p.m. on Saturday, Sept. 27th. The sponsors for this year are Liberty Energy, Record Gazette, Time Warner, Saboba Casino, Western Dental Center and Toyota of San Bernardino and the Bank of Hemet. Also they currently have contracts that just a little over \$72,000 to make the event happen and they have brought in currently commitments of \$39,500 from sponsors, advertising and vendors not include the gate and rodeo. They look to see a successful year this year.

Mayor Salas asked how much to they normally bring in the weekend of the event.

Mrs. Meraz said last year they brought in a little under \$40,000 through the gate take and the arena sales and the beverage sales.

There was more discussion regarding getting some free tickets to the kids, where people can get a calendar of events with the time and date of the event, information is also available on the website at www.banningstagecoachdays.com.

Bill Dickson addressed the Council stating that the police officers have gotten together and are doing a ride for all of the fallen officers and they will be starting off the parade this year.

Councilmember Botts said that on Sunday, Sept. 28th the Desert Edge Challenge - 5K Run/Walk and 10K Run will be sponsored the San Gorgonio Pass Rotary and Johnny Russo is the lead person on that. At the same time there will be a car show at the San Gorgonio Inn. Register at 7 a.m. at the Nicolet Middle School.

2. Approval to Establish a Community Advisory Panel for Renewable Energy Opportunities for the City of Banning.
(Staff Report – Brian Nakamura, City Manager)

City Manager gave the staff report as contained in the agenda packet. He said that this panel would be solely at the discretion of the Council so it would be somewhat independent and not driven by any specific group, entity or firm. He said that he had one volunteer approach him at the break and that was Mr. Sakurai who would be willing to serve. This would be an opportunity to discuss not just the current project that is being put forward to the community but other projects as well.

Mayor Pro Tem Franklin said that this is something she asked about at the last meeting. She said in regards to background once they got a lot of information about Liberty Energy she did make a couple of phone calls to St. Paul, Minnesota and one of the persons she talked to was one of the managers at District Energy and when she talked to him about what we were talking about doing here this was his recommendation an he referred her to a certain website to see what they were doing there. The idea was to get people who are in our community who are educated, have a lot of information already and that they would be able to sift through some of the information we get because we have as it has already been stated a lot of communications and a lot of comments have been made and without having any type of technical background it is hard to say who is right, what information is correct and what information is up to date. That is why she wanted to bring this forward as an opportunity for our community representatives to be able to help us in being able to sift though a lot of the information we've gotten to see not only what is correct, what is appropriate for what we want to do here in Banning but also to help us explore possible other alternatives if that would be the direction we want to go in. Also she would like to see what staff would want to say about it and maybe have, if the Council was agreeable, to have staff work with the panel to get it established.

Councilmember Machisic said that the housing market is really slow and appears that it will be slow for a number of years and if we are going to make some general changes he thinks that this is a very appropriate time because the market is slow and before it starts back up and we want to consider energy saving kinds of things on homes. We have some large projects pending and he is sure they will start depending on how many years it is going to be and if we could change our specs for homes he thinks that this is the appropriate time and this committee that Mayor Pro Tem Franklin is talking about would be one of the groups that would talk about these suggestions.

Councilmember Botts said he is open to discuss this and look at it. He thought this went quite a ways back when Councilmember Hanna was having discussions with Jim Earhart and some folks from Sun Lakes and the power lines going through and if we were to move forward with this he

thinks it is terribly important that if it is established that it has nothing to do with Liberty Energy or the current project. It should be a broad-based group to look at solar, wind and renewable energy and then he could support it.

Mayor Pro Tem Franklin said she would like to hear from staff regarding this idea.

Jim Earhart, Public Utility Director said that there is so much to discuss with renewable energy with all of the legislation that it is something that he believes is well beyond the scope of the general population as far as a utility is concerned. Solar panels are wonder and windmills are great but again, nobody wants them in their backyard either. He thinks the panel is a very good idea and assuming first off if Council and City Manager wants himself or staff involved in this committee which he would prefer to be if we are going to do this since he does oversee the utilities, he would like to sit down with the City Manager to come up with some criteria for the scope of the committee itself.

Councilmember Machisic said if you bring it to the Council to create a panel of this kind he would prefer to have the staff make a suggested plan with participants and whatever else to comprise the panel and bring back as a starting point for the Council to review. He would prefer to start from some model and Mr. Earhart did the Green Plan and he thinks that was excellent and we could use that as a starting point.

Mayor Pro Tem Franklin said that she was reading over the sample from Rock-Tenn and said this would be an opportunity for people who have questions and seeking information this is an avenue for people to go and ask their questions so that they can get information that is unbiased and it is as true to fact as possible.

Councilmember Hanna said that this came across truly especially with the letter from Liberty Energy as a Liberty Energy Committee and she frankly thinks that is a terrible idea. She doesn't think it is necessary and doesn't think it is going to be a valuable approach. She would suggest that this committee have nothing to do with Liberty Energy proposal. That is in the development process right now and will be on-going. She doesn't think we need a special committee to work on this. And also as an example we were given an article from the Daily Planet a newspaper in Minneapolis/St. Paul and if you actually read that very small print they are going through a horrendous situation. If this has anything to do with Liberty Energy, she would like the staff time to be kept track of and the whole thing charged to Liberty Energy as part of their development costs. We did in fact approve and Clean and Green Report a few months ago which actually has an advisory committee as part of that and it is very comprehensive. We agreed to appoint a Green and Clean Committee staffed by the appropriate personnel reporting to the City Council to act as a citizen review function for all sustainable programs, investigations, special projects and will provide leadership for emerging task force and working groups that will from time to time be created for specific focused investigations and program development. That could be a means to do essentially what she thinks that Mayor Pro Tem Franklin is suggesting we do. We already approved it so she doesn't know why we don't go forward and do it.

Councilmember Machisic said what he envisions with Mr. Earhart setting up a potential proposal for a committee coming back to the Council and the Council modifies it; etc. and if we select

members on this committee who have that expertise is that once we set up the committee he would hope the suggestions come from the committee and not the Council and these recommendations then could be discussed by the Council and then the public.

Mayor Salas opened the item for public comments.

Charlene Sakurai, 43000 Dillon Road said she thinks having an independent committee or panel is a really good idea. It should really be totally separate from anything that is potentially coming before the Council. They should have the freedom to explore and examine. She concern is that parameters for choosing that panel are specific and in writing and that independent of the City Council a group should choose that panel. The Council would approve it of course. She said that she has been on panels before and there is a certain goal for a panel and a certain freedom to explore but they know what they have to bring back within a given time and they need to be able to do that. Really try to keep it separate from Liberty or any other project that may be coming forward so that they are not burdened with that. It is a big thing to ask somebody to do that job and then have to go out and face the general public.

Mayor Salas closed the item for public comments.

Councilmember Hanna asked the Council if the members have to be residents of Banning.

Councilmember Botts said he thinks that we ought to decide if we want to ask staff to do this and not start inventing the committee here. Let's not invent it and if we agree that something needs to be done here let's ask the City Manager and Jim Earhart to come back.

Motion Botts that the City Council approve that staff come back with a model establishing guidelines for a Community Advisory Panel for Renewable Energy Opportunities for the City of Banning.

Councilmember Hanna said she thinks that question was really a basic kind of question. She believes all but the Design Review Committee which hasn't been formed yet requires that everyone be a resident of the city of Banning. She thinks that to ask staff to come up with that decision is quite a lot and if you think they should be fine and if not that would help staff to have that further direction.

Councilmember Machisic said if you are going to give them the freedom to come back with a proposal to the Council let's give them the freedom to do it and when it comes back if there is something we don't like, then we will talk about it and make some changes.

Motion seconded by Councilmember Machisic.

Mr. Earhart said for clarification he will work with City Manager and put together panel guidelines and present it to the Council for their consideration.

Motion carried 4/1 with Councilmember Hanna voting no.

ITEMS FOR FUTURE AGENDAS

New Items –

Mayor Pro Tem Franklin asked for the following to have on a future agenda: 1) Naming of streets for some of our more esteemed community members in their memory and she would like to see a plan or update on that issue; 2) she would like to have a discussion regarding contingency fee percentages; and 3) she would like an item on the executive session regarding potential litigation with Assistant City Attorney Eric Vail who spoke on the issue at our last Council meeting because there are some issues that need to be resolved in that area and that would be in regards to comments made by Councilmembers.

City Attorney said in regards to Mr. Vail's attendance he handles Hemet Council Meeting and their fourth week meeting is always an evening meeting and he cannot be here during that time but he can come to the first meeting in October.

There was Council consensus to these items for a future agenda.

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Salas – 11/27/07*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Franklin – 11/27/07*)
3. Review of Development Fees (*Hanna – 12/11/07*) (*Johnson*) (*ETA 10/28/08*)
4. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 10/14/08*)
5. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/14/08*)
6. Report on "One Stop Shop" (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/14/08*)
7. Bring back Riverside County Policy regarding animal rescue groups (*Salas*) (*Nakamura*) (*ETA 10/28/08*)
8. Report on "Request Partner" (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/14/08*)
9. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*)
10. Consideration of City Town Hall Meeting to hear what departments the City has and what kind of services the City offers. (*Franklin – 9/9/08*)

FUTURE MEETINGS

1. Special City Council Meeting (Closed Session) – September 29, 2008 – City Attorney Interviews beginning at 5:30 p.m. in the Large Conference Room.
2. Special City Council Meeting Budget Workshop – October 3, 2008 at 2:00 p.m. - Council Chambers

City Manager said in regards to the workshop on the 3rd of October he asked the Council if they would consider pushing that back possibly to the night of the meeting with the Banning Unified School District which is October 16th. He explained that at the two by two meeting they came up

with a date of October 16th at 5:30 p.m. to have a joint meeting with the Banning School Board at their meeting chambers at the school district and possibly the Council could push the budget meeting after that meeting since that evening is already tied up. He did not anticipate the joint meeting going more than an hour to an hour and a half.

There was staff and Council discussion regarding the budget workshop and the time needed to have that meeting and it was decided that the budget workshop will be either on October 20th or October 27th at 6:00 p.m. Mayor Salas will let City Manager know what day she can make it and there was approval for the meeting on October 16th with the Banning School Board.

ADJOURNMENT

By common consent the meeting adjourned at 9:48 p.m. in honor of Otis Clever a former Banning Planning Commissioner, Banning Chamber of Commerce Ambassador and Rotarian.

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.

Concerned only
9-23-08

Melvin J. Mulder, MD, FACS
5096 Breckenridge Avenue
Banning, CA 92220
(951) 769-7901
muldermel@aol.com

September 21, 2008

**City Council,
Banning, CA**

Members of the City Council:

As a resident at Sun Lakes, Banning, a retired general surgeon, and a past member of the Cleveland Clinic's Board of Governors, I am opposed to Liberty Energy's proposal to construct a renewable energy biomass power plant just east of where I live. Living where I do, when the wind is from the west, I breathe pollutants from the L.A./San Bernardino basin. When the Santa Ana's blow, I breathe pollutants from the east. On any given day, the wind can switch from one direction to the other, and I breathe pollutants from east and west.

As a physician, I am familiar with pharmaceuticals and bio-pollutants sold at major stores such as Wal-Mart. As you know, these products end up in sewage sludge, bio-solids, and bio-waste – the very materials that would be heated to generate electricity in the proposed plant, creating significantly-increased air pollution in a municipality presently not meeting acceptable pollution standards.

Some examples (only a partial listing) of pollutants from this new plant are as follows: carbon monoxide, nitrous oxides, sulfur oxides, chlorinated compounds, chloroform, benzene, ammonia, arsenic, lead, mercury, and a host of other noxious volatile metallic and/or organic solid particles and vapors. The sum-total of tons of pollutants emitted annually from this plant (as estimated by the EIR) is stunningly high! And, again, these pollutants would be added to the already polluted air in our city.

On a personal note, having performed surgery for over thirty years – much of it related to cancer, trauma, and children, this latter category of pediatric illnesses gives me the gravest concern regarding Liberty's proposal, the basic rule in medicine being: *first of all, do no harm!*

During the past century, illnesses among children have changed substantially. Classic infectious diseases are no longer the leading cause of morbidity and death. Today, the most serious illnesses among children are asthma (more than doubled in recent years), childhood cancer (significantly increased in recent decades), neuro-developmental and behavioral disorders, and certain congenital defects. Children are especially at risk for chemical pollutants in the environment, and more than 80,000 new synthetic chemical compounds have been developed during the past 50 years, chemicals having high potential for human toxicity when dispersed in air, food, water, garbage, sewage, and sludge.

Which diseases are caused by environmental pollution? It might be easier to list the diseases not caused or worsened. Too many to list, here are some of them: allergies, asthma, antibiotic resistance, birth defects (including brain and central nervous system), cancers (including lung cancer and pediatric cancers), dermatitis, chronic respiratory diseases (e.g., obstructive pulmonary disease and emphysema), estrogen imbalances, fertility problems, goiter, heart disease, heavy metal poisoning (lead), immuno-deficiency diseases, ozone-toxicity (sore throats, pulmonary inflammation, pulmonary congestion, chest pain), etc. Environmental pollution can also damage the human genome, shortening life spans because of harmful effects on the brain and central nervous system. Studies have shown that animal brains can actually shrink from prolonged exposure to environmental contaminants.

Exhibit "A"

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reg.mtg. - 9/23/08

Citing a recent study, *Environmental Pollutants and Disease in American Children*, conducted by a prestigious group of investigators from the U.S. Center for Children's Health and Environment, Mount Sinai School of Medicine (NYC), the Harvard School of Public Health, etc., environmental pollutants account for 30% of childhood asthma cases, 5-10% of cancers, and 10% of neurobehavioral disorders, estimates which are on the low side. So, if Liberty Energy comes to Banning, what will our city be like in ten to twenty years?

According to this study, five categories of childhood illness will increase substantially: lead poisoning, asthma, pulmonary disease, cancer, and neuro-behavioral disorders – not to mention similar effects on adults. Neuro-developmental and behavioral disorders will increase – 28% already wholly or partially caused by environmental factors excluding alcohol, tobacco, and/or drug abuse. The societal/financial costs of learning disabilities (dyslexia, attention-deficit hyperactivity disorder, diminished intelligence, autism, mental retardation, and cerebral palsy) are likely to escalate. If exposure to newer (inadequately tested) chemicals continues, diseases of environmental origin will become even greater in years to come. Yet all these diseases, caused by chemical pollutants in the ambient environment, are potentially avoidable through public health efforts involving “pollution prevention.”

Sobering words? Indeed! I like living where children and oldsters can breathe. I don't like living where the air is polluted by toxic substances of human origin. Nor *will* I live in such a community. *I will simply move away*, escaping what will become the “armpit” of California. Should others follow suit, as they surely will, don't be surprised if property values/tax revenues drop drastically. Hardly a positive scenario for Banning!

As a final caution, have you considered the financial downsides of this plant? A potential revenue source will likely become a huge financial liability. Once people experience the impact of toxic wastes – condoned and introduced by the City Council, despite known environmental risks – Banning will face some costly law-suits. Already, the annual price-tag of environmentally attributable diseases in the U.S. totals almost \$55 billion, and is rising daily!

Please give my concerns serious thought, and do not approve Liberty's power plant *anywhere near my back yard – or near anyone else's!*

Respectfully yours,



Melvin J. Mulder, MD, FACS
5096 Breckenridge Avenue
Banning, CA 92220

Exhibit "A"

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reg.mtg. – 9/23/08

Council mtg.
9-23-08

**LAW OFFICES OF
BENSON J. GOLDSTEIN**
Attorney at Law

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Woodland Hills, California 91367-6554
Bus: (818) 710-3860 Fax: (951) 769-6760

428 Sandpiper Street
Banning , California, 92220
(951) 769-6760

September 23, 2008

To : City Council
City of Banning, Ca.
99 East Ramsey Street
Banning, Ca., 92220

Att : Mayor Brenda Salas

re : Resolution 2007-24 and Resolution 2007-81
Liberty Energy's Sewage Sludge Plant

Dear Council Members:

This office and the undersigned represent the interests of the entity known as Citizens Against Toxic Sludge. With the election of several of the council members fast approaching, I note that there is an opportunity for the City Council to rescind two rather dangerous Resolutions, #2007-24 and #2007-81 (copies attached hereto) , for the following reasons :

1) Neither City Council Resolution identifies the "renewable energy biomass generating facility" for what it actually is -- a sewage sludge incinerator that burns human feces, animal feces, and contaminated material to ashes (according to the DEIR), thru a 118 foot high smoke stack, emanating contaminates into the very air the residents of Banning breathe , many of which are cancerous in nature.

2) Neither Letter of Intent from Liberty Energy that is attached to the respective resolutions identifies the "power generating plant" as a sewage sludge incinerator , yet again that is what the DEIR says it is .

3) Based on the facts as stated in items # 1 and # 2 above, it is quite apparent that none of the City Council members knew at the time of signing the respective resolutions on March 27, 2007 and July 10, 2007, that the project they were entertaining was actually a sewage sludge plant, that emanated carcinogenic materials into the air that the people of Banning breath. Hence the City Council has at the very least been grossly mislead by Liberty Energy , and most likely defrauded by Liberty as to the true nature of the plant that the Ci ty Council thought they were going to get.

Therefore, you now have the opportunity , and the power , to rescind both

Exhibit "B"

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City Council of Banning
September 23, 2008
Page 2

Resolutions # 2007-24 (agreement to buy electricity from Liberty Energy, if and when the plant is built) and Resolution # 2007-81 (agreement to enter into a land lease with Liberty Energy , if and when the plant is built) , based on the California Appellate Court case of the City of Susanville vs. Lee C. Hess Co., (1955), 45Cal 2nd 684 , 290P2nd 520 (at page 527), in which the Court stated that unless the city Council's decision to sign a resolution was procured by fraud, mutual mistake, or other basis for rescission (ie - misrepresentation) , then the City Council is powerless to act. In this case, on the other hand , the misrepresentation, if not fraud, as described above, is the basis ,and the power (thru the Susanville court decision described above) for the City Council members of Banning to now rescind both Resolution # 2007-24 and #2007-81, and prevent the impending health problems and perineal odors from ever entering the good city of Banning, California.

Very Truly Your,
Law Office of Benson Goldstein

By : 
Benson J. Goldstein
Attorney At Law for
Citizens Against Toxic
Sludge

LRG: t

Exhibit "B"

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reg.mtg. - 9/23/08

Rec'd 9/23/08
Council mtg

September 23, 2008

From: Edward Miller, 5088 Breckenridge Ave.

To: Banning City Council

I have a Doctorate in Engineering Science, and have many years experience in power plant and emission analysis. I wish to state that the air pollution emanating from the proposed plant as specified in the Environmental Impact Report *demands* that this project NOT be built in Banning.

The Environmental Impact Report states that the air in Banning currently does NOT meet the AQMD standards. The monitoring station at the Banning airport has reported approximately 90 days per year in which the ozone levels currently exceed the AQMD standards and the particulate matter currently exceeds the AQMD standards between 6 and 18 days per year for the last three years for which data is available.

The additional air pollution produced by the proposed plant will be added to our already unsatisfactory air. Criteria pollutants are those that the AQMD has set upper acceptable limits. The EIR lists the output of this proposed plant for the criteria pollutants carbon monoxide, nitrous oxides, sulfur oxides, volatile organic vapors and solid particles. The sum total of these pollutants emitted from this plant is 462,000 lb per year. Again, these air pollutants would be added to the already unsatisfactory air in our region.

To emphasize the impropriety of such additional pollution, this amount of pollution addition is *so great* that this plant *could not be built* without the AQMD requiring Liberty to purchase Emission Reduction Credits from some other company in a different area. What this means is that other cities that have *reduced* their pollution will be paid so that Banning can *increase* its air pollution.

This is an *absurd* action for our city to consider. Cities throughout California are attempting all means to reduce their air pollution. The meager pollution produced by cigarette smoke from outdoor restaurant areas, and the pollution from lawn mowers are being considered to be banned by other cities. For Banning to accept this giant increase in its air pollution goes against every known concept of improving the quality and image of our city. Our city should be planning to be one which can sell emission reduction credits to other cities, rather than be the polluter requiring special dispensation to increase our pollution.

Besides these pollutants whose maximum permissible concentrations have been set by the AQMD, other pollutants will be generated by this plant, and other dangerous chemicals will need to be transported into Banning to permit this plant to operate.

One of the most serious dangerous chemicals is concentrated pure ammonia, which requires special and careful handling. This plant requires 3,942,000 lb of liquid ammonia be brought through Banning into the plant every year. If each truck carries 30,000 lb of

ammonia, that is three to four trucks per day of this dangerous chemical through our streets. Even if none is lost in transfer, and no accident occurs, the Environmental Impact report states that 29,400 lb per year will be part of the pollution emitted by the plant to our atmosphere.

Many other pollutants are generated by this plant. I will only list those that I believe everyone is familiar with: 118,000 pounds per year of hydrochloric acid will be emitted, 321 pounds of chlorine will be emitted, 36 pounds mercury will be emitted. The report lists a total of 53 such non-criteria pollutants that will be released into our atmosphere when this plant is in operation. The result of these figures from the Environmental Impact Report is the fact that the air pollution in Banning will be irreparably damaged, and the quality of life irreparably changed.

I do not know if the City Council recognizes the enormity of the transport through Banning involved in this project. To run this plant, *1 1/3 billion* lb. of waste sludge will need be brought through the streets of Banning per year. Additionally *1/2 billion* lb of biomass per year will need be transported through Banning.

This plant is inappropriate for Banning, and that all the information required to reach that decision is in the Environmental Impact Report.

Your proposed visit to the St. Paul plant can produce little useful information. Short term visits to plant locations are usually uninformative. A plant can run perfectly and trucks can haul sewage waste for several years without incident. A short term visit to a plant can be considered equivalent to a visit to Prince William's Sound the day before the Exxon Valdez accident., when everything seemed perfect. One accident with sewage waste spill or dangerous chemicals would be the unfortunate event which would forever scar the City's reputation, and make us the focal point for future scorn, and continuing material for Jay Leno.

The general public was mainly unaware of this proposal until two weeks ago, and here is much misinformation being circulaed.. I have recently heard repeatedly the absurd statement that this plant is sealed and does not emit any pollution or odors. We know that is completely incorrect. Without discussing the laws of thermodynamics which state such a design is impossible, I will simply quote the statement from the Environmental Impact Report concerning the emission from this plant of the flue gases:

"Flue gases leaving the bubbling fluidized/combustion units would be cooled and directed through dry or wet scrubbers and bathhouses prior to release to the atmosphere. Emissions would be released through the cooling towers"

The SCAQMD has given a courtesy evaluation of that draft EIR . Their review indicates that odors will be a significant and ongoing problem for Banning if this plant is built. Does anyone really think that importing more than *1 3/4 billion* pounds of sewage and decaying vegetation would not cause Banning's air to have an odor?

I will quote from the report:

"There is insufficient information to determine whether...odor venting and the combustion system...is adequate to control odors..or whether or not that receiving systems would adequately control biosolid odors."

The SCAQMD's concerns about odor appear throughout their review. As far as I know, no one has built such a reception area, and there is no data to indicate whether such a reception area would prevent escape of odors to the surrounding area (Banning and other pass area cities), whether it has appropriate air locks, negative internal pressure to avoid leakage, etc.

" Green waste (biomass) may have started to compost drink shipping, which could generate substantial odors....A sealed biomass reception area is recommended". Even if a perfect reception area could be built, it would not eliminate odors from the trucks in transit through Banning.

