

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

January 13, 2009  
**6:30 p.m.**

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

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

**I. CALL TO ORDER**

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

**II. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS**

Report by City Attorney

Report by City Manager

PUBLIC COMMENTS – On Items Not on the Agenda

*A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.*

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

PRESENTATIONS:

1. Presentation by Officer Mike Bennett and Banning High School Principal Raymond Johnson – Regarding Banning High School *(ORAL REPORT)*

*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.*

2. Consideration by the Banning City Council to Approve Resolution No. 2009-07, In support of the Riverside County Detention Center near the Community of Whitewater ..... 1  
**Recommendation: That the City Council, subsequent to presentation by the County of Riverside consider adopting City Council Resolution No. 2007-09, In Support of the Riverside County Detention Center near the community of Whitewater.**

APPOINTMENTS:

1. City Council Committee Assignments ..... 5

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 – 12/10/08 ..... 7  
 2. Approval of Minutes – Special Meeting – 12/20/08 ..... 23  
 3. Resolution No. 2009-01, Approving the project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue ..... 24  
 4. Resolution No. 2009-02, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2009/2010 ..... 41  
 Center Gym to Whitmore  
 5. Resolution No. 2009-03, Accepting the 2009 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment and Training ..... 47  
 6. Resolution No. 2009-04, Authorizing the Appropriation of General Account Funds for the P.O.S.T. Law Enforcement Command College Program in the Amount of \$4,206.00 Which Will Be Reimbursed to the City of Banning Through the California Commission on Peace Officer Standards and Training Upon Completion of Each Session Completed ..... 50  
 7. Resolution No. 2009-05, Awarding An Agreement to Allsup Corporation of Upland, CA in an Amount “Not of Exceed” \$52,459.00 for the Emergency Repair of the CNG Fueling Station at the City Yard ..... 54

8.	Resolution No. 2009-06, Approving Participation In the Green Path North Transmission Project Feasibility Study . . . . .	58
9.	Emergency Booster Pump Repairs at Water Well C-2 Site. . . . .	65
10.	Emergency Booster Pump Repairs at Water Well C-3 Site. . . . .	70
11.	Notice of Completion for Project No. 2001-02, Construction of the 30" & 24" Water Transmission Pipeline. . . . .	75
12.	Notice of Completion for Project No. 2008-01WW, Cleaning of Anaerobic Digesters . . . . .	80
13.	Authorizing Public Utilities Director to Purchase Water Supply from Various Sources and Approval of Payment of Two Invoices. . . . .	84

- Open for Public Comments
- Make Motion

#### **IV. PUBLIC HEARINGS**

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

1.	Public Hearing Soliciting Public Comment on the City's Neighborhood Stabilization Program . . . . .	86
<b>Recommendation: That the City Council open the public hearing, receive public comment on the City's plan to expend Neighborhood Stabilization Program grant funds, and direct staff to prepare a report to address those comments for presentation at the second public hearing.</b>		

#### **V. REPORTS OF OFFICERS**

1.	Brian Nakamura, City Manager	
	A. Adoption of City Manager Goals for 2009 . . . . .	89
<b>Recommendation: That the City Council adopt, based upon the December 20, 2008 Executive Session, City Manager evaluation, the attached 2009 goals and objectives for the City Manager.</b>		
2.	Kahono Oei, City Engineer	
	A. 2009-2014 Five Year Consolidated Plan Needs Assessment Survey. . . . .	92
<b>Recommendation: That the City Council receive and file this report.</b> (This is for information purposes only and does not require action.)		
3.	Matthew Bassi, Interim Community Development Director	
	A. City Council Resolution No. 2008-121: City Council Review of an Agreement for the Deferral of Development Impact Fees in Amount of \$447,006.12 between the City of Banning and CA Kabir, Inc. for the Holiday Inn Express & Suites Hotel project Located at 3020 W. Ramsey Street . . . . .	103

Recommendation: **That the City Council adopt Resolution No. 2008-121, authorizing an Agreement between the City of Banning and CA Kabir, Inc., for the deferral of \$447,006.12 in Development Impact Fees for the Holiday Inn Express & Suites hotel project.**

- B. Holiday Inn Express & Suites Sign Proposal: A status update from the Community Development Department on a Proposal by Holiday Inn Express & Suites for an 80-foot Freeway-Oriented Sign... **163**
- C. Smoking in Public Parks – Review of Ordinance No. 1400: An Update by the Community Development Department on Draft Ordinance No. 1400 to Amend Section 8.56.030 of the City of Banning ..... **178**

## **VI. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Pending*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Pending*) (*City Manager*)
3. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 2/10/09*)
4. Report on “One Stop Shop” (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 1/27/09*)
5. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna – 8/12/08*) (*Burk/Nakamura*) (*ETA 2/09*)
6. 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*) (*Nakamura*) (*ETA 2/09*)
7. Policy on Summer/Winter Breaks for Council Meetings (*Franklin – 9/23/08*) (*Nakamura*) (*ETA 1/27/09*)

FUTURE MEETINGS

1. Need to schedule a Special City Council Meeting to interview Planning Commission Candidates.

## **VII. CLOSED SESSION**

1. The City Council will meet in Closed Session pursuant to the provisions of Government Code Section 54956.9 (a) & (b) to confer with legal counsel with regard to one matter of pending litigation – Banning Airport Associates.
  - A. Opportunity for Public to address closed session items.
  - B. Convene to Closed Session

## **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  
PRESENTATION**

**DATE:** Jan 13, 2009

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

**FROM:** Brian S. Nakamura, City Manager

**SUBJECT:** Consideration by the Banning City Council to Approve  
Resolution No. 2009- 07 in support of the Riverside County  
Detention Center near the Community of Whitewater.

**RECOMMENDATION:**

That the City Council, subsequent to presentation by the County of Riverside consider adopting City Council Resolution No. 2009-07 in support of the Riverside County Detention Center near the community of Whitewater.

**BACKGROUND:**

On December 11, 2008, at the monthly Pass Area Mayors Managers meeting a presentation by Supervisor Marion Ashley was made regarding the proposed Detention Center to be located near the community of Whitewater. Subsequent to the presentation Supervisor Ashley asked that each community present consider adopting the attached resolution in support of the proposed project.

Mayor Botts at that meeting asked that Riverside County make a presentation to the City Council prior to consideration for approval. Staff has also been informed that presentations are now scheduled for other agencies including Beaumont and Calimesa.

**FISCAL DATA:**

There is no anticipated fiscal impact to the City.



RECOMMENDED BY:



APPROVED BY:

**RESOLUTION NO. 2009-07**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF BANNING, CALIFORNIA  
IN SUPPORT OF RIVERSIDE COUNTY  
DETENTION CENTER**

**WHEREAS**, the primary role of local elected officials is to protect the health, safety and welfare of their residents; and

**WHEREAS**, the City of Banning continues to work with local law enforcement agencies to keep our streets safe and keep criminals behind bars; and

**WHEREAS**, a federal injunction requires Riverside County release inmates when the county's jails are at capacity; and

**WHEREAS**, in 2007 Riverside County released more than 6,000 criminals before they had completed their sentences because jails were at capacity; and

**WHEREAS**, without adequate inmate housing Riverside County will be forced to continue the early release of criminals who often return to the streets and commit new crimes against our residents, visitors and property; and

**WHEREAS**, Riverside County is conducting the environmental review of a site for a detention center along Interstate 10 near the Community of Whitewater; and

**WHEREAS**, the detention center will resemble a manufacturing or distribution center similar to other facilities on that segment of Interstate 10; and

**WHEREAS**, the Interstate 10 location is best suited for a detention center because of its close proximity to a transportation corridor and ease of access to county courts; and

**WHEREAS**, there appear to be few negative environmental impacts associated with the proposed Interstate 10 site for a detention center; and

**WHEREAS**, the detention center will house 2,000 inmates in its first phase and the site has potential to expand to 7,200 inmate beds; and

**WHEREAS**, the detention center will add amenities and infrastructure to the surrounding neighborhoods; and

**WHEREAS**, the detention center will generate about 1,500 public safety jobs at build out; and

**WHEREAS**, the detention center will allow the county to dramatically curtail the number of inmate early releases and better ensure criminals stay off the streets and therefore enhancing the quality of life for all residents and visitors.

**THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED** by the City Council of the City of Banning, County of Riverside, State of California, in regular session assembled on January 13, 2009, as follows:

1. That the City Council sees no deleterious public safety or economic impacts to cities and communities near the detention center.
2. That the City Council has determined construction of a new detention is a regional public safety priority.
3. That the City Council hereby finds the proposed site along Interstate 10 near Whitewater to be an ideal location for a detention center pending the outcome of the environmental impact study.
4. That the City Council endorses the project and recommends that Riverside County move forward with construction of the regional detention center near the Interstate 10 location.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of January 2009.

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Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

ATTEST

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2009-07 was duly adopted by the City Council of the City of Banning, California, at the special meeting thereof held on the 13<sup>th</sup> day of January, 2009 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

## **COMMITTEE ASSIGNMENTS - 2008**

### **CITY COUNCIL CITY OF BANNING**

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG)	1 <sup>st</sup> Monday of each month.	Machisic	Botts	Brian Nakamura City Manager
Riverside Transit Agency (RTA)	4 <sup>th</sup> Thurs. of each month – 2:00 p.m. (Nov. & Dec. 3 <sup>rd</sup> . Thursday)	Franklin	Salas	Duane Burk, Public Works Director
Riverside County Transportation Commission (RCTC)	2 <sup>nd</sup> Wednesday of each month - 10:00 a.m.	Hanna	Salas	Duane Burk, Public Works Director
Pass Area Transportation NOW Committee	1 <sup>st</sup> Friday of each month at Noon	Botts	Franklin	Duane Burk, Public Works Director.

## Assignments - 2008 (Continued)

Regional Conservation Authority	Tribal Distribution Fund Committee <i>(County Appt.)</i>	ECONOMIC DEVELOPMENT COMMITTEE LIAISONS	GOVERNMENT ACCESS CHANNEL COMMITTEE (as needed)	PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNNG (as needed)
Machisic Hanna, Alt.	Machisic	Botts Hanna	Botts Salas	Hanna

TUMF ZONE COMMITTEE	SOUTHERN CALIF. ASSOC. OF GOVERNMENTS (SCAG)	LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative	LEAGUE OF CALIF. CITIES – HOUSING & ECONOMIC DEVELOPMENT	
Salas Machisic, Alt.	Botts Hanna, Alt.	Franklin	Hanna	

CHAMBER OF COMMERCE <i>(External Group)</i>	LEAGUE OF CALIFORNIA CITIES <i>(External Group)</i>	SAN GORGONIO PASS WATER AGENCY <i>(External Group)</i>	COMMUNITY ACTION AGENCY <i>(External Group)</i>	WRCOG MULTI-SPECIES HABITAT CONSERVATION PLAN COMMITTEE
Botts Hanna Alt.	City Council	Botts Hanna, Alt.	Franklin Hanna, Alt.	Hanna Franklin, Alt.

### 2 x 2 COUNCIL WORKING GROUPS

BANNING UNIFIED SCHOOL DIST.	MORONGO BAND OF MISSION INDIANS	MT. SAN JACINTO COLLEGE		
Botts Franklin				

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

12/10/08  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Botts on December 10, 2008 at 7:25 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin  
Councilmember Hanna  
Councilmember Machisic  
Councilmember Robinson  
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager  
David Aleshire, City Attorney  
Bonnie Johnson, Finance Director  
Duane Burk, Public Works Director  
Jim Earhart, Public Utility Director  
Matt Bassi, Consultant  
Hoyl Belt, Human Resource Director  
Heidi Meraz, Recreation Director  
Tim Steenson, Development Services Manager  
Jeff Stowell, Battalion Chief  
Marie A. Calderon, City Clerk

Mayor Botts invited the audience to join him in the Pledge of Allegiance to the Flag. The invocation was given by Mayor Botts.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney – There was nothing to report.

## Report by City Manager

City Manager asked to consider an agenda item under closed session regarding City Manager evaluation.

**Motion Machisic/Hanna to add this item to the agenda and the need to take action arose after the posting of the agenda. Motion carried, all in favor.**

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

Santa Claus, 1 Santa Claus Lane addressed the Council regarding the giant toy giveaway for kids 12 and under on Sunday, Dec. 14<sup>th</sup> at 1:00 p.m. at Repplier Park.

Anthony Negron, Representing the Milo P. Johnson Center for Learning addressed the Council stating his concern in that they have a roster of 60 students at the school and many of them use Pass Transit in order to get to and from school. However, at the actual school location there is no bus stop placed there. The nearest bus stop they have is on Hargrave St. The primary concern is that a lot of these students are teen mothers who are expecting or already have children and they are having to walk from Hargrave to North Florida which is about a half a mile and pass through a not so good neighborhood. He is requesting to see if they can get a bus stop placed on the location at 647 North Florida for these students.

Councilmember Franklin said that just for clarification she does believe that the bus does go on Wilson Street which is about  $\frac{1}{2}$  a block away and Hargrave is two blocks from Florida. She said knows, sitting on the Ad Hoc Committee, that they are looking at the bus routes and how to improve the service because they do want to increase the number of riders. But she thinks that staff is going to be looking at that because they have been talking about how to improve their bus location stops, as well as, as how to increase the rider ship of our young people so they will look at it.

Raj Bhakta, owner of Holiday Inn Express, addressed the Council regarding his pole sign at his business. He said that Kim Clinton said that the City ordinance does not allow the pole sign at the property. He said that he has spent over \$6.5 million dollars to finish up this project and the City denied him having a pole sign. He has a picture of the pole sign for review and would like to get permission for this sign.

Mayor Botts said that they would have staff look at and have a report back to the Council from staff on Mr. Bhakta's specific issue.

Charlene Sakurai, 43000 Dillon Road stating that on behalf of the Alliance thank you very much to the City and individual departments of the City for all of the support in making the Phineas Festival of Lights such a success. Jim McMillian who is the Program Coordinator for the Alliance and Kathryn Robinson who was the Chair of that committee have gone way over what would normally be expected of people in those positions to make this really work. The community participation was great. This was the first year for the Festival of Lights and they hope next year it will be even bigger and they are so grateful for everybody's input and participation and support.

Doug Monte, Detective with Banning Police Department on behalf of Chief Leonard Purvis addressed the Council regarding the G.R.E.A.T. (Gang Resistance Education and Training) Program. They are currently teaching 400 6<sup>th</sup> Graders at Coombs Intermediate and they are about halfway through the curriculum. It is a 13-week program and he is happy to announce that the Banning Police Department was selected as the featured agency for the G.R.E.A.T. Program in a regional newsletter. He said the mural that they created for Coombs will be going up in the next few weeks and they will have 385 8x8 tiles mounted on the wall and will be a permanent fixture art project and all of his 6<sup>th</sup> graders from last year who are now at Nicolet Middle School all of their handprints will be on there including Zoro the K-9 dog. He thanked the Banning Police Dept. for this opportunity to represent them in the schools. He calls his Coombs kids "Great Kids and Kids with Class" and they are creating future role model students.

Mayor Botts said this is a great program and many of the Council were in attendance for the new BPAL program called "Club Mudd". We have a wonderful police department and volunteers to make this happen and most importantly the students who are part of it. This is a program that excels most others in other communities. On behalf of the Council, he thanked Detective Monte for an outstanding effort.

Amy Herr, 964 Dorothy Anna Dr. addressed the Council congratulating Councilmembers Hanna and Machisic on their re-election and Councilman Robinson on his election to the City Council. She said that she is very hopefully right now having our 2x2 meetings with the school district and the City is wonderful. It has allowed them to bridge a gap that has been there for a very long time and she thanked City Manager Nakamura for making those meetings happen and Mayor Botts and Council Member Franklin for attending those. Just the ability to sit down and talk about issues that are affecting both the City and the school district which affects all of our community members is really a breath of fresh air. It is about time that we have done something like this and she appreciates it very much and looks forward to seeing what this Council is going to be able to accomplish working together for the common vision of Banning and moving the town forward as it has done very well thus far. She said that be a life time resident of Banning it is so encouraging to her to see the wonderful things that are going on in town and it has never looked as beautiful as it looks right now. She also commended Detective Monte and his program with G.R.E.A.T. and all of the things that they do and it has made a huge impact on the kids in our community. She just wanted to thank the Council for their commitment to the community.

#### PRESENTATIONS:

##### 1. Presentation by Cal Heat PABAC

Frank Linares addressed the City Council thanking the Council for their support with their trip and making their dream come true to go to Cooperstown New York where they competed in the National Cooperstown Tournament of Champions. He went over their accomplishments at the event stating that they made it to the semi-finals and lost to a team from Fresno, California. He said it was a good experience for the team and he was proud of each of them. They took 3<sup>rd</sup> place out of 24 teams across the country. On behalf of the Cal Heat Pass Area Baseball Club he presented a plaque and picture to the Mayor and City Council for their support.

#### ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Franklin –

- Commended the Cultural Alliance, as well as, Detective Monte and the G.R.E.A.T. Program and Club Mudd for all their efforts and everyone involved.
- In regards to transit their Ad Hoc Committee met and they are completing the last of the surveys and there were over 400 surveys taken and an update should be made by the next meeting. One of the things they talked about was how to educate the public about public transit and second, how to increase our youth rider ship and those will be the two goals for the year. They did have an increase in Oct. this year of 60% and Nov. this year to last year was 10%.
- At the Passcom meeting there was a presentation on REARS (Riverside Emergency Animal Rescue System) by Animal Control and they do need volunteers and those can be obtained through the animal shelter. There will be more C.E.R.T. (Community Emergency Response

Training) training classes available and the next one is January 8<sup>th</sup> and 10<sup>th</sup> and you can call 951-572-3227 if you are interested in participating.

- She attended the Economic Workshop with Councilman Machisic and staff in regards to grant opportunities for infrastructure that was presented by the Give Program and the speaker was Will Marshall from the Department of Commerce.
- She had a chance to meet Darrell Thomas which resulted in a meeting with staff and County staff about a potential Dodger Dreamfield here in the City.
- She attended another event where she met with Mr. Sahib and his partner about their interest in being able to bring some kind of business here for green technology. They are very interested in the Banning area. She passed his card on to staff.
- On December 20<sup>th</sup> the City is having a Winter Celebration at the Community Center from 4:00 to 8:00 p.m. and they will be giving awards to the top three entries for the different programs and will have a vehicle competition and the community is invited to participate.

Councilmember Machisic –

- He said in a meeting with WRCOG he received a booklet that is a summary of Riverside County over the past year and he is circulating it to all members of the Council. It provides many vital statistics.
- Dave Willmon, League of California Cities representative made a presentation at the WRCOG meeting and there to report on the State budget and the amount of progress being made at the State level as far as the budget was almost non-existent.
- Also tonight they talked about the façade program and how it has progressed and is very advantageous to the downtown area but also he would like to bring to the attention of the audience and those watching from home that we just finished a parking lot adjacent to the city hall and one of the problem you have downtown is parking. When he talked to Duane Burk he asked how many additional parking spots and he was told that they added about 30 and that is vital in that particular area. If you haven't been to the Senior Center, you ought to go look at the renovation of the main dining room and the kitchen done by Public Works and it is outstanding and tonight we have approval of the completion and renovation of the Community Center. Also our substation where we have spent millions of dollars on is up and running and at the same time almost simultaneously we went to construction on an 8 million gallon water tank. It is important to mention these things because sometimes they are overlooked. The police department is rising and the County courthouse complex will be here shortly. He thanked the Cultural Alliance for bringing some life and activity to the downtown with the Festival of Lights. They are to be commended because one of their charges was to provide activities in the downtown and they have done an excellent job of it.

Councilmember Hanna –

- Congratulated staff on the rubberized asphalt on Wilson Street between 8<sup>th</sup> Street West to approximately Sunrise. Staff received a very large grant to help us pay for that and hopes that we will be able to do more across the city.

Councilmember Robinson –

- Said he really enjoyed the Phineas Festival and all that went on and he looks forward with doing that again next year.
- In regards to the P.A.P.A (Pass Area Performing Arts) theater plays Thursday, Friday and Saturday are the last three nights of the play and tickets are available through the box office.

Mayor Botts –

- He said he had the pleasure of participating in the Unity Walk last Saturday. He attended and spent several hours at Banning High and it was his first duty as the new Mayor to welcome everyone there and welcome the Ambassador of Haiti who was an incredible individual who spoke and Lois Carson from the Riverside County who was the speaker. It was a successful event and he appreciated the opportunity to be a part of it.

## RESOLUTION

1. Resolution No. 2008-126, Approving the Projects for Fiscal Year 2009-2010 Community Development Block Grant (CDBG) Program.  
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet. He is asking the Council to adopt Resolution No. 2008-126 approving the projects for fiscal year 2009-2010 for the CDBG Program as shown in Exhibits. The Ad Hoc Committee was comprised of Councilmembers Machisic and Hanna.

Councilmember Machisic said this is the typical example of many great needs and very few dollars and one of the things they tried to do at least from his way of thinking and also from Councilmember Hanna's was to provide the money locally and they also tried to provide it for the greatest number of people and also to the people who were in the greatest need. He used those criteria in trying to disperse the money. It is unfortunate that we don't have any more money to pass to these other groups that were certainly worthy but they had to make a decision based on those criteria.

Mayor Pro Tem Hanna said the other element which just became clear direction from the County this year is that the minimum size of the grant is \$10,000 unless the applicant is also applying to other cities and directly through the County. For example, Soroptimist House of Hope received \$7,000 and we are in hope that they will be receiving some funds via Desert Hot Springs as well as the County so it would make it over \$10,000 but given the minimum size otherwise of \$10,000 we they are only able to give two grants in addition to that.

There was some discussion in regards to the allocation of funds for CDBG projects and there was also some discussion on the money received last year for the park bowl.

Mayor Botts opened the item for public comments.

Cindy "Oma" Gray, Chief Administrator for Soroptimist House of Hope located at 628 S. 8<sup>th</sup> Street addressed the Council thanking them for the \$7,000 award and stated that Desert Hot Springs did come through with \$10,000 and they will be looking for that to be combined and look forward to that by January 2010. She said in regards to their program ten years ago today she walked through the door with three days clean and sober and last Sunday she celebrated 10 years clear and sober and still going strong and she thanked the Council very much.

Amy Herr, 964 Dorothy Anna Dr. addressed the Council stating that she was disappointed with the small amounts that the City has been hopefully granted in order to provide services to the members of our community. She was a bit concerned when she received notification from the

City that they were not going to be one of the funded community-based organizations. There is absolutely no way that she would ever take anything away from any of the others that have been awarded money because all of us she thinks are doing tremendous service to our community. She would personally like to see that funds were more equally distributed and however, had they known that there was a contingency that the County had put in place regarding applying for county funds, as well as the city funds, she would have of course done that but they didn't know about it. Also they received the letter regarding the CDBG application dated October 20<sup>th</sup> with the deadline date for November 7<sup>th</sup> so their timeframe was quite short in getting the application in. But in looking through all the projects that did make applications they were all very worthy organizations but she does think it would have been better if the monies could have been distributed between all of the local organizations so that we could all continue to make the impact that they are within the community. As far as the capital money goes, she would hope to in the future possibly this Council would consider the Roosevelt Williams Park as being one of the recipients of that because they are serving a hundred kids there in the off season of school in a building that is maybe 1000 square feet that the air-conditioning doesn't work well and they have issues with the bathrooms and they are trying to do the best they can with very limited conditions so she would hope that they all consider this in the future when the next CDBG money comes around and put it on a priority list.

Doug Monte addressed the Council on behalf of the Banning Police Department and he said he is representing Chief Purvis for the CDBG grant. Last year they were fortunate to receive CDBG grant monies in the amount of \$12,300 and he is happy to say that today all of the money has been expended except for about \$4,000 and everything has been accounted for. He asked that a representative from each part of BPAL come forward and he introduced Jorge Castillo representing the soccer group and they showed the uniforms that were purchased with CDBG grant monies. He said that Jorge is a full time coach for BPAL and he also hosts 50 kids for the Wednesday afternoon after school program at Nicolet Middle School. This is a competitive team and they finished taking first place in the Desert Tournament. He also introduced some skaters from the Freedom Rider Skaters with BPAL and they represent positive skaters and have kind of adopted the skate park. In introduced the newest group "Club Mudd" which is a ceramics club created with the partnership of the school district. He said that Paul "Bear" Bradford from Bare Creek Pottery is the instructor and there are 20 kids involved. They also have the Ballet Folklorico Dancers and there are 25 dancers in the group and Blanca Martinez is the instructor who donates hundreds of hours of her time along with Bear and Jorge. They also ten 951 Hip Hop Dancers and hope to build that group up. They do recycling wrangling as part of the Stagecoach Days festivities and were partly responsible for two tons of trash being collected during the four day event and they also do a lot of community service type things. This Saturday they will do the Shop with a Hero Program and they have 22 kids from Banning and 28 kids from Beaumont that will participate in this event and will have a \$100 dollar shopping spree at Wal-Mart. The kids chosen for this program have really given back to the community. No CDBG money is used for this program. Money is donated by private parties, businesses in the community of Banning and from other people and they raised about \$2200 to do this second annual program.

Councilmember Franklin said that she will be abstaining because she does sit on the board on two of the three agencies.

Mr. Duane said for the record the Council would only be recommending these dollar amounts back to the County. There will be another process brought back for the award.

**Motion Hanna/Machisic that the City Council adopt Resolution No. 2008-0126, Approving the Projects for Fiscal Year 2009-2010 Community Development Block Grant (CDBG) Program, and authorize staff to submit said applications to the Riverside County Economic Development Agency. Motion carried, with Councilmember Franklin abstaining.**

**CONSENT ITEMS**

Mayor Pro Tem Hanna pulled Consent Item No. 2 for discussion and Councilmember Franklin pulled Consent Item No. 3 for discussion.

**1. Approval of Minutes – Regular Meeting – 11/14/08**

Recommendation: That the minutes of the Regular Meeting of November 14, 2008 be approved.

**4. Resolution No. 2008-125, Authorizing the Police Department to Enter Into an Agreement with the California Office of Traffic Safety to receive \$7,789.84 in Overtime Funds to be used for Officers Participating in the 2009 California Sobriety Checkpoint Program.**

Recommendation: That the City Council adopt Resolution No. 2008-121, authorizing an Agreement between the City of Banning and CA KABIR, Inc. for the deferral of Development Impact Fees for the Holiday Inn Express hotel project.

**5. Resolution No. 2008-127, Approving the Amendment to the Professional Services Agreement with Urban Crossroads for the Traffic Impact Analysis Related to the Sunset Grade Separation and I-10 Interchange Improvement Project.**

Recommendation: That the City Council adopt Resolution No. 2008-127, Approving the Amendment to the Professional Services Agreement with Urban Crossroads for the Traffic Impact Analysis related to the Sunset Grade Separation and I-10 Interchange Improvements Project and authorize an additional expenditure to include \$12,700.00 for a total contract amount of \$50,000.00.

**6. Resolution No. 2008-128, Adopting a Conflict of Interest Code for the City of Banning**

Recommendation: That the City Council adopt Resolution No. 2008-128.

**7. Resolution No. 2008-129, Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line “D” Project No. 5-0-00152 (City of Banning Project No. 2006-02 – Storm Drain Line “D” Improvements on Ramsey Street, Martin Street and Williams Street).**

Recommendation: That the City Council adopt Resolution No. 2008-129, Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Storm Drain Line D Project No. 5-0-00152 (City of Banning Project No. 2006-02 Storm Drain Line D Improvements on Ramsey Street, Martin Street and Williams Street).

**8. Report of Investments for July, August and September 2008**

Recommendation: That the City Council receive and place these required monthly Report of Investments on file.

9. 2007-08 Annual Report of Development Impact Fee

Recommendation: That the City Council review and approve the 2007-2008 Annual Report of Development Impact Fees as required by the Mitigation Fee Act.

**Motion Machisic/Franklin to approve Consent Items 1, and 4 through 9.** Mayor Botts opened the item for public comments. **There were none. Motion carried, all in favor.**

2. Resolution No. 2008-121, Approving an Agreement with CA Kabir, Inc. for the Deferral of Development Impact Fees in the Amount of \$447,006.12 Associated with the Development of the Holiday Inn Express Hotel Located at 3020 W. Ramsey Street (APN: 538-340-005).

Mayor Pro Tem Hanna said she hopes that this new Council will have a workshop and come together and decide to give staff recommendation on what shouldn't and what should not be put on the Consent Items. This particular item is in reference to \$447,000 of proposed deferred development impact fees to the Holiday Inn. This is a significant issue and one that the public should be aware of. She doesn't know what they will end up agreeing to in terms of direction to staff but certainly things over a certain amount of money should not be on the Consent Items for approval. She would like staff to give a report on this item.

Matt Bassi, Interim Community Development Director gave the report on this item as contained in the agenda packet.

Councilmember Machisic said that he is in support of this particular action but at the same time as he mentioned earlier about policy governing owner participation agreements we definitely need a policy or an ordinance covering this with conditions under which these kinds of grants can be given. He is much in favor of them but at the same time we need to have some uniformity so if somebody wishes to receive one of these deferrals they would be given a policy, the rules and regulations for whatever. He has a number of questions in regards to repayment, how much, what is the interest, etc. so he is concerned with those things. He would like staff to come back at some point in time, with the Council's concurrence, to outline some guidelines or policies that govern under which conditions we grant these things.

Mayor Botts said that he would certainly support staff looking at that.

City Attorney addressed Councilman Machisic stating that earlier the issue was on OPA's so from that comment it sounds like you are extending the question to also deal with the fee deferral situation. Councilmember Machisic said yes.

City Attorney said the fee deferral is really a request of the City but he thinks that the same issue does apply when he inquired about it. The policy is being determined on past practice rather than really a formal written policy and there are a number of implications on the interest rate. The City has been using the LAIF rate which is kind of a rate. The LAIF funds are very limited as to what

they can be invested in and are very secure and the result is that the interest rate that the City receives is generally below what a normal financing would be in the market place.

Mayor Botts said that we cannot take action but sees heads nodding that we need to address that as a policy issue.

There was some further discussion in regards to prevailing wage and financial assistance.

Mayor Pro Tem Hanna asked if they could have some information from the developer as to why this is needed.

Raj Bhakta said that the \$447,000 is needed because of the present times at the bank and the situation is very tough but his project is going well. His plan is to open this hotel at the end of January. Actually the \$447,000 is the money he is asking to be deferred. He is not the only person doing this deferral for this amount. There are other hotels in Banning that already got the deferral which is the La Quinta. If he gets this help, there is a chance that he will end up paying before the two years is up. It is a tough situation and the bank does not want to give him the money.

Mayor Pro Tem Hanna said she doesn't know the business but she assumes that he probably took a construction loan out to build the hotel and did that include the fees.

Mr. Bhakta said no. He was surprised at these impact fees and it was about \$350,000 but the amount came up to about \$726,000 which he already paid \$260,000 to the City of Banning. He came up with this figure of \$447,000 and that money he does not have in his budget with the bank.

Councilmember Franklin asked staff if they could clarify for the audience what impact the deferral of fees will have on the City budget if any.

Finance Director said regarding the deferral of fees on the City budget as the applicant mentioned it is very hard in these economic times and even for the City of Banning. Obviously any of the fees that we defer are monies that are not readily available to the City Council to allocate during the budget process. She would however like to point out that just for the Council's general knowledge and she is sure that they are already aware of this that development impact fees are not fees that come to the City and go directly into the City's General Fund. These are fees that are set aside. They each have their own specific fund and it is for the impacts that development brings to our City so for future expansion of police facilities, fire facilities, other general facilities and these are impact fees but again, any fees we defer are less monies that are in our coffers and less money that we can invest, earn interest on and less monies that are available for the Council to spend. She can't say there isn't an impact obviously, but we have to kind of look at that. It is not a General Fund impact but it is an impact to the City overall.

Mayor Botts opened the item for public comments.

Mayor Botts asked Mr. Bassi to comment on the City being in the first position and how secure are we.

Mr. Bassi said he would have to defer that question to the City Attorney. Mayor Botts said that this states that the applicant has agreed to let us be in the first position and that is fine but has the bank said that. Mr. Bassi said he is not aware of this and the applicant has agreed to it but he is assuming that he has discussed this with his bank.

Mr. Bhakta said that actually is the amount that he discussed with the bank officer and she is not here right now and won't be back until next week and he will discuss this with her whether it is going to be the first place or the second place.

City Attorney said the agreement that you entered into before with La Quinta, which was before his watch, did not specify first position so he does not know what occurred there but when he got this agreement he had some of the issues that he talked about but to him the absolute prerequisite was that you need to be in a first position. So he raised that issue and that is the reason why this item was pulled at the last meeting. There was discussion and the property owner indicated that he was agreeable. So he went ahead and inserted the language that says we are in a first position and requires that we have a title report before we go forward to show that we are in a first position. Based upon his experience he thinks that is something that a lender could have a problem with. Their loan is going to be for a lot more money and there is only one party in a first position. The problem is that if you are not in a first position and he has dealt with this subject in other cities in the past and obviously when you are not in first position, you are going to be the last one that is going to get paid. And he has had to spend a considerable amount of time litigating trying to recover funds on deferred fee programs. If you collect them before you give the permit, you get paid and in fact, you will get paid before the bank if you condition the issuance of your permit. His experience is that cities don't make good banks. One of the problems is that the City does not like to foreclose on property which if you have a deed of trust which you have here, your remedy is a foreclosure action. It creates a political stigma and city council's don't like to do that and he doesn't have experience with this Council but the council's he has worked with in the past it has become a very extensive process giving the property owner more time, trying to hold hands and work through the situation and the legal costs get run up in that situation and ultimately he has been in situations where the council ultimately says lets split the different and lets pay half. Your at the beginning of kind of doing these fee deferral situations and he would want the Council to be aware and he understands the difficult times and the difficult times probably suggest that once you start to do these other people having difficult times will come in and ask for them.

There was some further discussion in regards to the City being in a first position and also the possible of considering an alternative.

Mayor Botts closed the item for public comments.

There was more further Council discussion in regards deferral of this amount of fees, alternative options and keeping the City in a first position. There was also some discussion about setting a precedent the need for setting guidelines for deferral of fees.

Mr. Bhakta said that if is not able to get this deferral for \$447,000 he won't be opening the hotel until probably the end of next year which would be December 2009. He is asking the City of Banning to help him and he will pay back the money to the City. This is not the first time that the City of Banning has done this. The City of Banning did it before with the La Quinta Inn and that is what he is asking about the seven year period.

Mayor Botts asked for a motion that would move this project forward with what we have indicated being in the first position and the bank has to approve that and also perhaps also we go back with negotiation on the amount and the repayment period.

City Attorney asked for clarification. In terms of the renegotiations on the payment period what are you instructing us to do. Mayor Botts said to shorten it. City Attorney asked to what. He said if you are giving staff explicit direction, then you give us explicit direction otherwise you can direct us to negotiate and we can come back and tell the Council what we worked out.

Mayor Pro Tem Hanna said she thinks what you have suggested is that first we try to get into first position but you have said that from your understanding of business that is very unlikely so our direction is first try to get into first position and if we are not in first position are you willing to consider an alternative that would be to have a shorter repayment schedule.

Mayor Botts said his position would be if we are not in a first position then we need to go back to the negotiating table and ask this gentleman to put up his house or other properties and that is done regularly in any number of situations where someone's business won't carry as collateral because there are first, second or thirds on it and often times you can ask the applicant or the individual if they have other assets that they could pledge. His position is that we ought to move forward with this agreement tonight subject to being in a first position and if we are not, then we have to go back to the table and find other assets that make us whole; collateralize the \$447,000.

Mayor Pro Tem Hanna said the problem is in it coming back to the Council in January. She thinks this is an important issue that we shouldn't just allow to slide by. She also thinks that it is very, very important that the City make a clear statement that no one has a contact with the City of Banning until they have a contract signed with the City of Banning. It is unfortunate that we have a bad precedent established and we need good policy in the future so that can be prevented. If you don't have a contact signed, you don't have a contract. It is a very simple matter but she thinks it is very important that we reinforce the idea. It is not good management and it is not good administration.

Mayor Botts reiterated that we negotiated in good faith with the legal opinion and we said we would move forward and the applicant has agreed to a first position and if we are guaranteed that from the bank then he thinks we should move forward with it. And if the bank does not do that then we are back to the table because there is no deal. And he thinks this shows good faith that negotiations took place between staff and this gentleman and we have not changed anything other than his agreement to be in a first position.

Mr. Bhakta said in other words he is not getting the help from the City of Banning for that amount.

City Attorney said what the Mayor has said is that you indicated that you are okay with the City being in a first position and the Council is saying if that is where we are at, they are okay with it.

Mr. Bhakta said he heard that. But his point is the \$447,000 and in the next two years and after that that will be the monthly payment with the interest which he is willing to pay.

**Mayor Botts said what he just said was if the rest of the Council agrees, the agreement stays the same with the exception that you agreed to have us in a first position and obviously the bank has to do that to. He is suggesting that we not change any of the terms but simply agree that we are in a first position. If your bank says no, then there is no deal and then we would have to come back and sit down and see what other collateral you can provide to us.**

Mr. Bhakta said okay.

**Councilmember Franklin moved what Mayor Botts just said. Motion was seconded by Councilmember Robinson. Motion carried, with Mayor Pro Tem Hanna voting no.**

3. Resolution No. 2008-122, Awarding the Construction Contract for Project No. 2008-08, Phase 2 Improvements to the Banning Community Center Gym to Whitmore Construction, Inc. for an amount of Not to Exceed \$168,627.00, which includes a 10% construction contingency.

Councilmember Franklin said she just wanted to know because this is something that will impact the rest of the community if we could have a small report on what is included in the renovations for the Community Center so the people know what it is.

Mr. Burk said the goal of the Council was to renovate the Senior Center, the Community Center offices and the Gym to make it more of a multi-purpose room. In this renovation they will be installing future conduits and gas lines to the air conditioning and heating units will be going up on the roof at a later date. The interior that building right now is a metal building and they will be framing in those walls to hide some of the aesthetics of the metal building and dry walling to help the acoustics in there. They will be changing the floor also. They will be painting the entire building and installing a volleyball court for another type of function for the community center. They will be installing a new 600 amp electrical panel and that panel will be accommodating the future air conditions units and other items. They will be replacing all of the existing lights with new lights to illuminate the gymnasium itself with a fluorescent protected cage light because of the other athletic events that goes on in there. They will be painting the ceiling and fixing the insulation up on top, new doors and installing drinking fountains. He explained further as to how they will be fixing the ceiling.

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2008-22, Awarding the Construction Contract for Project No. 2008-08, Phase 2 Improvements to the Banning Community Center Gym to Whitmore Construction, Inc. for an amount “Not to Exceed” \$168,627.00, which includes a 10% construction contingency: Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. Update on the City’s Neighborhood Stabilization Program  
(Staff Report - Timothy Steenson, Development Services Manager)

Mr. Steenson said the report before the Council is a report of the City’s Neighborhood Stabilization Program but probably just as accurately it is a report on the Neighborhood Stabilization Program in general. The report explains what our participation would be as part of the State’s allocation of that federal funding and it would be an amount of just over \$650,000. These funds are directed to be

spent to revitalize, rehabilitate blighted neighborhoods and structures. There are still a lot of questions in regards to the way it is structured right now because the State's program is still in development and we are still looking for some answers from housing and community development at the State level. The funds are aimed at acquiring these properties and that is what their plan right now is aimed at and they have just recently completed a survey of abandoned or unoccupied properties in this city. There are just over 600 single family residential units that are currently not occupied. They are in the process of identifying further the types of mortgages that are on these properties so they can determine where they fall into the guidelines from the federal government. Because the State's program is not finalized, our program cannot be finalized and he expects that in approximately 30 days all of this will start to come together and he explained further. Staff will be prepared to have an action plan ready to submit to the State by mid-January. The State then plans on being able to fund by mid-March. Staff has had dialogue with Habitat for Humanity in the Pass and staff thinks that probably the best expenditure of our funds would be to acquire some of these distressed properties and then involve Habitat in the rehabilitation of the properties and they also have the network to be able to qualify the targeted families middle, mid and low income families. Mr. Steenson said that this is an overview of where staff's plan is right now.

There was some Council and staff discussion in regards to this program in regards to buying properties, partnership with Habitat and other general questions in regards to an education component for people who might purchase these homes, assistance to people who are still in their homes but behind in their mortgages, and how to owners of these abandoned homes fit into this process. Staff explained that in regards to some of these questions there were no answers at this time but a number of jurisdictions are exploring partnership with Habitat.

Councilmember Machisic said for us to qualify we have to be at that million dollars and you indicated that we were in negotiations with the City of Beaumont. He asked how those negotiations were going.

Mr. Steenson said that they have talked with the representative from Beaumont and the result of our meetings have been that we hope to take direction from our Council and they would talk direction from their Council and hope that will happen and that there is a willingness to enter into that partnership. Mr. Steenson said they are thinking that that partnership works through Habitat for Humanity in the Pass. One of the questions that staff has taken forward to the state is in what form is this partnership with Beaumont. He said that HUD at the federal level has said that it is either a joint powers act or it's a memorandum of understanding. Our availability to present our plan to the State will not occur until about mid-January. They would then have about a 60-day window in which the State will consider these action plans and then finalize funding based on the allocations that they have already published.

Mayor Pro Tem Hanna said that this was very exciting and she would like to hear from Habitat of them being the non-profit agency that works with both Banning and Beaumont. She said you may not have enough information yet to be able to answer this very well but with \$659,478.00 is that to acquire the homes and to rehabilitate them.

Mr. Steenson said that it can be for both or it can be for either/or. He said that their feeling is that in a partnership with Habitat that if we acquire, Habitat has expressed a willingness to rehabilitate.

Mayor Botts opened the item for public comments.

Bill Dickson, 5700 W. Wilson said that he thinks this is really great and he loves what Habitat for Humanity has been doing. He asked if there was anything that fits into senior housing. If somebody comes into the community and asks him about senior housing, they have to be sent to Beaumont and he thinks that with the down turn of the market and the availability of properties out here it would be a good opportunity for us to look into establishing some senior housing since we do not have any.

Dean Jesson, Vice President of Habitat for Humanity in the San Gorgonio Pass Area, said that it has been their pleasure to work together with staff with the meetings with Beaumont and through Habitat it looks like the two are going to tie together, if the two Council's approve, and this is something that they have been trying to do for a lot of years. It is an indication that we are looking at the Pass as the "Pass" and not just Banning and Beaumont. With the gentlemen you have working on this program he is very pleased with and the City has been good to Habitat and at this time they are indicating that they will purchase the property and Habitat will refurbish at their cost.

Mayor Botts said that this item was for information and no action is required.

Councilmember Franklin said that she would like an update on the status of this in January after the cities get a chance to meet so the Council knows what is happening.

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

Councilmember Machisic said he received this bulletin from the State and it talks about the City of Banning sales tax and it talks about sales taxes down 16.8% in the second quarter and based on what has happened at the State level one of the things he would like to see us do is be prepared. We pared some money off of our budget but at some point in time he would like the staff to present to the Council a priority list, that if revenues go down further, that these are the things that we are going to cut. He thinks that it is important that not only we do it but the people in Banning know that this is what is coming at some point in time. Because he doesn't see that it is getting any better financially from an economic point of view and it is important that the people in town are not surprised when some things are cut. We have neighboring cities that have cut very dramatically into staff and we haven't done that to any great means but at the same time at some point we may have to and he rather discuss the issues before we have to do it and be prepared so the residents know about it.

Mayor Botts said that he concurs and he knows that staff is working on those kinds of things and would we anticipate an update or workshop in January.

City Manager said that they would be coming to the Council at the beginning of February and they would like to have that workshop.

Councilmember Machisic said the Council was asked about donations to charitable groups and we each sent forth some recommendations and he thinks it is important that they come to an agreement on that and make sure it is published with community groups because he can see a

group coming in and requesting funds and they don't know about the possible policy that we have. It is important that we develop that policy. He said he went to the State of City at Morongo and it was a very nice affair but he would image that it cost a few dollars and he was wondering if the City committed any of those funds to support that and if we are, he thinks that it is important that we lay down some guidelines for State of the City dinners.

City Manager said that the City was committed to some of the funding. As you recall, we modified the program towards the end and there were donations that were committed so we would hope that the donations would come in to minimize the cost for the City. Councilmember Machisic said he would still like the Council to take a look at that and maybe just review it because we have had some very lean and some very extravagant State of the City events and the Council just needs to discuss it and decide which way they would like to go as a body.

Mayor Botts said that he can assure the Council that as Mayor he will not surprise the Council. He said he agrees with Councilmember Machisic that this Council needs to be a part of that and unfortunately they were not.

Councilmember Franklin said that she would like to echo the concern about a budget committee workshop but what she would like to see, if possible, that enough time is given for full discussion and that we don't try to hurry it through but really spend time going over all of the different issues that have already been brought up. In regards to pending item 3 and 4 she would like some updated ETA's on those two items.

Mr. Bassi said that staff was actually going to bring to Council an ordinance when they were working with Burk, Williams and Sorensen on it and there was some legal issues that prohibited them from doing what they wanted to do and were waiting for case law to come up in order to come up with an ordinance that would satisfy the needs. There are some legal issues about citing the car owner who has parked his car on a lot. All they can really do is cite the property owner for having that car on that property. There is a freedom of speech issue about having a for sale sign on your car. Now that there is a new City Attorney staff will work with them and bring that back. In regards to the "One Stop Shop" the flow-chart presentation that was going to happen on the 28<sup>th</sup> didn't and staff is scheduled to bring that back at the end of January to the Council.

Mayor Pro Tem Hanna asked if the joint meeting with the Banning School Board has been scheduled.

City Manager said that they are trying to work on it and trying to figure out a date. The date of Saturday, January 10<sup>th</sup> in the morning has been talked about to have that meeting but he will confirm that as soon as they have the next 2 x 2 meeting.

#### Pending Items –

1. Schedule Meeting with the Beaumont City Council (*Pending*) (*City Mgr.*)
2. Schedule Special Jt. Meetings with the City's Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) (*Pending*) (*City Manager*)
3. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 12/10/08*)

4. Report on “One Stop Shop” (*Franklin* – 8/12/08) (*Hansen/Nakamura*) (ETA 11/14/08)
5. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave (*Hanna* – 8/12/08) (*Burk/Nakamura*) (ETA 1/09)
6. 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) (*Nakamura*) (ETA 1/09)
7. Policy on Summer/Winter Breaks for Council Meetings (*Franklin* – 9/23/08) (*Nakamura*) (ETA 1/09)

CLOSED SESSION

City Attorneys said that there is one closed session item that was added earlier in regards to the evaluation of the City Manager and in addition he is advised that staff would like to add another closed session dealing with a real property matter involving 219 N. San Gorgonio Avenue and this arose subsequent to the posting of the agenda and would need a motion to add to the agenda.

**Motion Robinson/Botts to add this item to the agenda. Motion carried, all in favor.**

Meeting went into closed session at 9:35 p.m. and returned to regular session at 11:00 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 11:00 p.m.

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Marie A. Calderon, City Clerk

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

12/20/08  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Botts on December 20, 2008 at 8:10 a.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

#### COUNCIL MEMBERS PRESENT:

Councilmember Franklin  
Councilmember Hanna  
Councilmember Machisic  
Councilmember Robinson  
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Brian Nakamura, City Manager

**CLOSED SESSION**

The City Council met in closed session pursuant to Government Code Section 54957 to consider personal matters - annual evaluation of the City Manager.

## ADJOURNMENT

By common consent the meeting adjourned at 11:21 p.m.

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Brian Nakamura, Deputy City Clerk

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** **January 13, 2009**

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

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

**SUBJECT:** **Resolution No. 2009-01, "Approving the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue"**

**RECOMMENDATION:**

- I. Adopt Resolution No. 2009-01, "Approving the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue."
- II. Authorize the Mayor to execute the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans)

**JUSTIFICATION:** It is essential that the City Council approve Resolution No. 2009-01 in order for the City of Banning to construct the grade separation and allow Caltrans to monitor, participate in, and assist with the development of said project.

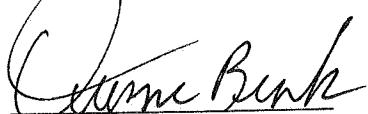
**BACKGROUND:** The Sunset Avenue railroad crossing is at street level and causes significant traffic delays to and from the southwest portion of the City of Banning. The proposed underpass would enhance traffic flows along Sunset Avenue and would provide a route for emergency services to access residents south of the railroad tracks, while improving overall safety in the area.

In order to successfully continue with this project and the design phase, it is essential that the City of Banning work with the State of California, Department of Transportation (Caltrans) and enter into the Project Development Cooperative Agreement, attached hereto as Exhibit "A". The Cooperative Agreement will permit Caltrans to monitor, participate in, and oversee various aspects of the project, including, but not limited to, reviewing environmental studies, environmental documentation, right of way engineering, and PS&E documents (plans, specifications and estimates). In the future, another Cooperative Agreement will be needed for the construction and landscaping phases of the project.

**FISCAL DATA:** The City shall bear all related project development costs such as the design, construction, and construction management phases, except for the costs of: the State's Independent Quality Assurance (IQA) review; the State's review, comment, and approval of the

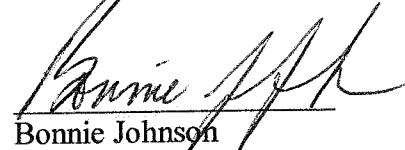
project environmental documentation for California Environmental Quality Act (CEQA); and the State's oversight efforts for the National Environmental Policy Act (NEPA) process, if applicable.

**RECOMMENDED BY:**



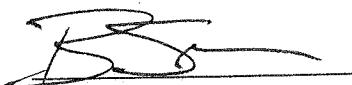
Duane Burk  
Director of Public Works

**REVIEWED BY:**



Bonnie Johnson  
Director of Finance

**APPROVED BY:**



Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, APPROVING THE PROJECT DEVELOPMENT COOPERATIVE  
AGREEMENT WITH THE STATE OF CALIFORNIA, DEPARTMENT OF  
TRANSPORTATION (CALTRANS), FOR THE GRADE SEPARATION AND RAMPS  
MODIFICATIONS AT SUNSET AVENUE**

**WHEREAS**, the Sunset Avenue railroad crossing is at street level and causes significant traffic delays to and from the southwest portion of the City of Banning; and

**WHEREAS**, staff has been working closely with Caltrans for a number of years to advance Project No. 2006-05 "Sunset Avenue Grade Separation."; and

**WHEREAS**, it is essential that the City of Banning enter into a Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans) in order to allow for the State to monitor, participate in, and oversee various aspects of the project.

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

**Section I.** Approve the Project Development Cooperative Agreement with the State of California, Department of Transportation (Caltrans), for the Grade Separation and Ramps Modifications at Sunset Avenue.

**Section II.** Authorize the Mayor to execute the Project Development Cooperative Agreement with State of California, Department of Transportation (Caltrans). This authorization will be rescinded if the Cooperative Agreement is not executed by both parties within one hundred eighty (180) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 13th day of January, 2009.

---

Robert E. Botts, Mayor  
City of Banning

**ATTEST**

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2009-01 was adopted by the City Council of the City of Banning at the Regular Meeting thereof held on the 13th day of January, 2009.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**EXHIBIT "A"**  
**PROJECT DEVELOPMENT COOPERATIVE AGREEMENT**  
**WITH THE STATE OF CALIFORNIA,**  
**DEPARTMENT OF TRANSPORTATION (CALTRANS)**

## PROJECT DEVELOPMENT COOPERATIVE AGREEMENT

This AGREEMENT, entered into effective on \_\_\_\_\_, 2008, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE," and the

CITY OF BANNING, a body politic and a municipal corporation of the State of California, referred to herein as "CITY."

### RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code sections 114 and 130, are authorized to enter into a Cooperative Agreement for improvements to the State Highway System (SHS) within CITY's jurisdiction.
2. CITY desires a grade separation and ramp modification at the Sunset Avenue Interchange/Interstate 10 (I-10) in the City of Banning, referred to herein as "PROJECT."
3. CITY is willing to fund one hundred percent (100%) of all capital outlay and support costs, except that the costs of STATE's Independent Quality Assurance (IQA) of PROJECT Project Approval and Environmental Document (PA&ED), Plans, Specifications and Estimates (PS&E) and right of way activities, all hereinafter referred to as PROJECT DEVELOPMENT, and STATE's costs incurred as the California Environmental Quality Act (CEQA) Lead Agency and National Environmental Policy Act (NEPA) Lead Agency, if applicable, in the review, comment and approval, if appropriate, of the PROJECT environmental documentation prepared entirely by CITY, will be borne by STATE.
4. STATE funds will not be used to finance any of the PROJECT DEVELOPMENT capital and support costs except as set forth in this Agreement.
5. The terms of this Agreement shall supersede any inconsistent terms of any prior Memorandum of Understanding (MOU) or agreement relating to PROJECT.

6. PROJECT landscape maintenance and construction phases will be the subject of a separate future agreement or agreements.
7. This Agreement will define the roles and responsibilities of the CEQA Lead Agency and CEQA Responsible Agency regarding the environmental documentation, studies, and reports necessary for compliance with CEQA. This Agreement will also define roles and responsibilities for compliance with NEPA, if applicable.
8. The parties now define herein below the terms and conditions under which PROJECT is to be developed, designed, and financed.

## SECTION I

### CITY AGREES:

1. To fund one hundred percent (100%) of all PROJECT DEVELOPMENT capital and support costs except for costs of STATE's IQA and STATE's review, comment and approval if appropriate, of the PROJECT environmental documentation for CEQA, and NEPA if applicable. If it becomes necessary to obtain additional funds to complete PROJECT, these additional funds will be provided by CITY using a funding source other than STATE funds.
2. To not use STATE funds for any PROJECT capital and support costs except as set forth in this Agreement.
3. All PROJECT work performed by CITY, or performed on CITY's behalf, shall be performed in accordance with all State and Federal laws, regulations, policies, procedures, and standards that STATE would normally follow. All such PROJECT work shall be submitted to STATE for STATE's review, comment, and concurrence at appropriate stages of development.
4. All PROJECT work, except as set forth in this Agreement, is to be performed by CITY. Should CITY request that STATE perform any portion of PROJECT work, except as otherwise set forth in this Agreement, CITY shall first agree to reimburse STATE for such work pursuant to an amendment to this Agreement or a separate executed agreement.
5. To have a Project Report (PR) and detailed PS&E prepared, at no cost to STATE, and to submit each to STATE for STATE's review and concurrence at appropriate stages of development. The PR, and the final PS&E for PROJECT shall be signed on behalf of CITY by a Civil Engineer registered in the State of California. CITY agrees to provide landscape plans prepared and signed by a licensed California Landscape Architect.
6. To have all necessary right of way maps and documents used to acquire right of way by CITY prepared by or under the direction of a person authorized to practice land surveying

in the State of California. Each right of way map and document shall bear the appropriate professional seal, certificate number, expiration date of registration certification and signature of the licensed person in Responsible Charge of Work.

7. To permit STATE to monitor, participate, and oversee selection of personnel who will prepare the PR, prepare environmental documentation, including the investigative studies and technical environmental reports, prepare the PS&E, provide right of way engineering services, and provide right of way acquisition services for PROJECT. CITY agrees to consider any request by STATE to avoid a contract award or to discontinue services of any personnel considered by STATE to be unqualified on the basis of credentials, professional expertise, failure to perform, and/or other pertinent criteria.
8. To submit to STATE for review, comment, concurrence, and/or approval of all Right of Way Engineering Land-Net Maps and Right of Way Appraisal Maps, Records of Survey, and Right of Way Record Maps all prepared in accordance with STATE's Right of Way Manual, Chapter 6, Right of Way Engineering, STATE's Plans Preparation Manual, STATE's Surveys Manual, applicable State laws, and other pertinent reference materials and examples as provided by STATE.
9. Personnel who prepare the preliminary engineering and environmental documentation, including investigative studies and technical environmental reports, shall be made available to STATE, at no cost to STATE, through completion of PROJECT construction to discuss problems which may arise during PS&E, Right of Way, and Construction phases of the PROJECT, and/or to make design revisions for contract change orders.
10. CITY shall include a "conflict of interest" requirement in the PROJECT design consultant contract(s) that prohibits the design consultant from being employed or under contract to the future PROJECT construction contractor.
11. Personnel who prepare right of way maps, documents, and related materials shall be made available to STATE, at no cost to STATE, during and after construction of PROJECT until completion and acceptance by STATE of Right of Way Record Maps, Records of Survey, and title to any property intended to be transferred to STATE.
12. To make written application to STATE for necessary encroachment permits authorizing entry of CITY onto SHS right of way to perform required PROJECT DEVELOPMENT work as more specifically defined elsewhere in this Agreement. CITY shall also require CITY's consultants and contractors to make written application to STATE for the same necessary encroachment permits.
13. To identify and locate all utility facilities within the area of PROJECT as part of the design responsibility for PROJECT. All utility facilities not relocated or removed in advance of construction shall be identified on the PS&E for PROJECT.
14. If any existing utility facilities conflict with the construction of PROJECT or violate STATE's encroachment policy, CITY shall make all necessary arrangements with the

owners of such facilities for their timely accommodation, protection, relocation, or removal.

The costs for the PROJECT's positive identification and location, protection, relocation, or removal of utility facilities whether inside or outside STATE's right of way shall be determined in accordance with Federal and California laws and regulations, and STATE's policies and procedures, standards, practices, and applicable agreements including, but not limited to, Freeway Master Contracts.

15. To furnish evidence to STATE, in a form acceptable to STATE, that arrangements have been made for the protection, relocation, or removal of all conflicting facilities within the SHS right of way and that such work will be completed prior to the award of the contract to construct PROJECT or as covered in the PS&E for said contract. This evidence shall include a reference to all required SHS encroachment permits.
16. To acquire and furnish all right of way, if any, outside of the existing SHS right of way and to perform all right of way activities, including all eminent domain activities, if necessary, at no cost to STATE, and in accordance with procedures acceptable to STATE. These activities shall comply with all applicable State and Federal laws and regulations, subject to STATE's IQA to ensure that the completed work and title to property acquired for PROJECT is acceptable for incorporation into the SHS right of way.
17. To utilize the services of a qualified public agency or a qualified consultant, as determined by STATE's District Division Chief of Right of Way, in all matters related to the acquisition of right of way in accordance with STATE's procedures as published in STATE's current Right of Way Manual. Whenever personnel other than personnel of a qualified public agency, or a qualified consultant, are utilized, administration of the personnel contract shall be performed by a qualified Right of Way person employed or retained by CITY.
18. To certify legal and physical control of right of way ready for construction and that all right of way parcels were acquired in accordance with applicable State and Federal laws and regulations, subject to review, comment, concurrence, and/or approval by STATE prior to the advertisement for bids for the contract to construct PROJECT.
19. To deliver to STATE legal title to the right of way, including access rights, free and clear of all encumbrances detrimental to STATE's present and future uses not later than the date of acceptance by STATE of maintenance and operation of the SHS facility. Acceptance of said title by STATE is subject to a review of a Policy of Title Insurance in the name of the State of California to be provided and paid for by CITY.
20. To be responsible for, and to the STATE's satisfaction, the investigation of potential hazardous material sites within and outside of the existing SHS right of way that could impact PROJECT as part of performing any preliminary engineering work. If CITY

discovers hazardous material or contamination within the PROJECT study area during said investigation, CITY shall immediately notify STATE.

21. If CITY desires to have STATE advertise, award, and administer the construction contract for PROJECT, CITY shall provide STATE with acceptable plans in a format acceptable to STATE. Reimbursement to STATE for costs incurred by STATE to advertise, award, and administer the construction contract for PROJECT will be covered in the separate Cooperative Agreement.
22. All aerial photography and photogrammetric mapping shall conform to STATE's current standards.
23. A copy of all original survey documents resulting from surveys performed for PROJECT, including original field notes, adjustment calculations, final results, and appropriate intermediate documents, shall be delivered to STATE and shall become property of STATE. For aerial mapping, all information and materials listed in the document "Materials Needed to Review Consultant Photogrammetric Mapping" shall be delivered to STATE and shall become property of STATE.
24. All original recorded land title documents created by PROJECT shall be delivered to STATE and become property of STATE.
25. To submit to STATE a list of STATE horizontal and vertical control monuments which will be used to control surveying activities for PROJECT.

## SECTION II

### STATE AGREES:

1. At no cost to CITY, to complete STATE's review, comment and approval, if appropriate, as the CEQA Lead Agency and NEPA Lead Agency, if applicable, of the environmental documentation prepared entirely by CITY and to provide IQA of all CITY PROJECT DEVELOPMENT work necessary for completion of the PR and PS&E for PROJECT done by CITY, including, but not limited to, investigation of potential hazardous material sites and all right of way activities undertaken by CITY or its designee, and provide prompt reviews, comments, concurrence, and/or approvals as appropriate, of submittals by CITY, while cooperating in timely processing of documents necessary for completion of the environmental documentation, PR, and PS&E for PROJECT.
2. Upon proper application by CITY and by CITY's contractor, to issue, at no cost to CITY and CITY's contractor, the necessary encroachment permits for required work within the SHS right of way as more specifically defined elsewhere in this Agreement.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of funds by the California Transportation Commission (CTC).
2. The parties to this Agreement understand and agree that STATE's IQA is defined as providing STATE policy and procedural guidance through to completion of the PROJECT preliminary engineering, PS&E, and right of way phases administered by CITY. This guidance includes prompt reviews by STATE to assure that all work and products delivered or incorporated into the PROJECT by CITY conform with then existing STATE standards. IQA does not include any PROJECT related work deemed necessary to actually develop and deliver the PROJECT, nor does it involve any validation to verify and recheck any work performed by CITY and/or its consultants or contractors and no liability will be assignable to STATE, its officers and employees by CITY under the terms of this Agreement or by third parties by reason of STATE's IQA activities. All work performed by STATE that is not direct IQA shall be chargeable against PROJECT funds as a service for which STATE will invoice its actual costs and CITY will pay or authorize STATE to reimburse itself from then available PROJECT funds pursuant to an amendment to this Agreement authorizing such services to be performed by STATE.
3. The design, right of way acquisition, and preparation of environmental documentation and related investigative studies and technical environmental reports for PROJECT shall be performed in accordance with all applicable Federal and STATE standards and practices current as of the date of performance. Any exceptions to applicable design standards shall first be considered by STATE for approval via the processes outlined in STATE's Highway Design Manual and appropriate memoranda and design bulletins published by STATE. In the event that STATE proposes and/or requires a change in design standards, implementation of new or revised design standards shall be done as part of the work on PROJECT in accordance with STATE's current Highway Design Manual Section 82.5, "Effective Date for Implementing Revisions to Design Standards." STATE shall consult with CITY in a timely manner regarding the effect of proposed and/or required changes on PROJECT.
4. STATE will be the CEQA Lead Agency and CITY will be a CEQA Responsible Agency. STATE will be the NEPA Lead Agency, if applicable. CITY will assess PROJECT impacts on the environment and CITY will prepare the appropriate level of environmental documentation and necessary associated supporting investigative studies and technical environmental reports in order to meet the requirements of CEQA and if applicable, NEPA. CITY will submit to STATE all investigative studies and technical environmental reports for STATE's review, comment, and approval. The environmental document and/or categorical exemption/exclusion determination, including the administrative draft, draft, administrative final, and final environmental documentation,

as applicable, will require STATE's review, comment, and approval prior to public availability.

If, during preparation of preliminary engineering, preparation of the PS&E, performance of right of way activities, or performance of PROJECT construction, new information is obtained which requires the preparation of additional environmental documentation to comply with CEQA and if applicable, NEPA, this Agreement will be amended to include completion of those additional tasks by CITY.

5. CITY agrees to obtain, as a PROJECT cost, all necessary PROJECT permits, agreements and/or approvals from appropriate regulatory agencies, unless the parties agree otherwise in writing. If STATE agrees in writing to obtain said PROJECT permits, agreements, and/or approvals, those said costs shall be paid by CITY, as a PROJECT cost.
6. CITY shall be fully responsible for complying with and implementing any and all environmental commitments set forth in the environmental documentation, permit(s), agreement(s) and/or environmental approvals for PROJECT. The costs of said compliance and implementation shall be a PROJECT cost.
7. If there is a legal challenge to the environmental documentation, including supporting investigative studies and/or technical environmental report(s), permit(s), agreement(s), environmental commitments and/or environmental approval(s) for PROJECT, all legal costs associated with those said legal challenges shall be a PROJECT cost.
8. CITY, subject to STATE's prior review and approval, as a PROJECT cost, shall be responsible for preparing, submitting, publicizing and circulating all public notices related to the CEQA environmental process and if applicable, the NEPA environmental process, including, but not limited to, notice(s) of availability of the environmental document and/or determinations and notices of public hearings. Public notices shall comply with all State and Federal laws, regulations, policies and procedures. STATE will work with the appropriate Federal agency to publish notices in the Federal Register, if applicable.

STATE, as a PROJECT cost, shall be responsible for overseeing the planning, scheduling and holding of all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. CITY, to the satisfaction of STATE and subject to all of STATE's and FHWA's policies and procedures, shall be responsible for performing the planning, scheduling and details of holding all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process. STATE will participate as CEQA Lead Agency and if applicable, the NEPA Lead Agency, in all public meetings/hearings related to the CEQA environmental process and if applicable, the NEPA environmental process, for PROJECT. CITY shall provide STATE the opportunity to provide comments on any public meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such public meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings.

9. In the event CITY would like to hold separate and/or additional public meetings/hearings regarding the PROJECT, CITY must clarify in any meeting/hearing notices, exhibits, handouts or other materials that STATE is the CEQA Lead Agency and if applicable, the NEPA Lead Agency, and CITY is the CEQA Responsible Agency. Such notices, handouts and other materials shall also specify that public comments gathered at such meetings/hearings are not part of the CEQA and if applicable, NEPA, public review process. CITY shall provide STATE the opportunity to provide comments on any meeting/hearing exhibits, handouts or other materials at least ten (10) days prior to any such meetings/hearings. STATE maintains final editorial control of exhibits, handouts or other materials to be used at public meetings/hearings solely with respect to text or graphics that could lead to public confusion over CEQA and if applicable, NEPA, related roles and responsibilities.
10. All administrative reports, studies, materials, and documentation, including, but not limited to, all administrative drafts and administrative finals, relied upon, produced, created or utilized for PROJECT will be held in confidence pursuant to Government Code section 6254.5(e). The parties agree that said material will not be distributed, released or shared with any other organization, person or group other than the parties' employees, agents and consultants whose work requires that access without the prior written approval of the party with the authority to authorize said release and except as required or authorized by statute or pursuant to the terms of this Agreement.
11. CITY's share of all changes in development and construction costs associated with modifications to the basic design features as described above shall be in the same proportion as described in this Agreement, unless mutually agreed to the contrary by STATE and CITY in a subsequent amendment to this Agreement.
12. The party that discovers hazardous materials (HM) will immediately notify the other party(ies) to this Agreement.

HM-1 is defined as hazardous material (including but not limited to hazardous waste) that requires removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.

HM-2 is defined as hazardous material (including but not limited to hazardous waste) that may require removal and disposal pursuant to federal or state law, only if disturbed by PROJECT.

13. STATE, independent of PROJECT, is responsible for any HM-1 found within existing SHS right of way. STATE will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

CITY, independent of PROJECT, is responsible for any HM-1 found outside existing SHS right of way. CITY will undertake HM-1 management activities with minimum impact to PROJECT schedule and will pay all costs for HM-1 management activities.

14. If HM-2 is found within the limits of PROJECT, the public agency responsible for advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM-2 management activities.

Any management activity cost related to HM-2 is a PROJECT construction cost.
15. Management activities related to either HM-1 or HM-2 include, without limitation, any necessary manifest requirements and designation of disposal facility.
16. STATE's acquisition or acceptance of title to any property on which any hazardous material is found will proceed in accordance with STATE's policy on such acquisition.
17. A separate Cooperative Agreement or agreements will be required to address Landscape Maintenance, and to cover responsibilities and funding for the construction phase of PROJECT.
18. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the development, design, construction, operation, or maintenance of the SHS and public facilities different from the standard of care imposed by law.
19. Neither STATE nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority, or jurisdiction conferred upon CITY or arising under this Agreement. It is understood and agreed that, CITY will fully defend, indemnify, and save harmless STATE and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
20. Neither CITY nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority, or jurisdiction conferred upon STATE or arising under this Agreement. It is understood and agreed that, STATE will fully defend, indemnify, and save harmless CITY and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
21. Prior to the commencement of any work pursuant to this Agreement, either STATE or CITY may terminate this Agreement by written notice to the other party.

22. No alteration or variation of the terms of this Agreement shall be valid unless made by a formal amendment executed by the parties hereto and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
23. This Agreement shall terminate upon the satisfactory completion of all post-PROJECT construction obligations of CITY and the delivery of required PROJECT construction documents, with concurrence of STATE, or on December 31, 2014, whichever is earlier in time, except that the ownership, operation, maintenance, indemnification, environmental commitments, legal challenges, and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement. Should any construction related or other claims arising out of PROJECT be asserted against one of the parties, the parties agree to extend the fixed termination date of this Agreement, until such time as the construction related or other claims are settled, dismissed or paid.

SIGNATURES ON FOLLOWING PAGES:

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

WILL KEMPTON  
Director

By: \_\_\_\_\_  
RAYMOND W. WOLFE, PhD, ME, CE  
District Director

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
Attorney,  
Department of Transportation

CERTIFIED AS TO FUNDS:

By: \_\_\_\_\_  
District Budget Manager

CERTIFIED AS TO FINANCIAL  
TERMS AND POLICIES:

By: \_\_\_\_\_  
Accounting Administrator

CITY OF BANNING

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

Attest: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
City Counsel

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** January 13, 2009

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2009-02, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2009/2010"

**RECOMMENDATION:** Adopt Resolution No. 2009-02, "Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2009/2010."

**JUSTIFICATION:** The City Council approved the formation of Landscape Maintenance District No. 1 ("the District") by adopting Resolution No. 1990-59 on August 14, 1990. The adoption of Resolution No. 2009-02 will enable the City Engineer to prepare for the assessment for Fiscal Year 2009/2010.

**BACKGROUND:** In accordance with the "Landscaping and Lighting Act of 1972" ("1972 Act") of the Streets and Highways Code, the City Council adopted a resolution on August 14, 1990 ordering the formation of Landscape Maintenance District No. 1, the boundaries of which are shown in Attachment "A". On May 10, 2005, the City Council approved Resolution No. 2005-36, ordering Annexation No. 1 (consisting of five tracts and three tentative tracts) to Landscape Maintenance District No. 1. The District, by special benefit assessments, provides funding for the servicing and maintenance of certain landscape areas within the City of Banning, all of which are located in the public right-of-way. The "1972 Act" requires that assessments are to be levied according to benefit rather than according to assessed value. Resolution No. 2009-02 will initiate the proceedings to update the District for Fiscal Year 2009/2010. A tentative schedule for updating the District, as required by the "Landscaping and Lighting Act of 1972," is attached hereto as Attachment "B" for your information.

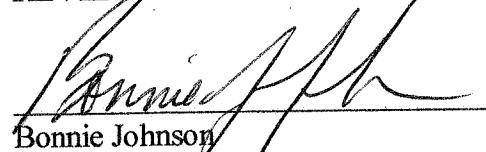
**FISCAL DATA:** Not applicable. A detailed estimate will be prepared and forwarded with the Engineer's report.

**RECOMMENDED BY:**



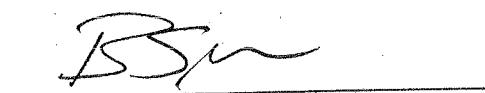
Duane Burk  
Director of Public Works

**REVIEWED BY:**



Bonnie Johnson  
Director of Finance

**REVIEWED BY:**



Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
INITIATING PROCEEDINGS TO UPDATE LANDSCAPE MAINTENANCE DISTRICT NO. 1  
FOR THE FISCAL YEAR 2009/2010, PURSUANT TO THE LANDSCAPING AND LIGHTING  
ACT OF 1972**

**WHEREAS**, the City Council, pursuant to the provisions of the "Landscaping and Lighting Act of 1972," Part 2 of Division 15 of the Streets and Highways Code of California, beginning with Section 22500, desires to initiate proceedings to update the City of Banning's Landscape Maintenance District No. 1, and to levy and collect annual assessments to pay for the operation, maintenance and servicing of landscaping and all appurtenant facilities related thereto.

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

**Section I.** The City Council desires to update Landscape Maintenance District No. 1 for Fiscal Year 2009/2010, pursuant to the "Landscaping and Lighting Act of 1972" (Section 22500 and following, Streets and Highways Code) for the purpose of the following improvements:

Maintaining and servicing street trees, parkways, median islands, perimeter strips and backup walls, side slopes adjacent to sidewalks and storm drains, open space areas, flood detention or retention basins, and the irrigation of the above improvements.

**Section II.** The City Council hereby directs the City Engineer to prepare and file with the City Clerk an Engineer's Report in accordance with Article 4 of Chapter 1 of the "Landscaping and Lighting Act of 1972."

**Section III.** The fee to be assessed will not exceed the reasonable cost of providing the service. The fee charged shall be based on the rate and methodology set forth in Resolution Nos. 1990-59 and 2005-36.

**Section IV.** The Mayor shall sign this resolution and the City Clerk shall attest and certify to the passage and adoption thereof.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of January, 2009.

---

Robert E. Botts, Mayor

**ATTEST:**

---

Marie A. Calderon, City Clerk

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

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-02 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 13<sup>th</sup> day of January, 2009.