"As much as 30,000 tons (60 million pounds) of biomass may be stored for up to 40 days in open windrows....There is no adequate discussion of how...fugitive odors .. would be contained from such a large amount of green waste material undergoing such a long storage area"

This comment is self-explanatory. But consider a similar problem. Imagine that the receiving silo for sewage becomes clogged, and the sewage need be stored outside. I doubt that anyone would like to consider that further.

"AQMD experience is that even fresh green waste odors at transfer stations can occur up to and more than one-half mile".

With the Santa Ana winds, one can only guess how far the odors would travel.

The AQMD review states that the area around the proposed plant be rezoned to preclude residential development in a buffer zone 1000 feet wide at all points due to air quality considerations. This Liberty plant would occupy 20.3 acres. The buffer zone required due to its pollution generation is an area of approximately 165 acres. This plant makes that area uninhabitable! What type of industry is likely to be willing to occupy this buffer zone?

If any could be found, they would likely be polluters themselves, requiring additional buffer zones. This 165 additional acres that would be lost to residential use would certainly be the beginning of a greater undesirable area. There are many expensive, attractive homes currently existing which are likely to be affected directly.

" SCAQMD recommends... a proposal for handling odor complaints. This could include.. Odor surveys, keeping a log of characteristics of any odors...identify source of odor.'

Clearly, this indicates that SCAQMD recognizes that odors will be generated by this plant and that complaints will be received. The AQMD suggestion that method of reporting and handling such odors is closing the barn door after the odor has left it. With all due respect to the hardworking staff of our city, Banning does not have the personnel and facilities to

carry out an appropriate investigation of odors and pollution. Leaving such matters to the polluter and the state and federal organizations to sort out and settle between them always results in long, legal, unsatisfactory results, while the problems, pollution and odors continues. Even when violations are reported to AQMD, and an inspector finally appears, the polluter can request a variance to permit excessive pollution and odor generation to continue. This could possibly be simply to purchase additional emission reduction credits. Whatever the end result, the process is not a quick, simple end to the pollution or odor.

This project has been fought and rejected by Kern County and Imperial County. Ordinances were passed in both outlawing this type of project. What is so special about Banning that we are so much smarter than those areas, that we are willing to take the risk of accepting this polluting, odoriferous untested plant? This is untried technology on this scale. If this were a safe, clean process, than it should be obvious that Los Angeles would burn its own sewage, rather than pay to have it transported out. I understand that Los Angeles has rejected this technology as being untried and untested, and that Orange County has refused to consider it.

This project will turn Banning into an industrial, polluted area, attracting only other polluting industrial companies. We all recognize Banning's desperate need for a tax base in these horrendous financial times. The solution must not be one that forever scars the community by changing its character, adding a permanent and disastrous stigma as the sewage dump of California, permanently threatening and damaging the health of its residents, and causing the flight of those residents capable of doing so. Is that the future you are planning for Banning? Is that the legacy you wish to be remembered by? I hope not. Thank you.

Received 9/23/08
Public Comments

September 23, 2008
Sherman B. Gallas
1308 Riviera Ave.
Banning, Ca 92220
Phone: (951)-845-2252

Subject: Presentation to the Banning City Council

Good evening Mayor Salas and Council Members. Thank you for allowing me to speak to you. My name is Sherman Gallas. I live at 1308 Riviera Ave. in Banning, at Sun Lakes.

I have Bachelor and Master Degrees in Mechanical Engineering with extensive experience as a Project Engineer responsible for multi-million dollar contracts, dealing with the design, development and manufacture of inter-continental ballistic missiles. The missiles included several rocket stages containing highly toxic propellants. Therefore, I am experienced in evaluating highly technical projects, involving toxic materials.

One of the commonly used rocket propellant ingredients is ammonium perchlorate, a very toxic material. Over the past 15 years, the government and rocket companies have spent hundreds of millions of dollars to clean underground water supplies which have been contaminated with perchlorate spilled or dumped from various rocket companies. It is timely that this subject is discussed in today's Press Enterprise Newspaper. As reported, this contamination occurs at 395 sites in 35 states. There are several sites in California, and some very close to us, such as Norco, Rialto, San Bernardino and Mentone. Lockheed Martin Corp. has spent \$100M, thus far, cleaning up perchlorate from ground water south of San Bernardino that is believed to come from a former Lockheed Rocket Plant in Mentone, east of Redlands.

Perchlorate interferes with thyroid function and poses developmental health risks, particularly for babies and fetuses. The Department of Health and Human Services, Agency for Toxic Substances states that perchlorate exposure can occur by living near a waste site. Therefore, it is highly likely that perchlorate will be in the waste brought to the proposed Liberty Facility. So I urge you to be very leery of this Project.

Exhibit "D"

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reg.mtg. - 9/23/08

Industrial Plants, involving toxic materials should not be located in or near cities. You have been misled concerning the exhaust emissions and related health risks. Therefore, you should withdraw from your letter of intent agreements with Liberty Energy.

Thank you for your consideration.

Rec'd 9/23/08
Comm't mtg.

To whom it may concern: Wednesday, August 7, 2008
City of Banning
Mayor Salas
City Council Members

From:
Charles Katz and Jacqulyn Katz
1101 N. First Street
Banning, CA92220

My history, as a resident of Riverside County for 31 years, and having lived at this address in Banning for 29 years, makes us want to stand up and be counted in regards to this situation. The main reason for moving to this area, was for the clean air and smog free environment, not to mention the clean water and seasonal changes.

We are opposed to the building and placement of the:
TOXIC WASTE INCINERATOR.....
WE DO NOT WANT IT IN OUR COMMUNITY.....
WE DO NOT WANT IT WITHIN 100 MILES.....

The Banning Community, Chamber of Commerce, Home builders, and local business minded individuals have always made it known that our unusually clean environment was a major factor for living in Banning. If you allow this project to take place; Banning will become the "New Stagecoach Town USA....GHOST TOWN"

So I ask the Honorable Mayor, City Council. Where do you, your children, grand children ,parents and grand parent wish to live...?
Next to Banning's finest toxic waste facility. WE SAY NO!

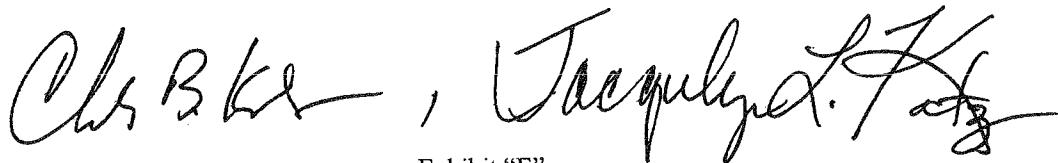


Exhibit "E"

38

reg.mtg. - 9/23/08

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

TO: **City Council**

FROM: **Ted Yarbrough, Fire Marshal/Emergency Services Coordinator**

SUBJECT: **Resolution 2008-110 Adopting a Disaster and Emergency Mutual Aid Agreement
between the City of Banning and the Morongo Band of Mission Indians**

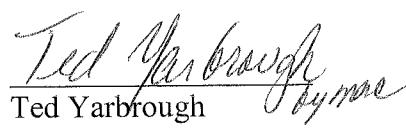
RECOMMENDATION: The City Council adopts Resolution No. 2008-110, "A Resolution of the City Council of Banning Adopting a Disaster and Emergency Mutual Aid Agreement between the City of Banning and The Morongo Band of Mission Indians."

JUSTIFICATION: During emergency situations, it may become necessary for neighboring communities to support one another to the extent possible. This agreement lays the foundation for the sharing of resources with the Morongo Band of Mission Indians (the Tribe) during such times. The federal government, through the National Incident Management System (NIMS), has mandated communities to establish mutual aid agreements with neighboring communities and local entities to help expedite the mitigation of damage caused by large or small events. Support for fire and law enforcement activities are supported through the "Master Mutual Aid Agreement" but nothing has been established to provide support for other City functions.

BACKGROUND: Early in 2007 the City's Emergency Services Coordinator (ESC) was asked by the Director of Emergency Services (DES) for the Tribe if the City would consider entering into a mutual aid agreement for the sharing of resources during emergency situations. The City's ESC then met with the City Manager and numerous department heads to discuss the agreement. Everyone agreed that this would be a positive step for the City. The draft agreement was reviewed and modified numerous times by City and Tribal staff before being finalized.

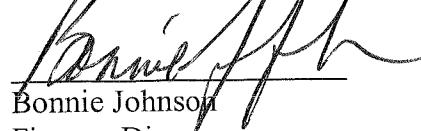
FISCAL DATA: Through this agreement, should the City require assistance from the Tribe, that assistance would be provided free of charge for the first 24 hours. After that period the Tribe would be reimbursed for their assistance as outlined in the agreement. Conversely, should the Tribe require assistance; the City would provide that assistance for the first 24 hours and would have to pay its employees for that period of time. The cost for assistance provided after the first 24 hours would be reimbursed to the City.

RECOMMENDED BY:



Ted Yarbrough
Fire Marshal/
Emergency Services Coor.

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-110

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A DISASTER AND EMERGENCY MUTUAL AID AGREEMENT BETWEEN THE CITY OF BANNING AND THE MORONGO BAND OF MISSION INDIANS

This Joint Resolution and Agreement ("Agreement") is made and entered into by and between the City of Banning ("City") and the Morongo Band of Mission Indians ("Tribe") hereinafter collectively referred to as the "Parties".

WHEREAS, the City is a municipal corporation incorporated in the State of California and located in the County of Riverside; and

WHEREAS, the Tribe is an Indian tribe recognized by the Secretary of the Interior as maintaining government-to-government relations with the United States and exercising governmental authority over the lands of the Morongo Indian Reservation ("Reservation") in Riverside County, California; and

WHEREAS, the Parties respectively are responsible for the safety and health of their communities, continuity of government, public safety, and community recovery after disasters; and

WHEREAS, the Parties are subject to natural and man-made disasters, which could overwhelm their resources; and

WHEREAS, the Parties value the intergovernmental relationships and continuously seek to improve response and recovery capabilities following a disaster; and

WHEREAS, an informed, cooperative, coordinated response by all governments provides the most safe and immediate response and recovery to disasters and emergencies; and

WHEREAS, it is lawful and in the public interest that a mutual aid Agreement providing a method whereby the City and Tribe agree to voluntarily furnish available resources, equipment, and manpower, on an emergency basis, to each other should a natural or other disaster occur.

NOW, THEREFORE, based on the foregoing and for good and valuable consideration, the Parties agree to the following:

DEFINITIONS:

The following terms shall have the following meaning:

1. **Disaster:** shall mean any happening that causes great harm or damage likely to be beyond the control of the services, personnel, equipment, and facilities of either of

the Parties, requiring the combined forces of other levels of government or political subdivisions to combat.

2. **Emergency Situation:** shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the jurisdiction of either of the Parties caused by such conditions as air pollution, fire, flood, storms, epidemic, riot, earthquake, or other conditions, including conditions resulting from a labor controversy, which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the Parties, requiring the combined forces of other political subdivisions to combat.
3. **Lending Entity:** shall mean the governmental agency (either the City of Banning or the Morongo Band of Mission Indians) that sends equipment, materials and/or personnel to assist the Requesting Entity during a Disaster or Emergency Situation.
4. **Requesting Entity:** shall mean the governmental agency (either the City of Banning or the Morongo Band of Mission Indians) that requests and receives equipment, materials, and/or personnel from the Lending Entity to assist during a Disaster or Emergency Situation.

PURPOSE:

The purpose of this Agreement is to provide a formal mechanism for intergovernmental cooperation and coordination between the City and the Tribe during disasters and emergency situations.

No provision of this Agreement shall be construed as relieving any Party hereto of any duty to respond to emergency situations in ways required by applicable laws of the United States, the State of California, and the constitution and bylaws of the Tribe.

SERVICES:

Whenever any Party to this Agreement suffers a Disaster or Emergency Situation which requires additional aid beyond that which either Party is able to provide for itself, it shall request help from the other Party to this Agreement through the City of Banning's Police Department Dispatch Center, Emergency Services Coordinator or the City Manager and the Tribe's Office of Emergency Services (OES). Each Party to this Agreement shall consider the request for aid and shall in its sole discretion determine what equipment, resources and manpower it can make available to the entity making the request.

The services that a Lending Entity may provide include, but are not necessarily limited to, trained and equipped emergency management, law enforcement, public works, and other City or Tribal resources, with the intent of making all resources available.

Nothing in this Agreement shall require a Lending Entity to commit or supply personnel, equipment and/or other resources the Lending Entity determines in its sole discretion to be necessary for the protection of its own community.

JOINT EMERGENCY OPERATION PLAN:

Upon Execution of this Agreement, the City's Emergency Coordinator and the Tribe's Office of Emergency Services (OES) shall prepare a Joint Emergency Operation Plan ("JEOP"). The JEOP shall state the particular personnel, equipment and/or services each Party can provide under this Agreement and shall provide a management and command structure, which will incorporate the National Incident Management System (NIMS) as recommended by the United States Department of Homeland Security (DHS) and the California Standardized Emergency Management System (SEMS). The JEOP shall also provide all current emergency contact information of both Parties as necessary for the execution of this Agreement. The Parties agree that the JEOP will be updated as necessary to maintain an effective emergency plan.

WORKERS COMPENSATION:

It is understood and agreed that any workers furnished to the Requesting Entity will be covered under Worker's Compensation by the Lending Entity and shall receive benefits for any injury or death that may occur under applicable Worker's Compensation Law.

LIABILITY:

Each of the Parties to this Agreement do hereby expressly waive all claims against every other Party for compensation for any loss, damage, personal injury, or death arising from the performance of this Agreement.

The City shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the Tribe from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the Tribe but only to the extent any such claim arises from the negligence or willful misconduct of the City or an individual or entity for which the City is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the City. The Tribe shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the City from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the City but only to the extent any such claim arises from the negligence or willful misconduct of the Tribe or an individual or entity for which the Tribe is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the Tribe.

INSURANCE:

(A) Each Party shall procure and maintain, at its own cost and expense during the period of this Agreement, comprehensive general liability insurance coverage, for its acts or omissions described herein in the following minimum amounts:

Bodily Injury (including death)	\$2,000,000.00
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Each person, each occurrence	\$2,000,000.00
Property Damage	\$2,000,000.00

- (B) Policies and certificates evidencing each Party's coverage shall be filed with the other Party, shall name the other Party as an additional insured, and shall be primary. Said policies or certificates shall provide thirty (30) days' written notice to the other Party prior to any material change, termination or cancellation.
- (C) The policy for same shall insure against all liability of the Party procuring insurance, its representatives, employees, invitee and agents arising from, or in connection with, each Party's acts or omissions in connection with this Agreement and shall insure performance by such Party of any of the hold-harmless provisions set forth herein.
- (D) The insurance required under this section shall be issued by either a reputable insurance company admitted to do business in California, in a form reasonably acceptable to the other Party, or through a joint powers agency, or similar entity, formed for the purpose of providing insurance to public entities.
- (E) The Parties recognize that insurance practices and requirements of a municipality may differ from that of private parties and may change from time to time. During any period of time in which the Parties, as regular practice do not maintain insurance but rather self-insure or participate in a Joint Powers Agreement with other governmental entities, the Parties may meet their insurance requirements under this Section in the same manner.

REQUEST FOR ASSISTANCE:

The City and Tribe will detail mutual aid requesting procedures in emergency operations plans that are approved from time to time by appropriate legislative authorities.

A Lending Entity shall be responsible for providing equipment that is properly inspected and maintained. A Lending Agency will provide operators for equipment as required. Operators shall have current licenses and/or certifications as required for the equipment they are operating.

COSTS AND PAYMENT:

A Lending Entity rendering aid to a Requesting Entity pursuant to this Agreement agrees to provide such aid at no charge for the first twenty-four (24) hours starting from the time personnel and/or equipment reports to a Requesting Entity.

The Parties agree that a Lending Entity shall receive payment for all services rendered under this Agreement beyond the first twenty-four (24) hours as follows:

1. For any employee provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity at the employee's regular pay rate including employee benefits, plus overtime where applicable.
2. For any equipment provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity per the current Federal Emergency Management

Association's Schedule of Equipment Rates plus twenty-five percent to account for cost of resources in California.

In addition to any charges a Lending Entity is entitled for services rendered under this Agreement, a Lending Entity shall be reimbursed by the Requesting Entity for any loss of, or damage to, any equipment incurred while rendering services under this Agreement in an amount not to exceed the cost of repair or replacement cost, whichever is the lesser amount. A Lending Agency shall also be entitled to reimbursement for the replacement of materials used while rendering services in the first twenty-four (24) hours under this Agreement in an amount not to exceed the actual cost of replacement.

A Lending Entity shall provide an invoice or billing statement to a Requesting Entity within forty-five (45) days of rendering any services under this Agreement. A Requesting Entity shall pay a Lending Entity the amount stated on an invoice or billing statement within thirty (30) days of its receipt, provided that no charges or costs are disputed. The Parties agree that a Requesting Entity shall be charged a penalty equal to the current interest rate of the Local Agency Investment Fund (LAIF) for failure to pay the amount stated on any invoice or billing statement within the thirty (30) day time period.

It is understood that both the City and the Tribe are responsible for their own submittal of claims for reimbursement of costs incurred under this Agreement for Stafford Act and other declared disasters. Reimbursement from the federal or other levels of government has no bearing on payments under this Agreement.

MISCELLANEOUS:

Agreement Review. The City (Emergency Services Coordinator) and Tribe (Director of Emergency Services) will meet at least once a year to review this Agreement.

Agreement Modification. Changes within the scope of this Agreement shall be made by the approval of the City and the Tribe.

EFFECT AND TERMINATION:

Effect. This Agreement shall remain in effect for five years from 30 days after the latest original signature.

Termination. Any Party to this Agreement may withdraw from the Agreement at any time and for any reason before the date of expiration by providing a ninety (90) day written notice to the other Party, as follows:

City Manager City of Banning Post Office Box 998 Banning, CA 92220	Finance Director City of Banning Post Office Box 998 Banning, CA 92220	Emergency Services Coordinator City of Banning Post Office Box 998 Banning, CA 92220
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Chief Administrative Officer Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220	Director, Office of Emergency Services Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220
--	--

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning does hereby adopt the Mutual Aid agreement between the City of Banning and the Morongo Band of Mission Indians.

PASSED, APPROVED, AND ADOPTED this 14th day of October 2008.

Brenda Salas, Mayor
City of Banning

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

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. 2007-110 as duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of October 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: **October 14, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Kahono Oei, City Engineer** 

SUBJECT: **Resolution No. 2008-112, "Accepting and Authorizing the Expenditure of SB-821 Bicycle and Pedestrian Facilities Grant Program Funds for Fiscal Year 2008/09"**

RECOMMENDATION: Adopt Resolution No. 2008-112, "Accepting and Authorizing the Expenditure of SB-821 Bicycle and Pedestrian Facilities Grant Program Funds for Fiscal Year 2008/09", to be utilized to pay for sidewalk improvements on Sims Street that will be constructed as part of the City's Annual Street Rehabilitation Project.

JUSTIFICATION: In order to obtain SB-821 funds from the Riverside County Transportation Commission (RCTC) for the street location that was awarded the grant, the City Council must accept the grant and authorize the expenditure of matching funds to fully pay for the sidewalk improvements.

BACKGROUND: A call for projects for the annual SB-821 Bicycle and Pedestrian Facilities Grant Program was issued by the RCTC on March 18, 2008. A grant application encompassing four projects was fully prepared in house by the Public Works Department and submitted to the RCTC in April, 2008. A presentation was then given by Engineering Division staff to the RCTC Review Committee on May 20, 2008.

There were 42 applications submitted by cities in Riverside County and the County for this highly coveted grant. The RCTC Review Committee scored each project application competitively and awarded a total of \$1,367,095.00 to agencies within Riverside County. The scoring summary sheet is attached as Exhibit "A". The City of Banning obtained the RCTC approved grant in June, 2008 for the following project:

No.	Project Description	SB-821 Grant	City's Match
1.	Hemmerling Elementary School - Sims Street, from Williams Street to Nicolet Street (west side)	\$ 45,000.00	\$ 15,000.00
	+ 10% contingency (based on total project amount of \$60,000.00)		\$ 6,000.00
	Total	\$ 45,000.00	\$ 21,000.00

The SB-821 grant will be used to fund sidewalk improvements at the above listed location, and those improvements will be constructed as part of the City's Annual Street Rehabilitation Project. The SB-821 grant must be utilized at locations where sidewalk and handicap ramps do not already exist and thus causes a safety concern, and in locations that lead to schools, parks, commercial districts, city and county services, amenities and other attractors.

FISCAL DATA: The Engineering Division of the Public Works Department obtained a grant in the "not-to-exceed" amount of \$45,000.00 from the RCTC to fund sidewalk and handicap ramp improvements along the west side of Sims Street, from Williams Street to Nicolet Street. The City is required to provide matching funds estimated at \$15,000.00, or 25% of the total project costs. Staff is requesting that a 10% construction contingency be added to the estimated project costs, bringing the total City's matching amount requested to \$21,000.00. When this construction project is awarded next year as part of the Annual Overlay project, the exact amount will be determined based on the contractor's actual bid prices. Staff is requesting that the City's matching funds be appropriated in the Measure "A" Fund for Fiscal Year 2008/09. The current estimated unappropriated balance in the Measure "A" Fund is \$641,778.00.

RECOMMENDED BY:



Duane Burk

Director of Public Works

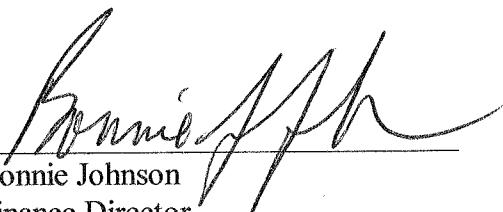
APPROVED BY:



Brian Nakamura

City Manager

REVIEWED BY:



Bonnie Johnson

Finance Director

RESOLUTION NO. 2008-112

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, ACCEPTING AND AUTHORIZING THE EXPENDITURE OF SB-821
BICYCLE AND PEDESTRIAN FACILITIES GRANT PROGRAM FUNDS FOR
FISCAL YEAR 2008/09**

WHEREAS, on March 18, 2008, the Riverside County Transportation Commission (RCTC) issued a call for projects for the annual SB-821 Bicycle & Pedestrian Facilities Grant Program; and

WHEREAS, Engineering Division Staff prepared a grant application encompassing four projects and presented the projects to the RCTC Review Committee on May 20, 2008; and

WHEREAS, in June of 2008, the RCTC approved one City of Banning project application (as shown attached as Exhibit "A"), and awarded the City \$45,000.00 to be used towards sidewalk and handicap ramp improvements at Hemmerling Elementary School, on the west side of Sims Street, from Williams Street to Nicolet Street; and

WHEREAS, the SB-821 grant will be used to fund sidewalk improvements at the approved project location listed above, as part of the City's Annual Street Rehabilitation Project; and

WHEREAS, the City of Banning is required to provide matching funds estimated at \$21,000.00, which includes a 25% match of the project costs, plus a 10% construction contingency; and

WHEREAS, when the project is awarded next year, the required matching funds will come from the City of Banning's Measure "A" Fund, for Fiscal Year 2008/09.

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 accepts the \$45,000.00 SB-821 Bicycle and Pedestrian Facilities Grant (also known as the Article 3 Sidewalk Fund) from the RCTC for Sims Street, from Williams Street to Nicolet Street.

Section II. The City Council of the City of Banning hereby authorizes the appropriation of the City's match, \$21,000.00, from the Measure "A" Fund and authorizes the Director of Finance to make the related budget adjustments.