AYES:

NOES:

ABSENT:

ABSTAIN:

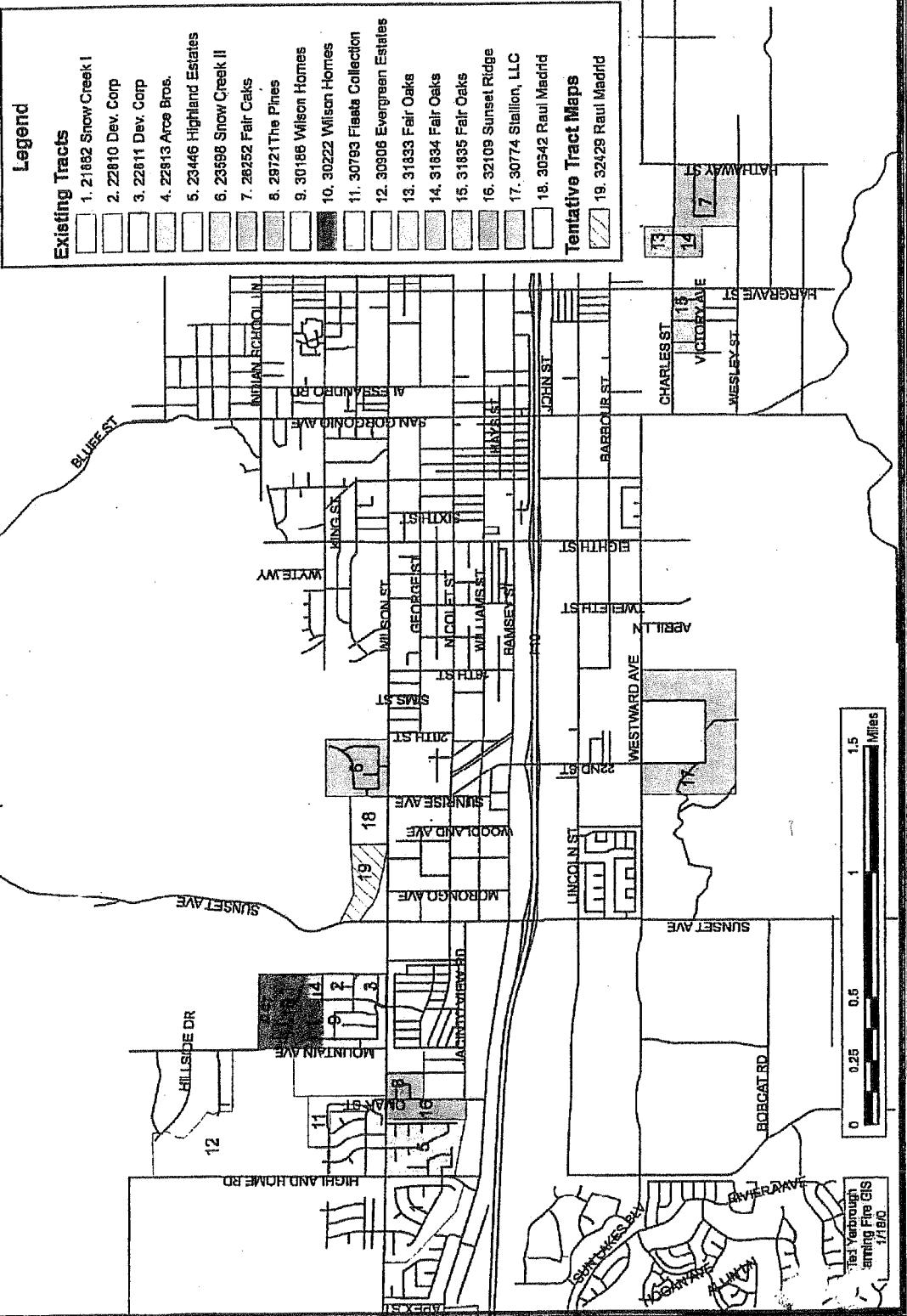
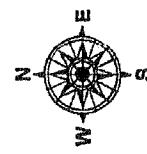
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Marie A. Calderon, City Clerk  
City of Banning, CA

**ATTACHMENT "A"**

**LANDSCAPE MAINTENANCE DISTRICT NO. 1  
FOR FISCAL YEAR 2009/2010**

MAP OF LANDSCAPE MAINTENANCE DISTRICT NO. 1  
JANUARY 2009



1st Yearrough  
Loring Fire GIS  
1/18/09

## **ATTACHMENT "B"**

### **TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1**

Item	Council Meeting
Resolution Initiating Update	January 13, 2009
Resolution of Intention (Approve Engineer's Report)	April 14, 2009
Public Hearing, Resolution Confirming Assessment	May 26, 2009

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **January 13, 2009**

**TO:** **City Council**

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

**SUBJECT:** **Resolution No. 2009-03, accepting the 2009 Supplemental Law Enforcement Services Fund Allocation and authorizing the Banning Police Department to use the funds towards the purchase of law enforcement related equipment and training.**

**RECOMMENDATION:** "The City Council adopt Resolution No. 2009-03 accepting the 2009 Supplemental Law Enforcement Services Fund (SLESF) allocation and authorize the Banning Police Department to apply the funds towards the purchase of law enforcement related equipment and training."

**JUSTIFICATION:** Funds from the Supplemental Law Enforcement Services Fund must be used to supplement frontline municipal police services.

**BACKGROUND:** The Banning Police Department anticipates using funds from SLESF to purchase equipment and provide advanced officer training, which will enhance the department's ability to provide a high level of professional service to the citizens of Banning. Anticipated equipment purchases include, but are not limited to vehicles, computer upgrades, and tactical equipment.

Legislation requires the City Council to officially accept the Supplemental Law Enforcement Services Funds and approve the police department's anticipated use of the funds.

**STRATEGIC PLAN INTEGRATION:** Council approval of this resolution will meet the city's goal to protect the citizens of this community with updated technology and well trained police officers.

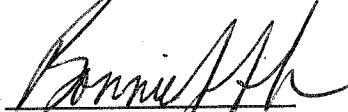
**FISCAL DATA:** The Supplemental Law Enforcement Services Fund (SLESF) allocation for 2009 is \$100,000. There is no city match required for this grant. The appropriation is requested in the resolution.

**RECOMMENDED BY:**



Leonard Purvis  
Chief of Police

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-03**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING ACCEPTING THE 2009 SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND ALLOCATION AND AUTHORIZING THE BANNING POLICE DEPARTMENT TO USE THE FUNDS TOWARDS THE PURCHASE OF LAW ENFORCEMENT RELATED EQUIPMENT AND TRAINING.**

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

**WHEREAS**, grants provided by State and Federal monies assist in supplementing these services; and

**WHEREAS**, the City Council is required to accept and appropriate the allocation of anticipated funds from this grant; and

**WHEREAS**, the grant funds will provide the Banning Police Department with updated technology, equipment, and training;

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning hereby accepts the 2009 Supplemental Law Enforcement Services Fund (SLESF) allocation, appropriates funds in the amount of \$100,000, and authorizes the Finance Department to make necessary budget adjustments related to these funds.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of January, 2009.

---

Bob Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

Aleshire & Wynder, LLP  
City Attorney

ATTEST:

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-03 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of January 2009, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2009

**TO:** City Council

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

**SUBJECT:** Resolution No. 2009-04 Reimbursable Funding for California P.O.S.T. Law Enforcement Command College

**RECOMMENDATION:** "Adopt Resolution No. 2009-04 authorizing an appropriation of \$4,206.00 from the City's general fund to the police department's training account, which will be reimbursed by the California Commission on Peace Officers Standards and Training (P.O.S.T.) under the P.O.S.T. Command College Program."

**JUSTIFICATION:** The Law Enforcement Command College is an eighteen month program designed to prepare today's law enforcement leaders for the challenges of the future. The Command College is a dynamic learning experience that focuses on the most effective methods, skills, and strategies needed to confront tomorrow's law enforcement issues. The program focuses on:

- Leadership principles needed to influence the future direction of the organization
- Strategies to identify emerging issues and provide a proactive response
- Skills and knowledge necessary to anticipate and prepare for the future
- Methods and benefits of sharing information
- Use of stakeholders in problem solving

The primary goal of the Command College is to provide an enhanced leadership course with a futures perspective to prepare the law enforcement leaders of today to lead into the future. The program has an emphasis on adult learning theories, placing accountability and responsibility on the student.

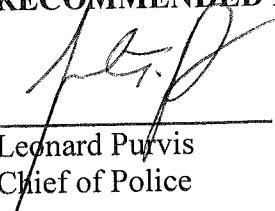
One of the capstone experiences in the Command College is authoring a professional journal article to capture the outcomes of the students' research project. The purpose of the journal article is to explore an important topic that will affect the future of law enforcement operations or service.

**BACKGROUND:** On October 7, 2008, Lt. Phil Holder was accepted into the California Law Enforcement Command College Program after a rigorous application and interview process. The program consists of six one-week bi-monthly sessions with a final culmination session occurring about 6 months after the sixth session. In sum, it is about an 18-month program. On December 7, Lt. Holder attended his first session held in Folsom, California.

**STRATEGIC PLAN INTEGRATION:** Council approval of this recommendation will help facilitate the police department's goals of better serving the community and the citizens who live here through providing a well educated and professional staff.

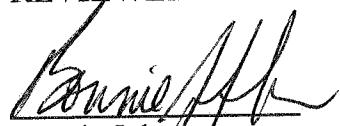
**FISCAL DATA:** The Cost of the California P.O.S.T. Law Enforcement Command College Program during the 2008-09 fiscal year is \$4206.00, which will be reimbursed to the City's General Fund upon the completion of each bi-monthly session.

**RECOMMENDED BY:**



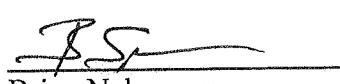
Leonard Purvis  
Chief of Police

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-04**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE APPROPRIATION OF GENERAL ACCOUNT FUNDS FOR THE P.O.S.T. LAW ENFORCEMENT COMMAND COLLEGE PROGRAM IN THE AMOUNT OF \$4,206.00, WHICH WILL BE REIMBURSED TO THE CITY OF BANNING THROUGH THE CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING UPON COMPLETION OF EACH SESSION COMPLETED BY LT. HOLDER.**

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

**WHEREAS**, the Police Department is proactive in its efforts to provide quality training for its employees; and

**WHEREAS**, the City's procedures requires the City Council to adopt a resolution authorizing the appropriation of funds from the City's general account.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning authorizes the appropriation of general funds (\$4,206) to the Banning Police Department Training Account (001-2200-421-23-06), which will be reimbursed from the California Commission on Peace Officer Standards and Training, under the P.O.S.T. Command College Program. The Finance Department is authorized to make necessary budget adjustments related to these funds.

**PASSED, APPROVED, AND ADOPTED** this 13th day of January, 2009.

---

Bob Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

Aleshire & Wynder, LLP  
City Attorney

ATTEST:

---

Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-04 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of January 2009, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** January 13, 2009

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2009-05, "Awarding an Agreement to Allsup Corporation of Upland, California in an amount of \$47,690.00 for the Emergency Repair of the CNG Fueling Station at the City Yard"

**RECOMMENDATION:** The City Council adopt Resolution No. 2009-05:

- I. Awarding an Agreement to Allsup Corporation of Upland, California in an amount of \$47,690.00 for the repair of the CNG Fueling Station at the City Yard.
- II. Authorizing the Director of Finance to make necessary budget adjustments and appropriations to cover expenses in an amount of \$52,459.00.

**JUSTIFICATION:** The immediate repairs are necessary in order to restore the existing malfunctioning compressed natural gas (CNG) fuel tank compressors.

**BACKGROUND:** The City of Banning owns and maintains the CNG Fueling Station located at 176 E. Lincoln Street. This station is utilized by the City's transit system which provides transportation services to the Banning, Beaumont, and Cabazon residents. Additionally, the station provides fueling services to various City vehicles necessary for daily operations and other agencies including Banning Unified School District, Air Quality Waste Management (AQMD), California Department of Transportation (Caltrans), and Waste Management.

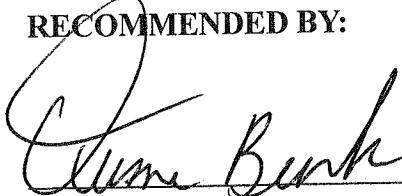
The existing CNG Fueling Station was constructed in 2001 and expanded in 2004. Since then, the CNG gas compressors have become worn down and are no longer under warranty. At this time, emergency repairs of the fuel pump equipment are necessary in order to provide safe conditions to those utilizing the station and are required to ensure that fueling services remain uninterrupted. The nearest alternative fueling station is located in Palm Springs and if the commute becomes necessary, the City's operations and abovementioned agencies would be negatively impacted.

Staff solicited a proposal from Allsup to perform the necessary repairs to the existing compressors. Based on the provided proposal, staff is requesting an emergency contract be awarded to Allsup Corporation of Upland, California in the amount of \$47,690.00. Additionally, staff is requesting to include a 10% contingency to compensate for any unforeseen conditions for a total project amount "Not to Exceed" \$52,459.00.

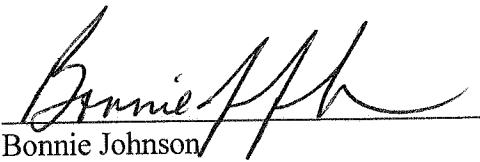
In the case of an emergency, which does not permit the delay resulting from the competitive bidding process, Public Contract Code Section 22050 authorizes the City of Banning to take corrective actions necessary to respond to the situation without securing bids. Allsup Corporation was the original contractor who constructed the fueling station and is willing to perform the emergency repairs. Staff believes the abovementioned repairs are necessary and need to be addressed as expeditiously as possible in order to preserve property and public safety.

**FISCAL DATA:** The current estimated fund balance in the Air Quality Management Fund is \$259,500.00. An appropriation from this fund to Account No. 132-4900-446.90-77 (Alternate Fueling System) in the amount of \$52,459.00, which includes a 10% contingency, is requested to fund the agreement with Allsup Corporation for the repair of CNG compressors.

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
\_\_\_\_\_  
Bonnie Johnson  
Director of Finance

**APPROVED BY:**

  
\_\_\_\_\_  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-05**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
AWARDING AN AGREEMENT TO ALLSUP CORPORATION OF UPLAND,  
CALIFORNIA IN AN AMOUNT OF \$47,690.00 FOR THE EMERGENCY REPAIR OF THE  
CNG FUELING STATION AT THE CITY YARD**

**WHEREAS**, the City of Banning owns and maintains the CNG Fueling Station located at 176 E. Lincoln Street and this station is utilized by the City's transit system which provides transportation services to the Banning, Beaumont, and Cabazon residents; and

**WHEREAS**, the station also provides fueling services to various City vehicles necessary for daily operations and other agencies including Banning Unified School District, Air Quality Waste Management, California Department of Transportation (Caltrans), and Waste Management; and

**WHEREAS**, the existing CNG Fueling Station was constructed in 2001 and expanded in 2004 and since then has become worn down and is no longer under warranty;

**WHEREAS**, emergency repairs of the fuel pump equipment are necessary in order to provide safe conditions to those utilizing the station and are required to ensure that fueling services remain uninterrupted; and

**WHEREAS**, staff solicited a proposal from Allsup to perform the necessary repairs to the existing compressors and based on the provided proposal, staff requests an emergency contract be awarded to Allsup Corporation in the amount of \$47,690.00 and to include a 10% contingency to compensate for any unforeseen conditions; and

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

**WHEREAS**, Allsup Corporation was the original contractor who constructed the fueling station and is willing to perform the emergency repair and staff believes the abovementioned repairs are necessary and need to be addressed as expeditiously as possible in order to preserve property and public safety.

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

**Section I.** The City Council of the City of Banning approve the repairs to the CNG Fueling Station allowing for the formal bid process to be overridden and payments to be distributed.

**Section II.** The City Council of the City of Banning award an Emergency Agreement to Allsup Corporation of Upland, California in an amount "Not to Exceed" \$47,690.00.

**Section III.** Authorize the Director of Finance to make necessary budget adjustments and appropriations related to the CNG Fueling Station repairs in an amount "Not to Exceed" \$52,459.00.

**Section IV.** The City Manager is hereby authorized to execute the Emergency Agreement for the CNG Fueling Station repairs. This authorization will be rescinded if the parties do not execute the contract agreement within thirty (30) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day January, 2009.

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Robert E. Botts, Mayor

**ATTEST:**

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

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

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-05 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 13<sup>th</sup> day of January, 2009.

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

---

Marie A. Calderon  
City Clerk of the  
City of Banning

## CITY COUNCIL AGENDA CONSENT

**Date:** January 13, 2009  
**TO:** Honorable Mayor and City Council  
**FROM:** James D. Earhart, Public Utilities Director  
**SUBJECT:** Resolution No. 2009-06 Approving Participation in the Green Path North Transmission Project Feasibility Study

**RECOMMENDATION:** The City Council approve the City's participation in the Green Path North Transmission Project feasibility study, which will determine the viability of building transmission facilities to bring renewable energy from the Imperial Valley to the Greater LA Basin.

**JUSTIFICATION:** It is in the best interest of the City to obtain long-term transmission capacity to import the renewable energy from its Ormat Geothermal power purchase agreements, which have a term of 25 years, terminating in 2032. The Banning Electric Utility ("Utility") currently participates in an annual auction with the California Independent System Operator ("CAISO") to obtain the transmission rights necessary to import the Ormat energy. This leaves the Utility exposed to the volatility of the market, where annual auction prices have fluctuated by up to 300 percent. Participating in the Green Path North Project would provide price certainty and would also allow the Utility to potentially increase its renewable energy resources in the Imperial Valley to further meet the City's RPS goal of 33 percent by 2020.

**BACKGROUND:** In response to Senate Bill 1078, the Banning City Council approved Resolution 2004-31 on March 23, 2004, establishing a RPS for the City of Banning. The City's RPS at that time reflected the State's goal of 20 percent by December 31, 2017. Since that time there have been increased efforts on the State and Federal level to accelerate the implementation of renewable energy in the electric industry. The California Legislature passed Senate Bill 107, which became law on January 1, 2007, and thereby accelerated the State's RPS goal to 20 percent by 2010. In addition, on November 17, 2008, Governor Schwarzenegger signed Executive Order S-14-08 increasing the State's goal to 33 percent by 2020. In anticipation of this increase, the Banning City Council had approved Resolution 2007-72, revising the City's RPS to reach 33 percent renewable energy by December 31, 2020.

There have been many concerns over how utilities were going to be able to tap the significant volume of renewable energy in the Imperial Valley (some experts have estimated that there is in excess of 4,000 megawatts capacity of geothermal energy located in the region) and import it to serve load in Los Angeles and the surrounding areas. The Los Angeles Department of Water and Power ("LADWP") along with several other Southern California Public Power Authority ("SCPPA") members, including the City of Banning, are participating in an initial study to determine the viability of a transmission line between the Imperial Valley and the Greater LA Basin (a map of the different possible routes the transmission line could take is attached for your reference as Exhibit "A"). The results of this study so far have been positive and LADWP, as the lead agency, is continuing with the exploratory process. This has included meetings with the communities potentially affected by the proposed transmission project, which Banning's Public

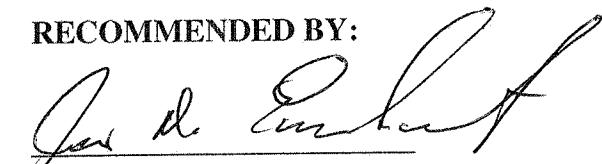
Utilities Director, Jim Earhart, participated in. The LADWP has committed to only use the proposed transmission path to import energy from renewable resources. The Utility fully supports that position.

While there are still many steps to take and hurdles to overcome in determining the feasibility of this project and bringing it to fruition, Staff is requesting the City Council's approval to continue participation in the feasibility study of this project before any further resources are expended by the Utility.

If the City Council ultimately approves participation in the final project, Staff is recommending a minimum participation level of two (2) megawatts of capacity, with the potential to increase that level to a maximum of six (6) megawatts. Based on a total estimated capacity of 800 megawatts for the project, this would put Banning's participation level at approximately .25 percent to .75 percent of the total project. This would allow the Utility to meet the current transmission requirements for its Ormat renewable energy contracts, and also provide import capability for up to two (2) megawatts of additional renewable energy purchases which are necessary to meet the City's RPS goal of 33 percent by 2020.

**FISCAL DATA:** The City's maximum exposure for costs associated with the feasibility study would be \$17,500, and funds are available in FY 2008-09 budget. Because the actual project is still in the exploratory stages, no firm numbers have been developed for the total cost of the project. However, estimates have been provided which put the total cost of the project at \$255 million to \$400 million, depending on which route is ultimately selected. Based on Banning's proposed participation levels, its share of the estimated total project cost could range from \$637,500 to \$3,000,000. This expense would not be incurred until participation in the project was ultimately approved by the City Council, and Bonds were issued by SCPPA to finance the project. The expense would be paid through monthly debt service payments made to SCPPA.

**RECOMMENDED BY:**

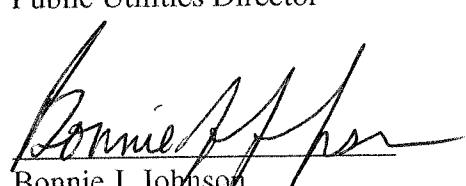


James D. Earhart  
Public Utilities Director

**APPROVED BY:**



Brian Nakamura  
City Manager



Bonnie J. Johnson  
Finance Director

**RESOLUTION NO. 2009-06**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING PARTICIPATION IN THE GREEN PATH NORTH TRANSMISSION PROJECT FEASIBILITY STUDY**

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

**WHEREAS**, the Banning City Council approved Resolution 2007-72 implementing a Renewables Portfolio Standard (“RPS”) of 33 percent by December 31, 2020, in support of California Senate Bills 1078 and 107 and Executive Order S-14-08; and

**WHEREAS**, the Los Angeles Department of Water and Power (“LADWP”) along with several other Southern California Public Power Authority (“SCPPA”) members, including the City of Banning, have initiated a study to determine the viability of a transmission line between the Imperial Valley and the Greater LA Basin (a map of the different possible routes the transmission line could take is attached for reference as Exhibit “A”); and

**WHEREAS**, the City of Banning wishes to develop resources to ensure that it meets its RPS goal through participation in projects such as said feasibility study; and

**WHEREAS**, the City of Banning intends to utilize the proposed Green Path North Transmission Project for the primary purpose of importing energy from renewable resources; and

**WHEREAS**, the City has a long-term power sales agreement with SCPPA to provide renewable geothermal energy from an Ormat facility located in the Imperial Valley through December 31, 2031, and therefore would benefit from participation in the Green Path North Transmission Project feasibility study; and

**WHEREAS**, the City’s maximum exposure for costs associated with the feasibility study would be \$17,500.00, and funds are available in the FY 2008-09 Budget;

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

1. Adopt Resolution No. 2009-06 approving participation in the Green Path North Transmission Project feasibility study, and authorize the City Manager or his/her designee to administer participation in said feasibility study.
2. Authorize the Mayor to execute Resolution No. 2009-06. Said authorization shall become void if not executed within 60 days of the effective date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of January 2009.

---

Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

Burke, Williams & Sorensen, LLP  
City Attorney

ATTEST:

---

Marie A. Calderon, City Clerk  
City of Banning

**CERTIFICATION**

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-06 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 13th day of January 2009 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

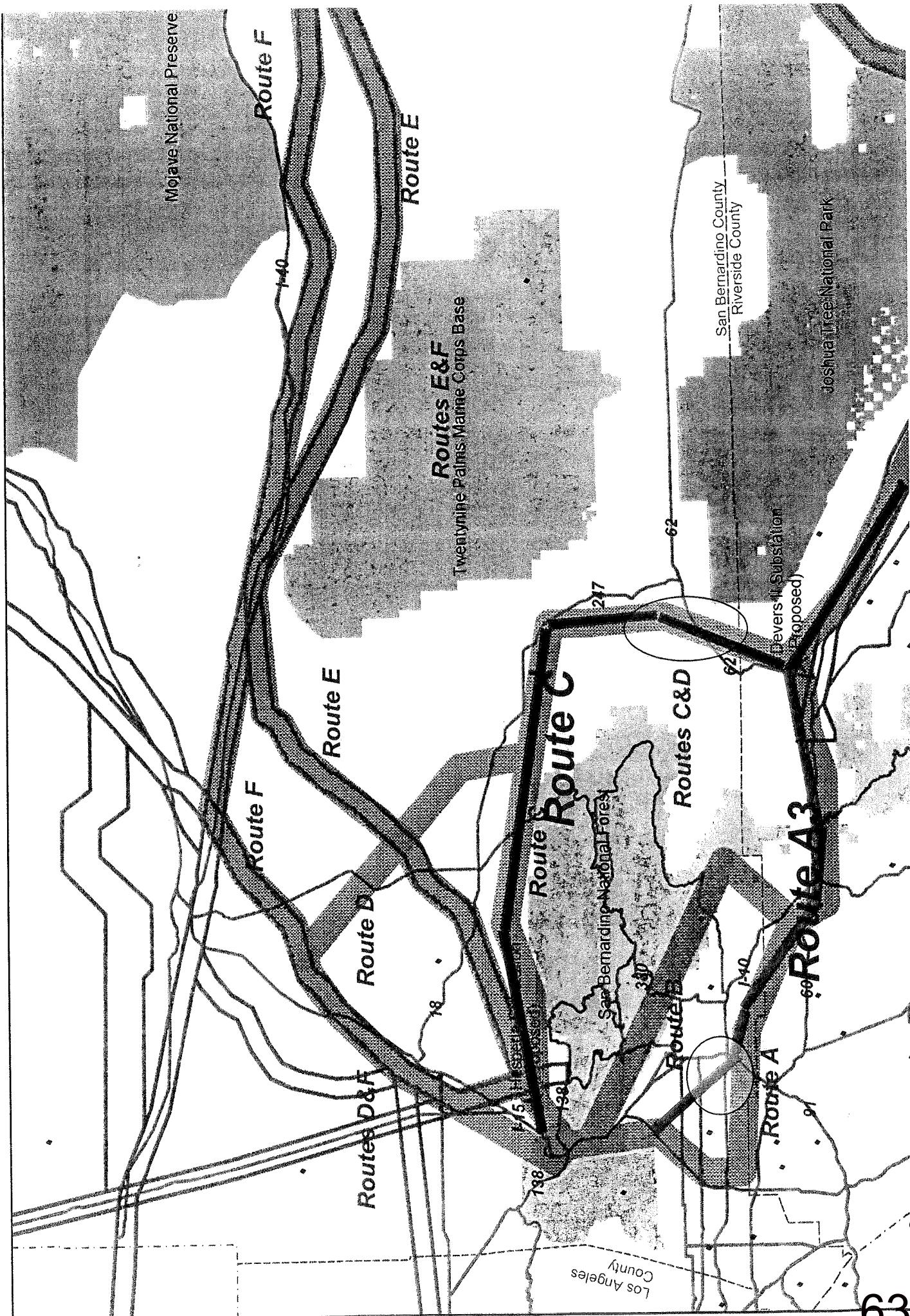
ABSENT:

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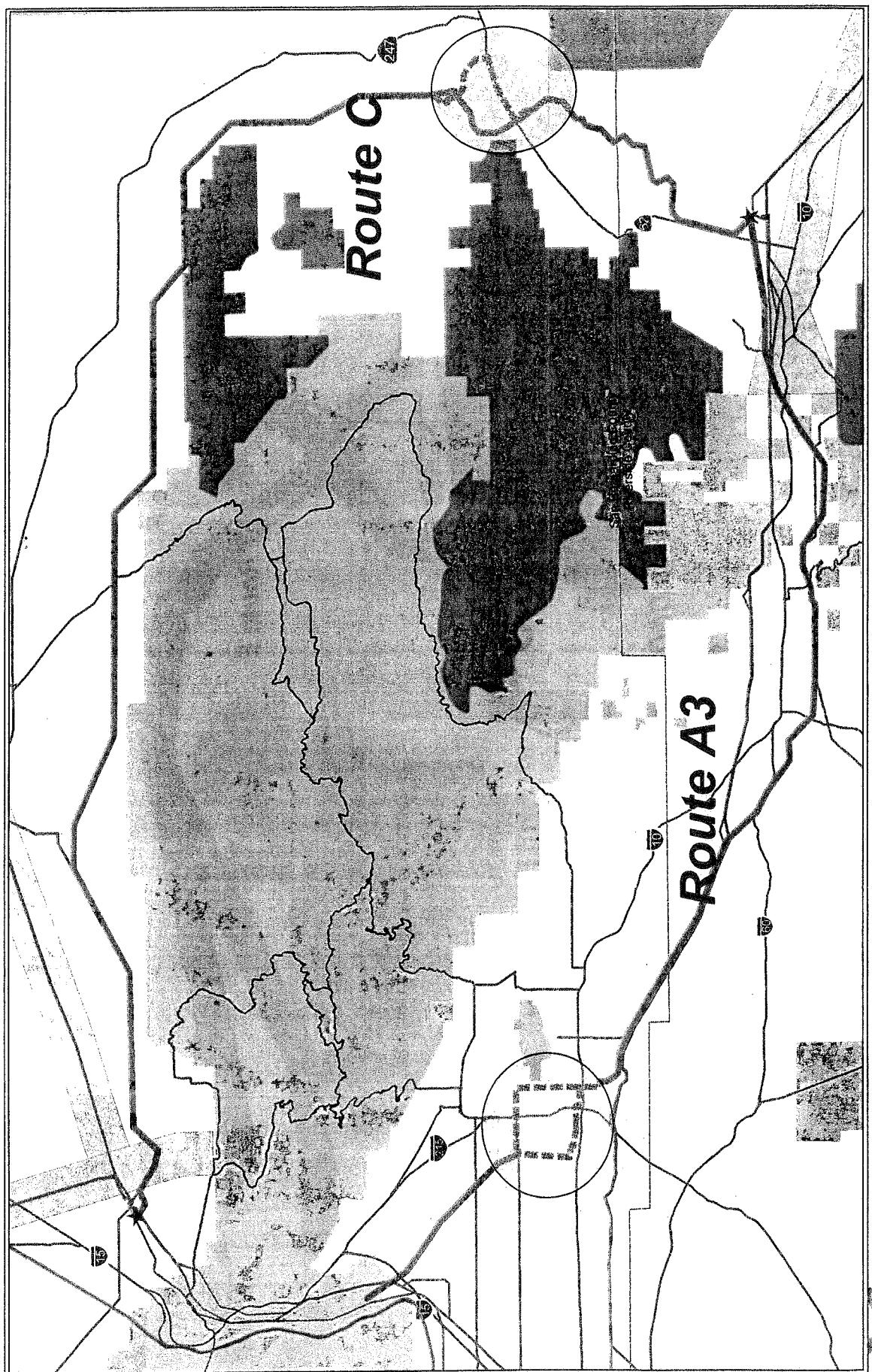
Marie A. Calderon, City Clerk  
City of Banning, California

## **Exhibit “A”**

## Project Configurations – Route C and A3



## Overhead Transmission Profile



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **January 13, 2009**

**TO:** **City Council**

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

**SUBJECT:** **Emergency Booster Pump Repairs at Water Well C-2 Site**

**RECOMMENDATION:** Approve the repairs to the booster pump at Water Well C-2 Site in the amount of \$11,015.13 and direct the City Clerk to record the *Notice of Completion*.

**JUSTIFICATION:** Repairs to the booster pump at the Water Well C-2 Site are essential to ensure uninterrupted water supplies to the City's utility customers.

**BACKGROUND:** The City of Banning owns and operates its own water system throughout the City. In July of 2008, the booster pump started making noise and the mechanical packing around the shaft of the motor began spraying water on the existing electrical panel.

Staff requested proposals from two firms to perform the necessary repairs with the results as follows:

	<u>Firm</u>	<u>Amount</u>
1)	Layne Christensen Company, Fontana, CA	\$6,900.00
2)	SoCal Pump & Well Drilling, Inc., Riverside, CA	\$7,120.00

Once, Layne disassembled the motor and pump assembly it was determined a new headshaft and related labor was necessary; increasing the costs for repairs to \$11,015.13.

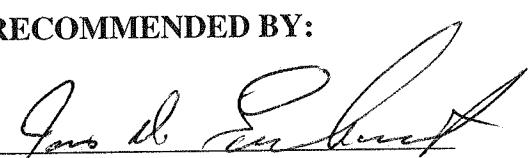
Layne Christensen Company is a reputable firm in the Water Utility industry and has extensive experience with well & pumping equipment, design, and construction. This company has successfully completed numerous projects for the City.

It is the Department's policy to maintain all wells and booster pumps in operation at all times to prevent water outages within the service area due to the different types of emergencies that can occur to effect the pumping of water into the distribution system. Multiple events can reduce the Department's ability to provide water and pressure to the City.

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

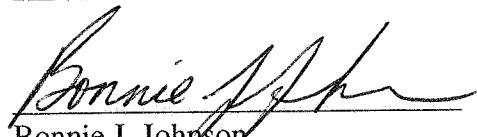
**FISCAL DATA:** The funds for the repairs to the booster pump was utilized from the FY 08-09 Water Division Operation Budget, Wells / Pump Equipment Expenses Account No. 660-6300-471-4506.

**RECOMMENDED BY:**



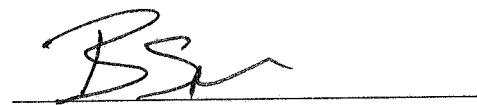
Jim Earhart  
Director of Public Utilities

**REVIEWED BY:**



Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED 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 NOTICE OF COMPLETION

14 Emergency Booster Pump Repairs at C-2 Well

15  
16 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
17 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
18 the State of California, and is hereby accepted by the City of Banning pursuant to  
19 authority conferred by the City Council this January 13, 2009, and the grantees consent to  
20 recordation thereof by its duly authorized agent.

21  
22 (1) That the OWNER, the City of Banning and Wastewater Solids  
23 Management, Inc., the Contractor entered into a written Agreement dated September 29,  
24 2008, for Emergency Booster Pump Repairs at C-2 Well ("Work of Improvement"). The  
25 scope of work under this project was to remove motor, change out mechanical seal, and  
26 reassemble at the Well C-2 Site in the City of Banning.

27  
28 (2) That the Work of Improvement was substantially completed on October  
29 30, 2008, and the Nature of Interest is in fee simple owner.

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

(4) That the said Work of Improvement was performed at the site of Water Well C-2 in the City of Banning.

(5) That the original contractor for said improvement was Layne Christensen Company, State Contractor's License No. 510011.

(6) That the performance and payment bonds were not required for this emergency project.

Dated: January 13, 2009

**CITY OF BANNING**  
A Municipal Corporation

By \_\_\_\_\_  
Brian Nakamura, City Manager

APPROVED AS TO FORM:

---

David Aleshire, Aleshire & Wynder, LLP  
City Attorney

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

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

7  
8 That I am the City Clerk of the City of Banning, which City caused the work to be  
9 performed on the real property herein described, and that I am authorized to verify this  
10 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
11 know the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed on \_\_\_\_\_, 2009 at Banning, California.

16  
17 \_\_\_\_\_  
18 City Clerk of the City of Banning  
19

20 JURAT

21  
22 State of California

23 County of Riverside

24  
25 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
26 \_\_\_\_\_, 2009 by \_\_\_\_\_ proved to me on the basis of  
27 satisfactory evidence to be the person(s) who appeared before me.

28  
29 (Seal) \_\_\_\_\_

30 Notary Public in and for said County  
31 and State  
32  
33  
34

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **January 13, 2009**

**TO:** **City Council**

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

**SUBJECT:** **Emergency Booster Pump Repairs at Water Well C-3 Site**

**RECOMMENDATION:** Approve the repairs to the booster pump at Water Well C-3 Site in the amount of \$18,887.78 and direct the City Clerk to record the *Notice of Completion*.

**JUSTIFICATION:** Repairs to the booster pump at the Water Well C-3 Site are essential to ensure uninterrupted water supplies to the City's utility customers.

**BACKGROUND:** The City of Banning owns and operates its own water system throughout the City. In August of 2008, the booster pump started making noise and the mechanical packing around the shaft of the motor began spraying water.

Staff requested proposals from two firms to determine the necessary repairs with the results as follows:

	<u>Firm</u>	<u>Amount</u>
1)	Layne Christensen Company, Fontana, CA	\$5,035.00
2)	SoCal Pump & Well Drilling, Inc., Riverside, CA	\$7,670.00

It was determined a new bowl assembly, air relief valve, and additional labor and equipment costs increased the over all project cost to \$18,887.78.

Layne Christensen Company is a reputable firm in the Water Utility industry and has extensive experience with well & pumping equipment, design, and construction. This company has successfully completed numerous projects for the City.

It is the Department's policy to maintain all wells and booster pumps in operation at all times to prevent water outages within the service area due to the different types of emergencies that can occur to effect the pumping of water into the distribution system. Multiple events can reduce the Department's ability to provide water and pressure to the City.

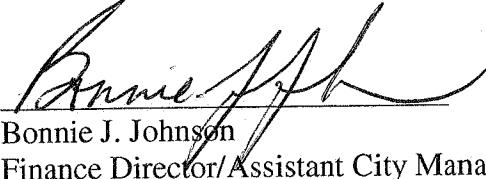
Authorization for this repair work is consistent with the City Policy as set forth in Ordinance No. 1266 for emergency booster pump repairs.

**FISCAL DATA:** The funds for the repairs to the booster pump was utilized from the FY 08-09 Water Division Operation Budget, Wells / Pump Equipment Expenses Account No. 660-6300-471-4506.

**RECOMMENDED BY:**

  
Jim Earhart  
Director of Public Utilities

**REVIEWED BY:**

  
Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED 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 NOTICE OF COMPLETION

14 Emergency Booster Pump Repairs at C-3 Well

15  
16 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
17 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
18 the State of California, and is hereby accepted by the City of Banning pursuant to  
19 authority conferred by the City Council this January 13, 2009, and the grantees consent to  
20 recordation thereof by its duly authorized agent.

21  
22 (1) That the OWNER, the City of Banning and Wastewater Solids  
23 Management, Inc., the Contractor entered into a written Agreement dated September 29,  
24 2008, for Emergency Booster Pump Repairs at C-3 Well ("Work of Improvement"). The  
25 scope of work under this project was to tear down booster pump, change out mechanical  
26 seal and bowl assembly, and reassemble at the Well C-3 Site in the City of Banning.

27  
28 (2) That the Work of Improvement was substantially completed on October  
29 30, 2008, and the Nature of Interest is in fee simple owner.

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

(4) That the said Work of Improvement was performed at the site of Water Well C-3 in the City of Banning.

(5) That the original contractor for said improvement was Layne Christensen Company, State Contractor's License No. 510011.

(6) That the performance and payment bonds were not required for this emergency project.

Dated: January 13, 2009

**CITY OF BANNING**  
A Municipal Corporation

By Brian Nakamura, City Manager

**APPROVED AS TO FORM:**

David Aleshire, Aleshire & Wynder, LLP  
City Attorney

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

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

8 That I am the City Clerk of the City of Banning, which City caused the work to be  
9 performed on the real property herein described, and that I am authorized to verify this  
10 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
11 know the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed on \_\_\_\_\_, 2009 at Banning, California.

17 \_\_\_\_\_  
18 City Clerk of the City of Banning  
19

20 JURAT

22 State of California

23 County of Riverside

25 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
26 \_\_\_\_\_, 2009 by \_\_\_\_\_ proved to me on the basis of  
27 satisfactory evidence to be the person(s) who appeared before me.

29 (Seal) \_\_\_\_\_

30 Notary Public in and for said County  
31 and State  
32  
33  
34

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2009

**TO:** City Council

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

**SUBJECT:** *Notice of Completion* for Project No. 2001-02, “Construction of the 30” & 24” Water Transmission Pipeline”

**RECOMMENDATION:** Accept the project entitled Project No. 2001-02, “Construction of the 30” & 24” Water Transmission Pipeline” as complete and direct the City Clerk to record the *Notice of Completion*.

**JUSTIFICATION:** Subject Project No. 2001-02, “Construction of the 30” & 24” Water Transmission Pipeline” is completed as per the contract specifications.

**BACKGROUND:** The City Council awarded a contract for Project No. 2001-02, “Construction of the 30” & 24” Water Transmission Pipeline” to J. Fletcher Creamer & Sons, Inc. of Sylmar, California at its regular meeting held on December 12, 2006.

Project No. 2001-02, “Construction of the 30” & 24” Water Transmission Pipeline” is a project consisting of a 30” water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24” water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey Street along with the necessary tie-ins to the existing distribution system.

Completion of this project took more time due to the City staff requesting additional work to be performed, such as, 1200 lineal feet of 20” pipeline repair in Mais Canyon, installing a 12” drain line for Water Well C-6, and installation of three fire hydrants at various locations in the City. This did not delay the use of the transmission pipelines for meeting the City water supply demands.

**FISCAL DATA:** The original contract price for the project was \$2,694,450.00 and the final contract amount is \$3,088,962.27. The increase of \$394,512.27 is caused by the 1200 lineal feet of 20” pipeline repairs in Mais Canyon (\$333,944.64 approved by the City Council), installing a 12” drain for Water Well C-6, installation of three fire hydrants, and construction changes made in the field during construction.

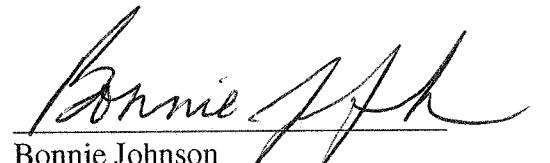
The funding for the construction costs for this project is available in the Banning Water Utility Authority Bond proceeds, Account No. 663-6300-471.9510.

**REVIEWED BY:**



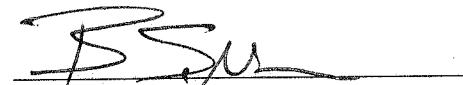
James D. Earhart  
Director of Public Utilities

**APPROVED BY:**



Bonnie Johnson  
Finance Director/Assistant City Manager

**APPROVED 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 NOTICE OF COMPLETION

14 Project No. 2001-02, "Construction of the 30" & 24" Water Transmission Pipeline"

15  
16 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
17 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
18 the State of California, and is hereby accepted by the City of Banning pursuant to  
19 authority conferred by the City Council this January 13, 2009, and the grantees consent to  
20 recordation thereof by its duly authorized agent.

21  
22 (1) That the OWNER, the City of Banning and J. Fletcher Creamer & Sons,  
23 Inc., the Contractor entered into a written Agreement dated December 6, 2006, for  
24 Project No. 2001-02, "Construction of the 30" & 24" Water Transmission Pipeline"  
25 ("Work of Improvement"). The scope of work under this project was the installation of a  
26 30" water transmission pipeline on Wilson Street from Sixteenth Street to Sunset Avenue  
27 and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson  
28 Street to just south of Ramsey Street along with the necessary tie-ins to the existing  
29 distribution system.

30  
31 (2) That the Work of Improvement was substantially completed on November  
32 5, 2008, and the Nature of Interest is in fee simple owner.

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

37

38 (4) That the said Work of Improvement was performed on Wilson Street from  
39 Sixteenth Street to Sunset Avenue and on Sunset Avenue from Wilson Street to just  
40 south of Ramsey Street in the City of Banning.

41

42 (5) That the original contractor for said improvement was J. Fletcher Creamer  
43 & Sons, Inc., State Contractor's License No. 587920.

44

45 (6) That the corporate surety on the performance and payment bonds is Safeco  
46 Insurance Companies, organized under the laws of the State of Washington, and duly  
47 authorized to transact business under the laws of the State of California.

48

49 | Dated: January 13, 2009

50

51 CITY OF BANNING  
52 A Municipal Corporation

53

54

55

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60

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David Aleshire, Aleshire & Wynder, LLP  
City Attorney

62

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

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

7  
8 That I am the City Clerk of the City of Banning, which City caused the work to be  
9 performed on the real property herein described, and that I am authorized to verify this  
10 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
11 know the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed on \_\_\_\_\_, 2009 at Banning, California.

16  
17 \_\_\_\_\_  
18 City Clerk of the City of Banning  
19

20 JURAT

21  
22 State of California

23 County of Riverside

24  
25 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
26 \_\_\_\_\_, 2009 by \_\_\_\_\_ proved to me on the basis of  
27 satisfactory evidence to be the person(s) who appeared before me.

28  
29 (S e a l) \_\_\_\_\_

30 Notary Public in and for said County  
31 and State  
32

33  
34

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2009

**TO:** City Council

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

**SUBJECT:** *Notice of Completion* for Project No. 2008-01WW, "Cleaning of Anaerobic Digesters"

**RECOMMENDATION:** Accept the project entitled Project No. 2008-01WW, "Cleaning of Anaerobic Digesters" as complete and direct the City Clerk to record the *Notice of Completion*.

**JUSTIFICATION:** Subject Project No. 2008-01WW, "Cleaning of Anaerobic Digesters" is completed as per the contract specifications.

**BACKGROUND:** The City Council awarded a contract for Project No. 2008-01WW, "Cleaning of Anaerobic Digesters" to Wastewater Solids Management, Inc., of Yachats, Oregon at its regular meeting held on August 12, 2006.

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

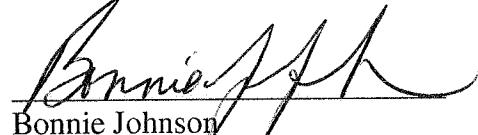
**FISCAL DATA:** Funding in the amount of \$34,500.00 for the project with Wastewater Solids Management, Inc. was available in the Wastewater Operations Division Fiscal Year 2008-09 Budget, Account No. 680-8000-454.3004 Repair/Maint. - Plant

**REVIEWED BY:**



James D. Earhart  
Director of Public Utilities

**APPROVED BY:**



Bonnie Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**



Brian Nakamura  
City Manager

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

---

12  
13 NOTICE OF COMPLETION

14 Project No. 2008-01WW, "Cleaning of Anaerobic Digesters"

15  
16 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
17 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
18 the State of California, and is hereby accepted by the City of Banning pursuant to  
19 authority conferred by the City Council this January 13, 2009, and the grantees consent to  
20 recordation thereof by its duly authorized agent.

21  
22 (1) That the OWNER, the City of Banning and Wastewater Solids  
23 Management, Inc., the Contractor entered into a written Agreement dated August 12,  
24 2008, for Project No. 2008-01WW, "Cleaning of Anaerobic Digesters" ("Work of  
25 Improvement"). The scope of work under this project was the removing of the sludge,  
26 scum, grease, and settlement solids from the three anaerobic digesters located at the  
27 Wastewater Treatment Plant on Charles Street in the City of Banning.

28  
29 (2) That the Work of Improvement was substantially completed on October  
30 21, 2008, and the Nature of Interest is in fee simple owner.

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

(4) That the said Work of Improvement was performed at the site of the Wastewater Treatment Plant located at 2242 East Charles Street in the City of Banning.

(5) That the original contractor for said improvement was Wastewater Solids Management, Inc.

(6) That the corporate surety on the performance and payment bonds is Western Surety Company, organized under the laws of the State of South Dakota, and duly authorized to transact business under the laws of the State of California.

Dated: January 13, 2009

CITY OF BANNING  
A Municipal Corporation

By Brian Nakamura, City Manager

**APPROVED AS TO FORM:**

David Aleshire, Aleshire & Wynder, LLP  
City Attorney

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

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

7  
8 That I am the City Clerk of the City of Banning, which City caused the work to be  
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12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed on \_\_\_\_\_, 2009 at Banning, California.

16  
17 \_\_\_\_\_  
18 City Clerk of the City of Banning  
19

20 JURAT

21  
22 State of California

23 County of Riverside

24  
25 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
26 \_\_\_\_\_, 2009 by \_\_\_\_\_ proved to me on the basis of  
27 satisfactory evidence to be the person(s) who appeared before me.

28  
29 (Seal) \_\_\_\_\_

30 Notary Public in and for said County  
31 and State

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** January 13, 2009

**TO:** City Council

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

**SUBJECT:** Purchase of Water Supply from Various Sources Available to the City

**RECOMMENDATION:**

1. Authorize the Public Utilities Director to purchase Water Supply from varying sources on an as needed basis within the approved funding levels set forth in the annual adopted budget for the City's Water Department. Such purchases will not require any further formal action by the City Council.
2. Approve payment of two invoices submitted for water supply; one with BCVWD in the amount of \$29,978.68 and the other with SGPWA for \$46,420.00.

**JUSTIFICATION:** The purchase of Water Supply is becoming more accessible to the City from the San Gorgonio Pass Water Agency (SGPWA), the Beaumont Cherry Valley Water District (BCVWD), the Beaumont Basin Watermaster (BBWM), and other sources around the state to meet the City's future water supply demands.

**BACKGROUND:** The Urban Water Management Plan of 2005 shows that in order for the City to meet its future water supply demands; it is necessary to purchase water from the SGPWA, BCVWD, and other imported water sources.

Presently, the City owns three wells in the Beaumont Groundwater Basin with BCVWD and the City by agreement pays its fair share for the operation of these wells to produce potable water for the City.

Recently, the City purchased State Project Water (SPW) from the SGPWA and this water was stored in the Beaumont Basin by using the BCVWD spreading grounds for future use by the City. Since, the City has not been pumping its total allotment stipulated in the adjudication of the Beaumont Basin; the BBWM has been increasing the amount of storage available to the City for future use.

It is important for staff to make quick decisions when water supplies become available from the various entities local and throughout the state. Payments for the purchase of the water supply will include the costs for operation of the three wells with BCVWD; costs for the purchase of water from SGPWA, BBWM, and other sources in the state; and the costs associated with percolating the water into the BCVWD spreading grounds.

**FISCAL DATA:** Every Fiscal Year the Water Department budgets with City Council approval for the purchase of water supply in Account No. 660-6300-471.2714 Water Purchase-Resale. Currently, there is \$500,000.00 available in the account to purchase water. There are two invoices submitted for payment; one with BCVWD in the amount of \$29,978.68 and the other with SGPWA for \$46,420.00. In the near future, there will be more water purchases from BCVWD coming from the three wells co-owned and opportunities of obtaining water from either the BBWM or SGPWA.

**REVIEWED BY:**

---

James D. Earhart  
Director of Public Utilities

**APPROVED BY:**

*Bonnie Johnson by: WWD*  
Bonnie Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**

*B.N.*  
\_\_\_\_\_  
Brian Nakamura  
City Manager

**CITY COUNCIL  
PUBLIC HEARING**

**Date:** January 13, 2009

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

**FROM:** Timothy Steenson, Development Services Manager

**SUBJECT:** Public Hearing Soliciting Public Comment on the City's Neighborhood Stabilization Program

**RECOMMENDATION:**

That the City Council open the public hearing, receive public comment on the City's plan to expend Neighborhood Stabilization Program grant funds, and direct staff to prepare a report to address those comments for presentation at the second public hearing.

**BACKGROUND:**

In the 2008 session Congress passed HR 3221, the American Housing Rescue and Foreclosure Prevention Act of 2008. One of the provisions of this act is the Neighborhood Stabilization Program, which provides \$3.9 billion in Community Development Block Grant funds, through the Department of Housing and Community Development (HCD), to state and local governments to help them deal with the neighborhoods and communities that are hardest hit by the foreclosure crisis. This funding will allow local municipalities to renovate and rehabilitate abandoned and foreclosed homes eliminating blight and reinvigorating and stabilizing the affected neighborhoods.

HR 3221 stipulates that each state and U.S. territory is entitled to a minimum amount of funding and that the actual amount be based on some specific criteria. The bill also provides funding to local municipalities based on that same specific criteria. This is somewhat different from the normal CDBG process whereby an applicant would develop a program including funding needs and submit for a grant of the specific amount the proposed program would cost. In this case the funding level is predetermined by a formula based on the criteria specified in HR 3221.

That criterion includes:

- those areas with the greatest number and percentage of home foreclosures
- those areas with the greatest number and highest percentage of homes financed by subprime mortgage related loans
- those areas identified as likely to face a significant rise in the rate of home foreclosures

Because of our size, based on the above criteria Banning did not have the kind of numbers that would qualify us for funding from a federal grant.

The State of California received a \$145 million dollar grant and the State Department of Housing and Community Development (HCD) will disseminate those funds along the same guidelines as the federal program and based on the same criteria. The State's plan will be a three tiered one. The funds must be used to benefit households that are at or below the middle, moderate, or low income levels.

The objective of Tier 1 of the State program is to allocate funds to the jurisdictions with the greatest need, as determined by HCD targeting the ones that did not receive a direct allocation from HCD. To receive a direct allocation under Tier 1, the jurisdiction's allocation based on the formula must equal or exceed \$1 million dollars. In Tier 1, HCD calculated allocations to cities and counties based on a combination of the number and per mortgage percentage of home foreclosures for each jurisdiction. To maximize the impact of these allocations, HCD set a minimum funding limit of \$1 million and set aside any allocations below this amount for Tier 2.

The objective of Tier 2 is to allow jurisdictions that did not receive allocations under Tier 1 an opportunity to receive funds and to permit counties the choice to obtain unallocated funds assigned to their citied and unincorporated areas. The minimum joint or cumulative funding allocation for Tier 2 is \$1 million. To be eligible to receive an allocation under Tier 2, the jurisdiction's allocation based on the formula must be at least \$100,000 but less than \$1 million.

In Tier 2, HCD will permit jurisdictions with calculated allocations below the \$1 million limit to combine their allocations with other contiguous jurisdictions to meet or exceed the minimum threshold of \$1 million. If these jurisdictions are unable to meet the minimum threshold of \$1 million through a joint application with other contiguous jurisdictions, HCD will reallocate any amounts not used to their respective counties. The counties may then request the funds and distribute them in accordance with the needs of the jurisdictions.

Tier 3 allocates funds reserved for households at or below 50 percent of the area median income. To be eligible to apply for funds under Tier 3, the jurisdiction must be eligible to receive a direct allocation from HCD or through HCD's Tiers 1 or 2. For Tier 3, HCD set aside 25 percent of the State's allocation (\$36,250,000) to be used to fund housing for households at or below 50 percent of the area median income.

#### **SUMMARY:**

Banning's allocation is set at \$659,478, and thus qualifies us for participation in Tier 2 of the State's program. This means that we will have "partner" with a contiguous jurisdiction to achieve the minimum \$1 million level required for direct funding from the State. The City of Beaumont was allocated \$441,455, so there is an opportunity for us to combine our allocation with the City of Beaumont to reach the minimum \$1 million level required for direct funding. There is also the opportunity for us to apply directly to HCD for additional funding under Tier 3

of the program which targets those households at or below 50 percent of the area median income.

Staff is currently exploring the possibility of partnering with Habitat for Humanity to expend the grant funds we receive. Habitat for Humanity already has the organization in place to do the type of work these funds are targeted towards and to qualify the income groups meant to benefit from this program. The plan would be for the City to acquire some distressed properties and for Habitat for Humanity to rehabilitate the properties and place deserving families in the houses. We plan to retain 10% of the money (approximately \$66,000.00) to clean-up blighted properties that would not otherwise be dealt with.

The State estimates that applications for this funding will be available mid to late January 2009 and that funds will be dispersed about mid March 2009.

**PREPARED BY:**



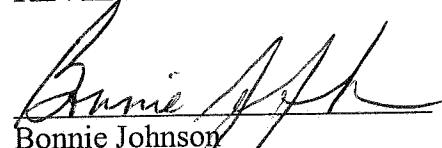
Timothy Steenson  
Development Services Manager

**REVIEWED BY:**



Matthew C. Bassi  
Interim Community Development Director

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**CITY COUNCIL AGENDA  
STAFF REPORT**

**DATE:** Jan 13, 2009

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

**FROM:** Brian S. Nakamura, City Manager

**SUBJECT:** Adoption of City Manager Goals for 2009.

**RECOMMENDATION:**

That the City Council adopt, based upon the December 20, 2008 Executive Session, City Manager evaluation, the attached 2009 goals and objectives for the City Manager.

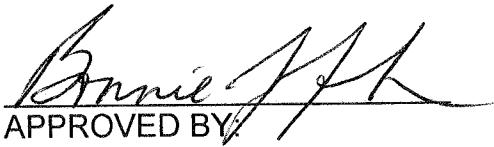
**BACKGROUND:**

The annual evaluation of the city manager is essential for the City Council and manager. The City Council's establishment of administrative goals and objectives enable the manager to carry out duties and provide clear direction to department directors. Further, the administrative goals and objectives will enable the City Council to objectively monitor and measure the city manager's annual performance.

**FISCAL DATA:**

There is no anticipated fiscal impact to the City.

  
RECOMMENDED BY:

  
APPROVED BY:

# City of Banning

**Date:** 12/20/2008

**To:** Brian Nakamura, City Manager

**Cc:** Bob Botts, Debbie Franklin, John Machisic, Don Robinson

**From:** Barbara Hanna

**RE:** Goals for City Manager

---

## A. Improved Communications

1. Create a resident/customer complaint procedure with timeline. All council members will be notified of all complaints.
2. Share issues raised by Council members with all Council members weekly.
3. Update project/program progress chart and share with Council monthly.
4. Develop, maintain and communicate with Council members a 4-month “running” Council and Agency agenda.
5. New procedure: Council members will now direct proposed agenda items to the City Manager. At the next Council or Agency meeting the proposed agenda item will be briefly analyzed for the Council’s consideration as a future agenda item. If approved by the Council it then goes on the 4-month “running” Council and Agency agenda.
6. The City Manager will report to the Council on a monthly basis all contracts or funding under his limit of \$25,000 to \$1,000.
7. Improved customer relations are essential for all departments. Develop ‘comment card’ program for all departments. “You get what you measure.” Schedule someone to answer the phone during all office hours.
8. Improve senior staff team effort so that all are pulling together. Resolve all conflict in a timely manner.

**B. Fiscal Responsibility**

1. Propose 2009 – 2010 balanced budget with alternatives.
2. As we move toward decisions, develop script for senior staff and Council to use in community meetings and coffees to educate and hear from the public.

**C. Economic Development – Our Strategy Out of the Recession**

1. Downtown revitalization is our #1 priority.
  - a. Target buildings for façade treatment and OPAs.
  - b. Develop marketing strategy to attract and locate new businesses downtown.
  - c. Distribute Request for Qualifications for the San Gorgonio Inn site to the development community. Agency Board considers staff's recommendations for developer qualifications.  
Distribute Request for Proposals to qualified developers.
2. Develop a one-year economic development plan for entire City. Include retail, commercial and industrial development. Continue Airport Master plan realization including finding a fixed-based operator, FAA grants and, potentially, a joint powers agreement with Morongo.

**D. Continue ongoing projects including:**

1. One stop development process. Measure success.
2. Renew discussions with Beaumont regarding Highland Springs Avenue's traffic issues including Joshua Palmer and I-10 off ramps. Consider those improvements that are easily done such as striping that will immediately improve traffic flow.
3. Move Park Master Plan forward.

Special Note: please arrange a legal workshop for Council with Dave Aleshire (similar to what he presented to Don) with a closed session on attorney evaluation.

**CITY COUNCIL AGENDA  
DIRECTOR'S REPORT**

**Date:** **January 13, 2009**

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

**FROM:** **Kahono Oei, City Engineer**

**SUBJECT:** **2009-2014 Five Year Consolidated Plan Needs Assessment Survey**

**RECOMMENDATION:** Receive and File. This is for informational purposes only and does not require action.

**BACKGROUND:** The County of Riverside is in the process of preparing their 2009-2014 Five Year Consolidated Plan. The Five Year Consolidated Plan is required by the U.S. Department of Housing and Urban Development (HUD) as a condition of receiving Federal funding under the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and Home Investment Partnership Act (Home) programs.

The Five Year Consolidated Plan is designed to be a collaborative process; therefore, the County sought the assistance of participating cities in the development of said plan. In response to the County's request, staff distributed surveys throughout the City as an insert with utility bills beginning November 19, 2008 and ending December 8, 2008. A sample survey is attached as Exhibit "A". A press release was published in the Press Enterprise on December 4, 2008 informing residents and stakeholders of the survey distribution and is attached as Exhibit "B". Additionally, surveys were made available to the public at the front desk, as well as, the Engineering counter at City Hall. The deadline to return the surveys to the City was December 19, 2008.

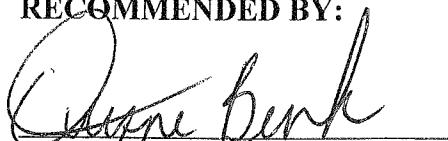
The Engineering Division received and tabulated 482 surveys; detailed results are shown in Exhibit "C" attached hereto. Based on survey results, the following percentages summarize the outcome of the High, Medium and Low Priority categories.

	<b>High</b>	<b>Medium</b>	<b>Low</b>	<b>No Need</b>	<b>No Reply</b>
<b>Housing Needs</b>	12%	13%	11%	32%	31%
<b>Infrastructure Improvements</b>	15%	20%	15%	26%	24%
<b>Public Facilities Needs</b>	14%	23%	14%	23%	26%
<b>Public Service Needs</b>	19%	21%	12%	22%	26%
<b>Accessibility Needs</b>	13%	19%	15%	25%	28%
<b>Economic Development Needs</b>	24%	17%	11%	21%	28%

The survey results will be submitted to Riverside County Economic Development Agency by their deadline, January 16, 2009.

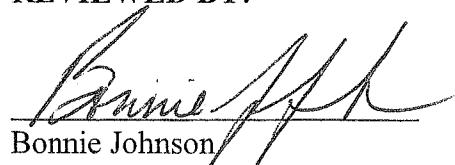
**FISCAL DATA:** There is no fiscal impact related to this survey and submittal to Riverside County Economic Development Agency.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Works

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**EXHIBIT “A”**

**SURVEY DISTRIBUTED TO  
BANNING RESIDENTS AND STAKEHOLDERS**



# City of Banning

## Public Works Department

Dear City of Banning Resident,

The purpose of this letter is to request and obtain information from our residents to discover how future Community Development Block Grant program funds could best be utilized in our community.

The City of Banning is requesting that its residents take advantage of this opportunity to provide their input on community development needs related to housing issues, employment and commuting, childcare issues, infrastructure improvements, public facilities, public service, accessibility, and economic development within the City of Banning.

Enclosed please find a survey provided by Riverside County Economic Development Agency (EDA). Please complete the attached survey and return directly to the City of Banning no later than December 19, 2008.

You may return the completed survey to the Engineering Division located at City Hall, 99 East Ramsey Street or please return by mail, fax or email as listed below.

City of Banning  
Attn: Public Works Department  
P.O. Box 998  
Banning, CA 92220

Fax: (951) 922-3141  
Email: [hstuart@ci.banning.ca.us](mailto:hstuart@ci.banning.ca.us)

If you have any questions or concerns, please do not hesitate to contact the City of Banning Public Works Department, Engineering Division at (951) 922-3130.

Sincerely,

*Kahono Oei*

Kahono Oei  
City Engineer

### RIVERSIDE COUNTY (2009-2014) CONSOLIDATED PLAN NEEDS ASSESSMENT SURVEY

The County of Riverside is in the process of preparing the 2009-2014 Consolidated Plan as required by the U.S. Department of Housing and Urban Development. This Needs Assessment Survey is used to obtain input from County residents and other interested persons regarding the housing, social, community, and economic development needs of County residents. The Consolidated Plan allows the County to utilize the Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), and HOME Investment Partnership Act (HOME) funds within the County.

\*Zip Code: \_\_\_\_\_ (\* Required Fields)

\*Please choose one:

Resident

Service Provider  Other Stakeholder

If you choose to, you may provide your name and contact information below. All responses will be kept confidential.

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

Phone / E-mail: \_\_\_\_\_

#### A. General Information

Please answer the following questions if they apply to you:

##### 1. Housing Issues

\*In which city or community do you live? \_\_\_\_\_

What is the size of your household (total number of persons living in your home)? \_\_\_\_\_

How many children (under 18 years of age) live in your household? \_\_\_\_\_

How many seniors (62 years of age or more) live in your household? \_\_\_\_\_

Are you a  renter or  homeowner? If a renter, how much do you pay for rent? \$ \_\_\_\_\_

How many rooms do you have? \_\_\_\_\_ Bedrooms \_\_\_\_\_ Bathrooms \_\_\_\_\_

Would you be interested in an affordable home-ownership program?  Yes  No

If you are a homeowner, how long have you owned your home? \_\_\_\_\_ Yr. \_\_\_\_\_ Mo.

How much is your monthly mortgage payment? \$ \_\_\_\_\_

How much do you pay for insurance and taxes each year? \$ \_\_\_\_\_

Do you feel you are overpaying for your housing costs?  Yes  No

Are you concerned about foreclosure?  Yes  No

If you own your home, would you be interested in an affordable housing rehabilitation program?

Yes  No

##### 2. Employment and Commuting

Are you employed?  Full-time  Part-time How far do you commute or travel to work each day? \_\_\_\_\_ What form of transportation do you use?  Your vehicle  Car-Pool  Public transport  
 3. Childcare Issues:

Do you or someone in your household pay for childcare?  Yes  No If yes, how many children? \_\_\_\_\_ How old? \_\_\_\_\_  
 How much do you pay a month for childcare? \$ \_\_\_\_\_ What are the working hours of your childcare provider? \_\_\_\_\_

Do you consider the cost of childcare to be a financial burden on your family?  Yes  No

Does the lack of affordable childcare prevent adults in your household from seeking employment?  Yes  No How far from your home or work do you travel for childcare? \_\_\_\_\_ approx. mils

B. General Needs Assessment Survey Please check the most appropriate Need Level box for each Need Category listed below. The Need Category corresponds to activities and projects that can be funded with CDBG, HOME, or ESG funding.

NEEDS CATEGORY	PRIORITY NEED LEVEL				NEEDS CATEGORY	PRIORITY NEED LEVEL			
	HIGH	MEDIUM	LOW	NO NEED		HIGH	MEDIUM	LOW	NO NEED
1. Housing Needs					5. Accessibility Needs (Removal of Barriers to the Handicapped)				
a. Repairs/Improvements to Housing:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Improvements for Handicapped Accessibility	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Apartments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Exterior Property Maintenance/ Code Enforcement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Rental Homes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Help in Purchasing a Home	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Owner Occupied homes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Needs of Homeless People:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Emergency Shelters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Transitional Housing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Supportive Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Permanent Housing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Special Needs Housing Facilities:					g. Rental Assistance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Mental Illness	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Repairs to Owner Occupied Housing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Drug/Alcohol Abuse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Construction of New Housing:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Elderly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- Rental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- HIV Needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	- For Sale	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
- Veterans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. Lead Paint Testing & Abatement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k. Tenant/Landlord Counseling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Residential Historic Preservation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l. Residential Historic Preservation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	m. Other Housing Needs (please identify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Infrastructure Improvements					6. Economic Development Needs				
a. Flood/Drainage Improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Neighborhood-Based Small Business uses (Laundromat, Grocery Market, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Water System Improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Job Creation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Street Improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Commercial Rehabilitation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Sewer Improvements	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Business Support Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Sidewalks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	f. Other Economic Development Needs (please identify)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Other Infrastructure Needs (please identify)									
3. Public Facilities Needs									
a. Senior Citizen Centers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
b. Youth Centers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
c. Centers for the Disabled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
d. Child Care Centers/Preschool Daycare	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
e. Parks & Recreation Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
f. Parking Facilities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
g. Community Centers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
h. Fire Stations/Equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
i. Other Neighborhood Facilities (please identify)									
4. Public Service Needs									
a. Senior Citizen Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
b. Handicapped Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
c. Youth Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
d. Transportation Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
e. Services for Battered and Abused Spouses	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
f. Health Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
g. Services for Abused and Neglected Children	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
h. Substance Abuse Services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					
i. Employment Training	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					

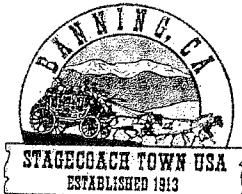
If you desire to share any other comments or concerns regarding your community's needs assessment, or specific projects or activities needed in your community, please indicate below:

If you represent an organization providing services to County residents, please provide a brief description of your organization, the services you provide, and your target client group:

Please return completed survey to:

City of Banning  
Attention Public Works Department  
P. O. Box 998  
Banning, CA 92220

FAX (951) 922-3141  
Email: hstuart@ci.banning.ca.us



## City of Banning

### Public Works Department

Estimado Residente de la Ciudad de Banning:

El propósito de esta carta es para pedir y adquirir información de nuestros residentes para descubrir como los fondos de el programa de las Becas de el Desarrollo de el Bloque de la Comunidad (Community Development Block Grants) pudieran ser mejor utilizadas en nuestra comunidad.

La Ciudad de Banning esta pidiendo que sus residentes tomen la oportunidad de proveer ideas acerca de el desarrollo y necesidad de la comunidad acerca de el tema de viviendas, empleo, viajar, cuidado de niños, mejoraciones de infraestructura, facilidades públicas, servicios públicos, accesibilidad, y desarrollos económicos dentro de la Ciudad de Banning.

Dentro de esta carta encontrara un questionario de parte de la Agencia de el Desarrollo Económico de el Condado de Riverside (EDA).

Por favor complete este questionario y devuelvalo directamente a la Ciudad de Banning no mas tarde de Diciembre 19, 2008.

Usted puede devolver este questionario a la División de Ingeniería localizada en el Municipio de la Ciudad (City Hall), 99 E. Ramsey o por favor mandelo por correo, fax o a la dirección de e-mail anotada abajo.

City of Banning  
Attn: Public Works Department  
P.O. Box 998  
Banning, CA 92220

Fax: (951) 3141  
e-mail: [hstuart@ci.banning.ca.us](mailto:hstuart@ci.banning.ca.us)

Si tiene preguntas acerca de esta información, no dude en llamar y ponerse en contacto con el Departamento de Obras Públicas, División de Ingeniería a (951) 922-3130.

Sinceramente,

*Kahono Oei*

Kahono Oei  
Ingeniero de la Ciudad

### RIVERSIDE COUNTY (2009-2014) CONSOLIDATED PLAN ESTUDIO DE EVALUACION DE NECESIDADES

El Condado de Riverside se esta preparando el proceso de 2009-2014 Plan de Consolidado como es requerido por el Departamento de Vivienda y Urbanización de los Estados Unidos. Este estudio de evaluación de necesidades es usado para obtener información de los residentes del Condado y otras personal interesados en vivienda, social, comunidad, y desarrollo económico necesidades de los residentes de el Condado.

\*Código Postal: \_\_\_\_\_ (\* Campos Obligatorios) \*Favor de Elegir Alguno       Residentes       Proveedor de Servicios       Otras Partes Interesadas

Se desea, puede dejar su nombre y información de contacto abajo. Todas las respuestas serán confidenciales.

Nombre: \_\_\_\_\_ Dirección: \_\_\_\_\_ Número Telefónico / Correo Electrónico: \_\_\_\_\_

#### A. Información General

Favor de contestar las siguientes preguntas si le aplican a usted:

##### 1. Cuestiones Relativas a la Vivienda

\*En que ciudad o comunidad vive usted? \_\_\_\_\_

Cuantas personas viven en su vivienda? \_\_\_\_\_

Cuantos niños (menor de 18 años) viven en su vivienda? \_\_\_\_\_

Cuantas personas de la tercera edad (62 años o mas) viven en su vivienda? \_\_\_\_\_

Usted es  rentero o  dueño de casa? Si es rentero, cuanto es su mensualidad? \$ \_\_\_\_\_

Cuantos cuartos y banos tiene? \_\_\_\_\_ Cuartos \_\_\_\_\_ Banos \_\_\_\_\_

Estaría interesado en programas de ser dueño de casa asequible?  Si  No

Si es dueño de cas, cuanto tiempo a sido dueño? \_\_\_\_\_ Años (Yr.) \_\_\_\_\_ Meses (Mo.)

Cuanto es su mensualidad de hipoteca? \$ \_\_\_\_\_

Cuanto paga por aseguransa y taxes cada año? \$ \_\_\_\_\_

Piensa que esta pagando mas de lo normal por el costo de su casa?  Si  No

Esta precupado/a de exclusion (foreclosure)?  Si  No

Si es dueño/a de casa, estaria interesado en el programa de vivienda asequible de rehabilitación?

Si  No

## 2. Empleo y Trafico

Esta empleado?  Tiempo Completo (Full-time)  Tiempo Parcial (Part-time) Que tan retirado maneja al trabajo cada dia? \_\_\_\_\_ millas

Que forma de transportacion usted usa?  Su Coche  Car-Pool  Transportacion Publica

## 3. Cuestiones de el Cuidado de los Ninos:

Usted o alguien en su vivienda pagan para el cuidado de los ninos?  Si  No Si la respuesta es Si, cuantos ninos? \_\_\_\_\_ Que edad tienen? \_\_\_\_\_

Cuanto pagan por el cuidado de ninos mensualmente? \$ \_\_\_\_\_ The que horas cuidan tus ninos? \_\_\_\_\_

Consideras el costo de el Cuidado de Ninos una carga financiera en tu familia?  Si  No El costo de Cuidado de Ninos esquivables no dejan que adultos en su casa poder trabajar?  Si  No

Que tan lejos de la casa o el trabajo lines que viajar para el cuidado de los ninos? \_\_\_\_\_ millas

B. Necesidades Generales de Evaluacion Encuesta Favor de escoger la selection mas apropiada en la cajita para cada categoria abajo. La Categoria de Necesidades corresponde a las actividades y proyectos que son fondados con CDBG, HOME, or ESG fondos.

CATEGORIA DE NECESIDADES	NECESIDAD PRIORITARIA A NIVEL				CATEGORIA DE NECESIDADES	NECESIDAD PRIORITARIA A NIVEL				
	ALTO	MEDIANO	BAJO	NO NECESIDAD		ALTO	MEDIANO	BAJO	NO NECESIDAD	
<b>1. Necesidad de Vivienda</b>					<b>f. Servicios de la Salud</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
a. Reparaciones/Mejoraciones de Casa:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	g. Servicios para Ninos Maltratados o no Queridos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Apartamentos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	h. Servicios de el abuso de substancia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Casas de Renta	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	i. Entrenamiento de Empleo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
- Duenos de Casa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	j. Al Tanto de el Crime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Mejoraciones de Accesibilidad de Descapacitados	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	k. Consejeria de Vivienda Justa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. Exterior Propiedad Mantenimiento/ Ejecucion de Codigo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	l. Otros Services Necesitados (favor de indicar) _____					
d. Ayuda en Compra de Casa	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
e. Necesidades de Gente Sin Hogar:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Centros de Emergencia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Transicion de la Vivienda	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Servicios de Apoyo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Casa Permanente	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
f. Necesidades Especiales de Vivienda:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Infermedad Mental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Abuso de Drogen/Alcohol	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Gente de Tercera Edad	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Necesidades de HIV	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Veteranos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
g. Asistencia de Renteros	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
h. Reparaciones a Casas de Duenos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
i. Construccion de Nuevas Viviendas:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- Rentar	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
- En Venta	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
j. Pintura con Plomo Y Reducción de los Ensayos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
k. Consulto de Renteros/Duenos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
l. Preservacion de Viviendas Historicas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
m. Otra Necesidad de Vivienda (favor de indicar) _____										
<b>2. Mejoraciones de Infraestructura</b>	ALTO	MEDIANO	BAJO	NO NECESIDAD	<b>5. Necesidades en Materia de Accesibilidad (Eliminacion de Barreras para los descapacitados)</b>	ALTO	MEDIANO	BAJO	NO NECESIDAD	
a. Inundacion/Drenaje	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Edificios Publicos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Sistema de el Agua	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Facilidades de Recreacion Y Parques	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. Calle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Facilidades de la Salud	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. Alcantarilla	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Otras Facilidades Comunitarias/ Centros de la Comunidad (favor de indicar) _____					
e. Banquetas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
f. Otras Mejoraciones Infraestructura (favor de indicar) _____										
<b>3. Necesidad de las Instalaciones Publicas</b>	ALTO	MEDIANO	BAJO	NO NECESIDAD	<b>6. Necesidades de Desarrollo Economico</b>	ALTO	MEDIANO	BAJO	NO NECESIDAD	
a. Centros de Gente Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	a. Comunidad basado en la utilizacion de pequenas empresas (Lavanderia, Marquetas, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
b. Centros para Jovenes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	b. Creacion de trabajos	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
c. Centros para los Descapacitados	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	c. Reabilitacion Commercial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
d. Centros de Cuidado de Ninos/Preschool	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	d. Servicios de Apoyo Empresarial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
e. Parques y Centros de Recreacion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	e. Otras necesidades de desarrollo economico (favor de indicar) _____					
f. Centros de Parquidadores	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
g. Centros de Comunidad	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
h. Centros de Bomberos/Equipo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
i. Otros Necesidades de los Vecinos (favor de indicar) _____										
<b>4. Necesidades del Servicio Publico</b>	ALTO	MEDIANO	BAJO	NO NECESIDAD						
a. Servicios de Gente Mayor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
b. Servicios de los Descapacitados	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
c. Servicios para Jovenes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
d. Servicios de Transportacion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						
e. Servicios para Maltratadas y Abusadas Conyuges	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>						

Si usted gustaria compartir otros comentarios o questiones referendio las necesidades de su comunidad o siertos proyectos o actividades necesitadas en su comunidad, favor de indicarlos abajo:

Si usted representa una organizacion que ofrece services a los residentes de el Condado, indique una descripcion de la organizacion, los servicios que ofrecen, y el grupo de clientes objetivo.