Section III. The City Council of the City of Banning authorizes the appropriation of \$66,000.00 in the Article 3 Sidewalk Fund for the construction of the aforementioned sidewalk improvements and authorizes the Director of Finance to make the related budget adjustments.

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

City Attorney

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-112 was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

**RANKING OF SB-821 GRANT APPLICATIONS
FOR FISCAL YEAR 2008/09**

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
SB 821 BICYCLE AND PEDESTRIAN FACILITIES PROGRAM
FY 2008/09 RECOMMENDED FUNDING**

Attachment II

<u>Rank</u>	<u>Agency</u>	<u>Project Description</u>	Total Costs	SB 821 Funds Requested	Recommended Allocation	Cumulative Funds Allocated	Average Score
1	Beaumont	Citywide Sidewalk & Access Ramps	\$448,200	\$179,280	\$179,280	\$179,280	89.3
2	Coachella	Palm View School S/W Projects	76,180	38,090	\$38,090	217,370	89.0
3	Peris	Indian Ave. Sidewalk & Ramps	250,000	80,000	\$80,000	297,370	88.6
4	Hemet	Citywide Sidewalk & Access Ramps	357,000	90,000	\$90,000	387,370	88.4
5	Coachella	Bobby G. Duke School S/W Projects	72,380	36,190	\$36,190	423,560	87.6
6	Banning	Hemmerling Elem. School Sidewalk	60,000	45,000	\$45,000	468,560	84.4
6	Riverside County	Krameria Ave. Sidewalk & Access Ramps	128,200	88,200	\$88,200	556,760	84.4
8	San Jacinto	Downtown Infill Sidewalks & Ramps	400,000	100,000	\$100,000	656,760	84.1
9	Lake Elsinore	Mohr Street Sidewalk	52,000	26,000	\$26,000	682,760	82.7
10	Palm Springs	Farrell Dr. "Missing Link" Sidewalk	117,500	87,500	\$87,500	770,260	80.7
11	Riverside County	So. Broadway Walkway Project	180,000	180,000	\$180,000	950,260	80.2
12	Palm Springs	Ramon Road "Missing Link" Sidewalk	123,900	92,900	\$92,900	1,043,160	80.0
13	Riverside	Orchard St. & Verde St. Sidewalks	300,000	150,000	\$150,000	1,193,160	79.8
14	Riverside County	Mayberry Ave. S/W - Dartmouth/Stanford	131,000	104,800	\$104,800	1,297,960	79.1
15	Desert Hot Springs	West Dr. Sidewalk & Bike Lane	227,000	170,250	\$69,135	1,367,095	78.9
16	Banning	Woodland Ave. Sidewalk	72,000	36,000	\$0	1,367,095	78.6
17	Cathedral City	Whitewater Neighborhood Sidewalk Improv.	180,000	108,000	\$0	1,367,095	78.2
18	Riverside	Central Ave. Sidewalk	200,000	100,000	\$0	1,367,095	77.3
19	Lake Elsinore	Campus Way Sidewalk	108,000	54,000	\$0	1,367,095	77.2
20	Lake Elsinore	Langstaff St. Sidewalk	97,200	48,600	\$0	1,367,095	77.0
21	Riverside	Randolph St. & Lake St. Sidewalks	330,000	165,000	\$0	1,367,095	76.6
22	Coachella	Valley View School S/W Projects	70,110	35,055	\$0	1,367,095	76.5
23	Corona	Sidewalk Gap Closures	156,000	117,000	\$0	1,367,095	76.1
24	Riverside County	Steve Ave. Sidewalk & Access Ramps	94,400	75,500	\$0	1,367,095	76.1
25	Riverside County	Jurupa Rd. Sidewalk & Access Ramps	171,900	137,500	\$0	1,367,095	75.4
26	Cathedral City	Cathedral Canyon Dr. Sidewalk	320,000	160,000	\$0	1,367,095	73.8
27	Lake Elsinore	Summer Ave. Sidewalk	97,900	48,950	\$0	1,367,095	73.8

RIVERSIDE COUNTY TRANSPORTATION COMMISSION
SB 821 BICYCLE AND PEDESTRIAN FACILITIES PROGRAM
FY 2008/09 RECOMMENDED FUNDING

Attachment III

<u>Rank</u>	<u>Agency</u>	<u>Project Description</u>	<u>Total Costs</u>	<u>SB 821 Funds Requested</u>	<u>Allocation</u>	<u>Recommended Allocation</u>	<u>Cumulative Funds Allocated</u>	<u>Average Score</u>
28	Lake Elsinore	Poe St. Sidewalk	38,500	19,250	\$0	\$0	1,367,095	73.7
29	Riverside	Orrenmaa Sch. Footpath Access Project	200,000	100,000	\$0	\$0	1,367,095	73.6
30	Riverside	Wheelchair Ramps	400,000	200,000	\$0	\$0	1,367,095	73.4
31	Riverside	Picker St., Ellen St. & Gramercy Pl. S/W	350,000	175,000	\$0	\$0	1,367,095	73.4
32	Coachella	Bagdouma Park Projects	72,620	36,310	\$0	\$0	1,367,095	73.2
33	Banning	Lions Park Sidewalk	80,000	40,000	\$0	\$0	1,367,095	73.1
34	Riverside County	Antelope Rd. Sidewalk & Access Ramps	84,300	67,400	\$0	\$0	1,367,095	71.6
35	Banning	Roosevelt Williams Prk. George St. S/W	56,000	42,000	\$0	\$0	1,367,095	71.3
36	Temecula	Citywide Class II Bike Lane Striping Proj.	100,000	80,000	\$0	\$0	1,367,095	69.7
37	Riverside County	Mayberry Ave. S/W - Peartree/Valle Vista	278,000	222,400	\$0	\$0	1,367,095	69.1
38	La Quinta	Coachella Canal Multi-Use Trail Bridge	228,750	114,375	\$0	\$0	1,367,095	65.7
39	Moreno Valley	Ped. Countdown Indications & ADA	156,523	125,218	\$0	\$0	1,367,095	64.4
40	Moreno Valley	Gap Closure Pedestrian Walkway	353,438	282,750	\$0	\$0	1,367,095	61.6
41	Palm Desert	Portola Ave. Sidewalk Realignment	256,000	70,000	\$0	\$0	1,367,095	61.1
42	Moreno Valley	Bicycle Master Plan Update	43,750	35,000	\$0	\$0	1,367,095	59.7
Totals			<u>\$7,518,751</u>	<u>\$4,163,518</u>			<u>\$1,367,095</u>	

JR: 5/21/08

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

TO: **City Council**

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

SUBJECT: **Resolution No. 2008-115, accepting the California “Next Generation” Click It or Ticket Mini-Grant**

RECOMMENDATIONS: “The City Council adopt Resolution No. 2008-115 appropriating \$19,773 into police department account 001 2200 421 1030 to fund the Banning Police Department’s grant agreement with the California Office of Traffic Safety (OTS) for the California “Next Generation” Click It or Ticket Campaign in the City of Banning.”

JUSTIFICATION: Utilizing funds from the “Next Generation” Click It Or Ticket Mini-Grant to pay overtime for officers participating in the 2009 California Seat Belt Compliance Campaign will enhance the police department’s ability to proactively educate the public on the importance of wearing seat belts and seek out seat belt violators between the campaign’s target dates of November 17, 2008 – May 31, 2009. This year’s seat belt campaign will include intensified enforcement during day/night time periods on a monthly basis.

BACKGROUND: The California Office of Traffic Safety has notified the Banning Police Department that \$19,773 is available in overtime for Banning Police Officers to participate in the California “Next Generation” Click It Or Ticket Campaign beginning November 17, 2008. During the six month campaign officers will conduct surveys to determine seat belt usage in the City of Banning and proactively patrol and ticket seat belt violators in support of the “Click It or Ticket” national campaign.

ACTION PLAN:

1. Obtain City Council approval to complete and submit an agreement between the Banning Police Department and the California Office of Traffic Safety to participate in the California “Next Generation” Click It Or Ticket Mini-Grant.
2. Participate in campaign and submit required reports to California OTS.
3. At conclusion of campaign, submit appropriate paperwork for reimbursement of OT funds.

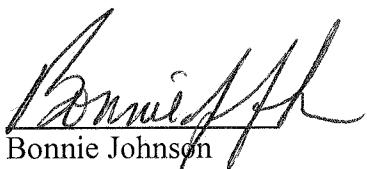
STRATEGIC PLAN INTEGRATION: Approval of this request will enhance the City’s image and provide the Citizens of Banning a safe, pleasant, and prosperous community in which to live, work, and play, while remaining cost effective.

FISCAL DATA: This grant will require the City Council to authorize an appropriation in the amount of \$19,773 to the police department's overtime account (001 2200 421 1030), which will be reimbursed to the City's General Fund upon completion of the grant by the California Office of Traffic Safety.

RECOMMENDED BY:



Leonard Purvis
Chief of Police



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-115

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE POLICE DEPARTMENT TO ENTER INTO AN AGREEMENT WITH THE CALIFORNIA OFFICE OF TRAFFIC SAFETY TO RECEIVE \$19,773 IN OVERTIME FUNDS TO BE USED FOR OFFICERS PARTICIPATING IN THE CALIFORNIA "NEXT GENERATION" CLICK IT OR TICKET CAMPAIGN.

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

WHEREAS, the City of Banning Police Department is committed to better traffic safety measures in the City of Banning; and

WHEREAS, the City of Banning Police Department is committed to educating the public on traffic safety issues; and

WHEREAS, the City of Banning Police Department is committed to participating in the national "Click It or Ticket" campaign; and

WHEREAS, the City's procedures requires the City Council to adopt a resolution authorizing the expenditure funds procured through grants.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the Banning Police Department to enter into an agreement with the California Office of Traffic Safety accepting overtime funds from the California "Next Generation" Click It Or Ticket Grant in the amount of \$19,773. Additionally, the City Council of Banning authorizes the appropriation of \$19,773 into the Banning Police Department Overtime Account (001-2200-421-1030), which will be reimbursed into the general fund when funds are received from the California Office of Traffic Safety. The Finance Department is authorized to make necessary budget adjustments related to these funds.

PASSED, APPROVED, AND ADOPTED this 14th day of October, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

City Attorney

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. 2008-115 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of October 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: October 14, 2008

TO: City Council

FROM: Bonnie Johnson, Finance Director

SUBJECT: Notice of Completion – "City Council Chambers Upgrade Project"

RECOMMENDATION: Accept the "Council Chamber Upgrade Project" as complete and direct the City Clerk to record the Notice of Completion.

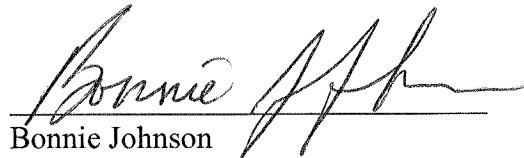
JUSTIFICATION: The Contractor has completed the work as per the plans and specifications.

BACKGROUND: The City Council awarded the construction contract for said project to Spinitar Company, County of Los Angeles, California, at its regular meeting held on July 24, 2007.

The scope of work for the project included the upgrade of the Council dais, new staff and City Clerk furniture which is designed to house much of the needed electronic equipment, new flat panel monitors for the dais, a new voting system, new speaker system, new projection system and screen, and upgraded cameras.

FISCAL DATA: The original/final contract price for the entire project was \$333,408.61.

APPROVED BY:



Bonnie Johnson
Finance Director

REVIEWED BY:

Brian Nakamura
City Manager

1 WHEN RECORDED MAIL TO:

2
3 City Clerk's Office
4 City of Banning
5 City Hall, 99 E. Ramsey Street
6 Banning, California 92220
7

8 FREE RECORDING:

9 Exempt Pursuant to
10 Government Code §6103
11

12
13
14 NOTICE OF COMPLETION

15 COUNCIL CHAMBER UPGRADE PROJECT

16
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,
18 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of
19 the State of California, and is hereby accepted by the City of Banning pursuant to
20 authority conferred by the City Council this October 14, 2008, and the grantees consent
21 to recordation thereof by its duly authorized agent.

22
23 (1) That the Owner, City of Banning, and Spinitar entered into a written
24 Agreement dated August 13, 2007, for the Council Chamber Upgrade Project (“Work of
25 Improvement”).

26
27 (2) That the Work of Improvement was substantially completed on September
28 26, 2008 and the Nature of the Interest was to Upgrade the City Council Chambers
29 located at the City of Banning City Hall.

30
31 (3) That the Owner, City of Banning, a municipal corporation, whose address
32 is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is the owner of
33 said Work of Improvement.

35 (4) That the said Work of Improvement was performed at the City of Banning
36 City Hall located at 99 East Ramsey St., Banning CA 92220.

37
38 (5) That the original contractor for said improvement was Spinitar, State
39 Contractor's License No. 783424.

40
41 (6) That the corporate surety on the performance and payment bonds is
42 Lincoln General Insurance Company.

43
44
45 Dated: October 14, 2008
46

47 CITY OF BANNING
48 A Municipal Corporation
49
50
51

52 By _____
53 Brian Nakamura, City Manager
54
55
56

57 APPROVED AS TO FORM:
58
59
60
61
62 _____
63 City Attorney

1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF RIVERSIDE)

4

5 MARIE A. CALDERON deposes and says:

6

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

13

14 City Clerk of the City of Banning

15

16

17

18 Subscribed and sworn to (or affirmed) before me this _____ day of _____,
19 2008, by _____, proved to me on the basis of
20 satisfactory evidence to be the person (s) whose name is subscribed to the within
21 instrument and acknowledged to me that she executed the same in her authorized
22 capacity and that by her signature on the instrument the person, or the entity upon behalf
23 of which the person acted, executed the instrument..

24

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

27

28 WITNESS my hand and official seal.

29

30

31

32

33

34

35

Notary Public in and for said County
and State

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: **October 14, 2008**

TO: **Honorable Mayor and City Council**

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

SUBJECT: **Notice of Completion for Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 East Ramsey Street"**

RECOMMENDATION: That the City Council accept Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 East Ramsey Street," as complete and direct the City Clerk to record the Notice of Completion.

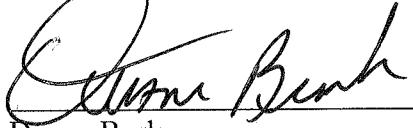
JUSTIFICATION: The contractor has completed the work as per the approved specifications.

BACKGROUND: On June 24, 2008 the Community Redevelopment Agency (CRA) and City Council adopted CRA Resolution No. 2008-11 and City Council Resolution No. 2008-80, "Awarding the Construction Contract for Project No. 2008-05, 'Removal of an Underground Storage Tank and Appurtenances at 311 East Ramsey Street,'" to West Tek, Inc. of Spring Valley, California.

The scope of work under this project included: obtaining the necessary permit for the removal of one Underground Storage Tank (UST), hoist and associated piping, from the Riverside County Department of Environmental Health; exposing three anomaly areas, including the underground storage tank, hoist and piping, during the geophysical phase, per the Phase I & II reports; exposing the underground storage tank, hoist and piping, for cleaning and inspection; excavation; triple rinse, wash, haul and dispose one UST (one 12,000 gallon tank), hoist and piping; backfilling and compacting excavation to 90% relative dry density; demolition of the concrete foundation at 311 E. Ramsey St. and adjacent property; removal and disposal of concrete debris; completion of a Tank Closure Report and submittal to the Riverside County Department of Environmental Health; removal and disposal of soil and asphalt pile from the northeast and southern portions of the property; and obtaining soil samples for laboratory analysis.

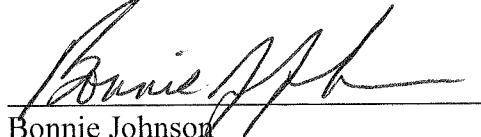
FISCAL DATA: The original contract amount for this project was \$59,680.00, with a final contract amount of \$73,034.43. Due to unforeseen conditions, two change orders were necessary amounting to \$13,354.43, which is approximately 22% of an increase from the original contract amount. Change Order No. 1 in the amount of \$5,647.58 was within the 10% construction contingency amount that was approved under CRA Resolution No. 2008-11 and City Council Resolution No. 2008-80. On September 23, 2008, Change Order No. 2 in the amount of \$7,706.85 was approved by the CRA under Resolution No. 2008-15 and by the City Council under Resolution No. 2008-109.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:



Brian Nakamura
City Manager

1 WHEN RECORDED MAIL TO:

2
3 City Clerk's Office
4 City of Banning
5 P.O. Box 998
6 Banning, California 92220
7

8 FREE RECORDING:

9 Exempt Pursuant to
10 Government Code §6103
11

13 NOTICE OF COMPLETION

14 REMOVAL OF AN UNDERGROUND STORAGE TANK AND APPURTENANCES

15 AT 311 EAST RAMSEY STREET

16 PROJECT NO. 2008-05

17
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
19 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of
20 the Civil Code of the State of California, and is hereby accepted by the OWNER, the City
21 of Banning, pursuant to authority conferred by the City Council this October 14, 2008,
22 and the grantees consent to recordation thereof by its duly authorized agent.

23
24 That the OWNER, the City of Banning, and West Tek, Inc. of Spring Valley, Calif., the
25 vendee, entered into an agreement on June 25, 2008, for the removal of an underground
26 storage tank and appurtenances. The scope of work under this project included: obtaining
27 the necessary permit for the removal of one Underground Storage Tank (UST), hoist and
28 associated piping, from the Riverside County Department of Environmental Health;
29 exposing three anomaly areas, including the underground storage tank, hoist and piping,
30 during the geophysical phase, per the Phase I & II reports; exposing the underground
31 storage tank, hoist and piping, for cleaning and inspection; excavation; triple rinse, wash,
32 haul and dispose one UST (one 12,000 gallon tank), hoist and piping; backfilling and
33 compacting excavation to 90% relative dry density; demolition of the concrete foundation
34 at 311 E. Ramsey St. and adjacent property; removal and disposal of concrete debris;
35 completion of a Tank Closure Report and submittal to the Riverside County Department

1 of Environmental Health; removal and disposal of soil and asphalt pile from the northeast
2 and southern portions of the property; and obtaining soil samples for laboratory analysis.
3 (“work of improvement”).

5 (1) That the work of improvement was completed on September 12, 2008, and
6 the Nature of Interest was to remove an underground storage tank and appurtenances.

7 (2) That the City of Banning, a municipal corporation, whose address is
8 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
9 of improvement.

10 (3) That the said work of improvement was performed at 311 East Ramsey
11 Street, Banning, California, 92220.

12 (4) That the original contractor for said improvement was West Tek, Inc.,
13 State Contractor's License No. 863268.

15 Dated: October 14, 2008

16 CITY OF BANNING
17 A Municipal Corporation

21 By _____
22 Duane Burk
23 Director of Public Works

25 APPROVED AS TO FORM:

29 Burke, Williams & Sorensen, LLP
30 City Attorney

1 STATE OF CALIFORNIA)

2) ss

3 COUNTY OF RIVERSIDE)

4

5 MARIE A. CALDERON deposes and says:

6

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

13

14 City Clerk of the City of Banning

15

16

17

18 Subscribed and sworn to (or affirmed) before me this _____ day of _____,
19 2008, by _____, proved to me on the basis of
20 satisfactory evidence to be the person (s) whose name is subscribed to the within
21 instrument and acknowledged to me that she executed the same in her authorized
22 capacity and that by her signature on the instrument the person, or the entity upon behalf
23 of which the person acted, executed the instrument..

24

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

27

28 WITNESS my hand and official seal.

29

30

31

32

33

34

35

Notary Public in and for said County
and State

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: **October 14, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Kahono Oei, City Engineer** 

SUBJECT: **Accept the Right-of-Way dedication from HDA Mortgage Fund, LLC for Street Improvements at Assessor's Parcel Number 541-054-007**

RECOMMENDATION: Accept the Right-of-Way dedication from HDA Mortgage Fund, LLC for Street Improvements at Assessor's Parcel Number 541-054-007, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

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

BACKGROUND: The property owner has submitted an application to build a new single family dwelling at Assessor's Parcel Number 541-054-007, also known as 1333 E. George Street. As part of the Conditions of Approval, the owner is required to dedicate the necessary right-of-way fronting his property in order to be able to build the street improvements at the proper location, per the City's General Plan

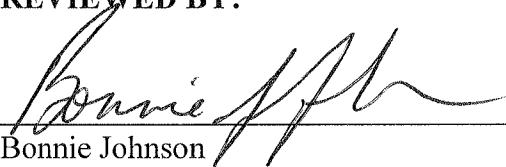
FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

EXEMPT RECORDING REQUESTED BY City of Banning PER GOV'T CODE 6103 AND WHEN RECORDED MAIL TO:	
City of Banning – City Clerk P.O. Box 998 Banning, CA 92220	
MAIL TAX STATEMENTS TO:	
City of Banning – City Clerk P.O. Box 998 Banning, CA 92220	

OFFER OF DEDICATION – ROAD PURPOSES

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

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

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

IN WITNESS THEREOF, these presents have executed this instrument this 26th day of July,
2008.

HDA MORTGAGE FUND, LLC

Corporation (Type Name)

David A. Mills

Signature

DAVID A. MILLS - MANAGING MEMBER

Name and Title (Type)

Corporation (Type Name)

Signature

Name and Title (Type)

See acknowledgements attached to this document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

On July 26th, 2008 before me, Frank Apostol, Notary Public
(Here insert name and title of the officer)

personally appeared David A. Mills,

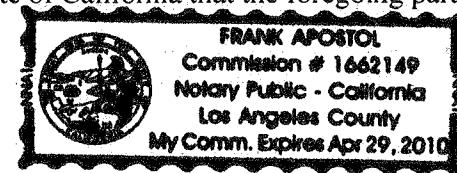
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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

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

WITNESS my hand and official seal.



Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

DESCRIPTION OF THE ATTACHED DOCUMENT

OFFER OF DEDICATION - ROAD PURPOSES

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 3 Document Date July 26, 2008

EXHIBIT B MAP

EXHIBIT A (AT&T) JULY 22, 2008

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer

(Title)

- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they, is/are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

EXHIBIT "A" - PARCEL "A"
RIGHT OF WAY DEDICATION

LEGAL DESCRIPTION :

THAT PORTION OF LOT 11 OF THE BROCK SUBDIVISION , IN THE CITY OF BANNING COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15 OF MAPS, PAGE 75, RECORDS OF SAID COUNTY, THAT PORTION OF SAID LOT 11 BEING DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 11 OF THE BROCK SUBDIVISION M.B. 15/75 THENCE S 89° 44' 44" E, ALONG THE NORTHERLY LINE OF GEORGE STREET A DISTANCE OF 70.38 FEET, TO THE WESTERLY LINE OF ALLEN STREET.

THENCE N 00° 02' 30" W, ALONG THE WESTERLY LINE OF ALLEN STREET, A DISTANCE OF 72.00 FEET. THENCE N 89° 44' 44" W, ALONG THE NORTHERLY LINE OF INSTRUMENT No. 0125616 RECORDED MARCH, 2008, A DISTANCE OF 5.00 FEET.

THENCE S 00° 02' 30" E, AND PARALLEL WITH THE WESTERLY LINE OF ALLEN STREET, A DISTANCE OF 44.55 FEET

THENCE S 44° 01' 05" W , A DISTANCE OF 31.08 FEET

THENCE N 89° 44' 44" W , AND PARALLEL WITH THE NORTHERLY LINE OF GEORGE STREET, A DISTANCE OF 43.77 FEET TO, THE WESTERLY LINE OF LOT 11 OF SAID BROCK SUBDIVISION.

THENCE S 00° 03' 01" E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING

PARCEL "A" CONTAINS 929.5 SQ. FT (0.02 ACRES)

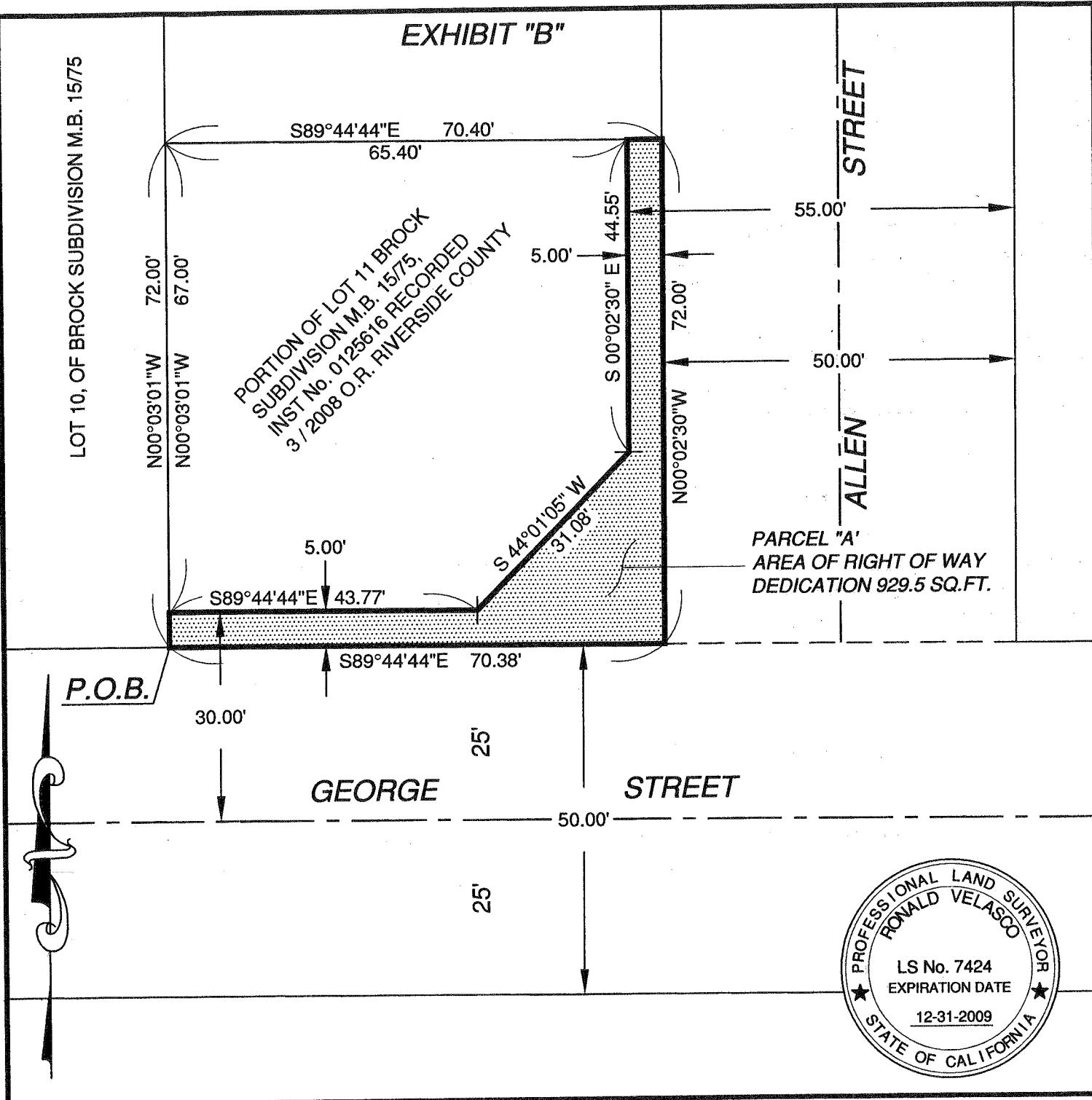
EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.


RONALD VELASCO LS 7424

JULY 22, 2008
DATE



EXHIBIT "B"

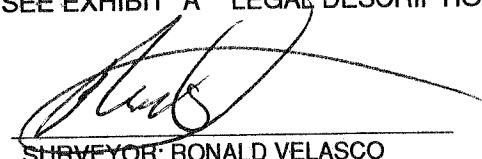


CITY OF BANNING
DEPARTMENT OF PUBLIC WORKS ENGINEERING DIVISION

RIGHT OF WAY DEDICATION

EXHIBIT PREPARED BY: AMIR ENGINEERING
ADDRESS: 160 LURING STREET
PALM SPRINGS, CALIF, 92262
PHONE NUMBER: 760-318-7424

LEGAL DESCRIPTION
SEE EXHIBIT "A" LEGAL DESCRIPTIONS


L.S. 7424
EXP 12/31/2009

SURVEYOR: RONALD VELASCO

CHECKED BY	SCALE 1"=20'	FILE No.
	SHEET No. 1 OF 1	DWG No. 080011.dwg

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: **October 14, 2008**

TO: **Honorable Mayor and City Council**

FROM: **Kahono Oei, City Engineer** 

SUBJECT: **Accept the Right-of-Way dedication from the Community Redevelopment Agency of the City of Banning for Street Improvements at Assessor's Parcel Number 541-146-003, 541-150-023, and 541-150-024**

RECOMMENDATION: Accept the Right-of-Way dedication from the Community Redevelopment Agency of the City of Banning for Street Improvements at Assessor's Parcel Number 541-146-003, 541-150-023, and 541-150-024, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

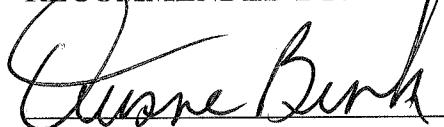
JUSTIFICATION: It is essential to obtain the right-of-way in order to construct the street improvements at the ultimate location and meet the proposed right-of-way width requirement set forth by the adopted Circulation Element.

BACKGROUND: At its regular meeting held on December 11, 2007 the Community Redevelopment Agency (CRA) of the City of Banning approved CRA Resolution No. 2007-25 for the purchase and sale agreement with joint escrow instructions for the purchase of APNs 541-146-003, 541-150-023, and 541-150-024.

In order to meet the requirements of the adopted Circulation Element, it is necessary for the City of Banning to obtain the right-of-way from the above mentioned parcels in order to construct future street improvements at a location meeting the City General Plan.

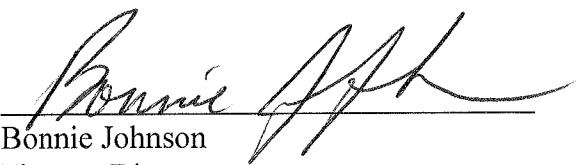
FISCAL DATA: Not applicable.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

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

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

MAIL TAX STATEMENTS
TO:

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

OFFER OF DEDICATION – ROAD PURPOSES

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

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

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

IN WITNESS THEREOF, these presents have executed this 7th day of OCTOBER,
2008.

Community Redevelopment Agency of the City of Banning

Corporation



Signature

Brian Nakamura, Executive Director

Community Redevelopment Agency of the City of Banning

Name and Title

See acknowledgements attached to this document.

ACKNOWLEDGMENT

State of California
County of RIVERSIDE)

On OCTOBER 07, 2008 before me, DANIELE S. SAVARD, NOTARY PUBLIC
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature



(Seal)

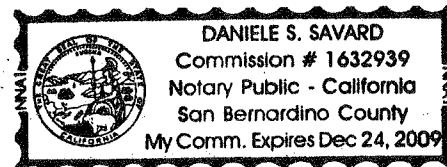


EXHIBIT "A"

LEGAL DESCRIPTION (RIGHT OF WAY DEDICATION) Portion APN: 541-146-003, 541-150-023, 024

THOSE PORTIONS OF LOTS 1 AND 6 IN BLOCK 5 OF AMENDED MAP OF BANNING LAND COMPANY, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 44 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AND PORTIONS OF LOT 167 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA AND A COPY THEREOF ON FILE IN BOOK 5 PAGE 186 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 1

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF RAMSEY STREET (30.00 FEET NORTH OF CENTERLINE) AND THE EAST RIGHT OF WAY LINE OF MARTIN STREET (30.00 FEET EAST OF CENTERLINE), (P.O.B. 1); THENCE SOUTH 89°57'45" EAST, ALONG SAID NORTH RIGHT OF WAY LINE OF RAMSEY STREET, A DISTANCE OF 499.20 FEET; THENCE NORTH 00°32'43" WEST, A DISTANCE OF 10.00 FEET; THENCE NORTH 89°57'45" WEST, PARALLEL WITH SAID NORTH RIGHT OF WAY LINE OF RAMSEY STREET, A DISTANCE OF 484.37 FEET; THENCE NORTH 41°38'28" WEST A DISTANCE OF 22.56 FEET TO THE EAST RIGHT OF WAY LINE OF MARTIN STREET; THENCE SOUTH 00°32'43" EAST, ALONG SAID EAST RIGHT OF WAY LINE OF MARTIN STREET, A DISTANCE OF 26.85 FEET TO THE POINT OF BEGINNING.

AREA OF DEDICATION IS 5,117 SQUARE FEET, MORE OR LESS.

PARCEL 2

BEGINNING AT THE INTERSECTION OF THE SOUTH RIGHT OF WAY LINE OF WILLIAMS STREET (25.00 FEET SOUTH OF CENTERLINE) AND THE EAST RIGHT OF WAY LINE OF MARTIN STREET (30.00 FEET EAST OF CENTERLINE), (P.O.B. 2); THENCE SOUTH 89°51'25" EAST ALONG SAID SOUTH RIGHT OF WAY LINE OF WILLIAMS STREET, A DISTANCE OF 329.21 FEET; THENCE SOUTH 00°32'43" EAST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 89°51'25" EAST, PARALLEL WITH THE CENTERLINE OF SAID WILLIAMS STREET, A DISTANCE OF 335.76 FEET; THENCE SOUTH 00°11'04" EAST, A DISTANCE OF 3.00 FEET; THENCE NORTH 89°51'25" WEST PARALLEL WITH SAID CENTERLINE OF WILLIAMS STREET, A DISTANCE OF 649.80 FEET; THENCE SOUTH 51°03'51" WEST, A DISTANCE OF 19.32 FEET TO THE EAST RIGHT OF WAY LINE OF MARTIN STREET. THENCE NORTH 00°32'43" WEST ALONG SAID EAST RIGHT OF WAY LINE MARTIN STREET, A DISTANCE OF 20.18 FEET TO THE POINT OF BEGINNING.

AREA OF DEDICATION IS 3,733 SQUARE FEET, MORE OR LESS

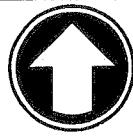
Prepared under my supervision:

Henry C. Poguiz
L.S. 6048

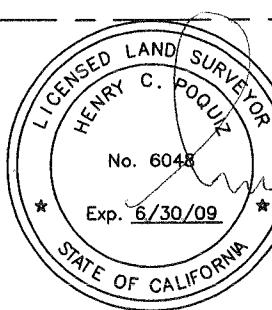
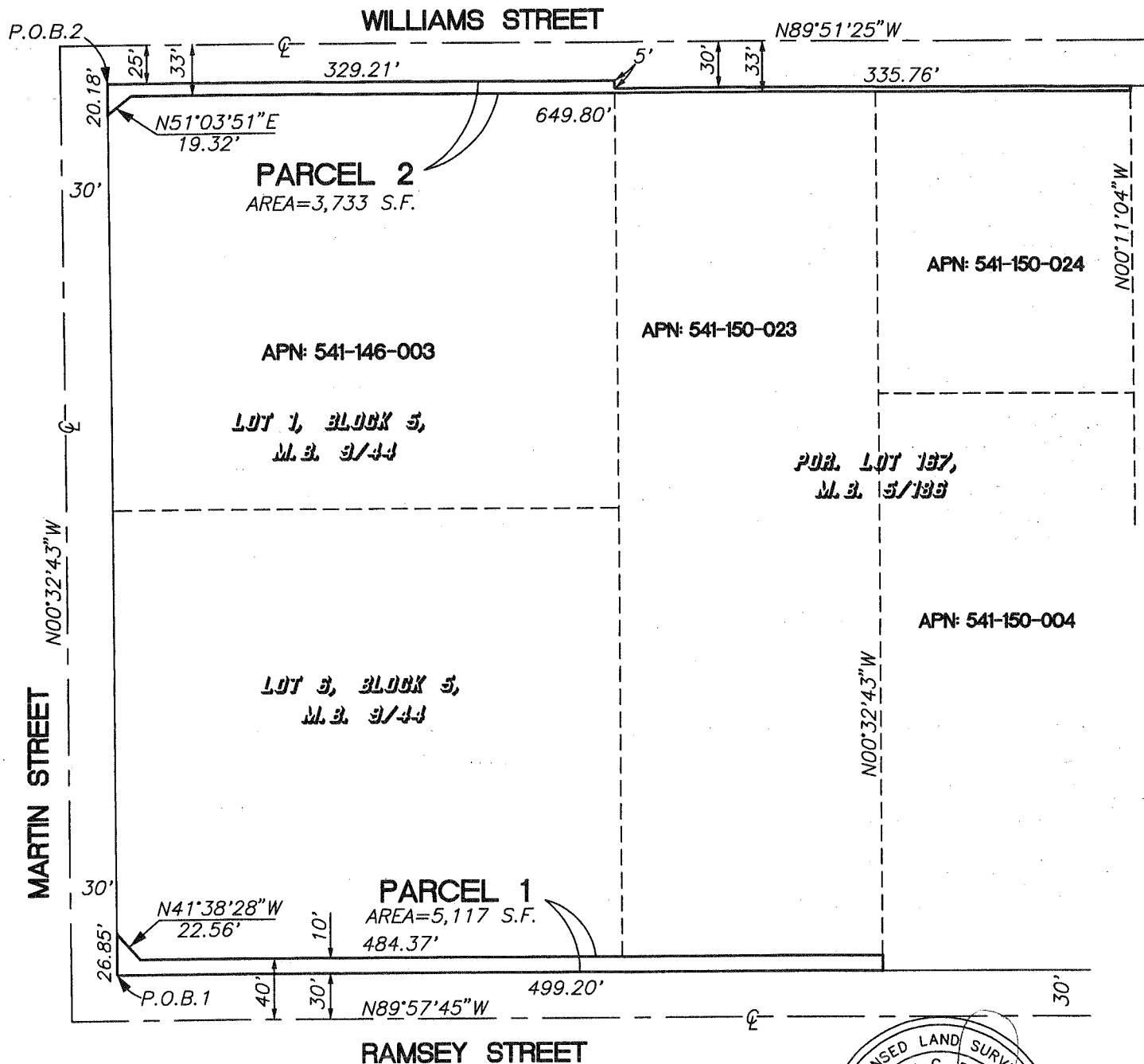
9/25/08



EXHIBIT "B"



SCALE: 1"=100'



9/25/08

CITY OF BANNING, CALIFORNIA DEED PLAT RAMSEY STREET, MARTIN STREET WILLIAMS STREET	DRAWN BY: HCP CHECKED BY: A.V. APPROVED BY: K.O. DATE: SEPTEMBER 11, 2008	
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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

TO: **City Council**

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

SUBJECT: **Amending the Existing Agreement for Consultant Services with Metcalf & Eddy, Inc. to Provide Additional Work for the Design and Construction Management of the Brinton Reservoir.**

RECOMMENDATION: The City Council approves amending the existing Agreement for Consultant Services with Metcalf & Eddy, Inc. to provide additional work for the Design and Construction Management of the Brinton Reservoir in the amount “Not to Exceed” of \$298,635.55.

JUSTIFICATION: Additional work for the Design and Construction of the Water Reservoir is essential to complete the construction of the project correctly and in a timely manner.

BACKGROUND: The City Council approved a Consultant Services Agreement for Project No. 2001-02 “Design and Construction Management for the 8 Million Gallon Water Reservoir” with Metcalf & Eddy, Inc. at the October 25, 2006, City Council Meeting in the amount of \$896,900.00. Amendment No. 1 was signed on November 13, 2007, in the amount of \$30,000.00 for the “Habitat Evaluation of the Burrowing Owl at the Brinton Reservoir Site.”

The additional *Scope of Work* included in this Amendment No. 2 is to provide the following: Additional Per-Bid Walk on July 16, 2008; Additional Printing During Bidding (Total of 90 Sets of Plans and Specifications); Additional Services During Design (Segmental Retaining Wall, Shoring, Pavement); Permitting the Overflow/Drain in Montgomery Creek; Permitting 401 and 404d for the Overflow/Drain Line in the Creek Bed; EA Survey of the Site Prior to Construction; Archaeology Work on Brinton Road; Additional Soils and Materials Testing; and Additional CMS During Construction (2 Months)

Construction of the Brinton Reservoir is now under way and completion is set for February 6, 2010.

Amendment No. 2 is in the amount of not to exceed of \$298,635.55 and the new contract amount will now be a total of \$1,225,535.55.

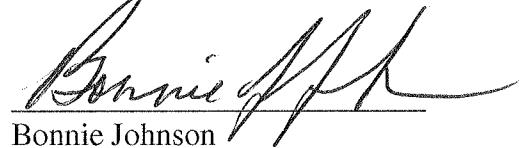
FISCAL DATA: The funds for this Amendment No. 2 shall be utilized from the FY 08-09 BUA Water Capital Project Fund, Account No. 683-6300-471.9509 Reservoirs.

RECOMMENDED BY:



James D. Earhart
Director of Public Utilities

REVIEWED BY:



Bonnie Johnson
Finance Director/
Assistant City Manager

APPROVED BY:



Brian Nakamura
City Manager

SECOND AMENDMENT TO AGREEMENT FOR CONSULTANT SERVICES
BETWEEN THE CITY OF BANNING
AND
METCALF & EDDY, INC.

ARTICLE 1. PARTIES AND DATE

1.1 This Second Amendment to the Agreement for Consultant Services ("First Amendment") dated as of the 14TH day of October, 2008 is entered into by and between the City of Banning ("City") and Metcalf & Eddy, Inc., a California Corporation ("Consultant").

ARTICLE 2. RECITALS

2.1 City and Metcalf & Eddy entered into that certain Agreement for Consultant Services dated 25th day of October, 2006 ("Agreement") and Amendment No. 1 signed on November 13, 2007, whereby Metcalf & Eddy agreed to provide engineering design and construction management services for the construction of an 8 Million Gallon Reservoir.

2.2 City and Metcalf & Eddy now desire to amend the Agreement plus Amendment No. 1 to include additional compensation of Not to Exceed \$298,635.55.00 to the original Contract Amount and revises the Scope of Services. The original Scope of Work and tasks are modified and revised to include the following: Additional Per-Bid Walk on July 16, 2008; Additional Printing During Bidding (Total of 90 Sets of Plans and Specifications); Additional Services During Design (Segmental Retaining Wall, Shoring, Pavement); Permitting the Overflow/Drain in Montgomery Creek; Permitting 401 and 404d for the Overflow/Drain Line in the Creek Bed; EA Survey of the Site Prior to Construction; Archaeology Work on Brinton Road; Additional Soils and Materials Testing; and Additional CMS During Construction (2 Months). The attachments: "Additional Services to Support the Design and Construction Management of the Brinton Reservoir- Past &

Future Work" for this Amendment No. 2 describe the revisions more clearly and are added to the existing Scope of Services.

ARTICLE 3. TERMS

3.1 Contract Amount: Original Amount and Amendment No. 1 of \$926,900.00 plus \$298,635.55.00 Amendment No. 2 equals a Total Contract Amount of \$1,225,535.55.00.

3.2 Continuing Effect of Agreement. Except as amended by this Second Amendment, all provisions of the Agreement and Amendment No. 1 shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement plus Amendment No. 1 as amended by this Second Amendment to the Consultant Services Agreement.

3.3 Affirmation of Agreement; Warranty Re Absence of Defaults. City and Metcalf & Eddy each ratify and reaffirm each and every one of their respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Metcalf & Eddy represents and warrants to City that, as of the date of this Second Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Metcalf & Eddy that, as of the date of this Second Amendment, Metcalf & Eddy is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

3.4 Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

3.5 Counterparts. This Second Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

CITY OF BANNING

CONSULTANT: Metcalf & Eddy, Inc.

By: _____
Brian Nakamura, City Manager

By: _____
(Authorized Officer)

Title: _____

Print Name

By: _____
(Authorized Officer)

Title: _____

Print Name

APPROVED AS TO FORM:

Burke, Williams & Sorensen, LLP
City Attorney

Metcalf & Eddy, Inc.
 300 South Grand Avenue, 2nd Floor
 Los Angeles, California 90071
 T 213.330.7305 F 213.330.7308 www.m-e.aecom.com

October 2, 2008

City of Banning

Attention: George Thacker
 RE: Additional Services to Support the Design and Construction Management of Brinton Reservoir – Past Work

Dear Mr. Thacker:

Per our conversations with you regarding the Banning Brinton Reservoir, additional work has been requested of us beyond the scope of our original agreement. The costs associated with each of these items is shown in the attached spreadsheet. The scope of work for these items is as follows:

1. Additional Printing During Bidding

We included 60 sets of plans and specifications with our base proposal. Due to the unusually high demand and number of plans requested by the City, we printed a total of 85 (1/2) size sets, 15 (full-size) and 90 sets of Specifications. To meet the schedule of the City we were not able to use our in-house printing company and outsourced the additional prints to a printer that could meet the Cities schedule. Additionally, additional staff time was required to oversee and deliver these prints. This resulted in incurring additional costs beyond what was originally anticipated, and request that the City reimburse M&E for these costs.

2. Additional Pre-Bid Walk on July 16, 2008

We did not anticipate two pre-bid meetings in our original proposal and this is somewhat unusual for construction. The first meeting held on June 25, 2008 was covered in original proposal. Due to the high number of bidders, and the possibility of not receiving a good bid from a qualified bidder who did not receive the appropriate notice as published by the City of Banning, a second pre-bid walk was requested by the City and arranged and performed by M&E. The costs associated with the additional second meeting July 16, 2008 are outlined in the attached spreadsheet.

3. Additional Services During Design (Segmental Retaining Wall, Shoring, Pavement)

It was not anticipated at the time of the proposal, that we would be covering the design of the segmental retaining wall or the shoring. In order to keep costs down, we allowed the Contractor the option of designing the shoring as a deviation from what was shown on the plans, and also showed schematically what was required for the design of the segmental retaining walls. Additionally, we did not plan on paving the access road from Mountain Avenue nor the access road on the top of the reservoir. The City made this request of M&E in the final stages of design, and we revised our plans to accommodate this. As a result we request that the City recognize this out-of-scope work and reimburse M&E for these costs.

George Thacker
Additional Past Work
October 2, 2008

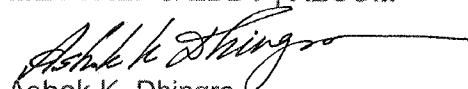
Page 2 of 2

Each of the above items is based on a finite number of hours, fees, and/or tests to be performed for the work. Should fees be required beyond what we have anticipated, we will request further adjustments to our contract. We have included a spreadsheet Amendment Fee Proposal for Banning Brinton Reservoir Services for your review which outlines the hours and fees associated with each of the above tasks. Additionally, we have included our proposals with our subconsultant Ninyo and Moore which outlines their commitment to the environmental and materials testing including number of tests and manhours associated with these elements as well.

We would like to meet with you to finalize this change order, and request that this be expedited with the City of Banning as soon as possible. Since we have already begun some of the work in good faith, should this change order be disapproved for any reason, we will simply reduce our original scope of work accordingly to stay within our contractual budget.

Please contact me on my cell at 909-224-3160, should you have any questions regarding this matter.