Favor de regresar este questionaria a:

City of Banning  
Attention Public Works Department  
P. O. Box 998  
Banning, CA 92220

FAX (951) 922-3141  
Email: [hstuart@ci.banning.ca.us](mailto:hstuart@ci.banning.ca.us)

## **EXHIBIT "B"**

### **PRESS RELEASE NOTIFYING THE PUBLIC OF SURVEY DISTRIBUTION**

THE PRESS-ENTERPRISE

E THURSDAY, December 4, 2008

#### **BANNING**

#### **City conducts survey about block grants**

The city of Banning will survey residents to determine how Community Development Block Grants could best be utilized. Residents will receive the surveys with their utility bills by Dec. 12. The surveys should be returned to the city by Dec. 19.

—Erin Waldner  
ewaldner@PE.com

**EXHIBIT "C"**

**SURVEY RESULTS**

City of Banning Public Works Department Riverside County (2009-2014) Consolidated Plan Needs Assessment Survey Results 482 Survey Responses Collected									
A. General Information									

### L1: Housing Issues

		% of Responses		% of Responses		% of Responses		% of Responses	
<b>Total number of persons living in the home</b>	<b>1-2</b>	<b>395</b>	<b>82%</b>	<b>3-4</b>	<b>62</b>	<b>13%</b>	<b>5-6</b>	<b>9</b>	<b>2%</b>
How many children (under 18 Years of age) live in the household	0	419	87%	1-2	43	9%	3-4	5	1%
How many seniors (65 Years of age or more) live in the household	0	104	22%	1	176	37%	2	185	38%
How many Rent or Own their home	Renter	34	7%	Homeowner	441	91%	No Reply	7	1%
If a Renter, how much is rent*	\$0-500	5	15%	\$501-1,500	17	50%	\$1,501-2,500	3	9%
How many bedrooms in the household	1-2	259	54%	3-4	203	42%	5-6	7	1%
How many bathrooms in the household	1-2	387	80%	3-4	86	18%	No Reply	9	2%
Interest in the affordable home-ownership program	Yes	96	20%	No	298	62%	No Reply	88	18%
If, homeowner, length of ownership**	1-5 Years	136	31%	6-10 Years	113	26%	11-20 Years	126	29%
How much is the monthly mortgage payment**	\$0-1,000	221	50%	\$1,1-2,000	93	21%	\$2,001-3,000	64	15%
How much is paid for insurance and taxes each year**	\$0-1,000	65	15%	\$1,001-2,000	94	21%	\$2,001-3,000	82	19%
Worried about overpaying for housing costs**	Yes	192	44%	No	212	48%	No Reply	37	8%
If home is owned, interest in the affordable housing rehabilitation program**	Yes	57	13%	No	214	47%	No Reply	0	0%
Results based on 441 Responses		119	27%	No	289	65%	No Reply	33	7%

\*Results based on 441 Responses

\*\*Results based on 116 people employed.

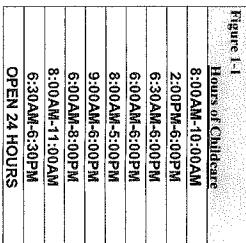
2. Employment and Commuting									
		% of Responses		% of Responses		% of Responses		% of Responses	
Employed	Full-time	80	76%	Part-time	38	8%	No Reply	364	76%
Mileage of Commute or travel to work each day*	1-20 Miles	54	47%	21-40 Miles	21	18%	41-60 Miles	8	7%
Type of transportation*	Vehicle	100	86%	Carpool	6	5%	Public Trans.	0	0%

\*Results based on 116 people employed.

### 3. Childcare Issues

		% of Responses		% of Responses		% of Responses		% of Responses	
<b>Pay for childcare</b>	<b>Yes</b>	<b>20</b>	<b>4%</b>	<b>No</b>	<b>386</b>	<b>80%</b>	<b>No Reply</b>	<b>76</b>	<b>16%</b>
If Yes, how many children*	1-2	15	75%	3-4	3	15%	5-6	1	5%
Age of children*	0-5	12	60%	6-10	20%	11-18	3	15%	No Reply
How much is paid for childcare*	\$0-500	13	65%	\$501-1,000	4	20%	No Reply	3	15%
Hours of the childcare provider	(Please to calculate the hours of the childcare provider due to the wide range of data. Please set a figure on this page for the hours that were provided to us.)								
Consideration of cost of childcare being a financial burden on the family*	Yes	13	65%	No	6	30%	No Reply	1	5%
Least affordable childcare that prevent adults from seeking employment*	Yes	9	45%	No	10	50%	No Reply	1	5%
Approximately how many miles are traveled to childcare location*	0-5	12	60%	6-10	3	15%	11-15	1	5%
Results based on 20 people having to pay for childcare.									
Note: Percent values are rounded to the nearest whole number.									

The surveys were mailed on November 19, 2008 - December 8, 2008 (These dates are approximate).  
The surveys were received from December 3, 2008 - December 19, 2008.



<b>B. General Needs Assessment Survey</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
<b>1. Housing Needs</b>											
a. Repairs/Improvements to housing:		42	9%	43	9%	32	7%	118	24%	247	51%
-Apartments		45	9%	38	8%	31	6%	102	21%	266	55%
-Rental Homes		76	16%	91	19%	61	13%	132	27%	122	25%
-Owner Occupied Homes		46	10%	66	14%	51	11%	183	38%	136	28%
b. Improvements for Handicapped Accessibility		76	16%	69	14%	67	14%	165	34%	105	22%
c. Exterior Property Maintenance/Code Enforcement		48	10%	34	7%	42	9%	218	45%	140	29%
d. Help in Purchasing a Home		97	20%	68	14%	35	7%	133	28%	149	31%
e. Needs of Homeless People:		63	13%	78	16%	45	9%	133	28%	163	34%
-Emergency Shelters		73	15%	77	16%	48	10%	128	27%	156	32%
-Transitional Housing		68	14%	57	12%	49	10%	139	29%	169	35%
f. Special Needs Housing Facilities		106	22%	77	16%	50	10%	133	28%	116	24%
-Mental Illness		54	11%	68	14%	56	12%	153	32%	151	31%
-Drug/Alcohol Abuse		75	16%	93	19%	43	9%	138	29%	133	28%
-Elderly		44	9%	64	13%	57	12%	158	33%	159	33%
-HIV Needs		93	19%	121	25%	34	7%	132	27%	102	21%
-Veterans		45	9%	69	14%	53	11%	169	35%	146	30%
g. Rental Assistance		68	14%	74	15%	78	16%	145	30%	117	24%
h. Repairs to Owner Occupied Housing		30	6%	38	8%	52	11%	200	41%	162	34%
i. Construction of New Housing:		29	6%	37	8%	55	11%	203	42%	158	33%
j. Lead Paint Testing & Abatement		38	8%	42	9%	124	26%	182	38%	96	20%
k. Tenant/Landlord Counseling		35	7%	31	6%	76	16%	180	37%	160	33%
l. Residential Historic Preservation		34	7%	41	9%	69	14%	180	37%	158	33%
Total % of columns		12%		13%		11%		32%		31%	
<b>2. Infrastructure Improvements</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
a. Flood/Drainage Improvements		62	13%	86	18%	74	15%	135	28%	125	26%
b. Water System Improvements		79	16%	89	18%	59	12%	130	27%	125	26%
c. Street Improvements		99	21%	113	23%	54	11%	109	23%	107	22%
d. Sewer Improvements		44	9%	103	21%	71	15%	134	28%	130	27%
e. Sidewalks		79	16%	91	19%	98	20%	123	26%	91	19%
Total % of columns		15%		20%		18%		26%		24%	
<b>3. Public Facilities Needs</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
a. Senior Citizen Centers		68	14%	118	24%	70	15%	106	22%	120	25%
b. Youth Centers		90	19%	108	22%	36	7%	123	26%	125	26%
c. Centers for the Disabled		65	13%	111	23%	67	14%	112	23%	127	26%
d. Child Care Centers/Preschool Daycare		67	14%	134	28%	59	12%	130	27%	92	19%
e. Parks & Recreation Facilities		63	13%	112	23%	70	15%	104	22%	133	28%
f. Parking Facilities		31	6%	97	20%	102	21%	118	24%	134	28%
g. Community Centers		57	12%	113	23%	78	16%	106	22%	128	27%
h. Fire Stations/ Equipment		96	20%	83	17%	59	12%	100	21%	144	30%
Total % of columns		14%		23%		14%		23%		26%	
<b>4. Public Service Needs</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
a. Senior Citizen Services		95	20%	116	24%	67	14%	88	18%	116	24%
b. Handicapped Services		79	16%	112	23%	56	12%	104	22%	131	27%
c. Youth Services		91	19%	100	21%	37	8%	117	24%	137	28%
d. Transportation Services		88	18%	119	25%	50	10%	107	22%	118	24%
e. Services for Battered and Abused Spouses		62	13%	111	23%	61	13%	117	24%	131	27%
f. Health Services		108	22%	103	21%	46	10%	104	22%	121	25%
g. Services for Abused and Neglected Children		100	21%	87	18%	43	9%	116	24%	136	28%
h. Substance Abuse Services		60	12%	94	20%	61	13%	122	25%	145	30%
i. Employment Training		115	24%	88	18%	52	11%	101	21%	126	26%
j. Crime Awareness		143	30%	111	23%	64	13%	63	13%	101	21%
k. Fair Housing Counseling		60	12%	83	17%	89	18%	116	24%	134	28%
Total % of columns		19%		21%		12%		22%		26%	
<b>5. Accessibility Needs</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
<i>(Removal of Barriers to the Handicapped)</i>											
a. Public Buildings		57	12%	91	19%	75	16%	121	25%	138	29%
b. Park & Recreation Facilities		53	11%	100	21%	73	15%	119	25%	137	28%
c. Health Facilities		73	15%	88	18%	70	15%	115	24%	136	28%
Total % of columns		13%		19%		13%		25%		28%	
<b>6. Economic Development Needs</b>		<b>High</b>	<b>%</b>	<b>Medium</b>	<b>%</b>	<b>Low</b>	<b>%</b>	<b>No Need</b>	<b>%</b>	<b>No Reply</b>	<b>%</b>
a. Neighborhood-based Small Business Uses		99	21%	90	19%	66	14%	99	21%	128	27%
b. Job Creation		167	35%	63	13%	32	7%	98	20%	122	25%
c. Commercial Rehabilitation		104	22%	91	19%	52	11%	101	21%	134	28%
d. Business Support Services		84	17%	85	18%	59	12%	103	21%	151	31%
Total % of columns		24%		17%		11%		21%		28%	

**CITY COUNCIL  
REPORT OF OFFICERS**

**DATE:** January 13, 2009

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

**FROM:** Matthew Bassi, Interim Community Development Director

**SUBJECT:** City Council Resolution No. 2008-121:

City Council Review of an Agreement for the Deferral of Development Impact Fees in the Amount of \$447,006.12 between the City of Banning and CA KABIR, INC., for the Holiday Inn Express & Suites Hotel project Located at 3020 W. Ramsey Street.

**RECOMMENDATION:**

That the City Council adopt Resolution No. 2008-121 (Attachment 1) authorizing an Agreement between the City of Banning and CA KABIR, Inc. for the deferral of \$447,006.12 in Development Impact Fees for the Holiday Inn Express & Suites hotel project.

**BACKGROUND:**

The City Council reviewed this item at its December 10, 2008 meeting. In general, the Council expressed a couple of important concerns about approving the Agreement as proposed by staff. It was felt that the proposed security and collateral provision was not realistic (i.e., city being in a 1st lien position over the lender), and that the length of the payback period was too long. The Council also expressed other concerns such as not having a standard policy on what provisions should be in a typical Deferral Agreement. A copy of the December 10, 2008 meeting minutes have been provided for Council consideration (Attachment 2). As a result of the discussion, the item was continued to the January 13, 2009 meeting to allow staff to meet with the applicant to address the concerns raised by the Council and bring back a revised Agreement.

**ANALYSIS:**

Staff met with the applicant (Mr. Raj Bhakta) on December 18, 2008 to discuss a revised agreement that would meet Council concerns and allow Mr. Bhakta to move forward with the opening of his hotel. It was at this meeting that Mr. Bhakta notified staff that his lender would not approve of the City being in a 1st lien position. Given that this was a primary issue with the Council, staff discussed other ideas with Mr. Bhakta.

In an effort to avoid the deferral agreement altogether, staff suggested that Mr. Bhakta look into other financing opportunities to pay the full amount owed on the development impact fees now. Some ideas presented by staff included such things as: 1) other investors and/or lenders, 2) getting additional funds from the Holiday Inn corporation, 3) using personal assets/finances or 4)

Holiday Inn Express & Suites Hotel

Deferral Agreement

January 13, 2009

Page 2 of 3

borrowing additional funds from his primary lender. Mr. Bhakta conveyed to staff that he looked into these opportunities already and that he has exhausted all conceivable ideas to obtain additional funding and avoid the deferral agreement.

Given that it appears there is no way to get additional funding to pay the full amount of the development impact fees now, staff proposed that Mr. Bahkta provide the City with an initial down payment when the Certificate of Occupancy is granted and pay off the balance over a shortened pay-back period rather than eight (8) years as originally proposed. Specifically, staff suggested an initial down payment/deposit of \$100,000 when the Certificate of Occupancy is issued and the remaining balance being paid off in \$50,000 installments (including interest) every six (6) months. Mr. Bhakta agreed with this idea and the attached deferral agreement reflects this.

In conclusion, staff believes that we have exhausted all the realistic opportunities with Mr. Bahkta. The down payment / semi-annual installment proposal seems to be the best solution at this time given the current economic and fiscal situation. With this proposal, the balance of the development impact fees will be paid off in approximately 42 months which is far better than the eight (8) years originally proposed. While the City is not in a 1st lien position (the City is in a 2nd lien position), this proposal will allow Mr. Bahkta to open the hotel as planned (proposed for late February/early March 2009) and begin operating, while at the same time allowing the City to begin collecting its Transient Occupancy Tax (TOT).

**FISCAL DATA:**

The total Development Impact Fees required for the Holiday Inn Express hotel project is \$447,006.12. The applicant is required (and has agreed) to pay \$100,000 at the time of the issuance of a Certificate of Occupancy. The remaining balance to be deferred is \$347,006.12. In accordance with the Deferral Agreement, the applicant is required to pay the City \$50,000 every six (6) months (beginning July 13, 2009) until the balance is paid off. The balance will be carried at the current LAIF rate of interest and adjusted on a quarterly basis. The payoff period is estimated to take approximately 42 months from the date the Deferral agreement is approved by the City Council. An amortization schedule has been provided in the Agreement and is provided on the next page for Council consideration.

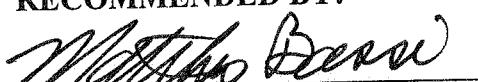
Holiday Inn Express & Suites Hotel  
Deferral Agreement  
January 13, 2009  
Page 3 of 3

**Holiday Inn Deferral of Development Impact Fees - Amortization Schedule**

Due Date of Payments	Payment Amount	Principal Amount (1)	Interest Amount	Outstanding Balance
January 13, 2009	\$100,000.00	-----	-----	\$347,006.12
July 13, 2009	\$50,000.00	\$45,193.97	\$4,806.03	\$301,812.15
January 13, 2010	\$50,000.00	\$45,819.90	\$4,180.10	\$255,992.25
July 13, 2010	\$50,000.00	\$46,454.51	\$3,545.49	\$209,537.75
January 13, 2011	\$50,000.00	\$47,097.90	\$2,902.10	\$162,439.84
July 13, 2011	\$50,000.00	\$47,750.21	\$2,249.79	\$114,689.64
January 13, 2012	\$50,000.00	\$48,411.55	\$1,588.45	\$66,278.09
July 13, 2012	\$50,000.00	\$49,082.05	\$917.95	\$17,196.04
January 13, 2013	\$50,000.00	\$17,196.04	\$238.17	\$0.00

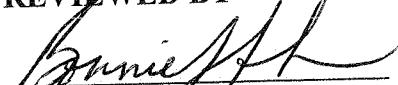
(1) The interest is based on the quarterly LAIF rate. The above utilizes a rate as of September 30, 2008 of 2.77%. It will be updated quarterly thereafter in accordance with the deferral agreement.

**RECOMMENDED BY:**



Matthew C. Bassi  
Interim Community Development Director

**REVIEWED BY**



Bonnie Johnson  
Finance Director

**APPROVED BY:**



Brian Nakamura  
City Manager

**CC Attachments:**

1. City Council Resolution No. 2008-121
  - Exhibit 1 - Proposed Deferral Agreement with CA Kabir, Inc.
    - Attachment 1 - Legal Description
    - Attachment 2 - Deed of Trust
    - Attachment 3 - Promissory Note
2. Draft City Council Minutes from the December 10, 2008 meeting
3. Council Staff Report from December 10, 2008 (without attachments)

**ATTACHMENT 1**  
**CITY COUNCIL RESOLUTION NO. 2008-121**

**RESOLUTION NO. 2008-121**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT WITH CA KABIR, INC. FOR THE DEFERRAL OF DEVELOPMENT IMPACT FEES IN THE AMOUNT OF \$447,006.12 ASSOCIATED WITH THE DEVELOPMENT OF THE HOLIDAY INN EXPRESS & SUITES HOTEL LOCATED AT 3020 WEST RAMSEY STREET (APN: 538-340-005)**

**WHEREAS**, CA KABIR, INC., has proposed the development of the Holiday Inn Express hotel comprised of a 70-room hotel that is 39,250 square feet in size (3 story building) in the Highway Serving Commercial (HSC) zone district within the City's Redevelopment Project Area located at 3020 West Ramsey Street (APN 538-340-005); and

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

**WHEREAS**, CA KABIR, INC., will construct the referenced hotel facility in compliance with the approved development plans.

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

**SECTION 1.** The City of Banning and CA KABIR, INC., enter into a Deferral Agreement for the deferral of Development Impact Fees in the amount of \$447,006.12 per the terms and conditions of the Deferral Agreement incorporated herein as Exhibit 1.

**SECTION 2.** Authorizes the City Manager to execute the Deferral Agreement with CA KABIR, INC., substantially in the form attached hereby and included as Exhibit 1 by this reference made part hereto.

**SECTION 3.** If such agreement is not executed by both parties and recorded by CA KABIR by March 13, 2009, such authorization shall become void and of no effect.

**PASSED, APPROVED, AND ADOPTED** this 13th day of January, 2009.

---

Robert E. Botts, Mayor  
City of Banning

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

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP  
City of Banning, California

**ATTEST:**

---

Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-121, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of January, 2009 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**EXHIBIT 1**  
**PROPOSED DEFERRAL AGREEMENT**

**AGREEMENT FOR THE DEFERRAL OF THE  
PAYMENT OF DEVELOPMENT IMPACT  
FEES FOR THE HOLIDAY INN EXPRESS  
HOTEL LOCATED AT  
3020 W. RAMSEY STREET, BANNING  
(APN NO. 538-340-022)**

**By and Between**

**CITY OF BANNING**

**and**

**CA KABIR, INC.**

**DATED: JANUARY 13, 2009**

**AGREEMENT FOR PAYMENT OF  
DEVELOPMENT IMPACT FEES**

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

**RECITALS**

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

B. The City has established a regular program of the payment of specified Development Impact Fees to offset impacts on public services and infrastructure from new development within the City. These fees (defined on page 3 of said agreement) are typically payable to the City at the time of the issuance of building permits for the project.

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

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

E. Developer and City acknowledge that the California Prevailing Wage law normally applies to projects where public funds are used for construction or for the payment of fees that are mandatory conditions of construction. In this case, City is not paying fees but is instead deferring payment of them. Developer is absolutely bound to pay the balance of the required Development Impact Fees, but will be allowed to pay them over time, with interest. Developer and City acknowledge that they have each and separately investigated California Prevailing Wage Law and have each and separately determined that the City's assistance through waiver of interest constitutes a *de minimis* contribution of public funds, as defined by California Labor Code Section 1720(c)(3) and precedential decisions issued by the Department of Industrial Relations interpreting that Section. Notwithstanding the analysis and determination of the

parties, Developer acknowledges that if the Department of Industrial Relations determines that the payment of public funds for the Project is not *de minimis*, then the construction and construction-related activities for the Project would be subject to the California Prevailing Wage Law and Developer would be required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project.

#### **DEFINED TERMS**

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

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

**“Developer”** shall mean CA KABIR, INC, a California sole proprietorship. The term “Developer” shall also include all assignees, to the extent permitted under this Agreement, of the rights and obligations of Developer under this Agreement, and any successor-in-interest to Developer having a legal and/or equitable interest in the Property.

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

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

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

**“Local Agency Investment Fund (LAIF) Rate”** shall mean a variable rate equal to the most recently published Quarterly Apportionment Rate for the Local Agency Investment Fund (established and maintained pursuant to Government Code § 16429.1 *et seq.* ) as published quarterly by the California State Treasurer’s Office. During the Term of the Note, the Rate shall

be adjusted quarterly to reflect the most recent rate published by the State Treasurer's Office for the LAIF.

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

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

**"Payment Period"** shall mean a period in which time the Developer pays the balance of the Development Impact Fees from and after the Effective Date of the Agreement for which Developer will have to pay the Deferral Amount, plus accrued interest, to the City as provided in Section 3 [Terms of Payment] no later than January 13, 2013.

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

- Block Wall Permit Fee
- Block Wall Plan Fee
- Building Permit Fee
- Computer Storage Fee
- Electrical Meter Installation Fee
- Electrical Permit Fee
- Energy Conservation Fee
- Engineering Plan Check Fee
- Fire Inspection Fee
- Fire Plan Check Fee
- Grading Fee
- Mechanical Permit
- Miscellaneous Fees
- Multi Species Habitat Conservation Plan Fee (MSHCP)
- New Construction Fee
- Plan Check Fees
- Plumbing/Gas Permit

Plan/Computer Storage Fee  
Public Works Permit Fee  
Public Works Inspection Fee  
Retaining Wall Permit Fee  
Retaining Wall Plan Check Fee  
Sewer Lateral Permit Fee  
Sewer Lateral Plan Check Fee  
Strong Motion Implementation Plan (SMIP) Fee  
Transportation Uniform Mitigation Fee (TUMF)  
Traffic Control Facility Fee  
Utility Connection Fee

**“Project”** shall mean the construction of a 3-story, 70-room hotel building (Holiday Inn Express & Suites) of approximately 39,250 square feet in size on property that is suitable for occupancy and use under the Highway Serving Commercial (HSC) zone district.

**“Property”** shall mean that certain parcel of real property commonly known as Assessor’s Parcel Number 538-340-022 located at 3020 West Ramsey Street in the City of Banning, County of Riverside, State of California, as more particularly described in the legal description attached hereto and incorporated herein by reference as Exhibit 1 of this Agreement.

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

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

## **OPERATIVE PROVISIONS**

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

### **1. Deferral And Payment.**

**1.1 City’s Deferral.** Upon payment in the amount of **\$100,000.00** by the Developer at the time of the Certificate of Occupancy is granted by the City, the City agrees that Developer may defer payment of the remaining balance of the Development Impact Fees in the amount of **\$347,006.12** imposed on the Project by City for the Payment Period provided Developer remains in compliance with the terms, conditions, and covenants of this

Agreement. The parties acknowledge that City normally requires the payment of all Development Impact Fees at the time the project applicant submits an application to the City for these permits and approvals. In this case, by virtue of this Agreement, the City will issue permits and approvals for the Project, provided all other requirements for the issuance of such permits have been met, even though the Developer will not have paid the Development Impact Fees. Notwithstanding any provision herein to the contrary, the deferral of payment provided hereunder is limited solely to Development Impact Fees as defined herein, and nothing herein provides for the deferral of payment of Permit and Processing Fees, including any fees imposed by any entity other than the City, and all Permit and Processing Fees shall be timely paid in accordance with law. Failure to timely pay such fees shall be a default hereunder and permit the acceleration of the payment of all other debts hereunder.

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

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

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

**1.3.2 Basis for *de minimis* Contribution.** In determining that City's contribution is *de minimis*, the parties took into account first the total City assistance by way of waiver of interest pursuant to Section 3.2.1 [No Payment Period]. The total assistance is thirty-two thousand six hundred fifty nine (\$32,659.00). The City then took into account the total cost of constructing the Project, which is approximately four million, seven hundred thirty three thousand dollars (\$4,733,000.00). The anticipated City assistance by way of waiver of interest constitutes .0069% of the total Project costs (\$32,659.00/\$4,733,000.00). Based upon Department of Industrial Relations precedent, a public agency contribution of 1.64% would be deemed to be *de minimis* (See DIR Public Works Decision No. 2004-024) and so the City's contribution to the Project should also be deemed *de minimis*.

### **1.3.3 Developer's Agreement to Comply With Prevailing Wage Law.**

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

## **2. Development Impact Fees**

**2.1 Total Development Impact Fees.** The total amount of Development Impact Fees to be paid for the Project is **\$447,006.12**. The Developer has obligated to pay the City an initial amount/deposit of **\$100,000.00** at the time of the issuance of a Certificate of Occupancy for the Project. The remaining balance of the Development Impact Fees is **\$347,006.12** which the Developer agrees to make regular and timely payments in the amount of **\$50,000.00** (plus interest) every six (6) months commencing on January 13, 2009 and concluding no later than July 13, 2013 as outlined in Section 3.2 of this Agreement.

## **3. Terms of Payment**

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

**3.2 Payment Over Time.** Developer agrees to pay the entire outstanding balance of the Development Impact Fees in the amount of **\$337,006.12** (plus accrued interest) from and after the Effective Date of this Agreement, and no later than the last business day on January 13, 2013. Developer agrees to make payment of regular semi-annual installments/payments (every 6 months) of principal and interest. The installments shall be calculated in such a manner as to amortize the remaining balance of the Development Impact Fees, plus accrued and capitalized interest over the remaining portion of the Repayment Period according to the Amortization Schedule provided below: (Page 8).

**Holiday Inn Deferral of Development Impact Fees**  
**Amortization Schedule (Amount Deferred is \$447,006.12)**

Due Date of Payments	Payment Amount	Principal Amount (1)	Interest Amount	Outstanding Balance
January 13, 2009	\$100,000.00	-----	-----	\$347,006.12
July 13, 2009	\$50,000.00	\$45,193.97	\$4,806.03	\$301,812.15
January 13, 2010	\$50,000.00	\$45,819.90	\$4,180.10	\$255,992.25
July 13, 2010	\$50,000.00	\$46,454.51	\$3,545.49	\$209,537.75
January 13, 2011	\$50,000.00	\$47,097.90	\$2,902.10	\$162,439.84
July 13, 2011	\$50,000.00	\$47,750.21	\$2,249.79	\$114,689.64
January 13, 2012	\$50,000.00	\$48,411.55	\$1,588.45	\$66,278.09
July 13, 2012	\$50,000.00	\$49,082.05	\$917.95	\$17,196.04
January 13, 2013	\$50,000.00	\$17,196.04	\$238.17	\$0.00

(1) The interest is based on the quarterly LAIF rate. The above utilizes a rate as of September 30, 2008 of 2.77%. It will be updated quarterly thereafter in accordance with the deferral agreement.

**3.2.1 Payment Period.** The Developer has obligated to pay the City an initial amount/deposit of **\$100,000.00** at the time of the issuance of a Certificate of Occupancy. The Developer shall commence payments of the remaining balance of **\$347,006.12** in regular semi-annual installments of principal and interest beginning on the 13<sup>th</sup> day of July, 2009 (as noted above) and every six (6) months thereafter. The period from the Effective Date of this Agreement through the 13<sup>th</sup> day January, 2013 shall be known as the "Payment Period" for purposes of this Agreement.

**3.2.2 Pre-Payment Option.** At any time during the Payment Period, the Developer may pay the entire outstanding principal balance of the Development Impact Fees. Pre-payment shall include the remaining principal amount owed and all interest accrued as of that date. The City and Developer agree that if a pre-payment of the entire balance is made prior to the final payment due date, then there shall be no pre-payment penalty imposed on the Developer.

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

**3.3 Security.** As further evidence of Developer's obligation to pay the Development Impact Fees, Developer shall execute and provide to the City a Promissory Note that is the same in all material respects to that attached hereto and incorporated herein by reference as Exhibit 3 of this Agreement. Developer's payment obligation under the Promissory Note and this Agreement shall be secured by a Deed of Trust recorded against the Property. The Deed of Trust shall be the same in all material respects as that attached hereto and incorporated herein by reference as Exhibit 2 of this Agreement. Developer shall ensure that the City's lien shall be a second lien on the Property. At Developer's expense, the parties shall arrange for a Closing for recording the Deed of Trust and issuance of Lender's Title Policy showing the priority of the City's Lien.

**3.4 Recordation of Agreement.** Recordation of this Agreement is tied to the property in the form of the lien and it shall be recorded no later than March 13, 2009 (60 days after adoption of Resolution No. 2008-121 approving said Agreement). The recording of the Agreement and the Deed of Trust in a second lien position as provided in Section 3.3 is a condition subsequent to the effectiveness of this Agreement. If this condition cannot be satisfied by the date provided in this Section, then this Agreement shall terminate and be of no further force and effect. In such event, all of the Development Impact Fees shall be due and payable in accordance with the normal city fee schedules. City shall not be required to issue any further permits unless Developer has made current any fees which have been due but not collected. City shall have no liability to Developer for loss, cost or damage due to Developer's failure to receive the deferral of fees due to the failure of this condition subsequent.

#### **4. General Indemnity.**

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

#### **5. Default And Remedies.**

**5.1 Default.** Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice

specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

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

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

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

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

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

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

## **6. General Provisions.**

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

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

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

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

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

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

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

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

If notice is to be made to the City:

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

If notice is to be made to Developer:

CA KABIR, INC  
Attn: Raj Bhakta  
2863 E. Colorado Boulevard  
Pasadena, CA 91107

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

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

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

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

**6.13 Waiver of Actions.** Developer, for itself and its contractors, hereby expressly agrees that City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Developer and its contractors. Furthermore, Developer, for itself and its contractors hereby expressly waives any right of action against the City created under Labor Code Sections 1726 and/or 1781, whether known, or unknown, foreseen or unforeseen relating to the Project and/or this Agreement.

## 7. SEVERABILITY

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, notary public,  
personally appeared \_\_\_\_\_, 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)

### OPTIONAL

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

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

#### DESCRIPTION OF ATTACHED DOCUMENT

##### TITLE OR TYPE OF DOCUMENT

PARTNER(S)  LIMITED  
  GENERAL

ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER \_\_\_\_\_

##### NUMBER OF PAGES

##### DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

**IN WITNESS WHEREOFF**, the parties hereto have executed this Agreement on the  
\_\_\_\_ day of \_\_\_\_\_, 2009.

**CITY:**  
CITY OF BANNING

By: \_\_\_\_\_  
Brian Nakamura  
City Manager

**ATTEST:**

By: \_\_\_\_\_  
Marie Calderon  
City Clerk, City of Banning

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP  
City of Banning, California

**DEVELOPER:**  
CA KABIR, INC.

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Raj Bhakta, CA KABIR, INC  
2863 E. Colorado Boulevard  
Pasadena, CA 91107

**ATTACHMENT 1**  
**LEGAL DESCRIPTION**

## Preliminary Report

YOUR REFERENCE: CA KABIR INC

Ticor Title Company  
ORDER NO.: 9767911-09

## LEGAL DESCRIPTION

## EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

THE EAST 2 1/2 ACRES OF THE WEST 10 ACRES, TOGETHER WITH THE WEST 47.36 FEET OF THE WEST 2 1/2 ACRES OF THE EAST 5 ACRES OF THE WEST 15 ACRES OF THAT PORTION OF THE WEST HALF OF SECTION 8, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY UNITED STATES GOVERNMENT SURVEY, DESCRIBED:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF SAID SECTION, WITH THE SOUTH LINE OF RAMSEY STREET;

THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION, 601.15 FEET, TO ITS INTERSECTION WITH THE NORTHERLY LINE OF THE 200 FOOT RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD;

THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID RIGHT OF WAY, TO A POINT 275 FEET WESTERLY FROM THE SOUTHWEST CORNER OF LOT 7 OF C.O. BARKER'S SUBDIVISION AS PER MAP RECORDED IN BOOK 6, PAGE 14, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID LOT, TO ITS INTERSECTION WITH THE SOUTH LINE OF RAMSEY STREET;

THENCE WESTERLY ALONG THE SOUTH LINE OF RAMSEY STREET, 2361.8 FEET, TO THE POINT OF BEGINNING,

EXCEPTING THAT PORTION THEREOF DEEDED TO THE STATE OF CALIFORNIA BY DEED RECORDED MARCH 24, 1959 IN BOOK 2437 PAGE 197, OFFICIAL RECORDS AND BY DEED RECORDED MARCH 19, 1959 AS INSTRUMENT NO. 22910, IN BOOK 2434 PAGE 417, OFFICIAL RECORDS.

SAID LEGAL DESCRIPTION IS BASED UPON LOT LINE ADJUSTMENT RECORDED APRIL 7, 2006 AS INSTRUMENT NO. 2006-0249893, OFFICIAL RECORDS.

**ATTACHMENT 2**

**DEED OF TRUST**

COPY

## RECORDATION REQUESTED BY:

METRO UNITED BANK  
 ALHAMBRA OFFICE  
 1101 WEST VALLEY BOULEVARD  
 ALHAMBRA, CA 91803

## WHEN RECORDED MAIL TO:

METRO UNITED BANK  
 NOTE DEPARTMENT  
 17870 CASTLETON ST., SUITE 100  
 CITY OF INDUSTRY, CA 91748

## SEND TAX NOTICES TO:

CA KABIR, INC., A CALIFORNIA CORPORATION  
 3020 West Ramsey St.  
 Banning, CA 92220

FOR RECORDER'S USE ONLY

## CONSTRUCTION DEED OF TRUST

THIS DEED OF TRUST is dated March 17, 2008, among CA KABIR, INC., A CALIFORNIA CORPORATION, whose address is 2863 E. Colorado Blvd., Pasadena, CA 91107 ("Trustor"); METRO UNITED BANK, whose address is ALHAMBRA OFFICE, 1101 WEST VALLEY BOULEVARD, ALHAMBRA, CA 91803 (referred to below sometimes as "Lender" and sometimes as "Beneficiary"); and Ticor Title Company, whose address is 500 N. Central Avenue, # 500, Glendale, CA 91203 (referred to below as "Trustee").

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

See Exhibit "A", which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.

The Real Property or its address is commonly known as 3020 West Ramsey St., Banning, CA 92220. The Assessor's Parcel Number for the Real Property is 538-340-022-1.

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

THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS OF THE TRUSTOR UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST. THIS DEED OF TRUST, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS ALSO GIVEN TO SECURE ANY AND ALL OF TRUSTOR'S OBLIGATIONS UNDER THAT CERTAIN CONSTRUCTION LOAN AGREEMENT BETWEEN TRUSTOR AND LENDER OF EVEN DATE HEREWITHE. ANY EVENT OF DEFAULT UNDER THE CONSTRUCTION LOAN AGREEMENT, OR ANY OF THE RELATED DOCUMENTS REFERRED TO THEREIN, SHALL ALSO BE AN EVENT OF DEFAULT UNDER THIS DEED OF TRUST. THIS DEED OF TRUST IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

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

**CONSTRUCTION MORTGAGE.** This Deed of Trust is a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of California.

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

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

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

**Compliance With Environmental Laws.** Trustor represents and warrants to Lender that: (1) During the period of Trustor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Trustor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any

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DEED OF TRUST  
(Continued)

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Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Trustor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Trustor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Trustor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Deed of Trust. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Trustor or to any other person. The representations and warranties contained herein are based on Trustor's due diligence in investigating the Property for Hazardous Substances. Trustor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Trustor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Deed of Trust or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Trustor's ownership or interest in the Property, whether or not the same was or should have been known to Trustor. The provisions of this section of the Deed of Trust, including the obligation to indemnify and defend, shall survive the payment of the Indebtedness and the satisfaction and reconveyance of the lien of this Deed of Trust and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

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

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

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

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

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

**Construction Loan.** If some or all of the proceeds of the loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Note (or such earlier date as Lender may reasonably establish) and Trustor shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by this Deed of Trust shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

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

Trustor, However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

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

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

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

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## DEED OF TRUST (Continued)

surety bond furnished in the contest proceedings.

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

**Notice of Construction.** Trustor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials and the cost exceeds \$500.00. Trustor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Trustor can and will pay the cost of such improvements.

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

**Maintenance of Insurance.** Trustor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Trustor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Trustee and Lender being named as additional insureds in such liability insurance policies. Additionally, Trustor shall maintain such other insurance, including but not limited to hazard, business interruption, and boiler insurance, as Lender may reasonably require. Notwithstanding the foregoing, in no event shall Trustor be required to provide hazard insurance in excess of the replacement value of the improvements on the Real Property. Policies shall be written in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Trustor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Trustor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

**Application of Proceeds.** Trustor shall promptly notify Lender of any loss or damage to the Property if the estimated cost of repair or replacement exceeds \$500.00. Lender may make proof of loss if Trustor fails to do so within fifteen (15) days of the casualty. If in replacement Lender's security interest in the Property has been impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If the proceeds are to be applied to restoration and repair, Trustor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Trustor from the proceeds for the reasonable cost of repair or restoration if Trustor is not in default under this Deed of Trust. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Deed of Trust, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Trustor as Trustor's interests may appear.

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

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

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

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

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

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(Continued)

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

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

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

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

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

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

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

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

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

**Taxes and Liens** section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender. The following provisions relating to this Deed of Trust as a security agreement are a part of this Deed of Trust:

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

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

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

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

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

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

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

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DEED OF TRUST  
(Continued)

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**Personal Property.** Lender may charge Trustor a reasonable reconveyance fee at the time of reconveyance.