Sincerely,
METCALF & EDDY | AECOM


Ashok K. Dhingra
Metcalf & Eddy | AECOM Project Director
Senior Vice President
Ashok.Dhingra@m-e.aecom.com

cc: File



Amendment No. 3 Fee Proposal for Banning Brinton Reservoir Design and Construction Management Services

METCALF & EDDY AECOM

Metcalf & Eddy, Inc.
 300 South Grand Avenue, 2nd Floor
 Los Angeles, California 90071
 T 213.330.7305 F 213.330.7308 www.m-e.aecom.com

October 2, 2008

City of Banning

Attention: George Thacker
 RE: Additional Services to Support the Design and Construction Management of Brinton Reservoir – Future Work

Dear Mr. Thacker:

Per our conversations with you regarding the Banning Brinton Reservoir, additional work has been requested of us beyond the scope of our original agreement. The costs associated with each of these items is shown in the attached spreadsheet. The scope of work for these items is as follows:

1. Permitting the Overflow/Drain Line in Montgomery Creek (excluding 401/404)

Additional permitting is required in order to construct the discharge piping into Montgomery Creek. A delineation will be needed to confirm the presence or absence of jurisdictional waters. Since the bank of drainage feature is altered, then a Stream Alteration Agreement (SAA) is required. If the outfall is not placed in waters of the U.S., then a Report of Waste Discharge (ROWD) for issuance of a Waste Discharge Requirement (WDR) from the RWQCB will be needed. The operation and maintenance of the outfall would likely fall under the Riverside NPDES/Municipal Stormwater Program that Banning is currently a member Agency of. The attached cost does is based upon the project being at nationwide status, the tie-in not disturbing more than one half acre, no additional mitigation plans being required, not falling under the provisions of a 401 or 404 permit, and the City of Banning paying all permit fees.

2. Permitting 401 and 404d for the Overflow/Drain Line in the Creek Bed

After the delineation is performed, if there are waters of the U.S. then we would need to confirm that the outfall is not placed in them. If the outfall is placed in waters of the U.S. (below ordinary high water mark...or in wetlands) then a 404 and 401 permit is needed for construction. We will need SHPO compliance for issuance of 404 (archaeological records search). To perform the associated work with obtaining the 401 and 404 permits we have attached the costs, in addition to the costs in Item No. 1.

3. EA Survey of Site Prior to Construction

During the course of the preparation of the environmental documents to secure the final environmental permits and EPA funding, a request was made for a survey of the owls. Subsequent to the owl survey which was performed in design, an additional survey was requested to be performed prior to the start of construction along with a short report of actual findings. It should be noted, that it is not anticipated that Owls will be found on the site, as much of their natural habitat has been destroyed by the recent fire. As a result we will send out a qualified biologist to perform this work prior to October 16, 2008 when the Contractor is expected to begin excavations.

4. Archaeology Work on Brinton Avenue

As a requirement of the Mitigated Negative Declaration prepared by MWH in October 2004, in Section 2.3.5, b, C-1 it states that "A trained archaeologist shall be present during excavations on Brinton Road in order to ensure that any cultural resources that are present are not inadvertently destroyed in the course of trenching". Therefore it will be necessary to have a trained archaeologist present during the excavation of the pipeline along Brinton Avenue. We have assumed based on the Contractor's preliminary schedule a duration of 21 days, possibly non-consecutive (only excavations are required to be observed, not placement of the pipeline nor backfilling of the trenches) and an 8 hour day with other direct costs.

5. Additional Soils and Concrete Testing

The City of Banning recently requested that M&E contract with a soils and concrete testing firm for the to ensure that the construction meets the requirements of the Contract Documents. However, at the time when Metcalf and Eddy submitted its proposal we included \$45,814.00 for soils testing and concrete materials testing. Now that the design is complete and contractor selected, we have been able to coordinate the full needs of testing with the contractor's schedule and the changes in project since our proposal. Unfortunately, the scope of the work is greater than we had originally planned, in part due to the placement of this large reservoir on the reservoir on the tight site. Originally it was planned that the reservoir could be set within the site with little or no shoring and retaining walls. While these did add additional costs to the design, the contractor's construction bids came in at a very reasonable rate. However, this does create additional work for M&E due to the additional testing that will be required to ensure that this structure is built in accordance with the plans and specifications. We are therefore requesting additional funding to cover this shortage beyond what we originally included within our proposal. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

6. Masonry Testing

The original proposal did not include any masonry walls in the design. The final design has masonry walls that was not anticipated at the time of our proposal. We have discussed the testing requirements with the testing lab and have determined the costs for the new scope of work. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

7. Soil Cement Testing

Due to the layout and footprint of the reservoir it was necessary to stabilize the fill underneath the southwest corner of the reservoir with soil cement. We did not foresee the need for soils cement in our original proposal, and this only became evident after the survey and civil work was done during design. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

8. Shoring Testing

The original proposal was based on a buried reservoir up next to the slope of the hill to the North. After the final footprint was chosen to maximize the storage volume to 8 MG, it became necessary to install both permanent and temporary shoring. Additional testing services of the shoring elements will be necessary from our materials testing lab. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

9. Segmental Retaining Wall Testing

The original proposal did not anticipate the need for segmental retaining walls. After the final footprint was chosen to maximize the storage volume to 8 MG, it became necessary to install both permanent and temporary shoring. These walls were chosen due to their highly aesthetic appearance which the City desires. Additional testing services of the shoring elements will be necessary from our materials testing lab. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

10. Pavement Section Testing

The original proposal and design did not include asphalt paving around the reservoir or on the existing dirt road from Mountain Avenue to the reservoir itself. Based upon the completed design and addition of asphalt paving we have included pricing for pavement observation testing. We are requesting that the City recognize this deviation from our original scope, and cover these additional materials testing fees.

11. Additional CMS During Construction (2 Months)

During the first Pre-Bid Meeting, it was requested by multiple bidders that the City change the original 14 month construction duration to a total of 16 months of construction. We included the original 14 month duration in our original proposal. We request the additional 2 months of Construction Management Services to cover the costs of this extension.

12. Project Escalation 2009 for Overtime Work

This is project escalation for the manhours that we believe to be taking place past December 31, 2008 associated with the above increases in Scope-of-Work.

Each of the above items is based on a finite number of hours, fees, and/or tests to be performed for the work. Should fees be required beyond what we have anticipated, we will request further adjustments to our contract. We have included a spreadsheet Amendment Fee Proposal for Banning Brinton Reservoir Services for your review which outlines the hours and fees associated with each of the above tasks. Additionally, we have included our proposals with our subconsultant Ninyo and Moore which outlines their commitment to the environmental and materials testing including number of tests and manhours associated with these elements as well.

We would like to meet with you to finalize this change order, and request that this be expedited with the City of Banning as soon as possible. Since we have already begun some of the work in good faith, should this change order be disapproved for any reason, we will simply reduce our original scope of work accordingly to stay within our contractual budget.

Please contact me on my cell at 909-224-3160, should you have any questions regarding this matter.

Sincerely,
METCALF & EDDY | AECOM


Ashok K. Dhingra
Metcalf & Eddy | AECOM Project Director
Senior Vice President
Ashok.Dhingra@m-e.aecom.com

cc: File



Amendment No. 3 Fee Proposal for Banning Brinton Reservoir Design and Construction Management Services

METCALF & EDDY | AECOM

20	108	388	0	0	40	60	616	\$ 127,783.50	\$ 6,776.00	\$ 244,866.40
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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

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

FROM: **Bonnie Johnson, Finance Director**

SUBJECT: **Interagency Service Agreement Between the City of Banning and the
Riverside Transit Agency**

RECOMMENDATION:

That the City Council adopt the Interagency Service Agreement Between the City of Banning and the Riverside Transit Agency.

JUSTIFICATION:

Adoption of this agreement not only supports cooperative transit services in the pass area, it also updates an agreement with the Riverside Transit Agency (RTA) that has been in existence since 1992.

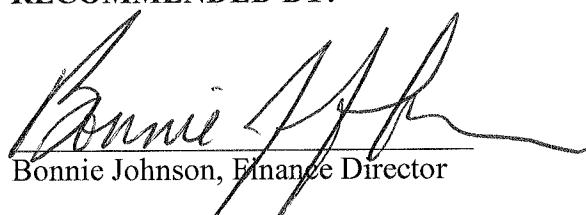
BACKGROUND/ANALYSIS:

The main focus of both the existing agreement and the proposed Interagency Service Agreement Between the City of Banning and RTA is to allow for transfers between our system and RTA's system. This agreement further streamlines the process by only accepting passes for such transfers. As of January of 2009, the cities of Banning and Beaumont, collectively Pass Transit, are planning on introducing daily and monthly passes to its passenger. The new transfer policy will coincide with the introduction of passes and therefore will not impact the ridership of Pass Transit.

FISCAL DATA:

None. No change as to how transactions are currently handled. Each party retains all fares collected in the operation of their respective services.

RECOMMENDED BY:



Bonnie Johnson, Finance Director

APPROVED BY:



Brian Nakamura, City Manager

**INTERAGENCY SERVICE AGREEMENT BETWEEN
THE CITY OF BANNING
AND
THE RIVERSIDE TRANSIT AGENCY**

THIS AGREEMENT is made and entered into this 14th day of October 2008 by and between the City of Banning, 99 E. Ramsey St., Banning, CA 92220 (hereinafter referred to as "CITY"); and the Riverside Transit Agency, a public agency formed under a Joint Powers Agreement, 1825 Third Street, Riverside, California 92507 (hereinafter referred to as "AGENCY").

RECITALS:

WHEREAS, CITY and AGENCY are empowered by law to provide the general public with convenient, safe and accessible transportation within their respective jurisdictions; and

WHEREAS, CITY and AGENCY desire to cooperate and coordinate in route planning, scheduling, stops, transfers, fares and information dissemination; and

WHEREAS, both parties agree that this Agreement shall be non-financial in nature;

WHEREAS, this agreement shall supersede any and all previous service agreements;

NOW, THEREFORE, it is mutually understood and agreed by CITY and AGENCY as follows:

ARTICLE 1. PUBLIC INFORMATION

CITY and AGENCY agree to cooperate in providing the public with specific transit information, advertising the operations of both agencies and promoting the general use of transit.

ARTICLE 2. STOPS

- A. CITY and AGENCY agree to cooperate in the location, installation and maintenance of all jointly used bus stops, including use of the other's poles and posts at joint transfer points.
- B. Each party shall be solely responsible for claims for damages arising out of its installation of its bus stop signs or passenger amenities.
- C. Each party agrees to the establishment of stops in the other's service area, subject to approval of each specific stop.
- D. Each party may negotiate with the other party regarding boarding restrictions within its respective service area where duplication of service or potential revenue loss may occur.
- E. Each party shall be responsible for obtaining any required licenses or permits and paying any necessary fees in order to establish bus stops, install amenities or operate service in either service area.

ARTICLE 3. FARES

Fares may vary in accordance with adopted policies of each party. Each party shall retain all fares collected in the operation of their service.

ARTICLE 4. TRANSFER CONNECTIONS

CITY and AGENCY agree to facilitate minimization of passenger waiting time, and both parties shall coordinate schedules whenever practical.

ARTICLE 5. TRANSFERS

- A. CITY shall accept AGENCY'S fare media valued at AGENCY'S base fare for that service toward CITY'S fixed route service at common transfer points. Passenger must pay any equalizing fare, if required. In the event that AGENCY'S base fare is valued at more than CITY'S base fare, no change or credit will be due the passenger.
- B. AGENCY shall accept CITY'S fare media valued at CITY'S base fare for that service toward AGENCY'S regular fixed route service at common transfer points. Passenger must pay any equalizing fare, if required. In the event that CITY'S base fare is valued at more

than AGENCY'S base fare, no change or credit will be due the passenger.

C. Fare media from CITY shall not be valid on AGENCY'S CommuterLink or Dial-A-Ride service.

D. Fare media from AGENCY shall not be valid on CITY'S Dial-A-Ride or any premium CITY service.

ARTICLE 6. OPERATIONAL INFORMATION

Each party shall notify the other agency of future plans for route and schedule changes, exclusive of temporary demand and emergency situations, no later than 30 days before the changes are scheduled to be implemented.

ARTICLE 7. CONTROL AND RESPONSIBILITY

A. Each party to this Agreement, in its operations pursuant hereto, is acting as an independent contractor and agrees to indemnify and hold the other party, including its officers, directors, employees, agents, subcontractors and suppliers, harmless from and against all claims, losses, damages and expenses, including attorney's fees, on account of bodily injury to or death of any person, or for property damage arising out of the performance of services described in this Agreement, unless caused by the negligence of the other party.

B. Each party to this agreement shall indemnify, defend and hold harmless the other party, including its officers, directors, employees, agents, subcontractors and suppliers, from and against any and all liability or expense including any claim of liability and any and all losses or costs, including legal expenses and costs of expert witnesses and consultants, that may be imposed by the other party solely by virtue of the provisions of Section 895.2 of the California Government Code.

ARTICLE 8. SERVICE TO BE OPERATED

Each party may operate non-duplicating services in the other's jurisdiction with the written approval of the other agency. Every attempt shall be made to coordinate alignments, schedules, stops, fare policies, and route planning for the safety and convenience of the general public.

ARTICLE 9, COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)

Each party shall be solely responsible for complying with the Americans with Disabilities Act of 1991 (ADA) as amended, including the provision of parallel ADA demand response service along each party's fixed routes operated in the other party's service area.

ARTICLE 10, NO MONETARY CLAIMS

Neither party shall have any claims against or liabilities to the other party on account of expenses incurred or revenues received or lost as a result of this Agreement except as otherwise provided.

ARTICLE 11. TERMS OF THE AGREEMENT

This Agreement shall be effective on the date of full execution and will remain in effect until terminated by either party by giving 60 days written notice to the other party.

ARTICLE 12. NOTIFICATION AND MAILING ADDRESSES

Any requests and demands made between the parties pursuant to this Agreement are to be directed as follows:

AGENCY:	CITY:
Riverside Transit Agency	City of Banning
1825 Third Street	99 E. Ramsey Ave.
Riverside, CA 92507	Banning, CA 92220
Attn: Vince Rouzaud	Attn: Transit Manager
Chief Procurement & Logistics Officer	
(951) 565-5180	(951) 922-3244

Any notices of service and schedule changes are to be directed as follows:

AGENCY:	CITY:
Riverside Transit Agency	City of Banning
1825 Third Street	99 E. Ramsey St.

Riverside, CA 92507
Attn: Mark Stanley
Director of Planning
(951) 565-5130

Banning, CA 92220
Attn: Transit Manager
(951) 922-3244

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

RIVERSIDE TRANSIT AGENCY

CITY

By _____
Larry Rubio
Chief Executive Officer

By _____
Brian Nakamura
City Manager

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
Kennard R. Smart, Jr.
General Counsel

By _____
City Attorney
for the City of Banning

**CITY COUNCIL AGENDA
CONSENT CALENDAR**

Date: October 14, 2008

TO: Honorable Mayor and City Council Members

FROM: Brian Nakamura, City Manager

SUBJECT: Awarding a Contract to Burke, Williams and Sorensen for Special Counsel Services to the City of Banning

RECOMMENDATION:

“That the City Council award a contract to Burke, Williams & Sorenson to provide Special Counsel services to the City of Banning.”

JUSTIFICATION:

The City Council directed the City Manager to solicit proposals from qualified firms.

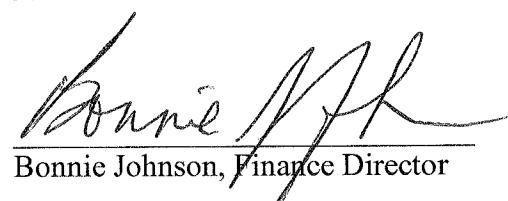
BACKGROUND/ANALYSIS:

At the direction of the City Council, the City Manager solicited proposals from various qualified law firms interested in performing City Attorney services to the City of Banning. The firm of Burke, Williams and Sorenson has served as the City Attorney or Interim City Attorney since July 2004. With the change in firms comes a process of transition. In addition, there are other certain projects in progress particularly in the area of property acquisition and water and utility issues that would be difficult to transition to a new firm at this point. This agreement is solely for the purpose of finishing those certain outstanding issues, as well as transitioning all other information, projects and issues to the newly selected law firm. The City Manager will be monitoring the agreement to ensure an efficient and smooth transition.

FISCAL DATA:

None. The existing 2008-09 budget includes an appropriation for City Attorney services. Staff expects to be able to work within the existing budget.

PREPARED BY:

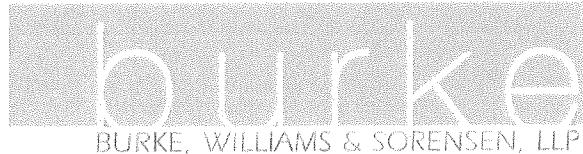


Bonnie Johnson, Finance Director

APPROVED BY:



Brian Nakamura, City Manager



Our File No:
F0002-0001
jbiggs@bwslaw.com

October 6, 2008

VIA FACSIMILE & REGULAR MAIL

Brian Nakamura, City Manager
City of Banning
99 E. Ramsey Street
Banning, CA 92220

Re: Legal Representation - Engagement Agreement

Dear Mr. Nakamura:

Thank you so much for giving our firm the opportunity to act as special legal counsel to the City ("City") with regard to matters that are currently underway during the transition of the City to new legal counsel. Burke, Williams & Sorensen (the "Firm") is pleased to provide any necessary legal services whenever called upon to do so by you on the following terms and conditions.

SCOPE OF SERVICES

The Firm shall perform such legal services as may be necessary to serve the City with regard to active matters in which we have represented the City as necessary to effect a positive transition to new legal counsel. Such matters include work related to certain pending litigation, property acquisition issues, water and utility concerns and such other matters as may be directed by the City Council or the City Manager.

ATTORNEYS

Julie Hayward Biggs will be the primary attorney coordinating legal services for the City in matters that are referred to the Firm. She will be assisted directly by Mr. Eric Vail and Mr. Tom Jex in this effort. All members of the Firm, however, will be available on an as needed basis to assist in matters related to the City.

COMPENSATION

General legal services provided by partners of the firm shall be compensated at the rate of \$325 per hour. The work of all associates of the firm working on matters for the City shall be compensated at the rate of \$225. Paralegals shall be compensated at

Brian Nakamura
City of Banning
June 26, 2008
Page 2

the rate of \$135. When requested, the Firm shall provide the City with an estimate of the costs of litigation or other services to be provided.

ADDITIONAL FINANCIAL ISSUES

A. Costs and Expenses. In addition to its legal fees, the Firm may incur various costs and expenses in performing legal services under this letter agreement. The City agrees to pay for those costs and expenses in addition to the hourly fees. The costs and expenses commonly incurred include fees fixed by law or assessed by public agencies, long distance telephone calls, travel time and mileage, messenger and other delivery fees (which will not be incurred without advance approval), postage, parking and other travel expenses, photocopying and other reproduction costs, and other similar items.

B. Billings. The firm will bill the City directly for its legal services, costs and expenses on a monthly basis. The City agrees that each such bill will be paid in full within 45 days of receipt.

POTENTIAL CONFLICTS OF INTEREST

We know of no conflicts of interest that would preclude the Firm from representing the City on any matter that may come before it. Nevertheless, the firm represents a wide variety of clients, including private individuals, businesses and other entities, and from time to time conflicts may arise that require disclosure to the City or disqualification of the Firm from representing either the City or the other client or both.

We are not permitted, nor would we consider, representing another client in any matter that is potentially adverse to the City. It is possible, however, that we may represent clients that may have issues relating to the City on matters that are unrelated to the City. For example, we might provide employment and labor advice to a national retail business that at some time in the future may be involved in some way with the City. In such a case, our representation of that company would be disclosed to the City at the earliest opportunity and the City would then need to evaluate whether it views that representation as in conflict with our representation of the City. Should the City find our representation of such a client objectionable, the City retains the ability to terminate our services or refer any matters that may be at issue to another attorney or law firm.

In order to facilitate resolution of any potential conflict of interest that may arise in the future, the City authorizes its attorney to review and evaluate potential conflicts of interest that may arise and to take appropriate action to waive or acknowledge and

Brian Nakamura
City of Banning
June 26, 2008
Page 3

accept continued representation by the Firm consistent with the Rules of Professional Conduct and California law.

The firm shall not be required to perform the services described above where to do so would be a conflict of interest pursuant to the State Bar Act.

TERM

The term of this Agreement shall commence on October 14, 2008, and shall continue thereafter unless amended or terminated pursuant to the terms of this Agreement.

The City may discharge the Firm at any time by written notice effective when received by the Firm. The Firm will provide no further services and advance no further costs on behalf of the City after receipt of the notice, unless specifically agreed to by the City. The Firm may withdraw from this engagement with the consent of the City or for good cause. Good cause may include the City's breach of this letter agreement, refusal to cooperate with the Firm, or any fact or circumstance that would render the Firm's continuing representation unlawful or unethical.

Notwithstanding the discharge or withdrawal of the Firm, the City will remain obligated to pay the Firm for all legal services rendered, costs and expenses under this letter agreement and to reimburse the Firm for all costs incurred prior to its termination.

In accordance with Business and Professions Code § 7149(a)(4), the City is hereby informed that the Firm maintains errors and omissions insurance coverage applicable to the services to be rendered under this Agreement.

Please carefully review the terms of this letter agreement and, if they are acceptable to City, execute the enclosed copy and return it to Ms. Biggs in the envelope provided. The Firm looks forward to working with the City. Please do not hesitate to contact me with any questions you may have.

NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

Brian Nakamura
City of Banning
June 26, 2008
Page 4

CITY: Brian Nakamura, City Manager
City of Banning
99 E. Ramsey Street
Banning, CA 92220

THE FIRM: Burke, Williams & Sorensen
2280 Market Street, Suite 300
Riverside, CA 92501
Attention: Julie Hayward Biggs, Esq.

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

GENERAL PROVISIONS

A. The Firm shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that the Firm is uniquely qualified to perform the services provided for in this Agreement.

B. The Firm is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its officers, employees, servants or agents shall have control over the conduct of the Firm or any of the Firm's officers, employees or agents. The Firm shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City. City acknowledges and agrees that the attorneys representing the City will need to represent to others their capacity and relationship to the City.

C. In the performance of this Agreement, the Firm shall not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry or religion of such persons.

D. Nothing contained in this Agreement shall be deemed, construed or represented by the City or the Firm to any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the City and the Firm other than attorney and client.

Brian Nakamura
City of Banning
June 26, 2008
Page 5

E. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

F. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

G. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

H. This Agreement may be modified by the mutual consent of the City Attorney and the Firm to adjust for costs, fees, services or other matters other than termination at any time.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as follows:

BURKE, WILLIAMS & SORENSEN, LLP
a Limited Liability Partnership

By _____
JULIE HAYWARD BIGGS
of BURKE, WILLIAMS & SORENSEN, LLP

Acknowledged and agreed to:
CITY OF BANNING

By: _____
Brian Nakamura, City Manager

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

TO: **City Council**

FROM: **Bonnie Johnson, Finance Director**

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

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

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

The reports are:

Expenditure approval lists	
August 7, 2008	1,459,141.02
August 14, 2008	1,209,082.78
August 22, 2008	1,579,561.96
August 28, 2008	2,088,825.71
September 15, 2008	3,909,002.76 (August Month End)

Payroll check registers	
August 1, 2008	19,764.88
Manual Check Date August 7, 2008	562.72
August 15, 2008	20,084.88
Manual Check Date August 21, 2008	2,136.02
August 29, 2008	17,815.44

Payroll direct deposits*	
August 1, 2008	369,638.41
August 15, 2008	331,995.70
August 29, 2008	354,443.80

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

* Included on the August month end expenditure approval list of 09/15/2008.