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

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

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

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

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

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

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

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

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

**Insolvency.** The dissolution or termination of Trustor's existence as a going business, the insolvency of Trustor, the appointment of a receiver for any part of Trustor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Trustor.

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

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

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

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

**Right to Cure.** If any default, other than a default in payment is curable and if Trustor has not been given a notice of a breach of the same provision of this Deed of Trust within the preceding twelve (12) months, it may be cured if Trustor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) If the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

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

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

**Foreclosure by Sale.** Upon an Event of Default under this Deed of Trust, Beneficiary may declare the entire Indebtedness secured by this Deed of Trust immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold the Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, the Note, other documents requested by Trustee, and all documents evidencing expenditures secured hereby. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement in accordance with applicable law. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or

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DEED OF TRUST  
(Continued)

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warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary may purchase at such sale. After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Arbitration.** Trustor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Deed of Trust or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Trustor and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Deed of Trust shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

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

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

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

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

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

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DEED OF TRUST  
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required and in all cases such consent may be granted or withheld in the sole discretion of Lender.  
**Severability.** If a court of competent jurisdiction finds any provision of this Deed of Trust to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Deed of Trust. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Deed of Trust shall not affect the legality, validity or enforceability of any other provision of this Deed of Trust.

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

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

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

**Beneficiary.** The word "Beneficiary" means METRO UNITED BANK, and its successors and assigns.

**Borrower.** The word "Borrower" means CA KABIR, INC., A CALIFORNIA CORPORATION and includes all co-signers and co-makers signing the Note and all their successors and assigns.

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

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

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

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

**Guarantor.** The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness. **Guaranty.** The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

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

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

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

**Lender.** The word "Lender" means METRO UNITED BANK, its successors and assigns.

**Note.** The word "Note" means the promissory note dated March 17, 2008, in the original principal amount of \$5,635,000.00 from Trustor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. **NOTICE TO TRUSTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

**Personal Property.** The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Trustor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property. The words "Personal Property" also include all tangible and intangible items obtained or owned by, or in the possession of Trustor that are directly or indirectly related to the acquisition, development, design, construction, permitting, marketing, or habitation of the Real Property or the improvements to be constructed on the Real Property, whether heretofore or hereafter issued, prepared, or executed, including without limitation all permits, licenses, authorizations and approvals, trademarks and tradenames, and any and all land use entitlements, development rights, sever capacity, approvals, density allocations and other rights or approvals relating to or authorizing

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**DEED OF TRUST  
(Continued)**

the development or occupancy of the Property, plus all utility or other deposits, reimbursement rights, studies, tests, contracts, plans and specifications, relating to the Property and Improvements.

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

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

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

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

**Trustee.** The word "Trustee" means Ticor Title Company, whose address is 500 N. Central Avenue, # 500, Glendale, CA 91203 and any substitute or successor trustees.

**Trustor.** The word "Trustor" means CA KABIR, INC., A CALIFORNIA CORPORATION.

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

**TRUSTOR:****CA KABIR, INC., A CALIFORNIA CORPORATION**

By: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION

**CERTIFICATE OF ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

)

) SS

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, 20 \_\_\_\_\_ before me, \_\_\_\_\_ (here insert name and title of the officer)

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

**WITNESS my hand and official seal.**

Signature \_\_\_\_\_

(Seal)

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(Continued)

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

To: \_\_\_\_\_, Trustee

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

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

Beneficiary: \_\_\_\_\_

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

Its: \_\_\_\_\_

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# CONSTRUCTION LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No.	Cal. Coll.	Account	Officer	Initials
\$5,635,000.00	03-17-2008	09-20-2009	0370253786	110-168	0370253700	A.Y.	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** CA KABIR, INC., A CALIFORNIA CORPORATION  
3020 West Ramsey St.  
Banning, CA 92220

**Lender:** METRO UNITED BANK  
ALHAMBRA OFFICE  
1101 WEST VALLEY BOULEVARD  
ALHAMBRA, CA 91803  
(626) 943-1138

THIS CONSTRUCTION LOAN AGREEMENT dated March 17, 2008, is made and executed between CA KABIR, INC., A CALIFORNIA CORPORATION ("Borrower") and METRO UNITED BANK ("Lender") on the following terms and conditions. Borrower has applied to Lender for one or more loans for purposes of constructing the improvements on the Real Property described below. Lender is willing to lend the loan amount to Borrower solely under the terms and conditions specified in this Agreement and in the Related Documents, to each of which Borrower agrees. Borrower understands and agrees that: (A) In granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement, and (B) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

**TERM.** This Agreement shall be effective as of March 17, 2008, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until September 20, 2009.

**ADVANCE AUTHORITY.** The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION.

**LOAN.** The Loan shall be in an amount not to exceed the principal sum of U.S. \$5,635,000.00 and shall bear interest on so much of the principal sum as shall be advanced pursuant to the terms of this Agreement and the Related Documents. The Loan shall bear interest on each Advance from the date of the Advance in accordance with the terms of the Note. Borrower shall use the Loan Funds solely for the payment of: (A) the costs of constructing the improvements and equipping the Project in accordance with the Construction Contract; (B) other costs and expenses incurred or to be incurred in connection with the construction of the improvements as Lender in its sole discretion shall approve; and (C) if permitted by Lender, interest due under the Note, including all expenses and all loan and commitment fees described in this Agreement. The Loan amount shall be subject at all times to all maximum limits and conditions set forth in this Agreement or in any of the Related Documents, including without limitation, any limits relating to loan to value ratios and acquisition and Project costs.

**PROJECT DESCRIPTION.** The word "Project" as used in this Agreement means the construction and completion of all improvements contemplated by this Agreement, including without limitation the erection of the building or structure on the Real Property identified to this Agreement by Borrower and Lender, installation of equipment and fixtures, landscaping, and all other work necessary to make the Project usable and complete for the intended purposes. The Project includes the following work:

To construct a 70-room franchise motel (Holiday Inn Express).

The word "Property" as used in this Agreement means the Real Property together with all improvements, all equipment, fixtures, and other articles of personal property now or subsequently attached or affixed to the Real Property, together with all accessions, parts, and additions to, all replacements of, and all substitutions for any of such property, and all proceeds (including insurance proceeds and refunds of premiums) from any sale or other disposition of such property. The real estate described below constitutes the Real Property as used in this Agreement.

The real estate or its address is commonly known as:

Real Property located at 3020 West Ramsey St., Banning, CA 92220.

**FEES AND EXPENSES.** Whether or not the Project shall be consummated, Borrower shall assume and pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including without limitation the following: (A) all closing costs, loan fees, and disbursements; (B) all expenses of Lender's legal counsel; and (C) all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

**NO CONSTRUCTION PRIOR TO RECORDING OF SECURITY DOCUMENT.** Borrower will not permit any work or materials to be furnished in connection with the Project until (A) Borrower has signed the Related Documents; (B) Lender's mortgage or deed of trust and other Security Interests in the Property have been duly recorded and perfected; (C) Lender has been provided evidence, satisfactory to Lender, that Borrower has obtained all insurance required under this Agreement or any Related Documents and that Lender's liens on the Property and Improvements are valid perfected first liens, subject only to such exceptions, if any, acceptable to Lender.

**REPRESENTATIONS AND WARRANTIES.** Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

**Organization.** Borrower is a corporation for profit which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California. Borrower is duly authorized to transact business in all other states in which Borrower is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which Borrower is doing business. Specifically, Borrower is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 3020 West Ramsey St., Banning, CA 92220. Unless Borrower has designated otherwise in writing, the principal office is the office at 3020 West Ramsey St., Banning, CA 92220. Borrower will notify Lender prior to any change which Borrower keeps its books and records including its records concerning the Collateral. Borrower shall do all things necessary to preserve in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

**Assumed Business Names.** Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

**Authorization.** Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of (a) Borrower's articles of incorporation or organization, or bylaws, or (b) any agreement or other instrument binding upon

# CONSTRUCTION LOAN AGREEMENT (Continued)

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Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

**Financial Information.** Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

**Legal Effect.** This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

**Properties.** Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

**Hazardous Substances.** Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

**Litigation and Claims.** No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

**Taxes.** To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

**Lien Priority.** Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

**Binding Effect.** This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

**Title to Property.** Borrower has, or on the date of first disbursement of Loan proceeds will have, good and marketable title to the Collateral free and clear of all defects, liens, and encumbrances, excepting only liens for taxes, assessments, or governmental charges or levies not yet delinquent or payable without penalty or interest, and such liens and encumbrances as may be approved in writing by the Lender. The Collateral is contiguous to publicly dedicated streets, roads, or highways providing access to the Collateral.

**Project Costs.** The total cost for the Project shall not exceed \$7,410,257.00. The Project costs are true and accurate estimates of the costs necessary to complete the improvements in a good and workmanlike manner according to the Plans and Specifications presented by Borrower to Lender, and Borrower shall take all steps necessary to prevent the actual cost of the improvements from exceeding the Project costs.

**Utility Services.** All utility services appropriate to the use of the Project after completion of construction are available at the boundaries of the Collateral.

**Assessment of Property.** The Collateral is and will continue to be assessed and taxed as an independent parcel by all governmental authorities.

**Compliance with Governing Authorities.** Borrower has examined and is familiar with all the easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements affecting the Project. The Project will at all times and in all respects conform to and comply with the requirements of such easements, covenants, conditions, restrictions, reservations, building laws, regulations, zoning ordinances, and federal, state, and local requirements.

**Survival of Representations and Warranties.** Borrower understands and agrees that in extending Loan Advances, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by the Lender, all such representations, warranties and covenants will survive the extension of Loan Advances and delivery to Lender of the Related Documents, shall be continuing in nature, shall be deemed made and ratified by Borrower at the time each Loan Advance is made, and shall remain in full force and effect until such time as Borrower's Indebtedness shall be paid in full, or until this Agreement shall be

# CONSTRUCTION LOAN AGREEMENT (Continued)

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terminated in the manner provided above, whichever is the last to occur.

**CONDITIONS PRECEDENT TO EACH ADVANCE.** Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

**Equity Funds.** Borrower shall provide evidence of equity funds totaling \$1,775,807.00 prior to the initial advance from the Loan Fund. Lender may, at Lender's option, require that the equity funds be deposited with Lender as a portion of the Loan Fund, which funds shall be disbursed prior to any Loan proceeds.

**Approval of Contractors, Subcontractors, and Materialmen.** Lender shall have approved a list of all contractors employed in connection with the construction of the Improvements, showing the name, address, and telephone number of each contractor, a general description of the nature of the work to be done, the labor and materials to be supplied, the names of materialmen, if known, and the approximate dollar value of the labor, work, or materials with respect to each contractor or materialman. Lender shall have the right to communicate with any person to verify the facts disclosed by the list or by any application for any Advance, or for any other purpose.

**Plans, Specifications, and Permits.** Lender shall have received and accepted a complete set of written Plans and Specifications setting forth all improvements for the Project, and Borrower shall have furnished to Lender copies of all permits and requisite approvals of any governmental body necessary for the construction and use of the Project.

**Architect's and Construction Contracts.** Borrower shall have furnished in form and substance satisfactory to Lender an executed copy of the Architect's Contract and an executed copy of the Construction Contract.

**Related and Support Documents.** Borrower shall provide to Lender in form satisfactory to Lender the following support documents for the Loan: Assignment of Architect's Contract, Assignment of Construction Contract and Completion Guaranty.

**Budget and Schedule of Estimated Advances.** Lender shall have approved detailed budget and cash flow projections of total Project costs and a schedule of the estimated amount and time of disbursements of each Advance.

**Borrower's Authorization.** Borrower shall have provided in form and substance satisfactory to Lender properly certified resolutions, duly authorizing the consummation of the Project and duly authorizing the execution and delivery of this Agreement, the Note and the Related Documents. In addition, Borrower shall have provided such other resolutions, authorizations, documents and instruments as Lender or its counsel, in their sole discretion, may require.

**Bond.** If requested by Lender, Borrower shall have furnished a performance and payment bond in an amount equal to 100% of the amount of the Construction Contract, as well as a materialmen's and mechanics' payment bond, with such riders and supplements as Lender may require, each in form and substance satisfactory to Lender, naming the General Contractor as principal and Lender as an additional obligee. Any required bonds and the contracts which they cover must be duly recorded or filed in accordance with California Civil Code Section 3235, if required by Lender.

**Appraisal.** If required by Lender, an appraisal shall be prepared for the Property, at Borrower's expense, which in form and substance shall be satisfactory to Lender, in Lender's sole discretion, including applicable regulatory requirements.

**Plans and Specifications.** If requested by Lender, Borrower shall have assigned to Lender on Lender's forms the Plans and Specifications for the Project.

**Environmental Report.** If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, an environmental report and certificate on the Property in form and substance satisfactory to Lender, prepared by an engineer or other expert satisfactory to Lender stating that the Property complies with all applicable provisions and requirements of the "Hazardous Substances" paragraph set forth in this Agreement.

**Soil Report.** If requested by Lender, Borrower shall have furnished to Lender, at Borrower's expense, a soil report for the Property in form and substance satisfactory to Lender, prepared by a registered engineer satisfactory to Lender stating that the Property is free from soil or other geological conditions that would preclude its use or development as contemplated without extra expense for precautionary, corrective or remedial measures.

**Survey.** If requested by Lender, Borrower shall have furnished to Lender a survey of recent date, prepared and certified by a qualified surveyor and providing that the Improvements, if constructed in accordance with the Plans and Specifications, shall lie wholly within the boundaries of the Collateral without encroachment or violation of any zoning ordinances, building codes or regulations, or setback requirements, together with such other information as Lender in its sole discretion may require.

**Zoning.** Borrower shall have furnished evidence satisfactory to Lender that the Collateral is duly and validly zoned for the construction, maintenance, and operation of the Project.

**Title Insurance.** Borrower shall have provided to Lender an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title insurance company acceptable to Lender and in a form, amount, and content satisfactory to Lender, insuring or agreeing to insure that Lender's security agreement or other security document on the Property is or will be upon recordation a valid first lien on the Property free and clear of all defects, liens, encumbrances, and exceptions except those as may be required by Lender in writing. If requested by Lender, Borrower shall provide to Lender, at Borrower's expense, a foundation specifically accepted by Lender in writing. If requested by Lender, Borrower shall provide to Lender, at Borrower's expense, a title policy upon the completion of each foundation for the Improvements, showing no endorsement (CLTA 102.5 or its equivalent) to the title policy upon the completion of each foundation for the Improvements, showing no encroachments, and upon completion an endorsement which insures the lien-free completion of the Improvements (CLTA 101 series, as required by Lender).

**Insurance.** Unless waived by Lender in writing, Borrower shall have delivered to Lender the following insurance policies or evidence thereof: (a) an all risks course of construction insurance policy (builder's risk), with extended coverage covering the Improvements issued in an amount and by a company acceptable to Lender, containing a loss payable or other endorsement satisfactory to Lender insuring Lender as mortgagee, together with such other endorsements as may be required by Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender; (b) owners and General Contractor general liability insurance, public liability and workmen's compensation insurance; (c) flood insurance if required by Lender or applicable law; and (d) all other insurance required by this Agreement or by the Related Documents.

**Workers' Compensation Coverage.** Provide to Lender proof of the General Contractor's compliance with all applicable workers' compensation laws and regulations with regard to all work performed on the Project.

**Payment of Fees and Expenses.** Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

**Satisfactory Construction.** All work usually done at the stage of construction for which disbursement is requested shall have been done in

# CONSTRUCTION LOAN AGREEMENT (Continued)

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a good and workmanlike manner and all materials and fixtures usually furnished and installed at that stage of construction shall have been furnished and installed, all in compliance with the Plans and Specifications. Borrower shall also have furnished to Lender such proofs as Lender may require to establish the progress of the work, compliance with applicable laws, freedom of the Property from liens, and the basis for the requested disbursement.

**Certification.** Borrower shall have furnished to Lender a certification by an engineer, architect, or other qualified inspector acceptable to Lender that the construction of the Improvements has complied and will continue to comply with all applicable statutes, ordinances, codes, regulations, and similar requirements.

**Lien Waivers.** Borrower shall have obtained and attached to each application for an Advance, including the Advance to cover final payment to the General Contractor, executed acknowledgments of payments of all sums due and releases of mechanic's and materialmen's liens, satisfactory to Lender, from any party having lien rights, which acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed, or furnished prior to such application for an Advance.

**No Event of Default.** There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

**DISBURSEMENT OF LOAN FUNDS.** The following provisions relate to the disbursement of funds from the Loan Fund.

**Application for Advances.** Each application shall be stated on a standard AIA payment request form or other form approved by Lender, executed by Borrower, and supported by such evidence as Lender shall reasonably require. Borrower shall apply only for disbursement with respect to work actually done by the General Contractor and for materials and equipment actually incorporated into the Project. Each application for an Advance shall be deemed a certification of Borrower that as of the date of such application, all representations and warranties contained in the Agreement are true and correct, and that Borrower is in compliance with all of the provisions of this Agreement.

**Loan to Value.** Unless waived by Lender in writing, the ratio of the amount of the Loan to the Value of the Property as completed shall not exceed 70.000%.

**Payments.** At the sole option of Lender, Advances may be paid in the joint names of Borrower and the General Contractor, subcontractor(s), or supplier(s) in payment of sums due under the Construction Contract. At its sole option, Lender may directly pay the General Contractor and any subcontractors or other parties the sums due under the Construction Contract. Borrower appoints Lender as its attorney-in-fact to make such payments. This power shall be deemed coupled with an interest, shall be irrevocable, and shall survive an Event of Default under this Agreement.

**Projected Cost Overruns.** If Lender at any time determines in its sole discretion that the amount in the Loan Fund is insufficient, or will be insufficient, to complete fully and to pay for the Project, then within ten (10) days after receipt of a written request from Lender, Borrower shall deposit in the Loan Fund an amount equal to the deficiency as determined by Lender. The judgment and determination of Lender under this section shall be final and conclusive. Any such amounts deposited by Borrower shall be disbursed prior to any Loan proceeds.

**Final Payment to General Contractor.** Upon completion of the Project and fulfillment of the Construction Contract to the satisfaction of Lender and provided sufficient Loan Funds are available, Lender shall make an Advance to cover the final payment due to the General Contractor upon delivery to Lender of endorsements to the ALTA title insurance policy following the posting of the completion notice, as provided under applicable law. Construction shall not be deemed complete for purposes of final disbursement unless and until Lender shall have received all of the following:

- (1) Evidence satisfactory to Lender that all work under the Construction Contract requiring inspection by any governmental authority with jurisdiction has been duly inspected and approved by such authority, that a certificate of occupancy has been issued, and that all parties performing work have been paid, or will be paid, for such work;
- (2) A certification by an engineer, architect, or other qualified inspector acceptable to Lender that the Improvements have been completed substantially in accordance with the Plans and Specifications and the Construction Contract, that direct connection has been made to all utilities set forth in the Plans and Specifications, and that the Project is ready for occupancy; and
- (3) Acceptance of the completed Improvements by Lender and Borrower.

**Construction Default.** If Borrower fails in any respect to comply with the provisions of this Agreement or if construction ceases before completion regardless of the reason, Lender, at its option, may refuse to make further Advances, may accelerate the indebtedness under the terms of the Note, and without thereby impairing any of its rights, powers, or privileges, may enter into possession of the construction site and perform or cause to be performed any and all work and labor necessary to complete the improvements, substantially in accordance with the Plans and Specifications.

**Damage or Destruction.** If any of the Collateral or Improvements is damaged or destroyed by casualty of any nature, within sixty (60) days thereafter Borrower shall restore the Collateral and Improvements to the condition in which they were before such damage or destruction with funds other than those in the Loan Fund. Lender shall not be obligated to make disbursements under this Agreement until such restoration has been accomplished.

**Adequate Security.** When any event occurs that Lender determines may endanger completion of the Project or the fulfillment of any condition or covenant in this Agreement, Lender may require Borrower to furnish, within ten (10) days after delivery of a written request, adequate security to eliminate, reduce, or indemnify Lender against such danger. In addition, upon such occurrence, Lender in its sole discretion may advance funds or agree to undertake to advance funds to any party to eliminate, reduce, or indemnify Lender against such danger or to complete the Project. All sums paid by Lender pursuant to such agreements or undertakings shall be for Borrower's account and shall be without prejudice to Borrower's rights, if any, to receive such funds from the party to whom paid. All sums expended by Lender in the exercise of its option to complete the Project or protect Lender's interests shall be payable to Lender on demand together with interest from the date of the Advance at the rate applicable to the Loan. In addition, any Advance of funds under this Agreement, including interest, shall be deemed to have been expended by or on behalf of Borrower and to have been secured by Lender's Deed of Trust, if any, on the Collateral.

**CESSATION OF ADVANCES.** If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor has with default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any or all of the Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender.

**CONSTRUCTION LOAN AGREEMENT**  
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**LIMITATION OF RESPONSIBILITY.** The making of any Advance by Lender shall not constitute or be interpreted as either (A) an approval or acceptance by Lender of the work done through the date of the Advance, or (B) a representation or indemnity by Lender to any party against any deficiency or defect in the work or against any breach of any contract. Inspections and approvals of the Plans and Specifications, the Improvements, the workmanship and materials used in the Improvements, and the exercise of any other right of inspection, approval, or inquiry granted to Lender in this Agreement are acknowledged to be solely for the protection of Lender's interests, and under no circumstances shall they be construed to impose any responsibility or liability of any nature whatsoever on Lender to any party. Neither Borrower nor any contractor, subcontractor, materialman, laborer, or any other person shall rely, or have any right to rely, upon Lender's determination of the appropriateness of any Advance. No disbursement or approval by Lender shall constitute a representation by Lender as to the nature of the Project, its construction, or its intended use for Borrower or for any other person, nor shall it constitute an indemnity by Lender to Borrower or to any other person against any deficiency or defects in the Project or against any breach of any contract.

**AFFIRMATIVE COVENANTS.** Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

**Notices of Claims and Litigation.** Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

**Financial Records.** Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

**Financial Statements.** Furnish Lender with the following:

**Additional Requirements.** Borrower understands and agrees that while this Agreement is in effect, Borrower will maintain a financial condition indicated by the following statements at all times, unless otherwise noted:

**Guarantor Annual Statements.** Annually, Borrower shall provide Lender with the financial statement of each Guarantor certified by such Guarantor to be true and correct no later than April 25th.

**Tax Returns.** Within ten (10) days of filing, a signed copy of the Federal Income Tax Return of Borrower together with K-1's and all other schedules pertaining to the Tax Return, or a signed copy of each of the Request for Tax Return Extensions. Tax returns are to be provided no later than nine (9) months after the fiscal year end.

**Guarantor Tax Returns.** Within ten (10) days of filing, a signed copy of the Federal Income Tax Return of each Guarantor together with K-1's and all other schedules pertaining to the Tax Return, or a signed copy of each of the Request for Tax Return Extensions. Tax Returns are to be provided no later than October 31st.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

**Additional Information.** Furnish such additional information and statements, lists of assets and liabilities, aging of receivables and payables, inventory schedules, budgets, forecasts, tax returns, and other reports with respect to Borrower's financial condition and business operations as Lender may request from time to time.

**Other Agreements.** Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

**Insurance.** Maintain fire and other risk insurance, hail, federal crop insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least fifteen (15) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

**Insurance Reports.** Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

**Guarantees.** Prior to disbursement of any Loan proceeds, furnish executed guarantees of the Loans in favor of Lender, executed by the guarantors named below, on Lender's forms, and in the amounts and under the conditions set forth in those guarantees.

<u>Names of Guarantors</u>	<u>Amounts</u>
Rajendra K. Bhakta	Unlimited
Kantilal K. Bhakta	Unlimited
Baldevbhai Bhakta	Unlimited

**Loan Fees, Charges and Expenses.** In addition to all other agreed upon fees, charges, and expenses, pay the following: \$42,263.00 Loan fee and \$1,000.00 Documentation Fee. Whether or not the Project is completed, Borrower also shall pay upon demand all out-of-pocket expenses incurred by Lender in connection with the preparation of loan documents and the making of the Loan, including, without limitation, all closing costs, fees, and disbursements, all expenses of Lender's legal counsel, and all title examination fees, title insurance premiums, appraisal fees, survey costs, required fees, and filing and recording fees.

**Loan Proceeds.** Use the Loan Funds solely for payment of bills and expenses directly related to the Project.

**Taxes, Charges and Liens.** Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

**Performance.** Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

**Inspection.** Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and

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Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

**Compliance Certificates.** Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

**Construction of the Project.** Commence construction of the Project no later than April 20, 2008, and cause the Improvements to be constructed and equipped in a diligent and orderly manner and in strict accordance with the Plans and Specifications approved by Lender, the Construction Contract, and all applicable laws, ordinances, codes, regulations, and rights of adjoining or concurrent property owners. Borrower agrees to complete the Project for purposes of final payment to the General Contractor on or before December 1, 2009, regardless of the reason for any delay.

**Defects.** Upon demand of Lender, promptly correct any defect in the Improvements or any departure from the Plans and Specifications not approved by Lender in writing before further work shall be done upon the portion of the Improvements affected.

**Project Claims and Litigation.** Promptly inform Lender of (1) all material adverse changes in the financial condition of the General Contractor; (2) any litigation and claims, actual or threatened, affecting the Project or the General Contractor, which could materially affect the successful completion of the Project or the ability of the General Contractor to complete the Project as agreed; and (3) any condition or event which constitutes a breach or default under any of the Related Documents or any contract related to the Project.

**Payment of Claims and Removal of Liens.** (1) Cause all claims for labor done and materials and services furnished in connection with the Improvements to be fully paid and discharged in a timely manner, (2) diligently file or procure the filing of a valid notice of completion of the Improvements, or such comparable document as may be permitted under applicable lien laws, (3) diligently file or procure the filing of a notice of cessation, or such comparable document as may be permitted under applicable lien laws, upon the happening of cessation of labor on the Improvements for a continuous period of thirty (30) days or more, and (4) take all reasonable steps necessary to remove all claims of liens against the Collateral, the Improvements or any part of the Collateral or Improvements, or any rights or interests appurtenant to the Collateral or Improvements. Upon Lender's request, Borrower shall make such demands or claims upon or against laborers, materialmen, subcontractors, or other persons who have furnished or claim to have furnished labor, services, or materials in connection with the Improvements, which demands or claims shall under the laws of the State of California require diligent assertions of lien claims upon penalty of loss or waiver thereof. Borrower shall, within ten (10) days after the filing of any claim of lien that is disputed or contested by Borrower, record or cause the General Contractor for the construction of the Improvements to record in the appropriate governmental office, a surety bond pursuant to California law sufficient to release the claim of lien and, within five (5) days of Lender's demand, make suitable provision by deposit of funds with Lender in an amount satisfactory to Lender or by bond satisfactory to Lender for the possibility that the contest will be unsuccessful. If Borrower fails to remove any lien on the Collateral or Improvements or provide a bond or deposit pursuant to this provision, Lender may pay such lien, or may contest the validity of the lien, and Borrower shall pay all costs and expenses of such contest, including Lender's reasonable attorneys' fees.

**Taxes and Claims.** Pay and discharge when due all of Borrower's indebtedness, obligations, and claims that, if unpaid, might become a lien or charge upon the Collateral or Improvements; provided, however, that Borrower shall not be required to pay and discharge any such indebtedness, obligation, or claim so long as (1) its legality shall be contested in good faith by appropriate proceedings, (2) the indebtedness, obligation, or claim does not become a lien or charge upon the Collateral or Improvements, and (3) Borrower shall have established on its books adequate reserves with respect to the amount contested in accordance with GAAP. If the indebtedness, obligation, or claim does become a lien or charge upon the Collateral or Improvements, Borrower shall remove the lien or charge as provided in the preceding paragraph.

**Environmental Studies.** Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

**Additional Assurances.** Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests in the Collateral and Improvements.

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

**NEGATIVE COVENANTS.** Borrower covenants and agrees with Lender that while this Agreement is in effect, Borrower shall not, without the prior written consent of Lender:

**Indebtedness and Liens.** (1) Except for trade debt incurred in the normal course of business and indebtedness to Lender contemplated by this Agreement, create, incur or assume indebtedness for borrowed money, including capital leases, (2) sell, transfer, mortgage, assign, pledge, lease, grant a security interest in, or encumber any of Borrower's assets (except as allowed as Permitted Liens), or (3) sell with recourse any of Borrower's accounts, except to Lender.

**Continuity of Operations.** (1) Engage in any business activities substantially different than those in which Borrower is presently engaged, (2) cease operations, liquidate, merge, transfer, acquire or consolidate with any other entity, change its name, dissolve or transfer or sell Collateral out of the ordinary course of business, or (3) pay any dividends on Borrower's stock (other than dividends payable in its stock), provided, however that notwithstanding the foregoing, but only so long as no Event of Default has occurred and is continuing or would result from the payment of dividends, if Borrower is a "Subchapter S Corporation" (as defined in the Internal Revenue Code of 1986, as amended), Borrower may pay cash dividends on its stock to its shareholders from time to time in amounts necessary to enable the

# CONSTRUCTION LOAN AGREEMENT (Continued)

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shareholders to pay income taxes and make estimated income tax payments to satisfy their liabilities under federal and state law which arise solely from their status as Shareholders of a Subchapter S Corporation because of their ownership of shares of Borrower's stock, or purchase or retire any of Borrower's outstanding shares or alter or amend Borrower's capital structure.

**Loans, Acquisitions and Guarantees.** (1) Loan, invest in or advance money or assets to any other person, enterprise or entity, (2) purchase, create or acquire any interest in any other enterprise or entity, or (3) incur any obligation as surety or guarantor other than in the ordinary course of business.

**Modification of Contract.** Make or permit to be made any modification of the Construction Contract.

**Liens.** Create or allow to be created any lien or charge upon the Collateral or the Improvements.

**Agreements.** Borrower will not enter into any agreement containing any provisions which would be violated or breached by the performance of Borrower's obligations under this Agreement or in connection therewith.

**GENERAL PROJECT PROVISIONS.** The following provisions relate to the construction and completion of the Project:

**Change Orders.** All requests for changes in the Plans and Specifications, other than minor changes involving no extra cost, must be in writing, signed by Borrower and the architect, and delivered to Lender for its approval. Borrower will not permit the performance of any work pursuant to any change order or modification of the Construction Contract or any subcontract without the written approval of Lender. Borrower will obtain any required permits or authorizations from governmental authorities having jurisdiction before approving or requesting a new change order.

**Purchase of Materials; Conditional Sales Contracts.** No materials, equipment, fixtures, or articles of personal property placed in or incorporated into the Project shall be purchased or installed under any Security Agreement or other agreement whereby the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider such items as personal property after their incorporation into the Project, unless otherwise authorized by Lender in writing.

**Lender's Right of Entry and Inspection.** Lender and its agents shall have at all times the right of entry and free access to the Property and the right to inspect all work done, labor performed, and materials furnished with respect to the Project. Lender shall have unrestricted access to and the right to copy all records, accounting books, contracts, subcontracts, bills, statements, vouchers, and supporting documents of Borrower relating in any way to the Project.

**Lender's Right to Stop Work.** If Lender in good faith determines that any work or materials do not conform to the approved Plans and Specifications or sound building practices, or otherwise depart from any of the requirements of this Agreement, Lender may require the work to be stopped and withhold disbursements until the matter is corrected. In such event, Borrower will promptly correct the work to the Lender's satisfaction. No such action by Lender will affect Borrower's obligation to complete the Improvements on or before the Completion Date. Lender is under no duty to supervise or inspect the construction or examine any books and records. Any inspection or examination by Lender is for the sole purpose of protecting Lender's security and preserving Lender's rights under this Agreement. No default of Borrower will be waived by any inspection by Lender. In no event will any inspection by Lender be a representation that there has been or will be compliance with the Plans and Specifications or that the construction is free from defective materials or workmanship.

**Indemnity.** Borrower shall indemnify, defend, and hold Lender harmless from any and all claims asserted against Lender or the Property by any person, entity, or governmental body, or arising out of or in connection with the Property, Improvements, or Project. Lender shall be entitled to appear in any proceedings to defend itself against such claims, and all costs and expenses attorneys' fees incurred by Lender in connection with such defense shall be paid by Borrower to Lender. Lender shall, in its sole discretion, be entitled to settle or compromise any asserted claims against it, and such settlement shall be binding upon Borrower for purposes of this indemnification. All amounts paid by Lender under this paragraph shall be secured by Lender's security agreement or Deed of Trust, if any, on the Property, shall be deemed an additional principal Advance under the Loan, payable upon demand, and shall bear interest at the rate applicable to the Loan.

**Publicity.** Lender may display a sign at the construction site informing the public that Lender is the construction lender for the Project. Lender may obtain other publicity in connection with the Project through press releases and participation in ground-breaking and opening ceremonies and similar events.

**Actions.** Lender shall have the right to commence, appear in, or defend any action or proceeding purporting to affect the rights, duties, or liabilities of the parties to this Agreement, or the disbursement of funds from the Loan Fund. In connection with this right, Lender may incur and pay reasonable costs, expenses and attorneys' fees. Borrower covenants to pay to Lender on demand all such expenses, together with interest from the date Lender incurs the expense at the rate specified in the Note, and Lender is authorized to disburse funds from the Loan Fund for such purposes.

**DEFINITION OF TERMS.** Each of the following shall constitute an Event of Default under this Agreement:

**DEFINITION OF TERMS.** Each of the following shall constitute an Event of Default under this Agreement:

**Payment Default.** Borrower fails to make any payment when due under the Loan.

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

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

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's or any Grantor's ability to repay the Loans or perform their respective obligations under this Agreement or any of the Related Documents.

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

**Insolvency.** The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

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

**Creditor or Forfeiture Proceedings.** Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan.

# CONSTRUCTION LOAN AGREEMENT (Continued)

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This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Breach of Construction Contract.** The Improvements are not constructed in accordance with the Plans and Specifications or in accordance with the terms of the Construction Contract.

**Cessation of Construction.** Prior to the completion of construction of the Improvements and equipping of the Project, the construction of the Improvements or the equipping of the Project is abandoned or work thereon ceases for a period of more than ten (10) days for any reason, or the Improvements are not completed for purposes of final payment to the General Contractor prior to December 1, 2009, regardless of the reason for the delay.

**Transfer of Property.** Sale, transfer, hypothecation, assignment, or conveyance of the Property or the Improvements or any portion thereof or interest therein by Borrower or any Borrower without Lender's prior written consent.

**Condemnation.** All or any material portion of the Collateral is condemned, seized, or appropriated without compensation, and Borrower does not within thirty (30) days after such condemnation, seizure, or appropriation, initiate and diligently prosecute appropriate action to contest in good faith the validity of such condemnation, seizure, or appropriation.

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

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

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

**Right to Cure.** If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**EFFECT OF AN EVENT OF DEFAULT; REMEDIES.** Upon the occurrence of any Event of Default and at any time thereafter, Lender may, at its option, but without any obligation to do so, and in addition to any other right Lender without notice to Borrower may have, do any one or more of the following without notice to Borrower: (a) Cancel this Agreement; (b) Institute appropriate proceedings to enforce the performance of this Agreement; (c) Withhold further disbursement of Loan Funds; (d) Expend funds necessary to remedy the default; (e) Take possession of the Property and continue construction of the Project; (f) Accelerate maturity of the Note and/or Indebtedness and demand payment of all sums due under the Note and/or Indebtedness; (g) Bring an action on the Note and/or Indebtedness; (h) Foreclose Lender's security agreement or Deed of Trust, if any, on the Property in any manner available under law; and (i) Exercise any other right or remedy which it has under the Note or Related Documents, or which is otherwise available at law or in equity or by statute.

**COMPLETION OF IMPROVEMENTS BY LENDER.** If Lender takes possession of the Collateral, it may take any and all actions necessary in its judgment to complete construction of the Improvements, including but not limited to making changes in the Plans and Specifications, work, or materials and entering into, modifying or terminating any contractual arrangements, subject to Lender's right at any time to discontinue any work without liability. If Lender elects to complete the Improvements, it will not assume any liability to Borrower or to any other person for completing the Improvements or for the manner or quality of construction of the Improvements, and Borrower expressly waives any such liability. Borrower irrevocably appoints Lender as its attorney-in-fact, with full power of substitution, to complete the Improvements, at Lender's option, either in Borrower's name or in its own name. In any event, all sums expended by Lender in completing the construction of the Improvements will be considered to have been disbursed to Borrower and will be secured by the Collateral for the Loan. Any such sums that cause the principal amount of the Loan to exceed the face amount of the Note will be considered to be an additional Loan to Borrower, bearing interest at the Note rate and being secured by the Collateral. For these purposes, Borrower assigns to Lender all of its right, title and interest in and to the Project Documents; however Lender will not have any obligation under the Project Documents unless Lender expressly hereafter agrees to assume such obligations in writing. Lender will have the right to exercise any rights of Borrower under the Project Documents upon the occurrence of an Event of Default. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently.

**ADDITIONAL DOCUMENTS.** Borrower shall provide Lender with the following additional documents:

**Corporate Resolution.** Borrower has provided or will provide Lender with a certified copy of resolutions properly adopted by Borrower's Board of Directors, and certified by Borrower's corporate secretary, assistant secretary, or other authorized officer, under which Borrower's Board of Directors authorized one or more designated officers or employees to execute this Agreement, the Note and any and all Security Agreements directly or indirectly securing repayment of the same, and to consummate the borrowings and other transactions as contemplated under this Agreement, and to consent to the remedies following any default by Borrower as provided in this Agreement and in any Security Agreements.