Report Prepared by: Michelle Green, Accounting Manager

RECOMMENDED BY:

Bonnie Johnson
Finance Director

APPROVED BY:

Brian Nakamura
City Manager

Fund/Department Legend:

General Fund – 001

Departments

0001 – General
1000 – City Council
1200 – City Manager
1300 – Human Resources
1400 – City Clerk
1500 – Elections
1800 – City Attorney
1900 – Fiscal Services
1910 – Purchasing & A/P
2060 – TV Government Access
2200 – Police
2210 – Dispatch
2300 – Animal Control

2400 – Fire
2700 – Building Safety
2800 – Planning
3000 – Engineering
3200 – Building Maintenance
3600 – Parks
4000 – Recreation
4010 – Aquatics
4050 – Senior Center
4060 – Sr. Center Advisory Board
4500 – Central Services
4800 – Debt Service
5400 – Community Enhancement

All Other Funds

003 - Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
104 – Article 3 Sidewalk Fund
110 – CDBG Fund
111 – Landscape Maintenance
132 – Air Quality Improvement Fund
140 – Asset Forfeiture-Police Fund
144 – Local Law Enforcement Block Grant
146 – San Gorgonio Gang Task Force
148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 - State Park Bond Fund
200 – Special Donation Fund
201 – Sr. Center Activities Fund
202 – Animal Control Reserve Fund
203 – Police Volunteer Fund
204 – D.A.R.E. Donation Fund
300 – City Administration COP Debt Service
360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities Fund
441 - Sunset Grade Separation Fund
444 - Wilson Median Fund
451 – Park Development Fund

470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA - Water Debt Service
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 - '07 Elec Revenue Bond Project Fund
675 – Public Benefit Fund
678 - '07 Elec Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Insurance Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
810 – CRA – Low/Mod Fund
830 – CRA – Debt Service Fund
850 – CRA - Administration Fund
854 – CRA Low/Mod Bond Fund
855 - 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – CRA - Project Fund

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: October 14, 2008

TO: City Council

FROM: Bonnie Johnson, Finance Director

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

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

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

The reports are:

Expenditure approval lists	
September 4, 2008	359,577.79
September 11, 2008	1,096,170.94
September 18, 2008	380,808.78
Manual Check Date September 19, 2008 ⁽¹⁾	374.65
September 25, 2008	1,027,405.27
Manual Check Date September 29, 2008 ⁽¹⁾	20.00
October 7, 2008	4,390,594.94 (August Month End)

Payroll check registers	
September 12, 2008	15,895.61
September 26, 2008	13,618.13
Manual Check Date September 26, 2008	6,737.05

Payroll direct deposits*	
September 12, 2008	333,427.82
September 26, 2008	331,085.54

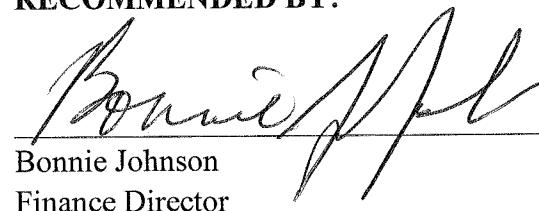
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

* Included on the September month end expenditure approval list of 10/07/2008.

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

Report Prepared by: Michelle Green, Accounting Manager

RECOMMENDED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian Nakamura
City Manager

Fund/Department Legend:

General Fund – 001

Departments

0001 – General
1000 – City Council
1200 – City Manager
1300 – Human Resources
1400 – City Clerk
1500 – Elections
1800 – City Attorney
1900 – Fiscal Services
1910 – Purchasing & A/P
2060 – TV Government Access
2200 – Police
2210 – Dispatch
2300 – Animal Control

2400 – Fire
2700 – Building Safety
2800 – Planning
3000 – Engineering
3200 – Building Maintenance
3600 – Parks
4000 – Recreation
4010 – Aquatics
4050 – Senior Center
4060 – Sr. Center Advisory Board
4500 – Central Services
4800 – Debt Service
5400 – Community Enhancement

All Other Funds

003 - Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
104 – Article 3 Sidewalk Fund
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111 – Landscape Maintenance
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144 – Local Law Enforcement Block Grant
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203 – Police Volunteer Fund
204 – D.A.R.E. Donation Fund
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360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities Fund
441 - Sunset Grade Separation Fund
444 - Wilson Median Fund
451 -- Park Development Fund

470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA - Water Debt Service
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 - '07 Elec Revenue Bond Project Fund
675 – Public Benefit Fund
678 - '07 Elec Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Insurance Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
810 – CRA – Low/Mod Fund
830 – CRA – Debt Service Fund
850 – CRA - Administration Fund
854 – CRA Low/Mod Bond Fund
855 - 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – CRA - Project Fund

**CITY COUNCIL AGENDA
ORDINANCES - INTRODUCTION**

Date: **October 14, 2008**

TO: **City Council**

FROM: **Ted Yarbrough, Fire Marshal/Emergency Services Coordinator**

SUBJECT: **Ordinance 1399 an Ordinance of the City of Banning, California accepting the “Fire Hazard Severity Zone” for the City of Banning as prepared by the Fire Department and kept on file in the City Clerks office.**

RECOMMENDATION: The City Council adopts Ordinance 1399 accepting the Fire Hazard Severity Zone Map as submitted by the Fire Department.

JUSTIFICATION: A Fire Hazard Severity Zone map identifies the areas within the City where development is most susceptible to wildland fire threats and defines where more stringent code requirements will be imposed on all new construction or renovations. CalFire created the original maps using computer aided fire modeling. The maps were distributed to local jurisdictions for review and acceptance. The Banning Fire Chief and Fire Marshal reviewed the maps and suggested changes. The changes were reviewed and eventually accepted by CalFire. The approved map will be the City’s “Fire Hazard Severity Zone Map”.

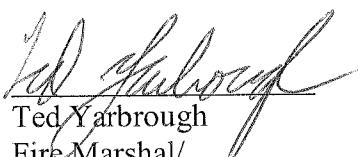
BACKGROUND: The State of California is responsible for determining Fire Hazard Severity Zones for all geographic areas within the state. Analysts use modern fire modeling technology, fire history, fuel models, aerial photos and weather records to determine how fires will burn in an area under different weather conditions. The Fire Hazard Severity Zones that were developed by the analysis indicate how the models predicted the rate of spread (speed of flaming front), the intensity (heat produced by the flaming front), ember production and the potential for those embers to ignite new fires. The zones that were created were titled Very High (most extreme fire behavior), High, Moderate Non-Wildland/Non-Urban and Urban Unzoned. To compliment the adoption of the 2007 International Building and Fire Codes, a chapter was created in the new building code that designated how buildings must be constructed in the moderate, high and very high severity zones. The requirements of the new chapter must be applied for those geographic areas of the state designated as “State Responsibility Areas” for fire protection purposes. In areas designated as a “Local Responsibility Area” (i.e. within the city limits of Banning), the new building code standards must be enforced only in “very high” severity zones.

In the summer of 2007, the state disseminated maps of the severity zones for review by local fire departments. Local departments had until mid-November of 2007 to respond to the zones created by the State. The City Fire Chief and Fire Marshal reviewed the State maps. It was felt that the analysts had made some incorrect (or uneducated) assumptions regarding local wind conditions, local development standards and local codes related to fire hazard abatement. Changes to the severity zones boundaries were made to the map and returned to the State, for review, along with an explanation of why the changes were made. The modified map was returned to the State within the time limit specified.

In August 2008, the fire department received comments back from the state relating to the recommended changes. All of the proposed changes were accepted except those proposed for the areas on the north side of town. The fire department resubmitted the changes with additional documentation explaining why the changes were recommended. In early September, the State approved the modifications suggested by the City Fire Chief and Fire Marshal. Those modifications are in the new map as presented for adoption.

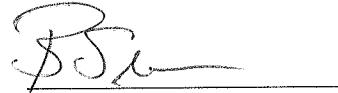
FISCAL DATA: There will be added construction costs to all development in the geographic areas of the City designated as a Very High severity zone. The only fiscal impact to the city will be in added construction cost to anything built, by the City, in the Very High severity zones.

PREPARED BY:



Ted Yarbrough
Fire Marshal/
Emergency Services Coor.

APPROVED BY:



Brian Nakamura
City Manager

ORDINANCE NO. 1399

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA ADOPTING THE "FIRE HAZARD SEVERITY ZONE MAP" FOR
THE CITY OF BANNING AS PREPARED BY THE FIRE DEPARTMENT**

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

SECTION 1.

The City Council adopts the Fire Hazard Severity Zone Map attached as Exhibit A.

The Fire hazard Severity Zone map will be used to determine the areas of the City where Chapter 7a of the California Building Code will be applied.

The Fire Hazard Severity Zone map shall be reviewed by the Fire Chief and updated, as required, every 5 years.

SECTION 2. NON-EXCLUSIVITY

Nothing in the Ordinance shall limit or preclude the enforcement of other applicable laws.

SECTION 3. EFFECTIVE

This ordinance shall take effect 30 days after adoption and be in force and effect according to California law.

SECTION 4. PUBLICATION

The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it, or a summary of it, to be published in a newspaper of general circulation within the City of Banning.

PASSED, APPROVED AND ADOPTED this _____ day of October, 2008.

Brenda Salas, Mayor

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

City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1399 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 14th day of October, 2008, and was duly adopted at a regular meeting of said City Council on the _____ day of October, 2008, by the following vote, to wit:

AYES:

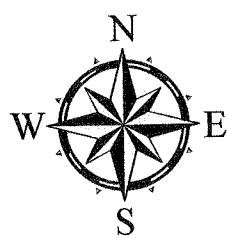
NOES:

ABSENT:

ABSTAIN:

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

FIRE HAZARD SEVERITY ZONES



Legend
Banning Fire Hazard Severity Zones

■	Very High
■	High
■	Moderate
■	Urban Unzoned
■	Non-Wildland/Non-Urban
□	City Boundary

Original Severity Zone Data
Created by
CALFIRE

Modified for the City of Banning
by Banning Fire Services
12/07

T. Yarbrough
Banning Fire GIS
9/05/08
Banning, CA

CITY COUNCIL AGENDA REPORTS OF OFFICERS

DATE: **October 14, 2008**

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

FROM: **Marie A. Calderon, City Clerk**

SUBJECT: **Conflict of Interest Code Update**

RECOMMENDATION:

That the City Council adopt Resolution No. 2008-116, proposing an amended Conflict of Interest Code for the City.

BACKGROUND/ANALYSIS:

The Political Reform Act requires the City to review its Conflict of Interest Code every two years to determine whether the Code needs to be amended. After reviewing the Conflict of Interest Code, it was determined that the list of "Designated Employees" required to file a Form 700 needs to be updated. The Political Reform Act defines a "Designated Employee" as one who makes or participates in making decision which may have a reasonable foreseeable material financial effect upon the employee's financial interests. The proposed list of Designated Employees identifies all of the positions with the City that satisfy the Political Reform Act's definition of a Designated Employee. No other changes to the Conflict of Interest Code are proposed by this Resolution.

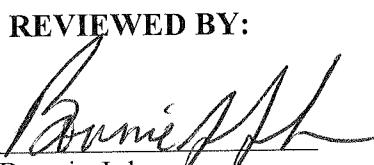
The Political Reform Act requires that the public and City's employees be given reasonable notice and opportunity to be heard on the proposed Conflict of Interest Code. To comply with this requirement, this Resolution proposes, but does not adopt, the amended Conflict of Interest Code. If this Resolution is adopted, there will be a 50 day public comment period and at the close of that public comment period another Resolution will be presented to the Council which will formally adopt the proposed Conflict of Interest Code.

FISCAL IMPACT: None

RECOMMEND BY:

Marie A. Calderon
City Clerk

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:


Brian S. Nakamura
City Manager

RESOLUTION NO. 2008-116

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, PROPOSING AN AMENDED CONFLICT OF INTEREST CODE

WHEREAS, the Political Reform Act requires every local government agency to review its conflict of interest code biennially to determine if it is accurate or needs amending; and

WHEREAS, a review of the City's current Conflict of Interest Code indicates the need to amend certain positions for filing of Statements of Economic Interest Fair Political Practices Commission Form 700; and

WHEREAS, Government Code section 87311 requires the adoption of the City's Conflict of Interest Code to be done in a manner that gives the residents of the City, as well as the officers, employees, and consultants of the City, notice and fair opportunity to present their views; and

NOW, THEREFORE, BE IT RESOLVED

Section 1. Conflict of Interest Code Proposed. Section 18730 of Title 2 of California Code of Regulations, attached as Exhibit "A" to this resolution, along with Exhibit "B" (Designated Employees for the Conflict of Interest Code) and Exhibit "C" (Disclosure Categories), attached hereto and incorporated herein by reference, are proposed to be the Conflict of Interest Code of the City of Banning.

Section 2. FIFTY (50) Day Comment Period. The public shall have an opportunity to comment on the proposed Conflict of Interest Code of the City of Banning for a period of fifty (50) days following the adoption of this resolution. At the close of the fifty (50) day comment period the City Council may adopt the proposed Conflict of Interest Code, adopt an amended version of the proposed Conflict of Interest Code, or return the proposed code to staff for revision and resubmission within 50 days.

Section 3. Statement of Economic Interests. Employees designated in Exhibit "B" shall file statements of economic interests (Form 700) with the City Clerk. The City Clerk shall forward the original Form 700s filed by the Mayor, Members of the City Council, Planning Commissioners, the City Manager, the City Attorney, and the City Treasurer to the Fair Political Practices Commission pursuant to California Government Code Sections 87200 and following. The City Clerk shall retain a copy of all statements of economic interests and make them available for public inspection and reproduction in accordance with Government Code Section 81008.

Section 4. Maintenance of Conflict of Interest Code. The City Clerk shall maintain at all times one copy of the City's Conflict of Interest Code for examination by the public and shall cause the filing of such code in the manner required by law.

PASSED, APPROVED, AND ADOPTED this 14 day of October, 2008.

Brenda Salas, Mayor

ATTEST:

Marie Calderon, City Clerk

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

, City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution No. 2008-116 was duly adopted by the City Council of the City of Banning at a regular meeting thereof, held on the 14th day of October, 2008, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT “A”

Section 18730 of Title 2 of California Code of Regulations

CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 6. FAIR POLITICAL PRACTICES COMMISSION
CHAPTER 7. CONFLICTS OF INTEREST
ARTICLE 2. DISCLOSURE

Section 18730. Provisions of Conflict of Interest Codes

(a) Incorporation by reference of the terms of this regulation along with the designation of employees and the formulation of disclosure categories in the Appendix referred to below constitute the adoption and promulgation of a conflict of interest code within the meaning of Government Code section 87300 or the amendment of a conflict of interest code within the meaning of Government Code section 87306 if the terms of this regulation are substituted for terms of a conflict of interest code already in effect. A code so amended or adopted and promulgated requires the reporting of reportable items in a manner substantially equivalent to the requirements of article 2 of chapter 7 of the Political Reform Act, Government Code sections 81000, et seq. The requirements of a conflict of interest code are in addition to other requirements of the Political Reform Act, such as the general prohibition against conflicts of interest contained in Government Code section 87100, and to other state or local laws pertaining to conflicts of interest.

(b) The terms of a conflict of interest code amended or adopted and promulgated pursuant to this regulation are as follows:

(1) Section 1. Definitions.

The definitions contained in the Political Reform Act of 1974, regulations of the Fair Political Practices Commission (2 Cal. Code of Regs. sections 18110, et seq.), and any amendments to the Act or regulations, are incorporated by reference into this conflict of interest code.

(2) Section 2. Designated Employees.

The persons holding positions listed in the Appendix are designated employees. It has been determined that these persons make or participate in the making of decisions which may foreseeably have a material effect on economic interests.

(3) Section 3. Disclosure Categories.

This code does not establish any disclosure obligation for those designated employees who are also specified in Government Code section 87200 if they are designated in this code in that same capacity or if the geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction in which those

persons must report their economic interests pursuant to article 2 of chapter 7 of the Political Reform Act, Government Code sections 87200, et seq.

In addition, this code does not establish any disclosure obligation for any designated employees who are designated in a conflict of interest code for another agency, if all of the following apply:

- (A) The geographical jurisdiction of this agency is the same as or is wholly included within the jurisdiction of the other agency;
- (B) The disclosure assigned in the code of the other agency is the same as that required under article 2 of chapter 7 of the Political Reform Act, Government Code section 87200; and
- (C) The filing officer is the same for both agencies.¹

Such persons are covered by this code for disqualification purposes only. With respect to all other designated employees, the disclosure categories set forth in the Appendix specify which kinds of economic interests are reportable. Such a designated employee shall disclose in his or her statement of economic interests those economic interests he or she has which are of the kind described in the disclosure categories to which he or she is assigned in the Appendix. It has been determined that the economic interests set forth in a designated employee's disclosure categories are the kinds of economic interests which he or she foreseeably can affect materially through the conduct of his or her office.

(4) Section 4. Statements of Economic Interests: Place of Filing.

The code reviewing body shall instruct all designated employees within its code to file statements of economic interests with the agency or with the code reviewing body, as provided by the code reviewing body in the agency's conflict of interest code.²

(5) Section 5. Statements of Economic Interests: Time of Filing.

(A) *Initial Statements.*

All designated employees employed by the agency on the effective date of this code, as originally adopted, promulgated and approved by the code reviewing body, shall file statements within 30 days after the effective date of this code. Thereafter, each person already in a position when it is designated by an amendment to this code shall file an initial statement within 30 days after the effective date of the amendment.

(B) *Assuming Office Statements.*

All persons assuming designated positions after the effective date of this code shall file statements within 30 days after assuming the designated positions, or if subject to State Senate confirmation, 30 days after being nominated or appointed.

(C) *Annual Statements.*

All designated employees shall file statements no later than April 1.

(D) *Leaving Office Statements.*

All persons who leave designated positions shall file statements within 30 days after leaving office.

(5.5) Section 5.5. Statements for Persons Who Resign Prior to Assuming Office.

Any person who resigns within 12 months of initial appointment, or within 30 days of the date of notice provided by the filing officer to file an assuming office statement, is not deemed to have assumed office or left office, provided he or she did not make or participate in the making of, or use his or her position to influence any decision and did not receive or become entitled to receive any form of payment as a result of his or her appointment. Such persons shall not file either an assuming or leaving office statement.

(A) Any person who resigns a position within 30 days of the date of a notice from the filing officer shall do both of the following:

1. File a written resignation with the appointing power; and
2. File a written statement with the filing officer declaring under penalty of perjury that during the period between appointment and resignation he or she did not make, participate in the making, or use the position to influence any decision of the agency or receive, or become entitled to receive, any form of payment by virtue of being appointed to the position.

(6) Section 6. Contents of and Period Covered by Statements of Economic Interests.

(A) *Contents of Initial Statements.*

Initial statements shall disclose any reportable investments, interests in real property and business positions held on the effective date of the code and income received during the 12 months prior to the effective date of the code.

(B) *Contents of Assuming Office Statements.*

Assuming office statements shall disclose any reportable investments, interests in real property and business positions held on the date of assuming office or, if subject to State Senate confirmation or appointment, on the date of nomination, and income received during the 12 months prior to the date of assuming office or the date of being appointed or nominated, respectively.

(C) *Contents of Annual Statements.*

Annual statements shall disclose any reportable investments, interests in real property, income and business positions held or received during the previous calendar year provided, however, that the period covered by an employee's first annual statement shall begin on the effective date of the code or the date of assuming office whichever is later, or for a board or commission member subject to Government Code section 87302.6, the day after the closing date of the most recent statement filed by the member pursuant to 2 Cal. Code Regs. section 18754.

(D) *Contents of Leaving Office Statements.*

Leaving office statements shall disclose reportable investments, interests in real property, income and business positions held or received during the period between the closing date of the last statement filed and the date of leaving office.

(7) Section 7. Manner of Reporting.

Statements of economic interests shall be made on forms prescribed by the Fair Political Practices Commission and supplied by the agency, and shall contain the following information:

(A) *Investment and Real Property Disclosure.*

When an investment or an interest in real property³ is required to be reported,⁴ the statement shall contain the following:

1. A statement of the nature of the investment or interest;
2. The name of the business entity in which each investment is held, and a general description of the business activity in which the business entity is engaged;
3. The address or other precise location of the real property;
4. A statement whether the fair market value of the investment or interest in real property equals or exceeds two thousand dollars (\$2,000), exceeds ten thousand dollars (\$10,000), exceeds one hundred thousand dollars (\$100,000), or exceeds one million dollars (\$1,000,000).

(B) *Personal Income Disclosure.*

When personal income is required to be reported,⁵ the statement shall contain:

1. The name and address of each source of income aggregating five hundred dollars (\$500) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a

general description of the business activity, if any, of each source;

2. A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was one thousand dollars (\$1,000) or less, greater than one thousand dollars (\$1,000), greater than ten thousand dollars (\$10,000), or greater than one hundred thousand dollars (\$100,000);

3. A description of the consideration, if any, for which the income was received;

4. In the case of a gift, the name, address and business activity of the donor and any intermediary through which the gift was made; a description of the gift; the amount or value of the gift; and the date on which the gift was received;

5. In the case of a loan, the annual interest rate and the security, if any, given for the loan and the term of the loan.

(C) *Business Entity Income Disclosure.*

When income of a business entity, including income of a sole proprietorship, is required to be reported,⁶ the statement shall contain:

1. The name, address, and a general description of the business activity of the business entity;
2. The name of every person from whom the business entity received payments if the filer's pro rata share of gross receipts from such person was equal to or greater than ten thousand dollars (\$10,000).

(D) *Business Position Disclosure.*

When business positions are required to be reported, a designated employee shall list the name and address of each business entity in which he or she is a director, officer, partner, trustee, employee, or in which he or she holds any position of management, a description of the business activity in which the business entity is engaged, and the designated employee's position with the business entity.

(E) *Acquisition or Disposal During Reporting Period.*

In the case of an annual or leaving office statement, if an investment or an interest in real property was partially or wholly acquired or disposed of during the period covered by the statement, the statement shall contain the date of acquisition or disposal.

(8) Section 8. Prohibition on Receipt of Honoraria.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept any honorarium from any source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (a), (b), and (c) of Government Code Section 89501 shall apply to the prohibitions in this section.

This section shall not limit or prohibit payments, advances, or reimbursements for travel and related lodging and subsistence authorized by Government Code section 89506.

(8.1) Section 8.1. Prohibition on Receipt of Gifts in Excess of \$390.

(A) No member of a state board or commission, and no designated employee of a state or local government agency, shall accept gifts with a total value of more than \$390 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. This section shall not apply to any part-time member of the governing board of any public institution of higher education, unless the member is also an elected official.

Subdivisions (e), (f), and (g) of Government Code section 89503 shall apply to the prohibitions in this section.

(8.2) Section 8.2. Loans to Public Officials.

(A) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the elected officer holds office or over which the elected officer's agency has direction and control.

(B) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any officer, employee, member, or consultant of the state or local government agency in which the public official holds office or over which the public official's agency has direction and control. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(C) No elected officer of a state or local government agency shall, from the date of his or her election to office through the date that he or she vacates office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status.

(D) No public official who is exempt from the state civil service system pursuant to subdivisions (c), (d), (e), (f), and (g) of Section 4 of Article VII of the Constitution shall, while he or she holds office, receive a personal loan from any person who has a contract with the state or local government agency to which that elected officer has been elected or over which that elected officer's agency has direction and control. This subdivision shall not apply to loans made by banks or other financial institutions or to any indebtedness created as part of a retail installment or credit card transaction, if the loan is made or the indebtedness created in the lender's regular course of business on terms available to members of the public without regard to the elected officer's official status. This subdivision shall not apply to loans made to a public official whose duties are solely secretarial, clerical, or manual.

(E) This section shall not apply to the following:

1. Loans made to the campaign committee of an elected officer or candidate for elective office.
2. Loans made by a public official's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such persons, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans from a person which, in the aggregate, do not exceed five hundred dollars (\$500) at any given time.
4. Loans made, or offered in writing, before January 1, 1998.

(8.3) Section 8.3. Loan Terms.

(A) Except as set forth in subdivision (B), no elected officer of a state or local government agency shall, from the date of his or her election to office through the date he or she vacates office, receive a personal loan of five

hundred dollars (\$500) or more, except when the loan is in writing and clearly states the terms of the loan, including the parties to the loan agreement, date of the loan, amount of the loan, term of the loan, date or dates when payments shall be due on the loan and the amount of the payments, and the rate of interest paid on the loan.

(B) This section shall not apply to the following types of loans:

1. Loans made to the campaign committee of the elected officer.
2. Loans made to the elected officer by his or her spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin, or the spouse of any such person, provided that the person making the loan is not acting as an agent or intermediary for any person not otherwise exempted under this section.
3. Loans made, or offered in writing, before January 1, 1998.

(C) Nothing in this section shall exempt any person from any other provision of Title 9 of the Government Code.

(8.4) Section 8.4. Personal Loans.

(A) Except as set forth in subdivision (B), a personal loan received by any designated employee shall become a gift to the designated employee for the purposes of this section in the following circumstances:

1. If the loan has a defined date or dates for repayment, when the statute of limitations for filing an action for default has expired.
2. If the loan has no defined date or dates for repayment, when one year has elapsed from the later of the following:
 - a. The date the loan was made.
 - b. The date the last payment of one hundred dollars (\$100) or more was made on the loan.
 - c. The date upon which the debtor has made payments on the loan aggregating to less than two hundred fifty dollars (\$250) during the previous 12 months.

(B) This section shall not apply to the following types of loans:

1. A loan made to the campaign committee of an elected officer or a candidate for elective office.

2. A loan that would otherwise not be a gift as defined in this title.

3. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor has taken reasonable action to collect the balance due.

4. A loan that would otherwise be a gift as set forth under subdivision (A), but on which the creditor, based on reasonable business considerations, has not undertaken collection action. Except in a criminal action, a creditor who claims that a loan is not a gift on the basis of this paragraph has the burden of proving that the decision for not taking collection action was based on reasonable business considerations.

5. A loan made to a debtor who has filed for bankruptcy and the loan is ultimately discharged in bankruptcy.

(C) Nothing in this section shall exempt any person from any other provisions of Title 9 of the Government Code.

(9) Section 9. Disqualification.

No designated employee shall make, participate in making, or in any way attempt to use his or her official position to influence the making of any governmental decision which he or she knows or has reason to know will have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(A) Any business entity in which the designated employee has a direct or indirect investment worth two thousand dollars (\$2,000) or more;

(B) Any real property in which the designated employee has a direct or indirect interest worth two thousand dollars (\$2,000) or more;

(C) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by or promised to the designated employee within 12 months prior to the time when the decision is made;

(D) Any business entity in which the designated employee is a director, officer, partner, trustee, employee, or holds any position of management; or

(E) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$390 or more provided to, received by, or promised to

the designated employee within 12 months prior to the time when the decision is made.

(9.3) Section 9.3. Legally Required Participation.

No designated employee shall be prevented from making or participating in the making of any decision to the extent his or her participation is legally required for the decision to be made. The fact that the vote of a designated employee who is on a voting body is needed to break a tie does not make his or her participation legally required for purposes of this section.

(9.5) Section 9.5. Disqualification of State Officers and Employees.

In addition to the general disqualification provisions of section 9, no state administrative official shall make, participate in making, or use his or her official position to influence any governmental decision directly relating to any contract where the state administrative official knows or has reason to know that any party to the contract is a person with whom the state administrative official, or any member of his or her immediate family has, within 12 months prior to the time when the official action is to be taken:

- (A) Engaged in a business transaction or transactions on terms not available to members of the public, regarding any investment or interest in real property; or
- (B) Engaged in a business transaction or transactions on terms not available to members of the public regarding the rendering of goods or services totaling in value one thousand dollars (\$1,000) or more.

(10) Section 10. Disclosure of Disqualifying Interest.

When a designated employee determines that he or she should not make a governmental decision because he or she has a disqualifying interest in it, the determination not to act may be accompanied by disclosure of the disqualifying interest.

(11) Section 11. Assistance of the Commission and Counsel.

Any designated employee who is unsure of his or her duties under this code may request assistance from the Fair Political Practices Commission pursuant to Government Code section 83114 and 2 Cal. Code Regs. sections 18329 and 18329.5 or from the attorney for his or her agency, provided that nothing in this section requires the attorney for the agency to issue any formal or informal opinion.

(12) Section 12. Violations.

This code has the force and effect of law. Designated employees violating any provision of this code are subject to the administrative, criminal and civil sanctions provided in the Political Reform Act, Government Code sections 81000-91014. In

addition, a decision in relation to which a violation of the disqualification provisions of this code or of Government Code section 87100 or 87450 has occurred may be set aside as void pursuant to Government Code section 91003.

¹ Designated employees who are required to file statements of economic interests under any other agency's conflict of interest code, or under article 2 for a different jurisdiction, may expand their statement of economic interests to cover reportable interests in both jurisdictions, and file copies of this expanded statement with both entities in lieu of filing separate and distinct statements, provided that each copy of such expanded statement filed in place of an original is signed and verified by the designated employee as if it were an original. See Government Code section 81004.

² See Government Code section 81010 and 2 Cal. Code of Regs. section 18115 for the duties of filing officers and persons in agencies who make and retain copies of statements and forward the originals to the filing officer.

³ For the purpose of disclosure only (not disqualification), an interest in real property does not include the principal residence of the filer.

⁴ Investments and interests in real property which have a fair market value of less than \$2,000 are not investments and interests in real property within the meaning of the Political Reform Act. However, investments or interests in real property of an individual include those held by the individual's spouse and dependent children as well as a pro rata share of any investment or interest in real property of any business entity or trust in which the individual, spouse and dependent children own, in the aggregate, a direct, indirect or beneficial interest of 10 percent or greater.

⁵ A designated employee's income includes his or her community property interest in the income of his or her spouse but does not include salary or reimbursement for expenses received from a state, local or federal government agency.

⁶ Income of a business entity is reportable if the direct, indirect or beneficial interest of the filer and the filer's spouse in the business entity aggregates a 10 percent or greater interest. In addition, the disclosure of persons who are clients or customers of a business entity is required only if the clients or customers are within one of the disclosure categories of the filer.

EXHIBIT “B”

DESIGNATED EMPLOYEES

DESIGNATED EMPLOYEES FOR
THE CONFLICT OF INTEREST CODE

A designated employee is anyone within the City who is an officer, employee, member or consultant who is designated in the Code because the position entails the making or participating in the making of decisions which may foreseeably have a material effect on any financial interest of the officer, employee, member or consultant.

The term “designated employee” does not include any public official specified in Government Code Section 87200 nor does it include a position which is solely clerical, ministerial or manual, or any unsalaried member of a board or commission which is solely advisory.

<u>“Designated Employees”</u>	<u>Disclosure Categories Assigned</u>
Accounting Manager	1, 2, 3, 4, 6, 7
Assistant Public Utilities Director	1, 2, 3, 4, 6, 7
Associate Civil Engineer	1, 2, 3, 4, 6, 7
Building Maintenance Specialist	1, 2, 3, 6, 7
Buyer	1, 2, 3, 4, 6, 7
Chief of Police	2, 3, 7
City Clerk	1, 2, 3, 6, 7
City Engineer	1, 2, 3, 4, 6, 7
Community Development Director	1, 2, 3, 4, 6, 7
Consultants	1, 2, 4, 5, 6
Customer Services Manager	1, 2, 4, 5, 6
Development Services Manager/Building Official	1, 2, 3, 4, 7
Finance Director	1, 2, 3, 4, 6, 7
Electric Utility Director	1, 2, 3, 4, 7
Electric Operations Manager	1, 2, 3, 4, 7
Fleet Maintenance Manager	2, 3, 7
Human Resource Director	1, 2, 3, 4, 6, 7
Parks/Streets Maintenance Manager	1, 2, 3, 4, 6, 7
Police Lieutenants	2, 3, 7
Power Contracts & Revenue Administrator	1, 2, 3, 4, 6, 7
Public Utility Director	1, 2, 3, 4, 6, 7
Public Works Director	1, 2, 3, 4, 6, 7

Purchasing Manager	1, 2, 3, 4, 6, 7
Recreation Director	1, 2, 3, 4, 6, 7
Water/Wastewater Superintendent	1, 2, 3, 4, 6, 7
Water/Wastewater Utility Director	1, 2, 3, 4, 6, 7

EXHIBIT “C”

DISCLOSURE CATEGORIES

DISCLOSURE CATEGORIES

The disclosure categories listed below identify the types of investments, business entities, sources of income, and real property which the designated employee must disclose for each disclosure category to which he or she is assigned.

Category 1: All investments and management positions in, and sources of income from, all business entities that do business or own real property in the City, plan to do business or own real property in the City within the next year or have done business or owned real property in the City within the past two years.

Category 2: All interest in real property which is located in whole or in part within, or not more than two miles outside, the boundaries of the City.

Category 3: All investments and management positions in, and sources of income from, business entities subject to the regulatory, permit or licensing authority of the Designated Employee's Department, which will be subject to such authority within the next year or have been subject to such authority within the past two years.

Category 4: All investments in, and sources of income from, business entities that are engaged in land development, construction or the acquisition or sale of real property in the City, plan to engage in such activities in the City within the next year or have engaged in such activities in the City within the past two years.

Category 5: All investments and management positions in, and sources of income from, business entities that are banking, savings and loan or other financial institutions.

Category 6: All investments and management positions in, and sources of income from, business entities that provide services, supplies, materials, machinery or equipment of a type purchased or leased by the City.

Category 7: All investments and management positions in, and sources of income from, business entities that provide services, supplies, materials, machinery or equipment of a type used or administered by the Designated Employee's Department.

**CITY COUNCIL AGENDA
BANNING UTILITY AUTHORITY AGENDA
CONSENT ITEM**

Date: **October 14, 2008**

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

FROM: **Bonnie Johnson, Finance Director**

SUBJECT: **Resolutions Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations and Associated Revenues**

RECOMMENDATION:

1. "The City Council of The City of Banning adopt Resolution 2008-114 Authorizing the Amendment of the Fiscal Year 2007-08 Budget to Include Certain Necessary Adjustments and the Fiscal Year 2008-09 Budget to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2008-09 Appropriations and Associated Revenues"
2. "The Banning Utility Authority of The City of Banning adopt Resolution 2008-05UA Authorizing Amendments of the Fiscal Year 2008-09 Water and Wastewater Budgets to Include Encumbrance Carryovers and Continuing Appropriations of Certain Unexpended Fiscal Year 2007-08 Appropriations"

JUSTIFICATION: At the end of fiscal year 2007-08 several budgeted projects had not been fully completed for a variety of reasons. In addition, in many cases funds had been encumbered (i.e. committed via purchase order toward a specific item or project) but not yet expended. In preparation of the 2008-09 Budget, departments were instructed not to include previously approved appropriations or encumbered items in their upcoming fiscal year requests in to avoid the "double" budgeting of expenditures. However, these items (continuing appropriations and encumbrances) were accounted for in available fund projections and thus will not impact previously presented 2008-09 fund balances. Allowing for the carryover of unexpended funds that are earmarked for specific purposes facilitates meeting our budgetary goals.

BACKGROUND & ANALYSIS: Appropriations which were approved by Council last fiscal year which qualify for a "Continuing Appropriation" status include capital projects, work projects, grant appropriations and other goods and services which have a specific purpose and have not been completed by fiscal year end. Each fund is projected to meet or exceed net year-end projections when these appropriations are included.

Continuing appropriations and encumbrance carryovers is a standard budgetary method common to many agencies and is authorized by the City's Council approved Budget and Fiscal Administrative Policy. Exhibit A, attachment to Resolution 2008-114 and Resolution 2008-05UA, is a detailed listing of the recommended encumbrance carryovers and continuing appropriations.

In addition, other housekeeping adjustments are deemed necessary to the fiscal year 2007-08 budget to reflect proper budgeting practices. These adjustments are detailed on Exhibit "B".

FISCAL IMPACT: Previously approved, unspent appropriations as well as other known budgetary adjustments were accounted for in the Fiscal Year 2008-09 available fund balance projections that were approved during the recent budget process. Therefore, funding for Fiscal Year 2008-09 encumbrance carryovers, continuing appropriations and other recommended adjustments will not impact previously presented projections.

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Brian Nakamura
City Manager

RESOLUTION NO. 2008-114

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING THE AMENDMENT OF THE FISCAL YEAR 2007-08 BUDGET TO
INCLUDE CERTAIN NECESSARY ADJUSTMENTS AND THE FISCAL YEAR 2008-09
BUDGET TO INCLUDE ENCUMBRANCE CARRYOVERS AND CONTINUING
APPROPRIATIONS OF CERTAIN UNEXPENDED FISCAL YEAR 2007-08
APPROPRIATIONS AND ASSOCIATED REVENUES**

WHEREAS, the Fiscal Year 2007-08 Budgets for the funds listed on Exhibit "A" net operations ending balances are anticipated to exceed year-end projections by an amount greater than the encumbrance and continuing appropriation total request; and

WHEREAS, Departments requesting encumbrance carryovers and continuing appropriations are within their approved budget amounts and the items or services were previously approved in the Fiscal Year 2007-08 Budget; and

WHEREAS, Council desires to ensure continuity in accomplishing multi-year objectives by continuing unspent approved Fiscal Year 2007-08 budgeted items and/or services into Fiscal Year 2008-09; and

WHEREAS, Council also desires to make certain other necessary adjustments to Fiscal Year 2007-08 budget as presented in Exhibit "B";

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California that the budgets for the fiscal year ended June 30, 2009 and June 30, 2008, are amended to include Encumbrance Carryovers, Continuing Appropriations and Associated Revenue Projections as reflected in Exhibit "A", and other adjustments as reflected in Exhibit "B", respectively, and by this reference incorporated herein as though set forth in full.

PASSED, APPROVED AND ADOPTED this 14th day of October 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

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. 2008-114 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 14th day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

FY 2007- 08

Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
General Fund			
Revenue			
001-2200-341-31-45	State Homeland Security Grant	113,400	
001-2200-341-31-46	OTS Traffic Safety Grant	21,229	
001-2060-306-12-06	Interfund Loan - Council Chamber remodel	90,330	
001-2800-361.41-02	Misc Reimbursements	120,000	
Allocations			
001-1200-412-33-11	Professional Services - Godbe/Tramutola	47,500	
001-1200-412-33-11	Professional Services - CFD formation Consultant	40,000	
001-1400-412-33-72	Codification of municipal code changes	6,000	
001-1900-412.33-11	Professional Services - GASB 34	6,272	
001-1900-412.33-11	Professional Services - CFD legal services	20,000	
001-1900-412.33-12	Audit Services - Lance, Soll & Lunghard	1,701	
001-1910-412.89.48	Computer software - insurance/contract tracking	8,000	
001-2060-446.90-15	Council Chamber remodel - Spinitar, misc.	29,330	
001-2060-446.90-56	Broadcasting Equipment	66,950	
001-2200-421.10-30	Overtime - Grant funded	36,097	
001-2200-421.15-15	PERS - Grant funded	2,762	
001-2200-421.89-48	Computer hardware - Grant funded	8,741	
001-2200-421.90-52	Vehicles - light bar and accessories	1,295	
001-2200-421.90-52	Vehicles - balance of grant	268	
001-2200-421-90-56	Machinery/equip. - photo booking system	22,000	
001-2200-421.56-18	Transfer to DARE/GREAT Program	3,216	
001-2300-424.33-90	Animal Control Services	120,302	
001-2700-442.23-27	Contract Services - Civic Plus	14,184	
001-2700-442.23-39	Weed Abatement Services	43,745	
001-2800-441.23-27	Contract Services - Civic Plus	9,456	
001-2800-441.33-11	Professional Services - Civic Plus	120,000	
001-2800-441.33-11	Professional Services - Housing Element update	75,000	
001-2800-441.33-11	Professional Services - RK Engineers, Terra Nova	11,403	
001-3000-442.33-11	Professional Services - Misc	10,000	
001-3000-442.33-53	Engineering Services - Union Pacific and misc.	53,303	
001-3000-442.90-48	Computer Hardware - plotter, printer	5,000	
001-3200-412-30-02	Repair/Maint. - Buildings	25,000	
001-3200-412-90-07	Parking Lot Improvements - Community Center	12,300	
001-4000-461-90-15	Building Improvements - Community Center	41,240	
001-4000-461-90-97	Skate Park - Balance	34,418	
001-4010-461-30-12	Pool Maintenance	5,200	
001-4500-412-90-56	Scanning Equipment	13,584	
Fund #001 Total:		344,959	894,267
Gas Tax Street Fund			
Allocations			
100-4900-431-38-59	Other Street Materials	50,000	
100-4900-431-93-37	Storm Drain - Design/construction of Line "H"	100,000	
Fund #100 Total:		-	150,000
Measure A Street Fund			
Allocations			
101-4900-431-56-07	Transfer - Sidewalk Fund	24,159	
101-4900-431-93-16	Measure A Street Improvements - IPS	96,212	
Fund #101 Total:		-	120,371

FY 2007- 08

Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
Article 3 Sidewalk Fund			
Revenue			
104-4900-344-33-01	Article 3 Sidewalk Grant	82,017	
104-4900-381-56-02	Transfer - Measure A Fund	24,159	
Allocations			
104-4900-431-93-11	Sidewalk Improvements - IPS		75,842
	Fund #104 Total:	106,176	75,842
Community Development Block Grant Fund			
Revenue			
110-5506-347-34-02	Federal CDB Grants	1,000	
110-5507-347-34-02	Federal CDB Grants	88,411	
110-5508-347-34-02	Federal CDB Grants	177,551	
Allocations			
110-5506-461-42-51	Volunteer Center of Riverside	1,000	
110-5507-446-41-74	House of Hope	4,000	
110-5507-461-90-30	Roosevelt Williams Park Improvements	31,989	
110-5507-461-90-38	Sylvan Park Improvements	67,422	
110-5508-446-42-56	Banning Cultural Alliance	15,000	
110-5508-461-90-67	Repllier Park Improvements	147,551	
	Fund #110 Total:	266,962	266,962
Landscape Maintenance			
Allocations			
111-4900-432.30-01	Maintenance/repairs		30,000
	Fund #111 Total:	-	30,000
Allocations			
148-2207-421-90-56	Machinery & Equipment	6,496	
148-2208-421-90-56	Machinery & Equipment	35,380	
	Fund #148 Total:	-	41,876
DARE/GREAT Fund			
Revenue			
204-2200-381.55-01	Transfer in - General Fund	3,216	
Allocations			
204-2200-421.10-10	Payroll		13,283
204-2200-421.23-05	Travel/conference		184
	Fund #204 Total:	3,216	13,467
Traffic Facilities Fund			
Allocations			
420-4900-431.93-27	Design of various traffic signals		8,475
	Fund #420 Total:	-	8,475

FY 2007- 08

Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
Sunset Grade Separation Fund			
Revenue			
441-6500-366.41-21	TUMF Funding	1,384,777	
Allocations			
441-6500-431.93-02	Engineering Services - LD King	1,083,357	
441-6500-431.93-02	Engineering Services - Impact Sciences	148,125	
441-6500-431.93-02	Engineering Services - Urban Crossroads	13,289	
	Fund #441 Total:	1,384,777	1,244,771
Park Development Fund			
Allocations			
451-3600-461-90-10	Landscape Design - Repplier Park	2,057	
451-3600-461-90-37	Repplier Park Improvements	150,000	
451-3600-461-33-11	Professional Services - update master plan	125,000	
	Fund #451 Total:	-	277,057
Capital Improvement Fund			
Allocations			
470-2200-413.33-11		5,598	
470-2200-413-90-10	Planning/Engineering- Ashbury	578,750	
470-2200-412-90-12	Building Construction - Cal K-12	12,391,820	
470-2200-412-90-12	Building Construction - Oakview, Landmark, etc.	1,558	
470-4000-413-90-15	Building Improvements - Balance of budget		
	Fund #470 Total:	-	12,977,726
Airport Fund			
Revenue			
600-5100-347-34-06	FAA Improvement Program fund	150,000	
Allocations			
600-5100-435-33-11	Professional Services - SD Engineering, misc.	165,500	
	Fund #600 Total:	150,000	165,500
Transit Fund			
Revenue			
610-5800-306-12-09	Article 4 - Capital	36,700	
610-5850-306-12-09	Article 4 - Capital	19,094	
610-5800-341-31-25	Capital Grant - STA	873,148	
610-5850-341-31-25	Capital Grant - STA	48,013	
610-5800-341-31-45	State Homeland Security Grant	1,182	
Allocations			
610-5800-434-89-46	Office Equipment	450	
610-5800-434-89-48	Computer Hardware	5,357	
610-5800-434-89-56	Machinery & Equipment	61	
610-5800-434-90-19	Plant Property	11,584	
610-5800-434-90-46	Office Equipment	4,635	
610-5800-434-90-51	Automotive Equipment	802,261	
610-5800-434-90-53	Radio Equipment	35,500	
610-5800-434-90-56	Machinery & Equipment	51,182	
610-5850-434.90-51	Automotive Equipment	67,107	
	Fund #610 Total:	978,137	978,137

Exhibit A
FY 2007- 08
Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
Water Operations Fund			
Allocations			
660-6300-471-27-14	Water purchase - resale	292,586	
660-6300-471-23-32	Laboratory Expense - Babcock	7,000	
660-6300-471-33-11	Professional Services - RHA	3,695	
660-6300-471-90-18	Plant Improvements - Rock Bottom	119,625	
660-6300-471-95-10	Water Mains - Soils Testing	3,320	
660-6300-471-95-10	Water Mains - Design	34,990	
660-6300-471-95-10	Water Mains - balance of account	321,773	
660-6300-471-90-56	Machinery/Equipment - trailer, etc. per budget	156,978	
660-6300-471-90-52	Vehicles - replace units per budget	56,550	
660-6300-471-95-27	SCADDA/Telemetry	26,000	
Fund #660 Total:		-	1,022,517
Water Capital Facilities Fund			
Allocations			
661-6300-471-90-78	Planning/Design - well 25	55,896	
661-6300-471-90-78	Planning/Design - balance of budget	118,852	
661-6300-471-96-28	State Water Line	160,548	
661-6300-471-96-28	State Water Line - balance of budget	250,954	
Fund #661 Total:		-	586,250
BUA Water Capital Projects Fund			
Revenue			
663-6300-361.41-02	Misc Reimbursements	100,000	
663-6300-347.34-29	EPA Grant	1,388,600	
Allocations			
663-6300-471-95-10	Water Mains - various	75,159	
663-6300-471-95-10	Water Mains - balance of budget	1,333,975	
663-6300-471-95-09	Reservoirs - Design	407,043	
663-6300-471-95-09	Reservoirs - balance of budget	2,298,047	
Fund #663 Total:		1,488,600	4,114,224
Electric Operations Fund			
Allocations			
670-7000-473-33-11	Professional Services - Willdan, Aspen	7,865	
670-7000-473-87-01	Interfund Loan - Council Chamber remodel	90,330	
670-7000-473-89-48	Computer Hardware	72,005	
670-7000-473-90-18	Plant Improvements - David Evans and Assoc.	2,537	
670-7000-473-90-52	Vehicles	121,900	
Fund #670 Total:		-	294,637
Electric Improvement Fund			
Revenue			
673-7000-381.56-86	Transfers from Bond Project Fund	12,632,367	
Allocations			
673-7000-473-96-18	Substation - RW Beck, Polk & Steinle	6,768,372	
673-7000-473-96-18	Substation - Balance of budget	892,753	
673-7000-473-96-20	Substation Modifications	490,000	
673-7000-473-96-23	Voltage Conversion	1,130,214	
Fund #673 Total:		12,632,367	9,281,339