**Opinion of Counsel.** When required by Lender, Borrower has provided or will provide Lender with an opinion of Borrower's counsel certifying to and that: (1) Borrower's Note, any Security Agreements and this Agreement constitute valid and binding obligations on Borrower's part that are enforceable in accordance with their respective terms; (2) Borrower is validly existing and in good standing; (3) Borrower has authority to enter into this Agreement and to consummate the transactions contemplated under this Agreement; and (4) such other matters as may have been requested by Lender or by Lender's counsel.

**INTEREST RESERVE.** As part of the total Loan Fund, Lender and Borrower have agreed to set aside an Interest Reserve Fund in the amount of \$384,588.00 for payment of interest. Pursuant to the interest payment schedule outlined in the Loan Documents, Lender will advance funds from this Interest Reserve Fund to keep interest payments current. Should the funds aside in the Interest Reserve Fund be completely disbursed, Borrower agrees to maintain the interest payments current or to replenish the Interest Reserve Fund with sufficient funds as required by Lender. Notwithstanding the above, Borrower may, with notice to Lender, make interest payments directly to Lender pursuant to the interest payment schedule outlined in the Loan Documents.

**DISBURSEMENT OF FUNDS.** The Loan Fund shall include Borrower's funds required by Lender at the closing of the loan and such funds shall be under the sole control of California Fund Control Inc.

# CONSTRUCTION LOAN AGREEMENT (Continued)

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**MISCELLANEOUS PROVISIONS.** The following miscellaneous provisions are a part of this Agreement:

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

**Attorneys' Fees; Expenses.** Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

**Authority to File Notices.** Borrower appoints and designates Lender as its attorney-in-fact to file for the record any notice that Lender deems necessary to protect its interest under this Agreement. This power shall be deemed coupled with an interest and shall be irrevocable while any sum or performance remains due and owing under any of the Related Documents.

**Arbitration.** Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Agreement or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. The obtaining of injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Agreement shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

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

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

**Choice of Venue.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of LOS ANGELES County, State of California.

**Indemnification of Lender.** Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's attorneys' fees, as well as Lender's architect's and engineering fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Agreement and the exercise of the rights and remedies granted Lender under this. The foregoing indemnity provisions shall survive the cancellation of this Agreement as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Agreement following default hereunder.

**Consent to Loan Participation.** Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

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

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



# CONSTRUCTION LOAN AGREEMENT (Continued)

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**Note.** The word "Note" means the promissory note dated March 17, 2008, in the original principal amount of \$5,635,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

**Permitted Liens.** The words "Permitted Liens" mean (1) liens and security interests securing indebtedness owed by Borrower to Lender; (2) liens for taxes, assessments, or similar charges either not yet due or being contested in good faith; (3) liens of materialmen, mechanics, warehousemen, or carriers, or other like liens arising in the ordinary course of business and securing obligations which are not yet delinquent; (4) purchase money liens or purchase money security interests upon or in any property acquired or held by Borrower in the ordinary course of business to secure indebtedness outstanding on the date of this Agreement or permitted to be incurred under the paragraph of this Agreement titled "Indebtedness and Liens"; (5) liens and security interests which, as of the date of this Agreement, have been disclosed to and approved by the Lender in writing; and (6) those liens and security interests which in the aggregate constitute an immaterial and insignificant monetary amount with respect to the net value of Borrower's assets.

**Plans and Specifications.** The words "Plans and Specifications" mean the plans and specifications for the Project which have been submitted to and initiated by Lender, together with such changes and additions as may be approved by Lender in writing.

**Project.** The word "Project" means the construction project as described in the "Project Description" section of this Agreement.

**Project Documents.** The words "Project Documents" mean the Plans and Specifications, all studies, data and drawings relating to the Project, whether prepared by or for Borrower, the Construction Contract, the Architect's Contract, and all other contracts and agreements relating to the Project or the construction of the Improvements.

**Property.** The word "Property" means the property as described in the "Project Description" section of this Agreement.

**Real Property.** The words "Real Property" mean the real property, interests and rights, as further described in the "Project Description" section of this Agreement.

**Related Documents.** The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guarantees, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

**Security Agreement.** The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

**Security Interest.** The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

**Value.** The word "Value" means such amount or worth as defined and determined by Lender in its sole discretion unless agreed to the contrary by Lender in writing.

**BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS CONSTRUCTION LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS CONSTRUCTION LOAN AGREEMENT IS DATED MARCH 17, 2008.**

**BORROWER:**

CA KABIR, INC., A CALIFORNIA CORPORATION

**By:** Rajendra K. Bhakta, President of CA KABIR, INC., A  
CALIFORNIA CORPORATION

**LENDER:**

METRO UNITED BANK

**By:** Authorized Officer

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**ATTACHMENT 3**  
**PROMISSORY NOTE**

## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call / Call	Account	Officer	Initials
\$5,635,000.00	03-17-2008	09-20-2009	0370253786	1101/166	0370253700	AY	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

Borrower: CA KABIR, INC., A CALIFORNIA CORPORATION 3020 West Ramsey St. Banning, CA 92220	Lender: METRO UNITED BANK ALHAMBRA OFFICE 1101 WEST VALLEY BOULEVARD ALHAMBRA, CA 91803 (626) 943-1138
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Principal Amount: \$5,635,000.00

Initial Rate: 6.500%

Date of Note: March 17, 2008

PROMISE TO PAY. CA KABIR, INC., A CALIFORNIA CORPORATION ("Borrower") promises to pay to METRO UNITED BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million Six Hundred Thirty-five Thousand & 00/100 Dollars (\$5,635,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance, interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in full immediately upon Lender's demand. If no demand is made, Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on September 20, 2009. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning April 20, 2008, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any unpaid collection costs; then to any late charges; then to any accrued unpaid interest; and then to principal. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the Wall Street Journal Prime Rate (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 6.000%. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 0.500 percentage points over the Index, resulting in an initial rate of 6.500%.

NOTICE: Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT; MINIMUM INTEREST CHARGE. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. In any event, even upon full prepayment of this Note, Borrower understands that Lender is entitled to a minimum interest charge of \$100.00. Other than Borrower's obligation to pay any minimum interest charge, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: METRO UNITED BANK, ALHAMBRA OFFICE, 1101 WEST VALLEY BOULEVARD, ALHAMBRA, CA 91803.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, the interest rate on this Note shall, if permitted under applicable law, immediately increase by adding a 5.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

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

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

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

## PROMISSORY NOTE (Continued)

Page 2

Loan No: 0370253786

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

**Change In Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

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

**Cure Provisions.** If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. Borrower also will pay any court costs, in addition to all other sums provided by law.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of California.

**CHOICE OF VENUE.** If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of LOS ANGELES County, State of California.

**DISHONORED ITEM FEE.** Borrower will pay a fee to Lender of \$15.00 if Borrower makes a payment on Borrower's loan and the check or unauthorized charge with which Borrower pays is later dishonored.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instruments listed herein:

(A) a Construction Deed of Trust dated March 17, 2008, to a trustee in favor of Lender on real property located in Riverside County, State of California. That agreement contains the following due on sale provision: Lender may, at Lender's option, declare immediately due and payable all sums secured by the Construction Deed of Trust upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property, whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Borrower is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Borrower. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

(B) inventory, chattel paper, accounts and general intangibles described in a Commercial Security Agreement dated March 17, 2008.

**LINE OF CREDIT.** This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. The following person or persons are authorized to request advances and authorize payments under the line of credit until Lender receives from Borrower, at Lender's address shown above, written notice of revocation of such authority: Rajendra K. Bhakta, President of CA KABIR, INC., A CALIFORNIA CORPORATION. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

**ARBITRATION.** Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Code of Procedure of the National Arbitration Forum in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Borrower and Lender agree that in the event of an action for judicial foreclosure pursuant to California Code of Civil Procedure Section 726, or any similar provision in any other state, the commencement of such an action will not constitute a waiver of the right to arbitrate and the court shall refer to arbitration as much of such action, including counterclaims, as lawfully may be referred to arbitration. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

**INTEREST RESERVE.** As part of the total Loan Fund, Lender and Borrower have agreed to set aside an Interest Reserve Fund in the amount of \$384,588.00 for payment of interest. Pursuant to the interest payment schedule outlined in the Loan Documents, Lender will advance funds from this Interest Reserve Fund to keep interest payments current. Should the funds aside in the Interest Reserve Fund be completely disbursed, Borrower agrees to maintain the interest payments current or to replenish the Interest Reserve Fund with sufficient funds as required by Lender. Notwithstanding the above, Borrower may, with notice to Lender, make interest payments directly to Lender pursuant to the interest payment schedule outlined in the Loan Documents.

**PROMISSORY NOTE  
(Continued)**

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Loan No: 0370253786

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: METRO UNITED BANK 17870 CASTLETON ST, STE 100 CITY OF INDUSTRY, CA 91748.

**GENERAL PROVISIONS.** This Note is payable on demand. The inclusion of specific default provisions or rights of Lender shall not preclude Lender's right to declare payment of this Note on its demand. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive any applicable statute of limitations; presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral, or impair, fail to realize upon or perfect Lender's security interest in the collateral, and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**CA KABIR, INC., A CALIFORNIA CORPORATION**

By:

Rajendra K. Bhakta, President of CA KABIR, INC., A  
CALIFORNIA CORPORATION

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**ATTACHMENT 2**

**DRAFT CITY COUNCIL MINUTES FROM  
DECEMBER 10, 2008 MEETING**

Excerpt of Minutes of the December 10, 2008 Special City Council Meeting

\* 2. Resolution No. 2008-121, Approving an Agreement with CA Kabir, Inc. for the Deferral of Development Impact Fees in the Amount of \$447,006.12 Associated with the Development of the Holiday Inn Express Hotel Located at 3020 W. Ramsey Street (APN: 538-340-005).

Mayor Pro Tem Hanna said she hopes that this new Council will have a workshop and come together and decide to give staff recommendation on what shouldn't and what should not be put on the Consent Items. This particular item is in reference to \$447,000 of proposed deferred development impact fees to the Holiday Inn. This is a significant issue and one that the public should be aware of. She doesn't know what they will end up agreeing to in terms of direction to staff but certainly things over a certain amount of money should not be on the Consent Items for approval. She would like staff to give a report on this item.

Matt Bassi, Interim Community Development Director gave the report on this item as contained in the agenda packet.

Councilmember Machisic said that he is in support of this particular action but at the same time as he mentioned earlier about policy governing owner participation agreements we definitely need a policy or an ordinance covering this with conditions under which these kinds of grants can be given. He is much in favor of them but at the same time we need to have some uniformity so if somebody wishes to receive one of these deferrals they would be given a policy, the rules and regulations for whatever. He has a number of questions in regards to repayment, how much, what is the interest, etc. so he is concerned with those things. He would like staff to come back at some point in time, with the Council's concurrence, to outline some guidelines or policies that govern under which conditions we grant these things.

Mayor Botts said that he would certainly support staff looking at that.

City Attorney addressed Councilman Machisic stating that earlier the issue was on OPA's so from that comment it sounds like you are extending the question to also deal with the fee deferral situation. Councilmember Machisic said yes.

City Attorney said the fee deferral is really a request of the City but he thinks that the same issue does apply when he inquired about it. The policy is being determined on past practice rather than really a formal written policy and there are a number of implications on the interest rate. The City has been using the LAIF rate which is kind of a rate. The LAIF funds are very limited as to what they can be invested in and are very secure and the result is that the interest rate that the City receives is generally below what a normal financing would be in the market place.

Mayor Botts said that we cannot take action but sees heads nodding that we need to address that as a policy issue.

There was some further discussion in regards to prevailing wage and financial assistance.

Mayor Pro Tem Hanna asked if they could have some information from the developer as to why this is needed.

Raj Bhakta said that the \$447,000 is needed because of the present times at the bank and the situation is very tough but his project is going well. His plan is to open this hotel at the end of January. Actually the \$447,000 is the money he is asking to be deferred. He is not the only person doing this deferral for this amount. There are other hotels in Banning that already got the deferral which is the La Quinta. If he gets this help, there is a chance that he will end up paying before the two years is up. It is a tough situation and the bank does not want to give him the money.

Mayor Pro Tem Hanna said she doesn't know the business but she assumes that he probably took a construction loan out to build the hotel and did that include the fees.

Mr. Bhakta said no. He was surprised at these impact fees and it was about \$350,000 but the amount came up to about \$726,000 which he already paid \$260,000 to the City of Banning. He came up with this figure of \$447,000 and that money he does not have in his budget with the bank.

Councilmember Franklin asked staff if they could clarify for the audience what impact the deferral of fees will have on the City budget if any.

Finance Director said regarding the deferral of fees on the City budget as the applicant mentioned it is very hard in these economic times and even for the City of Banning. Obviously any of the fees that we defer are monies that are not readily available to the City Council to allocate during the budget process. She would however like to point out that just for the Council's general knowledge and she is sure that they are already aware of this that development impact fees are not fees that come to the City and go directly into the City's General Fund. These are fees that are set aside. They each have their own specific fund and it is for the impacts that development brings to our City so for future expansion of police facilities, fire facilities, other general facilities and these are impact fees but again, any fees we defer are less monies that are in our coffers and less money that we can invest, earn interest on and less monies that are available for the Council to spend. She can't say there isn't an impact obviously, but we have to kind of look at that. It is not a General Fund impact but it is an impact to the City overall.

Mayor Botts opened the item for public comments.

Mayor Botts asked Mr. Bassi to comment on the City being in the first position and how secure are we.

Mr. Bassi said he would have to defer that question to the City Attorney. Mayor Botts said that this states that the applicant has agreed to let us be in the first position and that is fine but has the bank said that. Mr. Bassi said he is not aware of this and the applicant has agreed to it but he is assuming that he has discussed this with his bank.

Mr. Bhakta said that actually is the amount that he discussed with the bank officer and she is not here right now and won't be back until next week and he will discuss this with her whether it is going to be the first place or the second place.

City Attorney said the agreement that you entered into before with La Quinta, which was before his watch, did not specify first position so he does not know what occurred there but when he got this agreement he had some of the issues that he talked about but to him the absolute prerequisite was that you need to be in a first position. So he raised that issue and that is the reason why this item was pulled at the last meeting. There was discussion and the property owner indicated that he was agreeable. So he went ahead and inserted the language that says we are in a first position and requires that we have a title report before we go forward to show that we are in a first position. Based upon his experience he thinks that is something that a lender could have a problem with. Their loan is going to be for a lot more money and there is only one party in a first position. The problem is that if you are not in a first position and he has dealt with this subject in other cities in the past and obviously when you are not in first position, you are going to be the last one that is going to get paid. And he has had to spend a considerable amount of time litigating trying to recover funds on deferred fee programs. If you collect them before you give the permit, you get paid and in fact, you will get paid before the bank if you condition the issuance of your permit. His experience is that cities don't make good banks. One of the problems is that the City does not like to foreclose on property which if you have a deed of trust which you have here, your remedy is a foreclosure action. It creates a political stigma and city council's don't like to do that and he doesn't have experience with this Council but the council's he has worked with in the past it has become a very extensive process giving the property owner more time, trying to hold hands and work through the situation and the legal costs get run up in that situation and ultimately he has been in situations where the council ultimately says lets split the different and lets pay half. Your at the beginning of kind of doing these fee deferral situations and he would want the Council to be aware and he understands the difficult times and the difficult times probably suggest that once you start to do these other people having difficult times will come in and ask for them.

There was some further discussion in regards to the City being in a first position and also the possible of considering an alternative.

Mayor Botts closed the item for public comments.

There was more further Council discussion in regards deferral of this amount of fees, alternative options and keeping the City in a first position. There was also some discussion about setting a precedent the need for setting guidelines for deferral of fees.

Mr. Bhakta said that if is not able to get this deferral for \$447,000 he won't be opening the hotel until probably the end of next year which would be December 2009. He is asking the City of Banning to help him and he will pay back the money to the City. This is not the first time that the City of Banning has done this. The City of Banning did it before with the La Quinta Inn and that is what he is asking about the seven year period.

Mayor Botts asked for a motion that would move this project forward with what we have indicated being in the first position and the bank has to approve that and also perhaps also we go back with negotiation on the amount and the repayment period.

City Attorney asked for clarification. In terms of the renegotiations on the payment period what are you instructing us to do. Mayor Botts said to shorten it. City Attorney asked to what. He said

if you are giving staff explicit direction, then you give us explicit direction otherwise you can direct us to negotiate and we can come back and tell the Council what we worked out.

Mayor Pro Tem Hanna said she thinks what you have suggested is that first we try to get into first position but you have said that from your understanding of business that is very unlikely so our direction is first try to get into first position and if we are not in first position are you willing to consider an alternative that would be to have a shorter repayment schedule.

Mayor Botts said his position would be if we are not in a first position then we need to go back to the negotiating table and ask this gentleman to put up his house or other properties and that is done regularly in any number of situations where someone's business won't carry as collateral because there are first, second or thirds on it and often times you can ask the applicant or the individual if they have other assets that they could pledge. His position is that we ought to move forward with this agreement tonight subject to being in a first position and if we are not, then we have to go back to the table and find other assets that make us whole; collateralize the \$447,000.

Mayor Pro Tem Hanna said the problem is in it coming back to the Council in January. She thinks this is an important issue that we shouldn't just allow to slide by. She also thinks that it is very, very important that the City make a clear statement that no one has a contact with the City of Banning until they have a contract signed with the City of Banning. It is unfortunate that we have a bad precedent established and we need good policy in the future so that can be prevented. If you don't have a contact signed, you don't have a contract. It is a very simple matter but she thinks it is very important that we reinforce the idea. It is not good management and it is not good administration.

Mayor Botts reiterated that we negotiated in good faith with the legal opinion and we said we would move forward and the applicant has agreed to a first position and if we are guaranteed that from the bank then he thinks we should move forward with it. And if the bank does not do that then we are back to the table because there is no deal. And he thinks this shows good faith that negotiations took place between staff and this gentleman and we have not changed anything other than his agreement to be in a first position.

Mr. Bhakta said in other words he is not getting the help from the City of Banning for that amount.

City Attorney said what the Mayor has said is that you indicated that you are okay with the City being in a first position and the Council is saying if that is where we are at, they are okay with it.

Mr. Bhakta said he heard that. But his point is the \$447,000 and in the next two years and after that that will be the monthly payment with the interest which he is willing to pay.

**Mayor Botts said what he just said was if the rest of the Council agrees, the agreement stays the same with the exception that you agreed to have us in a first position and obviously the bank has to do that to. He is suggesting that we not change any of the terms but simply agree that we are in a first position. If your bank says no, then there is no deal and then we would have to come back and sit down and see what other collateral you can provide to us.**

Mr. Bhakta said okay.

**Councilmember Franklin moved what Mayor Botts just said. Motion was seconded by Councilmember Robinson. Motion carried, with Mayor Pro Tem Hanna voting no.**

**ATTACHMENT 3**

**COUNCIL STAFF REPORT FROM DECEMBER 10, 2008**  
**(without attachments)**

**CITY COUNCIL  
CONSENT ITEM**

**DATE:** November 14, 2008

**TO:** Honorable Mayor and City Council

**FROM:**  Matthew Bassi, Interim Community Development Director

**Subject:** [City Council Resolution No. 2008-121:](#)  
City Council Review of an Agreement for the Deferral of Development Impact Fees between the City of Banning and CA KABIR, INC., for the Holiday Inn Express Hotel Located at 3020 W. Ramsey Street.

**RECOMMENDATION:**

That the City Council adopt Resolution No. 2008-121 (Attachment 1) authorizing an Agreement between the City of Banning and CA KABIR, Inc. for the deferral of Development Impact Fees for the Holiday Inn Express hotel project.

**BACKGROUND:**

On February 20, 2007, the Planning Commission approved Conditional Use Permit No. 06-807 and Design Review No. 06-7016 for the development of a 39,250 square-foot (3 stories), 70-unit Holiday Inn Express hotel in the Highway Serving Commercial (HSC) zone district.

On June 3, 2008, the Community Development Department issued building permits for the project, and over the past five (5) months regular site/building inspections have been taking place. Construction of the hotel is nearly complete and the applicant is estimating that by the end of December 2008 the hotel will be ready for occupancy.

**ANALYSIS:**

In accordance with Council Resolution No. 2008-58 (approved May 27, 2008), the Development Impact Fees for the Holiday Inn Express hotel project were automatically deferred until the issuance of a Certificate of Occupancy. However, in a letter dated October 30, 2008 (Attachment 2), the applicant (Raj Bhakta – Holiday Inn Express) requested deferral of the Development Impact Fees beyond the issuance of a Certificate of Occupancy. The letter indicates that the applicant is facing many hardships and incurring overwhelming construction costs.

In evaluating the applicant's request, staff believes that it would be to the city's benefit to defer payment of the Development Impact Fees beyond the issuance of a Certificate of Occupancy provided there is adequate security to ensure future payment of the fees. The City

Holiday Inn Express Deferral Agreement

November 14, 2008

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Council approved a similar request a few months ago for the La Quinta Inn & Suites hotel (May 13, 2008). Where a project involves significant capital investment, is located in a redevelopment area and will serve to either encourage further development of an area where development has been stagnant or where the project will provide a needed service, the City Council may find that the project qualifies to have payment of the Development Impact Fees deferred beyond a Certificate of Occupancy.

Staff has prepared a draft deferral agreement for Council consideration (Exhibit 1 of Attachment 1). The agreement will basically defer payment of the Development Impact Fees for a two (2) year period, at which time interest will begin to accrue for the remaining six (6) year period. As further evidence of CA KABIR, INC., obligation to pay the Development Impact Fees, they will execute a Promissory Note which will be secured by a Deed of Trust recorded against the property.

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

**FISCAL DATA:**

The total Development Impact Fees required for the Holiday Inn Express hotel project is \$447,006.12. This will be the total amount subject to deferral under the provision of the Agreement.

**RECOMMENDED BY:**

  
Matthew C. Bassi  
Interim Community Development Director

**REVIEWED BY**

---

Bonnie Johnson  
Finance Director

**APPROVED BY:**

---

Brian Nakamura  
City Manager

Holiday Inn Express Deferral Agreement

November 14, 2008

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**ATTACHMENTS:**

1. City Council Resolution No. 2008-121  
Exhibit 1 - Draft Deferral Agreement with CA Kabir, Inc.
  - Attachment 1 - Legal Description
  - Attachment 2 - Deed of Trust
  - Attachment 3 - Promissory Note
2. Correspondence Letter from Raj Bhakta (dated October 30, 2008)

G:\538-340-005 Holiday Inn Express\CC Staff Report 11-14-08.doc

# CA KABIR INC.

D.B.A. HOLIDAY INN EXPRESS BANNING CA

October 30, 2008

City Of Banning  
99 E. Ramsey St.  
P.O. Box 998  
Banning CA 92220

To City Council:

We are aware of the Development Impact Fees we must pay during the submission of the project-related applications. I am requesting that the Holiday Inn Express project we are implementing become eligible for deferral of these Development Impact Fees. We realized that it is required for us to pay these fees, but we are requesting to pay these fees in installments over time, with interest. I am seeking out a similar agreement to that of the La Quinta Inn project. We are dealing with many hardships and incurring overwhelming construction costs due to the fast pace of the project during our economic crisis and hope that we can work out an agreement to satisfy both sides.

Sincerely,



Raj Bhakta

President

**CITY COUNCIL  
REPORT OF OFFICERS**

**Date:** **January 13, 2009**

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

**FROM:** **Matthew C. Bassi, Interim Community Development Director**

**SUBJECT:** **Holiday Inn Express & Suites Sign Proposal:**

A Status Update from the Community Development Department on a Proposal by Holiday Inn Express & Suites Hotel for an 80-foot Freeway-Oriented Sign.

**APPLICANT'S REQUEST**

At the December 10, 2008 City Council meeting, Mr. Raj Bhakta (Holiday Inn Express and Suites) addressed the Council about the need for a freeway-oriented sign to help identify the new hotel located at 3020 W. Ramsey Street. Mr. Bhakta would like to construct an 80-foot tall freeway-oriented sign (Attachment 1) that would be located at the southern end of the property adjacent to the I-10 freeway.

Mr. Bhakta approached the Planning Division a couple of weeks ago about the proposed 80-foot tall freeway-oriented sign. Based on our current Sign Ordinance regulations, individual freeway-oriented signs are not allowed. Prior to September 27, 2007, Section 9125.6(4)(e) of the Sign Ordinance did allow individual freeway-oriented signs (refer to Attachment 2).

The Council directed staff to assess Mr. Bhakta's request and report back at the next Council meeting.

**BACKGROUND**

On September 25, 2007, the City Council adopted Ordinance No. 1377 (Attachment 3) which amended the Sign Ordinance. The amendment primarily created six (6) "sign districts" where existing individual freeway-oriented signs in the district along the I-10 freeway would be amortized/phased out and a program established to group all the individual signs onto seven (7) large freeway-oriented signs (similar in size and shape to Beaumont's freeway sign). The amendment also established new size and height regulations and removed the limitation of the type of businesses allowed to have a freeway-oriented sign. The Council also adopted Resolution No. 2007-137 (Attachment 4) on November 13, 2007 that approved a special design for the new freeway-oriented signs.

The purpose in establishing the new regulations was to improve visibility and address sign blight issues. However, the cost to implement the program to group existing freeway-oriented signs has not been funded by the City nor has any individual property owner come to the plate proposing to pay for a sign in their district.

## ANALYSIS

Since adoption of Ordinance No. 1377, there has not been a formal sign application submittal to review a proposed freeway-oriented sign until staff received Mr. Bhakta's request. Under the previous sign regulations (pre-September 25, 2007), the Holiday Inn Express hotel would have been allowed a freeway-oriented sign; however, the maximum height was limited to 55 feet. Mr. Bhakta's request is for an 80-foot sign. Given the current Sign Ordinance regulations, the Planning Division could not approve Mr. Bhakta's request for a freeway-oriented sign.

With respect to the current sign regulations, the concept of establishing the "sign districts" and the grouping of existing freeway-oriented signs onto larger signs has not been implemented and, thus, has not achieved the desired results. While the concept definitely has merit and could be implemented, the cost of doing it (whether by public financing or private financing) has been a major obstacle. Also, given the present economic challenges it is unlikely that either public or private financing is feasible to initiate the sign district concept.

An additional challenge to carrying out the sign district concept is the reality that existing business owners are not required to remove their non-conforming freeway-oriented signs. If the City wants to force removal of the existing non-conforming freeway-oriented signs, it must financially compensate business owners as part of the amortization requirements of the Sign Ordinance. The amortization period established by Ordinance No. 1377 for existing non-conforming freeway-oriented signs is 10 years from its adoption (i.e., October 9, 2017).

### Options Available:

Several options the City Council could consider to address freeway-oriented sign issues are provided as follows:

- 1) Direct staff to continue with the implementation of the existing sign regulations as adopted with Ordinance No. 1377.
  - The net result of this action is that no new freeway-oriented signs can be approved by the Planning Division, including the request by Mr. Bhakta for the Holiday Inn Express. This will more than likely impact the ability of new businesses to attract customers from the freeway, thereby, impacting their revenue/economic opportunities.
- 2) Direct staff to amend the existing sign ordinance to propose a whole new set of regulations to achieve similar results as the sign district concept.
  - This option would result in significant staff and city attorney time and cost to create the new regulations. It would also mean that new freeway-oriented signs will remain prohibited.

- 3) Direct staff to amend the existing Sign Ordinance to re-establish the freeway-oriented sign requirements that existed prior to September 25, 2007.
  - This option would give the Planning Division the authority to approve new freeway-oriented signs subject to the location, height, size and sign area requirements of the pre-September 25, 2007 regulations. It would also remove the non-conforming status of existing freeway-oriented signs and eliminate the financial burden self-imposed by the City to pay for removal of these non-conforming signs to achieve the "sign district" concept. However, this option would result in a number of new freeway-oriented signs along the I-10 corridor which will add the "clutter" and "aesthetic" concerns that partially led to adoption of Ordinance No. 1377.

#### **FISCAL IMPACT**

There will be no fiscal impact with this action.

#### **RECOMMENDATION**

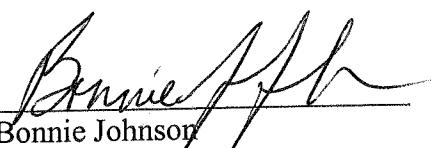
Staff recommends the City Council:

1. Affirm that the request by Holiday Inn Express to install an 80-foot tall freeway-oriented sign is not allowed under the City's current sign regulations; and
2. Direct staff to prepare a Zone Text Amendment that revises the Sign Ordinance to re-establish the freeway-oriented sign requirements that existed prior to September 25, 2007.

#### **PREPARED BY:**

  
\_\_\_\_\_  
Matthew C. Bassi  
Interim Community Development Director

#### **REVIEWED BY:**

  
\_\_\_\_\_  
Bonnie Johnson  
Finance Director

#### **APPROVED BY:**

  
\_\_\_\_\_  
Brian Nakamura  
City Manager

**CC Attachments:**

1. Architectural Exhibit of the holiday Inn Express Freeway Sign Proposal
2. Excerpts from the Pre-September 27, 2007 Sign Ordinance (Section 9125.6(4)(e))
3. Ordinance No. 1377 (adopted September 27, 2007)
4. Council Resolution No. 2007-137 (adopted November 13, 2007)

G:\538-340-005 Holiday Inn Express\Sign Proposal CC Report 1-13-09.doc

**ATTACHMENT 1**

**ARCHITECTURAL EXHIBIT OF THE HOLIDAY INN EXPRESS  
FREEWAY SIGN**



InterContinental Hotels Group

Intercontinental Hotels Group  
Three Ravinia Drive  
Suite 100  
Atlanta, GA 30346-2149

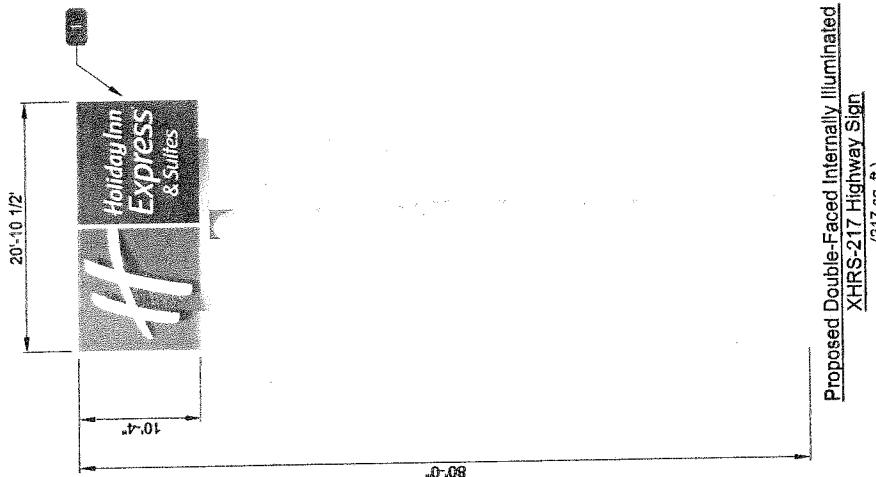
## Signage Survey

November 19, 2008, Rev01

### BANNING

INTERSECTION OF  
INTERSTATE 10  
AND SUNSET BOULEVARD  
BANNING, CA 92220  
Site Number: CA11197  
Inn Code: BANEX

### Recommendation Drawing



Proposed Double-Faced Illuminated  
XHRS-217 Highway Sign  
(217 sq. ft.)



Sign Management  
3200 Franklin Place, Suite 200  
Nashville, TN 37214

Phone: 615.655.1661  
Fax: 615.655.1703  
Web: [www.signmgmt.com](http://www.signmgmt.com)

Graphics shown are representative only, the only approved  
artwork and graphics standards for face selection.  
These are original unpublished designs, created by Sign  
Management Consultant, Inc. These drawings shall not be  
used or copied for the project in which they were developed  
without owner's approval. These documents are to design  
client purposes and shall not be interpreted as a final design.  
The products mentioned shall be the responsibility of the  
architect, architect, and mechanical engineering.

**ATTACHMENT 2**

**COPY OF SECTION 9125.6(4)(E)**

**(Pre-September 27, 2007 Code Section)**

c. Freestanding signs shall be located in a landscaped planter area not less than fifty (50) square feet with one dimension being at least four (4) feet.

\* (e) Freeway-oriented freestanding sign. A freestanding sign proposed to be located and designed in such a manner as to be viewed by the freeway traveling public and limits its advertising to such services as food, lodging and automotive services shall be subject to the following regulations:

a. Said business must be a freeway-oriented business, as determined by the Planning Commission.

b. Said business must be easily accessible to a freeway off-ramp, as determined by the Planning Commission.

c. Said sign shall not block another freeway oriented freestanding sign. The applicant shall be responsible for providing the Planning Commission with evidence to assure satisfactory compliance with this requirement.

d. Said sign shall be located in a planter area not less than fifty (50) square feet with one dimension being at least four (4) feet, unless from the evidence presented to the Planning Commission it can be determined that the area is not visible from Ramsey Street, or the absence of the planter shall not be detrimental to the appearance of the area.

e. Said sign shall not exceed an overall height of fifty-five (55) feet.

f. Said sign shall not exceed one hundred seventy-five (175) square feet per display face (a variance not to exceed an additional fifty (50) square feet may be possible providing the applicant meets the requirements for a variance as outlined in article 16 of this code).

(f) Painted signs. Each business shall be permitted painted signs subject to the following conditions:

a. Said signs shall be in combination with or in lieu of wall signs.

b. The area of said painted sign shall be deducted from the total allowable wall sign.

(g) One flag pole, displaying one or more flags of the state and nation, not to exceed 100 feet in height. Any flag pole over 35 feet in height shall have a light or beacon established atop the pole. Such light or beacon shall be maintained such that it is continuously operating.

**ATTACHMENT 3**

**ORDINANCE NO. 1377 (Adopted on 9/25/07)**

ORDINANCE NO. 1377

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTIONS 9009.06(G), 9109.11 (2)(f), AND 9109.15 OF THE MUNICIPAL CODE REGARDING FREEWAY ORIENTED FREESTANDING SIGN PROVISIONS.

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

**SECTION 1.** Section 9109.06(G) of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“G. New freestanding signs, except for new freeway oriented freestanding signs permitted pursuant to Section 9109.11(2)(f).”

**SECTION 2.** Section 9109.11(2)(f) of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“(f) Freeway Oriented Freestanding Sign. A freeway oriented freestanding sign (“freeway sign”) is a sign located and designed in such a manner as to be viewed by the public traveling to, from or through the City of Banning on Interstate 10. To prevent visual clutter and preserve the aesthetics of the City, there shall be no more than seven freeway signs in the City. Freeway signs shall be located along the Interstate 10 right of way in accordance with the Freeway Oriented Freestanding Sign District Map, as illustrated in section 9109.11(2)(f)(10). Freeway signs shall be subject to the following regulations:

- 1) The freeway sign shall be designed in accordance with the City’s Freeway-Oriented Freestanding Sign Design Criteria, as illustrated in 9109.11(2)(f)(11).
- 2) The freeway sign shall accommodate advertising displays for multiple businesses, and shared use of the freeway sign, including any video displays, shall be required.
- 3) The freeway sign shall not block any portion of another freeway sign from the view of any vehicle driver or passenger traveling on Interstate 10. The applicant shall be responsible for providing the Director with evidence to assure satisfactory compliance with this requirement.
- 4) The freeway sign shall be located in a planter area not less than 50 square feet with one dimension being at least four feet.
- 5) The freeway sign shall not exceed an overall height of 55 feet as measured from the Interstate 10 surface road grade.
- 6) The freeway sign’s display faces shall not exceed 180 square feet per display face, and no variance to this maximum dimension may be granted.
- 7) Video displays, if used, shall be turned off between the hours of 10:00 PM and 6:00 AM.
- 8) Sound shall not be permitted.
- 9) Freeway Oriented Freestanding Sign District Map. [Exhibit “A”]

10) Freeway Oriented Freestanding Sign Design Criteria shall be established by City Council resolution.

**SECTION 3.** Section 9109.15 of the Banning Municipal Code is hereby amended to read in its entirety as follows:

"(a) Any sign that does not conform to the requirements of this Section, either by variance previously granted or by conformance to the existing sign regulations at the time the initial permit for the sign was issued, shall either be removed or brought up to code requirements within 10 years from the date it became noncompliant with the Section. Notwithstanding the foregoing, the City shall not require a nonconforming sign to be removed pursuant to this Section without paying compensation to the sign owner, if compensation is required by the Outdoor Advertising Act (Business and Professions Code section 5200 et seq.), or Division 3, Chapter 2.5 ("On-Premises Advertising Displays") of the Business and Professions Code, or compensation is otherwise required by Federal or State law.

(b) In accordance with California Business and Professions Code section 5499, no legal nonconforming sign will be required to be removed on the sole basis of its height or size if special topographic circumstances would result in a material impairment of visibility of the sign or the owner's or user's ability to adequately and effectively continue to communicate to the public through the use of the sign. The owner or user may maintain the sign at the premises and at a location necessary for continued public visibility at the height or size at which the sign was previously lawfully erected pursuant to all applicable codes, regulations and permits. Any such sign will be deemed to be in conformance with this article."

**SECTION 4. SEVERABILITY.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 5. NON-EXCLUSIVITY.** Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

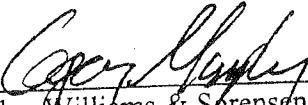
**SECTION 6. EFFECTIVE.** This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

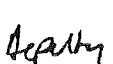
**SECTION 7. PUBLICATION.** The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED AND ADOPTED this 9<sup>th</sup> day of October, 2007.