FY 2007- 08

Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
Electric Bond Project Fund			
Allocations			
674-7000-473.56-57	Transfers to Electric Improvement Fund	12,632,367	
Fund #674 Total:		12,632,367	
Public Benefit Fund			
Allocations			
675-7020-473-89-46	Office Furniture & Equipment	4,207	
Fund #675 Total:		4,207	
Wastewater Operations Fund			
Allocations			
680-8000-454-33-11	Professional services - Various	29,429	
680-8000-454-30-04	Repair/Maint. - Plant - Digester #2	9,104	
680-8000-454.45-09	Sewer Collection System Expense - root control	4,770	
680-8000-454-90-52	Vehicles	32,000	
680-8000-454-95-12	Treatment Plant Improvement	100,000	
Fund #680 Total:		175,303	
BUA Water Capital Projects Fund			
Allocations			
683-8000-454-90-78	Planning/Design - Parsons	431,850	
Fund #683 Total:		431,850	
Insurance fund			
Allocations			
700-5030-480-40-03	State Unemployment Insurance	15,810	
Fund #700 Total:		15,810	
Information Services			
Allocations			
703-3700-480-89-48	Computer Hardware - Various	19,245	
703-3700-480-90-46	Office Furniture	14,000	
703-3700-480-90-48	Computer Hardware - Various	25,000	
703-3700-480-90-49	Computer Software - Various	7,500	
Fund #703 Total:		65,745	
Utility Billing			
Allocations			
761-3100-480-30-12	Audit Services - Lance, Soll & Lunghard	3,699	
761-3100-480-89-48	Computer Software	6,979	
761-3100-480-89-49	Computer Hardware	3,822	
761-3110-480-9052	Vehicles - replacement vehicle	19,834	
Fund #761 Total:		34,334	
Grand Total All Funds		17,355,194	45,903,034

FY 2007-08
Recommended Budget Adjustments

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE ADJUSTMENT	EXPENDITURE ADJUSTMENT
Riverside County MOU - Police			
Allocations			937
003-2289-421.10-10	Payroll	<u> </u>	<u>937</u>
		Fund #003 Total:	
San Gorgonio Task Force			
Allocations			383
146-2200-421.36-07	Food/meals costs	<u> </u>	<u>383</u>
		Fund #146 Total:	
Special Donation Fund			
Allocations			1,560
200-9100-446.41-93	All-Star Tournaments	<u> </u>	<u>1,560</u>
		Fund #200 Total:	
DARE/GREAT Grant			
Revenue		35,310	
204-2200-361.42-02	Cost Reimbursements: BUSD	<u> </u>	<u> </u>
Allocations			7,420
204-2200-446.42-50	Miscellaneous Expense	<u> </u>	<u>13,921</u>
204-2200-446.55-22	Interfund Transfers	<u>35,310</u>	<u>21,341</u>
		Fund #204 Total:	
Sun Lakes CFD 86-1			
Allocations			636
360-6700-431.33-19	Administrative Fees - Lien releases	<u> </u>	<u>636</u>
		Fund #360 Total:	
Area Police Computer fund			
Allocations			6,188
370-2200-421.30-17	Repair/Maint - Hardware	<u> </u>	<u>6,188</u>
		Fund #370 Total:	
Fairs Oaks Assessment Dist.			
Allocations			20,000
375-4900-431-61-12	Principal Payments	<u> </u>	<u>20,000</u>
		Fund #375 Total:	
Police Facilities Fees			
Allocations			30,195
400-2200-421.90-10	Planning/Engineering	<u> </u>	<u>30,195</u>
		Fund #400 Total:	
General Facilities Fees Fund			
Allocations			4,506
430-2900-441-90-15	Building Improvements	<u> </u>	<u>4,506</u>
		Fund #430 Total:	

FY 2007-08
Recommended Budget Adjustments

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE ADJUSTMENT	EXPENDITURE ADJUSTMENT
Refuse Fund Allocations 690-9600-453-33-11	Professional Services		10,141
		<hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/>
			10,141
Fund #690 Total:			
Electric Debt Service Allocations 678-7000-473.62-02	Interest expense		117,884
		<hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/>
			117,884
Fund #678 Total:			
Fleet Maintenance Allocations 702-3800-480.10-10	Payroll		1,763
		<hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/>
			1,763
Fund #702 Total:			
Grand Total All Funds		35,310	215,534
		<hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/>

RESOLUTION NO. 2008-05UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING AUTHORIZING AMENDMENTS OF THE FISCAL YEAR 2008-09 WATER AND WASTEWATER BUDGETS TO INCLUDE ENCUMBRANCE CARRYOVERS AND CONTINUING APPROPRIATIONS OF CERTAIN UNEXPENDED FISCAL YEAR 2007-08 APPROPRIATIONS.

WHEREAS, the Fiscal Year 2007-08 Budgets for the Water and Wastewater funds as listed on Exhibit "A" are anticipated to exceed year-end projections by an amount greater than the encumbrance and continuing appropriation total request; and

WHEREAS, after including the requested encumbrance carryovers and continuing appropriations water and wastewater appropriations are within their approved budget amounts and the items or services were previously approved in the Fiscal Year 2007-08 Budget; and

WHEREAS, the Authority desires to ensure continuity in accomplishing multi-year objectives by continuing unspent approved Fiscal Year 2007-08 budgeted items and/or services into Fiscal Year 2008-09;

NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority that the water and wastewater budgets for the fiscal year ended June 30, 2009, are amended to include Encumbrance Carryovers and Continuing Appropriations as reflected in Exhibit "A", and by this reference incorporated herein as though set forth in full.

PASSED, APPROVED AND ADOPTED this 14th day of October 2008.

Brenda Salas, Chairman
Banning Utility Authority

APPROVED AS TO FORM AND
LEGAL CONTENT:

Authority Counsel

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2008-05UA was duly adopted by the Banning Utility Authority at a regular meeting thereof held on the 14th day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Banning Utility Authority

FY 2007- 08

Encumbrances and Continuing Appropriations and Projected Revenue Carryovers

FUND ACCOUNT #	ACCOUNT DESCRIPTION	REVENUE CARRYOVER	ALLOCATION CARRYOVER
Water Operations Fund			
Allocations			
660-6300-471-27-14	Water purchase - resale	292,586	
660-6300-471-23-32	Laboratory Expense - Babcock	7,000	
660-6300-471-33-11	Professional Services - RHA	3,695	
660-6300-471-90-18	Plant Improvements - Rock Bottom	119,625	
660-6300-471-95-10	Water Mains - Soils Testing	3,320	
660-6300-471-95-10	Water Mains - Design	34,990	
660-6300-471-95-10	Water Mains - balance of account	321,773	
660-6300-471-90-56	Machinery/Equipment - trailer, etc. per budget	156,978	
660-6300-471-90-52	Vehicles - replace units per budget	56,550	
660-6300-471-95-27	SCADDA/Telemetry	26,000	
Fund #660 Total:		1,022,517	
Water Capital Facilities Fund			
Allocations			
661-6300-471-90-78	Planning/Design - well 25	55,896	
661-6300-471-90-78	Planning/Design - balance of budget	118,852	
661-6300-471-96-28	State Water Line	160,548	
661-6300-471-96-28	State Water Line - balance of budget	250,954	
Fund #661 Total:		586,250	
BUA Water Capital Projects Fund			
Revenue			
663-6300-361.41-02	Misc Reimbursements	100,000	
663-6300-347.34-29	EPA Grant	1,388,600	
Allocations			
663-6300-471-95-10	Water Mains - various	75,159	
663-6300-471-95-10	Water Mains - balance of budget	1,333,975	
663-6300-471-95-09	Reservoirs - Design	407,043	
663-6300-471-95-09	Reservoirs - balance of budget	2,298,047	
Fund #663 Total:		1,488,600	4,114,224
Wastewater Operations Fund			
Allocations			
680-8000-454-33-11	Professional services - Various	29,429	
680-8000-454-30-04	Repair/Maint. - Plant - Digester #2	9,104	
680-8000-454.45-09	Sewer Collection System Expense - root control	4,770	
680-8000-454-90-52	Vehicles	32,000	
680-8000-454-95-12	Treatment Plant Improvement	100,000	
Fund #680 Total:		175,303	
BUA Water Capital Projects Fund			
Allocations			
683-8000-454-90-78	Planning/Design - Parsons	431,850	
Fund #683 Total:		431,850	
Grand Total All Funds		1,488,600	6,330,144

**CITY COUNCIL MEETING
JOINT MEETING
CONSENT ITEMS**

Date: **October 14, 2008**

TO: **City Council**

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

SUBJECT: **Adoption of City Council Resolution No. 2008-118 and Utility Authority Resolution No. 2008-06UA, "Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26."**

RECOMMENDATION:

- a) The City Council adopt Resolution No. 2008-118, "Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26."
- b) The Utility Authority adopt Resolution No. 2008-06UA, "Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26."
- c) Appropriate \$379,834.00 from the Water Division Operations reserves and authorize the Finance Director to make the necessary budget adjustments.

JUSTIFICATION: The construction of the BCVWD Well No's 24, 25, and 26 in the Beaumont Groundwater Subbasin is essential to augment the future water supply to serve the City's Water Utility customers. The City of Banning is participating in the well construction of Well No's 24, 25, and 26 pursuant to the joint Agreement between the BCVWD and the City of Banning (attached herewith as Exhibit "A").

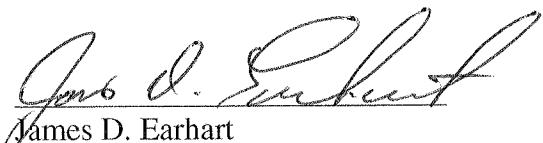
BACKGROUND: The City of Banning entered into an Agreement with Beaumont Cherry Valley Water District (BCVWD) to construct three new water wells jointly at a 50%-50% cost sharing within the Beaumont Groundwater Subbasin. Being the lead agency, BCVWD has completed Well No's 24, 25, & 26 and these wells are in service.

BCVWD has submitted progress invoices for designing, drilling, and equipping of Well No. 25 in the amount of \$118,678.80 and Well No. 26 in the amount of \$261,154.82 for a total of \$379,833.62. As future invoices are received from BCVWD, staff will continue to make the necessary payments for the completion of Wells No. 25 & 26.

FISCAL DATA: It is recommended that an appropriation in the amount of \$379,834.00 be made from the Water Division Operations reserve funds to the FY 08-09 Water Operations Division Budget, Account No. 661-6300-471.9508 to provide the necessary funding for this partial payment. The total estimated cost of the project for these two wells is \$5,000,000.00. This amount is to be shared equally by the City of Banning and the BCVWD. Currently, it is

estimated that there is \$2,481,000.00 in the unrestricted funds available in the Water Division Operations Reserves

REVIEWED BY:



James D. Earhart
James D. Earhart
Director of Public Utilities

APPROVED BY:



Bonnie Johnson
Bonnie Johnson
Finance Director/Assistant City Manager

APPROVED BY:



Brian Nakamura
Brian Nakamura
City Manager

RESOLUTION NO. 2008-118

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE RELEASE OF A PARTIAL PAYMENT TO THE BEAUMONT CHERRY VALLEY WATER DISTRICT FOR WELLS NO. 25 & 26

WHEREAS, the City of Banning owns and operates its own Water Utility, supplying potable water to its residents; and

WHEREAS, the City of Banning enter into a joint Agreement with Beaumont Cherry Valley Water District (BCVWD), to construct new water wells jointly within the Beaumont Groundwater Subbasin; and

WHEREAS, the drilling/construction of Wells No. 25 & 26 are a joint effort to augment the future water supply to serve Banning's customers; and

WHEREAS, the BCVWD has submitted progress invoices for designing, drilling, and equipping of Well No. 25 in the amount of \$118,678.80 and Well No. 26 in the amount of \$261,154.82 for a total of \$376,833.62; and

WHEREAS, the City of Banning will reimburse the BCVWD up to 50% of the eligible drilling/construction costs of Wells No. 25 & 26; and

WHEREAS, funding of this partial payment is available in the Water Division Operations reserves; and

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

Section I. Adopt Resolution No. 2008-118, "Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26."

Section II. Appropriate \$379,834.00 from the Water Division Operations reserves and authorize the Director of Finance to make the necessary budget adjustments.

PASSED, APPROVED, AND ADOPTED this 14th day of October, 2008.

Brenda Salas, Mayor

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

City Attorney

ATTEST:

Marie A Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-118 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 14th day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

RESOLUTION NO. 2008-06UA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE RELEASE OF A PARTIAL PAYMENT TO THE BEAUMONT CHERRY VALLEY WATER DISTRICT FOR WELLS NO. 25 & 26

WHEREAS, the City of Banning owns and operates its own Water Utility, supplying potable water to its residents; and

WHEREAS, the City of Banning enter into a joint Agreement with Beaumont Cherry Valley Water District (BCVWD), to construct new water wells jointly within the Beaumont Groundwater Subbasin; and

WHEREAS, the drilling/construction of Wells No. 25 & 26 are a joint effort to augment the future water supply to serve Banning's customers; and

WHEREAS, the BCVWD has submitted progress invoices for designing, drilling, and equipping of Well No. 25 in the amount of \$118,678.80 and Well No. 26 in the amount of \$261,154.82 for a total of \$376,833.62; and

WHEREAS, the City of Banning will reimburse the BCVWD up to 50% of the eligible drilling/construction costs of Wells No. 25 & 26; and

WHEREAS, funding of this partial payment is available in the Water Division Operations reserves; and

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

Section I. Adopt Resolution No. 2008-06UA, "Approving the Release of a Partial Payment to the Beaumont Cherry Valley Water District for Wells No. 25 and 26."

Section II. Appropriate \$379,834.00 from the Water Division Operations reserves and authorize the Director of Finance to make the necessary budget adjustments.

PASSED, APPROVED, AND ADOPTED this 14th day of October, 2008.

Brenda Salas, Chairman
Banning Utility Authority

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

City Attorney

ATTEST:

Marie A Calderon, Secretary
Banning Utility Authority

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2008-06UA was duly adopted by the Board of the Banning Utility Authority at a regular meeting thereof held on the 14th day of October, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority

AGREEMENT

THIS AGREEMENT is by and between the City of Banning ("City") and the Beaumont-Cherry Valley Water District ("District"), sometimes jointly referred to as the "Parties."

RECITALS

WHEREAS, the Parties are the agencies serving the largest number of domestic water users in the San Gorgonio Pass area and collectively rely in substantial part on the Beaumont Basin ("Basin") as a source of water; and

WHEREAS, the Parties desire to promote conjunctive use of the Basin and desire to jointly address issues concerning the long-term reliability of the Basin as a source of potable water, including the use of water recycling and the treatment and use of imported water.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

I. PRODUCTION FACILITIES.

The Parties shall share the cost of constructing and operating three new production wells as follows:

A. Description.

The production wells shall be located west of Highland Springs Road at mutually agreed locations; shall be at least 1,500 feet deep' shall have minimum diameters of 18"; and each shall be capable of producing a minimum of 2,000 gallons per minute ("gpm").

B. Construction Costs.

The costs of constructing the production wells shall be shared equally between the Parties. The costs of constructing facilities to connect a Party's distribution system to any or all of said wells shall be borne by that Party.

C. Ownership.

The District and the City shall own and operate the wells jointly, on a 50-50 basis. District shall function as the lead operating agency with primary responsibility for the operation and maintenance of the joint facilities.

D. Operation, Maintenance, Repair and Replacement Costs.

(1). Operating and maintenance costs for each well shall be assessed to each Party on a per well basis. "Operating and maintenance costs" are defined as direct labor costs, electric costs, and costs of routine maintenance of the pumping facilities. "Repair and Replacement Cost: are defined as necessary costs of required repair or replacement of equipment and facilities. The District shall deliver the water to a tie-in point with City's water system at Highland Springs Avenue from the joint facilities at the Operating and maintenance costs of the water and without any wheeling cost.

(2). The cost shall be assessed based on the ratio of water supplied to that Party from a well/wells to the total water produced from that source.

(3). Each Party shall bear as its separate obligation those costs related to operation of facilities that it owns and that are used to deliver water to its distribution system.

(4). The District will submit the actual operation costs to operate the joint well/wells along with the necessary back up information on quarterly basis to the City. City will reimburse the District the said operation costs on quarterly basis subject to verification of such actual costs.

E. Production & Supply Pending Construction of Wells.

With respect to each production well, commencing on the date hereof and pending construction and development of the well to the point where total production from the well reaches 2,000 gpm, the District shall supply up to 1,000 gpm during Southern California Edison ("SCE") off peak hours to the City on an as-needed basis, at the District's cost of production. "Costs of production" are hereby defined as costs of electricity and direct labor costs required to bring the water to the surface and make it available to the City at the tie-in point.

F. Production & Supply Following Construction of Wells

(1). When the combined, total production from the three production wells reaches 6,000 gpm on a continuous basis, City shall be entitled to receive the greater of 3,000 gpm or 50% of the production at the District's Operating and Maintenance costs as defined above.

(2). The quantity of water delivered to City from the wells shall be charged to the City's total entitlement water from the Beaumont Basin set forth on Exhibit "Appropriators and Their Rights and Shares of Safe Yield and Operating Yield" of (Column number 6, "Operating Yield") the Stipulated Judgment in the Riverside County Superior Court case, San Timoteo Watershed Management Authority, etc. v. City of Banning, et al., Riverside County Superior Court case No. RIC 389197.

II. WATER TREATMENT PLANT.

A. Development of Joint Water Treatment Facilities.

The District has plans to build a water treatment facility for the treatment of state water project water on the District property located in Cherry Valley adjacent to District's Taylor reservoir. The Parties hereby express their intent to share the cost for design and construction of proposed treatment facilities. However, such agreement shall not prevent any party from unilaterally commencing the construction of the treatment plant. Should a Party elect to proceed with the design and construction of the treatment plant, it will not preclude the second party from constructing additions to the plant at a later date at the discretion of that Party. If construction on such water treatment plant has not commenced within 10 years of date hereof, Section II of this agreement "Water Treatment Plant" shall become void and of no further effect, unless otherwise mutually agreed by the Parties.

(1) Construction Costs.

Costs shall be shared based on percentage of participation in the total capacity of the plant: the City's percentage participation shall be determined by City, but shall not exceed 50% of rated plant capacity.

(2) Operation and Maintenance, Repair and Replacement Costs.

Operations and Maintenance shall be assessed on each Party according to its percentage of participation in the cost of operating and maintaining said water treatment facilities. "Repair and Replacement Cost" repair and replacement costs shall be assessed on each party according to its percentage of participation in the operation of the plant.

B. Treated Water Allocation.

Each party will be entitled to its prorata share of State Water Project water treated by the water treatment plant, based on its percentage of financial participation in the construction of the plant.

III. INTERCONNECTION OF SYSTEMS.

A. Connections.

City's and District's existing potable water distribution systems and recycled water systems (as the same are developed) shall be interconnected in order that each system will serve as a backup to the other. Connections will be at mutually agreed upon points between compatible pressure zones. Each connection shall be metered. Interconnection shall be established at such times and such places as are mutually agreed by the Parties in writing.

B. Cost Sharing.

(1) Construction Costs.

The costs of constructing/installing connections, meters and related facilities shall be borne equally by the Parties unless otherwise agreed in writing.

(2) Operation, Maintenance, Repair and Replacement

Each Party shall be responsible for operation, maintenance, repair and replacement of connections, meters, and related interconnection facilities assigned to it, as shown on Exhibit "A," attached hereto. Said exhibit may be amended from time to time. Each agency shall annually invoice the other for one-half of the total costs incurred for the operation and maintenance of said connections, etc.

C. Excess Deliveries Charges.

Water delivered to City by District shall be charged to City's entitlement to production from the wells as set forth in Paragraph 1(E) and 1(F) above. Deliveries by District to City in excess of said quantities shall be charged to City at District's lowest domestic water rate. Conversely, deliveries

by City to District shall be charged to District at City's lowest domestic water rate.

IV. RECYCLED WATER AND IN-LIEU WATER.

The District shall give the City first-take on any excess recycled water of the District. The decision to accept the water made available under this section shall be at the sole discretion of the City. The District and the City will work together to develop a system for deliveries to be made to the City under this subsection.

V. 1960, 1966 MEMORANDA OF UNDERSTANDING.

The 1960 and 1966 Memoranda of Understanding between the Parties are hereby modified to the extent necessary to allow for the construction and operation of the wells described in Paragraph 1 above, for the benefit of both parties. Consistent with those Memoranda of Understanding, either Party may, without consulting the other, develop additional water supplies within its boundaries, provided that it observes the one-half mile setback or buffer zone on each side of Highland Springs Road as created by said MOU's.

VI. Effective Date.

This MOU shall become effective when both Parties have executed this MOU and have executed the Stipulation for Judgment in the adjudication action, San Timoteo Watershed Management Authority v. City of Banning, et al., Riverside County Superior Court, Case No. RIC 389197.

VII. TERMINATION.

This Agreement may be terminated by written consent of both parties.

VIII. JOINT FUNDING EFFORT.

The Parties agree to work together to obtain Federal and State funding for projects that will jointly benefit both Parties, including the development of Supplemental Water Master Plans to include importation of State Water Project water, the capture and recharge of urban and storm runoff, recycled water systems, interconnection of domestic water systems, and State Water Project water treatment facilities. In addition, the Parties hereby agree to work with the California Department of Water Resources, the San Gorgonio Pass Water Agency ("Pass") and others, to develop supplemental water and recycled water supplies and will work closely with Pass to obtain access to and storage and distribution of State Water Project water.

IX. AMENDMENT.

This Agreement may be amended only by written amendment signed by the Parties.

X. SEVERABILITY.

In the event a portion of this Agreement is illegal or unenforceable, the remaining provisions will be given effect in order to preserve the original intent of the Parties.

XI. NOTICES.

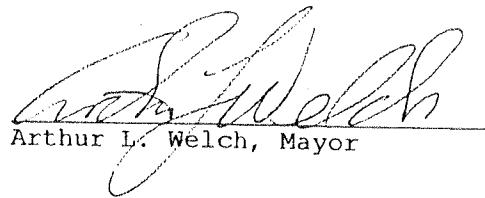
Notices shall be sent as follows:

City of Banning:

Beaumont-Cherry Valley Water District:

DATED, 12/23 2003 CITY OF BANNING

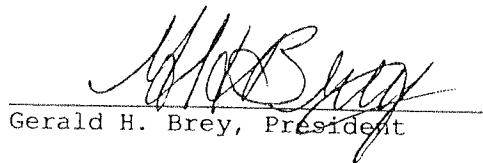
By



Arthur L. Welch, Mayor

DATED, 2003 BEAUMONT-CHERRY VALLEY WATER DISTRICT

By



Gerald H. Brey, President