  
Deborah Franklin, Mayor Pro Tem

APPROVED AS TO FORM AND  
LEGAL CONTENT:

  
\_\_\_\_\_  
Burke, Williams & Sorenson, LLP

  
\_\_\_\_\_  
Gary Mayley  
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 I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1377 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 25<sup>th</sup> day of September, 2007, and was duly adopted at a regular meeting of said City Council on the 9th day of October, 2007, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic

NOES: None

ABSTAIN: None

ABSENT: Mayor Salas

  
\_\_\_\_\_  
Marie A. Calderon

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

**ATTACHMENT 4**  
**COUNCIL RESOLUTION NO. 2007-137**

RESOLUTION NO. 2007-137

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A FREEWAY-ORIENTED FREESTANDING SIGN DESIGN IN ACCORDANCE WITH SECTION 9109.11 (2)(f)(10) OF THE MUNICIPAL CODE.

WHEREAS, at the September 25<sup>th</sup> meeting, the City Council adopted Ordinance No. 1377 approving Zone Text Amendment #07-97504, amending Sections 9009.06(G), 9109.11(2)(f) and 9109.15; and

WHEREAS, Section 9109.11(2)(f)(10) of this Ordinance requires the design to be adopted by resolution.

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

SECTION 1. In accordance with the provisions of Section 9109.11(2)(f)(10) the following figure (Figure 1) represents the Banning Municipal Code Freeway Oriented Freestanding Sign Design:

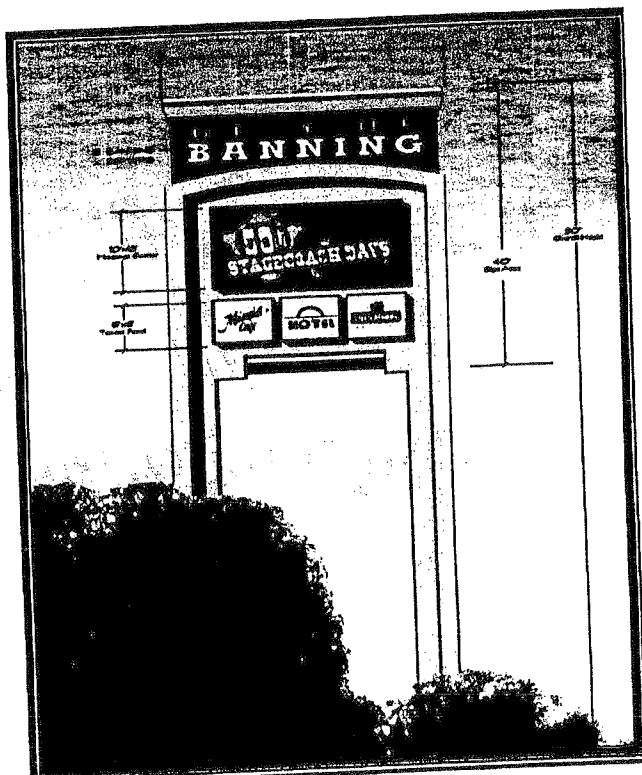


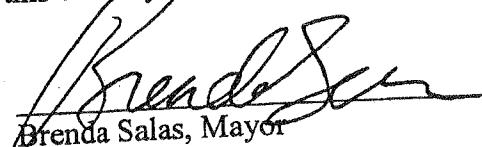
Figure 1: Freeway-Oriented Freestanding Sign Design

## SECTION 2. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. **Approval of Freeway-Oriented Freestanding Sign Design.** The City Council hereby approves the Freeway-Oriented Freestanding Sign Design.

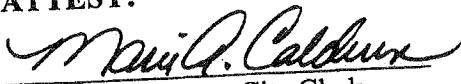
**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of November, 2007.

  
Brenda Salas, Mayor  
City of Banning

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

  
\_\_\_\_\_  
Burke, Williams & Sorensen, LLP  
Dep City Attorney

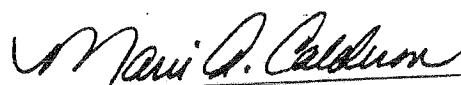
**ATTEST:**

  
\_\_\_\_\_  
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. 2007-137, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of November 2007, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas  
NOES: None  
ABSENT: None  
ABSTAIN: None

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

**CITY COUNCIL  
REPORT OF OFFICERS**

**Date:** January 13, 2009

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

**FROM:** Matthew C. Bassi, Interim Community Development Director

**SUBJECT:** Smoking in Public Parks – Review of Ordinance No. 1400:

An Update by the Community Development Department on Draft Ordinance No. 1400 to Amend Section 8.56.030 of the Banning Municipal Code Regulating Smoking in Public Parks in the City of Banning.

**BACKGROUND:**

Ordinance No. 1400 (Attachment 1) was originally presented to the City Council at the October 28, 2008 meeting. Staff recommended approval of the Ordinance that would prohibit smoking in city public parks in the same manner as smoking is prohibited in city public facilities. There was a good deal of discussion/comments on the proposed Ordinance from Councilmembers and the general public. As a result, the Council voted to table the item so staff could research the issues and bring back the ordinance for adoption.

As there were a number of comments raised at the October 28 meeting, staff is providing a copy of the minutes from the Council meeting (Attachment 2). The following is a general summary of the issues/comments raised by Councilmembers (for the six (6) public comments, refer to the attached minutes).

**Councilmember Franklin:**

- Commented that there should be designated smoking areas within the parks (e.g., away from playground areas and group events/concerts) rather than prohibiting it park-wide.
- Commented how implementation of the ordinance would take police personnel away from other priorities, and expressed concern about the difficulty for city staff to enforce the ordinance.
- Commented that her research on-line revealed that there is a lot of information about this issue and what other cities have done, but also noted that other cities are finding it hard to enforce.

**Councilmember Hanna:**

- Commented that many cities in Riverside County have already adopted ordinances prohibiting smoking in public parks.

- Commented that the city's top priority should be our children and that parks are intended for children so smoking in city parks should be prohibited.
- Commented that the ordinance allows smoking on public streets and/or alleys so there is opportunity for smoking adjacent to the park.
- Commented that enforcement is a serious issue and that education is needed on second hand smoke affects.

Councilmember Machisic:

- Commented that enforcement of the ordinance is a concern.
- Commented that smoking is a problem for health but at the same time it will be difficult for officers to patrol through the park unless it is spot-checking.
- Commented that the people will have to get acclimated to the ordinance because they have always smoked in public parks.

Former Mayor Salas:

- Commented that smoking in the park when children are around is not a healthy thing and that we should take a good look at how we can enforce the ordinance.
- Commented that Riverside County is not allowing smoking within a certain distance from building entrances and exits but that the County has established designated smoking areas.

ANALYSIS:

In an effort to address Council concerns, staff met with two (2) representatives from the Riverside County Department of Public Health; Mr. James Jo, DrPH and Ms. Consuela Edmond. Mr. Jo and Ms. Edmond provided staff with information about what other city agencies are doing to address smoking in public parks, some facts and data sheets on smoking and health, as well as a small, non-scientific public opinion poll taken at several city parks. The information that was provided to staff is included in the staff report (refer to Attachment 3). The following is a summary of the information provided by Mr. Jo and Ms. Edmond.

- According to the American Nonsmokers' Rights Foundation (ANRF), there are 391 municipalities in the United States that have adopted "Smoke-Free Park Laws" as of October 2008. Of these municipalities, approximately 89 are California municipalities (the nearest agencies to Banning are Colton, Corona and Yucaipa).

- In general, there have been over 2,600 communities nation-wide that have adopted smoke-free initiatives since 1964 when the U.S. Surgeon General's report on Smoking and Health was released (Source: American Cancer Society). It is not known how many of these 2,600 smoke-free initiatives specifically addressed smoking in public parks, but this is a significant number of communities that have addressed concerns about smoking in their communities.
- While not specific to smoke-free parks, according to "California's Clean Air Project", approximately 157 California communities as of November 2007 have prohibited smoking/tobacco use in outdoor dining areas, public parks/beaches, and sporting venues.
- In a small "non-scientific" survey of 43 Banning residents in October 2008, Mr. Jo (Riverside County Health representative) notes that over 74% stated that outdoor public recreation areas should be smokefree. Over 62% of the surveyed residents believe that tobacco litter is a problem in public parks. Over 65% believe that a smokefree policy will reduce litter. He further notes that of the residents surveyed 23% were tobacco users. As noted this survey is non-scientific and a small sampling. A copy of the survey questions is provided as part of Attachment 3.

While enforcement was an issue with the Council, Chief Purvis noted that there would be a time period where public education would be needed after adoption of the Ordinance, and that enforcement would at first be more "complaint-driven" (i.e., calling the police department to dispatch an officer). Chief Purvis noted that it would be good to have a period of 90 – 120 days after adoption of the Ordinance for people to get acclimated before fully enforcing citations. Staff has also received confirmation and support from Mr. Jo and Ms. Edmonds that the County Health Department would be willing to undergo an education campaign on smoking in public parks to assist the City in "getting the word out".

In terms of having designated smoking areas within the parks, staff believes that the Ordinance meets this concern and is flexible in that people are allowed to smoke on public streets and alleys adjacent to the park. In addition, staff revised the Ordinance from the last meeting to include public sidewalks adjacent to public parks where people could smoke. While it is not an "official designated smoking area," it does provide some concession so that a person does not have to completely leave the area. Mr. Jo has indicated that the County's preference would be to prohibit smoking park-wide and not have designated smoking areas due to the "second-hand" smoke concerns.

### **CONCLUSION:**

While the issue of smoking remains a concern by most, it is important to note that the original Ordinance to regulate smoking in public parks was requested by the City Council. While City staff is certainly not an expert in the field of public health, we believe the proposed Ordinance does address Council concerns, and provides for some flexibility to people who do smoke. Currently, Chapter 8.56 of the Municipal Code precludes smoking in all City-owned facilities

(refer to Attachment 4), so including smoking in public parks appears to be a logical extension of this regulation.

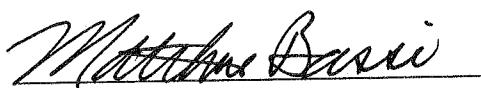
**FISCAL IMPACT:**

There will be no fiscal impact with the adoption of this Ordinance.

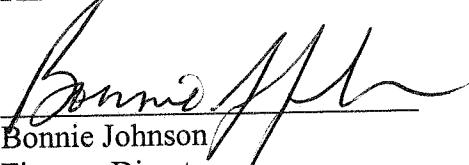
**RECOMMENDATION:**

The Community Development Department recommends that the City Council adopt Ordinance No. 1400 amending Section 8.56.030 of the Banning Municipal Code to regulate smoking in public parks.

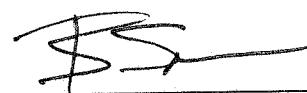
**PREPARED BY:**

  
Matthew C. Bassi  
Interim Community Development Director

**REVIEWED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
\_\_\_\_\_  
Brian Nakamura  
City Manager

**CC Attachments:**

1. Draft Ordinance No. 1400
2. Meeting Minutes from the October 28, 2008 Council meeting
3. Materials/Packet Information from Riverside County Department of Public Health
4. Copy of Chapter 8.56 of the Banning Municipal Code

**ATTACHMENT 1**  
**ORDINANCE NO. 1400**

**ORDINANCE NO. 1400**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA, AMENDING SECTION  
8.56.030 OF THE BANNING MUNICIPAL CODE TO  
REGULATE SMOKING IN PUBLIC PARKS IN THE CITY  
OF BANNING**

**WHEREAS**, the City has considered amending regulations related to smoking in public parks in the City of Banning; and

**WHEREAS**, public response to the issue demonstrated a strong desire on the part of citizens in neighborhoods throughout the City for such regulations; and

**WHEREAS**, the City desires to enact restrictions to regulate smoking in public parks to mitigate the negative effects on neighborhood citizens utilizing the City's public parks; and

**WHEREAS**, City staff has recommended the passage of such restrictions to the City Council to protect the public health, safety and welfare; and

**WHEREAS**, on October 28, 2008, the City Council held a public meeting at which time interested persons had an opportunity to testify in support of, or opposition to the adoption of Ordinance No. 1400; and

**WHEREAS**, at said public meeting on October 28, 2008, the City Council considered and heard public testimony and comments regarding the adoption of Ordinance No. 1400 and continued the item to the January 13, 2009 City Council meeting; and

**WHEREAS**, on January 13, 2009, the City Council held a second public meeting at which time interested persons had an opportunity to testify in support of, or opposition to the adoption of Ordinance No. 1400; and

**WHEREAS**, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public meetings held on October 28, 2008 and January 13, 2009.

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

**SECTION 1. ENVIRONMENTAL FINDINGS**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Report dated January 13, 2009, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and

§21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

**CEQA:** The City Council has analyzed Ordinance No. 1400 and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. It is the City Council’s independent judgment that in adopting Ordinance No. 1400 that there is no possibility that the activity in question will have a significant effect on the environment; thus, the activity is not subject to CEQA. The proposed amendment to the Banning Municipal Code does not relate to any one physical project and will not result in any physical change to the environment. Therefore, the adoption of Ordinance No. 1400 is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**SECTION 2.** Chapter 8.56.030 of the Banning Municipal Code is hereby amended to read as follows:

**8.56.030 Regulation of Smoking in City Facilities and City Public Parks**

Smoking shall be regulated in the following places within the City:

A. No person shall smoke or use any tobacco product within any enclosed city facility or within the boundaries of any public park within the City of Banning. This prohibition shall not ban smoking or tobacco product use in or upon public streets, sidewalks or alleys adjacent to a city facility or public park, but shall prohibit such acts in off-street parking areas within city public parks.

B. Smoking in any enclosed city facility and within the boundaries of any city public park owned by the City of Banning shall be subject to the enforcement and penalty provisions of Section 8.56.070 and Section 8.56.080(A) & (B).

**SECTION 3.** **Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

**SECTION 4.** **Effective Date.** This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law.

**SECTION 5.** **Publication.** The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

**PASSED, APPROVED, AND ADOPTED** this 13th day of January, 2009

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Robert E. Botts, Mayor  
City of Banning

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

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP  
City of Banning, California

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1400 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 13th day of January, 2009, and was duly adopted at a regular meeting of said City Council on the 27th day of January, 2009, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**ATTACHMENT 2**

**CITY COUNCIL MINUTES FROM  
THE OCTOBER 28, 2008 MEETING**

Subs Owners, Mr. and Mrs. Benhar, and the City of Banning for Public Parking Use.

Recommendation: That Resolution No. 2008-113 be adopted.

4. Resolution No. 2008-117, Accepting and Authorizing an Amendment to the Riverside County Transportation Commission Transportation Expenditure Plan and Retail Transaction and Use Tax Ordinance (Ordinance No. 88-1 – Measure “A”).

Recommendation: That Resolution No. 2008-117 be adopted.

5. Notice of Completion for Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets.

Recommendation: That the City Council accept Project No. 2008-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets, as complete and direct the City Clerk to record the Notice of Completion.

**Motion Machisic/Franklin to approve Consent Items 1 through 5.** Mayor Salas opened the item for public comments. There were none. **Motion carried, all in favor.**

#### ORDINANCES - INTRODUCTION

\* 1. Ordinance No. 1400 – Regulations for Smoking in Public Parks  
(Staff Report – Matt Bassi, Consultant)

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

Mayor Pro Tem Franklin said she knows that we are talking about adding no smoking to our parks but she knows that a lot of families do participate in family events at parks where they are there all day and have we considered the possibility of doing restricted areas as opposed to saying the whole parks are non-smoking.

Mr. Bassi said he believes the direction from Council was to include the entire public park and he doesn't remember any direction that would set off sites for smoking but if that is the Council's desire they can amend the ordinance to include that.

Mayor Pro Tem Franklin said she has some concerns because she does go to some of the parks and she does see family affairs and there are people who do smoke. She knows that there is a concern about our children but if we were to say certain areas were not allowable for smoking such as around the playground areas or anytime there is a group event like the concerts in the park and there are only certain areas where people could smoke. She said that parks are one of the few places where people can go free and they can enjoy family events and community events there and she would hate to say you cannot smoke there especially because a lot of the events are for a long time. Also she asked how do you police or monitor such a thing.

Mr. Bassi said there is an enforcement section and penalty section that currently exists for everything within that chapter about smoking and so that would still be the case. There is a subsection that talks about an employee or City Manager or designee could do enforcement. He would imagine that the police department would be involved in enforcement if they see it or even the code enforcement team may see something as they are driving by and make a call to address that.

Mayor Pro Tem Franklin said she would hate to think that we are having our police worried about people smoking as opposed to some of the other things we need them to focus on.

Councilmember Hanna said it is not listed in this report but many cities in Riverside County and certainly many, many cities in Southern California have a similar kind of concern and have an ordinance to this effect. She thinks that our top priority should be our children and that parks are places for children and smoking shall not be allowed in the parks. She would point out however, on page 55 of the Council packet under Section 2. Chapter 8.56..030 A, second sentence says "This prohibition shall not ban smoking or tobacco produce use in or upon public streets or alleys adjacent to any City facility or public park, but shall prohibit such acts on sidewalks and in off-street parking areas within the City public parks." It seems to her that once people understand there are some possibilities to smoke but not in the parks themselves. In terms of enforcement that is always a serious issue. All of this is education and we are saying to people that this is not what we should be allowing our children do have to suffer through. Of course smoke affects everyone and not just children but she thinks that our priority should be for children.

Councilmember Machisic said is only concern was enforcement because have some very serious things to enforce and smoking certainly is a problem for health but at the same time it is going to be hard for them to patrol through the park unless it is spot checking.

Mayor Pro Tem Franklin said she also looked on-line to see what was happening in other cities and there is a lot of information out there about what a lot of different cities are doing and they are doing different things but one of the things that most of them refer to is how hard it is to enforce. She would hate to see us put an ordinance out there that we are not really going to enforce.

Councilmember Hanna said actually there are a lot of ordinances that are not enforced on a stringent basis. Again, this is kind of an education of our community that smoking is bad and we don't want our children to be affected by it. For example, if you were allergic to smoking and somebody is smoking in the park, you can say excuse me it is against the law to smoke in the park. You have some means to say something; right now you just have to leave.

Councilmember Machisic said he believes that this is an ordinance that is going to mature over a number of years and it is not going to happen immediately. People have to become acclimated to this because they have always smoked in the park, the picnic table and family gatherings.

Mayor Salas said while we shouldn't adopt any ordinance or continue to allow ordinances that are on the books that we are not enforcing we need to take a good look at how we can do that. Having smoking in the park when children are around is definitely not a healthy means and she knows that the County of Riverside is not allowing within a particular amount of feet smoking near the

building entrances and exits. But at the same time these employees or people visiting the County facilities have designated areas where they can smoke. She asked Chief Purvis his thoughts on this ordinance in terms of enforcement.

Chief Purvis said as far as the enforcement aspect he thinks that there would be a time of public education period where we inform anybody that is in violation of that new ordinance and he thinks primarily it would be complaint driven at first if we do have some folks in the park who are offended by the smoke, they could call the police department and they could have an officer dispatched to that location. They could either inform them of the new ordinance or actually take enforcement action immediately. But what they would want to do is to at least give the public a time period to get acclimated to the new ordinance and then start enforcement after maybe a 90 to 120 day period. It is also a great tool that they can deal with people in a park setting. Say they are doing other things such as loitering or whatever else the case may be and they are smoking as well that gives the police officer an extra way to deal with something or a problem in a park. They can enforce it if they have to but he believes it would probably be more complaint driven where they actually receive complaints from citizens.

Mayor Salas asked Chief Purvis about designated areas in the park. He said that it would probably muddy the water a little bit. And if there are designated areas smoke can still dissipate pretty easily into other areas where people are going to be offended by it.

Mayor Salas opened the item for public comments.

Bill Dickson, 5700 W. Wilson said being a reformed smoker for over thirty years and being married to a smoker he thinks the Council ought to sit back and really think long and hard before we drive another wedge into the community. There are enough things going on that is dividing the community and you need to be extremely careful before you drive another wedge in there. Our parks are there for everybody and if you are going to put something together you ought to put something together maybe where we do have designated areas. He hates second hand smoke but you need to be careful.

Charlene Sakurai, 43000 Dillon Road said her background is oncology nursing so she has spent 40 years dealing with lung cancer among other things and smoking, etc. and education. She thinks it is laudable to think about a no smoking ordinance for parks. But she thinks the Council also ought to consider some type of no smoking programs offered within the city that we can do something to remedy the problem because it is not a city problem, it becomes a personal health problem. So if you cannot smoke here, you are going to go smoke there. She worked in a cancer facility where it became a conflict of interest to smoke on the property but everybody who did smoke and patients included were going out onto the sidewalk on the street to smoke and they still are. She thinks it is incumbent upon us as a City if we decide to have an ordinance to prevent them from smoking where they can smoke now, to also help them to overcome this habit if they choose to do that. She has never seen anything in the paper about no smoking programs. There is a wonderful opportunity to partner with the hospital with the American Cancer Society, the American Lung Association and numerous other organizations who would jump at the chance to come and offer programs if we would help to publicize that

and support it. She would encourage the Council to think in terms of something like that and not just to take away but also to provide.

Dorothy McLean, 916 Linda Vista Dr. addressed the Council stating that it has been her good fortune to be able to sub at Nicolet Middle School two weeks in an American History class and she learned that she is not smarter than a 8<sup>th</sup> grader when it comes to history classes which she had many moons ago but she came across the following and she thinks it applies. She said that Alexander Hamilton wrote, "Government implies the power of making laws. It is essential to the idea of a law that it be intended with a penalty or punishment for disobedience. If there be no penalty, the resolutions or commands that pretend to be law will in fact amount to nothing more than advice." She said we have an ordinance on the books that states that campaign signs are not to be up before 30 days before the election. Many candidates put their signs up when they felt like it and nothing was done. Obviously nobody wanted to uphold the ordinance and in doing so made the Council look weak; she doesn't want a weak Council. Also signs have been put up on private property and on public land without permission and nothing has been done. It is disturbing when candidates do not follow the law. Now you are thinking about prohibiting smoking in public places. Who will be the ones to enforce the law? The police have enough to do responding to real crimes. It seems unnecessary to put such an ordinance in their hands. In an ideal situation we would hope that if children are playing at the playground and somebody is smoking, that they could be asked to move away so the children don't have to breathe the second hand smoke or what you usually do is pick up your kids and move somewhere else. She doesn't believe that this ordinance is necessary or it will be properly enforced and if that is the case, it will again be the sign of a weak Council of which she does not want.

Helen Barnes, 2102 W. Lincoln Street addressed the Council stating that she is a smoker and smokers on the most part are very considerate of those who choose not to smoke. In her home no one smokes. What will this ordinance provide the citizens of the community; laws that cannot be enforced. Being a City employee herself previously she knows that when police officers or City employees are seen hanging around the park we get labeled as lazy, nothing to do, and why are we sitting around at the park. Do we have the man power in the police force or the code enforcement departments to enforce this ordinance; she doesn't think so. Smokers are already discriminated against because they cannot smoke in restaurants, bars or any public buildings. The taxes on cigarettes are unbelievable. And the reason for that is because someone stepped up to the plate and complained about second hand smoke. We are talking about a City park. We are not talking about inside of a building. The smoke is not going to hang around anybody. She feels that this ordinance is unnecessary and she would hope that this Council has far more important issues to discuss than whether or not someone is smoking a cigarette in the park.

Dr. James Jo, County Public Heath Department, Tobacco Control Project addressed the Council stating that going back to the issue about enforcement it is a very tough issue. As a local lead agency he is working with many other governmental agencies on this issue of smoke free parks and they told him that the way they are enforcing it is to use self enforcement. What that means is having the proper signage at the parks. Make sure that people are seeing the signage that "this park is smoke free" and as people read those and are educated about that they

will tell their friends and relatives and whoever visits the parks. If anyone lights up a cigarette, then they will just kindly remind them that this park is indeed smoke free and the word will get out and hopefully this will be self-enforcement. And hopefully no help will be needed by the police department. This is what he has heard from the other lead agencies who are working on this issue in terms of enforcement. He also mentioned that there are more than 120 communities here in California as of November 2007 that adopted smoke free outdoor places such as parks. He wanted to let the Council know that this was not something new but definitely there are many other communities that have adopted the ordinance and he believes they are doing very well. One of the reasons they are so adamant about supporting this ordinance is because when people come to places such as parks which is considered a very family place and when young kids see adults who light up in places like that he believes it is giving a negative message to these young kids. They are getting the message that it is okay to smoke. There have been numerous studies done that show that kids who grow up seeing adults smoking are more prone to smoke and become a smoker when they grow up as a teenager. One statistic showed that everyday in California there is 6,000 high school kids who start up smoking or at least try smoking. He said that they have done a couple of park clean-ups in the city of Banning back in August and they had many high school kids and youth help them and they visited a couple of the parks and they found a lot of cigarette butts even on the areas around the tot lots which should be smoke free. Obviously people are not adhering to the ordinance. He showed the cigarette butts that they collected and it is very unsightly and he knows that cleaning up is not an easy task so they believe with the passage of the ordinance it will definitely solve that issue. They also did a public opinion poll here in the city of Banning and visited the parks and according to the survey it was found that more than 70% of the people who were polled agreed that public places such as parks should be smoke free. A total of 43 people were polled at two different parks in Banning and at a community health center.

A young lady name Sherry, Cal State San Bernardino student, addressed the Council stating that she had a relative who died of a smoking related illness. She knows personally that smoking kills innocent people and it makes her very sad to know that her uncle passed away when he didn't have to. When a smoker lights up at a park it sends the wrong message to young children that it is okay to smoke when in fact smoking is never a positive thing. Children who are exposed to second hand smoke are two times likely to die of sudden infant death syndrome known as SIDS. Children exposed to second hand smoke are also likely to suffer from increase asthma attacks. She is asking the Council members to please consider the negative affects of smoking and adopt an ordinance to prohibit smoking in our community parks. We believe that smoke free parks will help protect our families, young children and the environment.

Mayor Salas seeing no one else come forward closed the item for public comments.

There was some further Council discussion in regards to this issue in regards to encouraging a healthy Banning, weighing in honestly on future agenda items, self-education on smoking, willingness to listen to information before making a decision, taking away people's rights, coming back with pros and cons on an issue to the Council before going forward with a formal ordinance for adoption, review reports from other cities on this issue, possibly trying this program at one or two parks in the city and educating the community.

Councilmember Machisic recommended that this item be tabled and that the Council get more information and additional options regarding this program. **There was Council consensus to this recommendation.**

#### REPORTS OF OFFICERS

1. Status Report on the One Stop Shop

City Manager said that this will be deferred to November 14<sup>th</sup> so that staff can give the Council something in writing prior to the meeting so that the Council can have some thoughts to be able to come to the meeting with after the Council sees it in writing.

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

Councilmember Machisic said he spoke about this donation thing to various groups and he would like to see something organized based on some of the comments he made in regards to total amount of money, announcement in advance, budget development, and maximum amount. He said that also Councilmember Franklin at one time talked about the groups being composed of citizens of Banning as opposed to other groups outside the city.

Mayor Pro Tem Franklin would like something back regarding our visioning and mission for the City. She would like this to come back on the agenda for Council to review.

Mayor Salas said she wanted to clarify for the public and for the viewers at home that the discussion item that we just had in regards to smoking in the parks the Council tabled it because the Council wants to hear the feedback from the community. It is important that the Council listen and hear the concerns and what the people feel out in the community so they are not going to try to push anything. But that doesn't mean that they are not hearing the concerns or definitely not concerned about the public's health and safety because that is important.

##### 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 12/10/08*)
4. Review of Ordinance regarding the selling of cars in shopping center parking lots (*Salas – 9/9/08*) (*Hansen*) (*ETA 11/14/08*)
5. Ordinance regarding smoke free parks (*Hanna – 8/12/08*) (*Nakamura*) (*ETA 10/28/08*)
6. Report on "One Stop Shop" (*Franklin – 8/12/08*) (*Hansen/Nakamura*) (*ETA 10/28/08*)
7. Bring back Riverside County Policy regarding animal rescue groups (*Salas*) (*Nakamura*) (*ETA 1/09*)
8. Report on "Request Partner" (*Hanna – 8/12/08*) (*Johnson/Nakamura*) (*ETA 11/14/08*)
9. Development of Bridge & Thoroughfare District to fund grade separation at Hargrave

**ATTACHMENT 3**  
**RIVERSIDE COUNTY INFORMATION ON SMOKING**

**Municipalities with Smokefree Park Laws**  
*enacted as of October 2, 2008*

This list includes those municipalities that specified that all city parks and/or specifically named city parks are smokefree. The list does not include those municipalities that have designated smoking areas in city parks, those that provide coverage only a certain number of feet from playgrounds or youth areas, and those that provide coverage only during youth events.

<b>Municipality</b>	<b>State</b>
1. Bay Minette	AL
2. Bayou La Batre	AL
3. Center Point	AL
4. Center Point	AL
5. Daphne	AL
6. Decatur	AL
7. Fayette	AL
8. Fultondale	AL
9. Gardendale	AL
10. Gulf Shores	AL
11. Headland	AL
12. Homewood	AL
13. Hueytown	AL
14. Huntsville	AL
15. Irondale	AL
16. Jasper	AL
17. Montevallo	AL
18. Orange Beach	AL
19. Troy	AL
20. Trussville	AL
21. Vestavia Hills	AL
22. Atkins	AR
23. Batesville	AR
24. Benton	AR
25. Bentonville	AR
26. Russellville	AR
27. Albany	CA
28. Amador County	CA
29. Baldwin Park	CA
30. Belmont	CA
31. Berkeley	CA
32. Beverly Hills	CA
33. Blue Lake	CA
34. Calabasas	CA
35. Calexico	CA
36. Carpinteria	CA
37. Carson	CA
38. Ceres	CA
39. Cerritos	CA
40. Chula Vista	CA

<b>Municipality</b>	<b>State</b>
41. Clayton	CA
42. Clovis	CA
43. Colton	CA
44. Contra Costa County	CA
45. Corona	CA
46. Culver City	CA
47. Del Mar	CA
48. El Cajon	CA
49. El Monte	CA
50. Emeryville	CA
51. Encinitas	CA
52. Fairfax	CA
53. Firebaugh	CA
54. Fowler	CA
55. Fresno	CA
56. Gardena	CA
57. Glendale	CA
58. Glendora	CA
59. Grand Terrace	CA
60. Hawthorne	CA
61. Hayward	CA
62. Huntington Park	CA
63. Imperial Beach	CA
64. Ione	CA
65. Jackson	CA
66. La Mesa	CA
67. Laguna Hills	CA
68. Laguna Niguel	CA
69. Laguna Woods	CA
70. Lodi	CA
71. Loma Linda	CA
72. Los Alamitos	CA
73. Los Angeles	CA
74. Mammoth Lakes	CA
75. Marin County	CA
76. Monterey County	CA
77. Monterey Park	CA
78. National City	CA
79. Novato	CA
80. Oak Park	CA

<b>Municipality</b>	<b>State</b>
81. Oakland	CA
82. Oceanside	CA
83. Palmdale	CA
84. Palo Alto	CA
85. Palos Verdes Estates	CA
86. Pasadena	CA
87. Reedley	CA
88. Rosemead	CA
89. Rosemead	CA
90. Roseville	CA
91. Ross	CA
92. Salinas	CA
93. San Anselmo	CA
94. San Diego	CA
95. San Diego County	CA
96. San Dimas	CA
97. San Fernando	CA
98. San Francisco	CA
99. San Jose	CA
100. San Mateo County	CA
101. San Ramon	CA
102. Santa Clarita	CA
103. Santa Cruz County	CA
104. Santa Monica	CA
105. Santa Rosa	CA
106. Seal Beach	CA
107. Simi Valley	CA
108. Temecula	CA
109. Thousand Oaks	CA
110. Ukiah	CA
111. Watsonville	CA
112. Winters	CA
113. Woodland	CA
114. Yuba City	CA
115. Yucaipa	CA
116. Arvada	CO
117. Avon	CO
118. Carbondale	CO
119. Eagle County	CO
120. Snowmass Village	CO
121. Steamboat Springs	CO
122. Timnath	CO
123. Colchester	CT
124. WALLINGFORD	CT
125. Wallingford	CT
126. Bethany Beach	DE
127. Chipley	FL
128. Coral Springs	FL
129. Largo	FL

<b>Municipality</b>	<b>State</b>
130. Port Orange	FL
131. Sarasota County	FL
132. Wellington	FL
133. Weston	FL
134. Athens/Clarke County	GA
135. Coweta County	GA
136. Douglasville	GA
137. Effingham County	GA
138. Harris County	GA
139. Henry County	GA
140. Hawaii County	HI
141. Honolulu	HI
142. Clarinda	IA
143. Des Moines	IA
144. Indianola	IA
145. Iowa City	IA
146. Johnson County	IA
147. Johnston	IA
148. Muscatine	IA
149. Scott County	IA
150. Tipton	IA
151. Urbandale	IA
152. Ammon	ID
153. Rexburg	ID
154. Buffalo Grove	IL
155. Chicago Heights	IL
156. Cook County	IL
157. Deerfield	IL
158. Hawthorn Woods	IL
159. Highland Park	IL
160. Hoffman Estates	IL
161. Lake Forest	IL
162. Libertyville	IL
163. Lindenhurst	IL
164. Northbrook	IL
165. Orland Park	IL
166. Palatine	IL
167. Tinley Park	IL
168. Westchester	IL
169. Wheaton	IL
170. Wheaton	IL
171. Wilmette	IL
172. Wilmette	IL
173. Cumberland	IN
174. Elkhart	IN
175. Evansville	IN
176. Fishers	IN
177. Goshen	IN
178. Logansport	IN

Municipality	State
179. St Joseph County	IN
180. Baton Rouge/East Baton Rouge Parish	LA
181. Shreveport	LA
182. Abington	MA
183. Braintree	MA
184. Cambridge	MA
185. Holliston	MA
186. Malden	MA
187. Mashpee	MA
188. Somerville	MA
189. Swamscott	MA
190. Tyngsborough	MA
191. Westford	MA
192. Whately	MA
193. Charles County	MD
194. Augusta	ME
195. Bucksport	ME
196. Portland	ME
197. Westbrook	ME
198. Winthrop	ME
199. Fremont	MI
200. Huntington Woods	MI
201. Kimball Township	MI
202. Muskegon	MI
203. Saint Ignace	MI
204. Adrian	MN
205. Aitkin	MN
206. Albert Lea	MN
207. Alexandria	MN
208. Andover	MN
209. Anoka	MN
210. Arden Hills	MN
211. Ashby	MN
212. Battle Lake	MN
213. Baudette	MN
214. Bloomington	MN
215. Callaway	MN
216. Champlin	MN
217. Cohasset	MN
218. Coon Rapids	MN
219. Crystal	MN
220. Dakota County	MN
221. Dassel	MN
222. Dayton	MN
223. Eden Prairie	MN
224. Edina	MN
225. Elbow Lake	MN
226. Ellsworth	MN
227. Ham Lake	MN

Municipality	State
228. Hardwick	MN
229. Hastings	MN
230. Herman	MN
231. Hoffman	MN
232. International Falls	MN
233. Luverne	MN
234. Maple Grove	MN
235. Maplewood	MN
236. Marshall	MN
237. Mendota Heights	MN
238. Mounds View	MN
239. New Brighton	MN
240. New York Mills	MN
241. North St Paul	MN
242. Olmsted County	MN
243. Parkers Prairie	MN
244. Plymouth	MN
245. Ramsey	MN
246. Robbinsdale	MN
247. Round Lake	MN
248. Shoreview	MN
249. Spring Lake Park	MN
250. St. Francis	MN
251. Zimmerman	MN
252. Kirksville	MO
253. Aberdeen	MS
254. Ecru	MS
255. Greenwood	MS
256. Gulfport	MS
257. Hattiesburg	MS
258. Hernando	MS
259. Kosciusko	MS
260. McComb	MS
261. Pascagoula	MS
262. Petal	MS
263. Pontotoc	MS
264. Senatobia	MS
265. Shuqualak	MS
266. Tupelo	MS
267. Walls	MS
268. Havre	MT
269. Grand Island	NE
270. Concord	NH
271. Dover	NH
272. Berlin Township	NJ
273. Beverly	NJ
274. Carlstadt Borough	NJ
275. Delran Township	NJ
276. Dover Township	NJ

<b>Municipality</b>	<b>State</b>
277. East Greenwich	NJ
278. East Rutherford Borough	NJ
279. Eatontown Borough	NJ
280. Franklin Lakes	NJ
281. Hightstown Borough	NJ
282. Holmdel Township	NJ
283. Jackson Township	NJ
284. Lavallette Borough	NJ
285. Linwood City	NJ
286. Livingston Township	NJ
287. Logan Township	NJ
288. Long Hill Township	NJ
289. Manalapan Township	NJ
290. Manville Borough	NJ
291. Millstone Township	NJ
292. Moonachie Borough	NJ
293. Mount Arlington Borough	NJ
294. Newton	NJ
295. Raritan Township	NJ
296. Ridgefield Borough	NJ
297. Ringwood	NJ
298. River Vale Township	NJ
299. Seaside Park	NJ
300. Secaucus	NJ
301. Shrewsbury Borough	NJ
302. Stafford Township	NJ
303. Teaneck Township	NJ
304. Union City	NJ
305. Vernon Township	NJ
306. Vineland City	NJ
307. Washington Township	NJ
308. West Milford Township	NJ
309. West Orange township	NJ
310. Woodbury Heights Borough	NJ
311. Woolwich Township	NJ
312. Albuquerque	NM
313. Mesilla	NM
314. Silver City	NM
315. DeWitt	NY
316. Hudson Falls	NY
317. Niskayuna	NY
318. North Syracuse	NY
319. Oneida	NY
320. Sylvania	OH
321. Ashland	OR
322. Bend	OR
323. Corvallis	OR
324. Grants Pass	OR
325. Newport	OR

<b>Municipality</b>	<b>State</b>
326. Sherwood	OR
327. Brentwood	PA
328. East Donegal Township	PA
329. Edwardsville	PA
330. Erie County	PA
331. Kingston	PA
332. Lemoyne	PA
333. New Hope	PA
334. Quakertown	PA
335. Richland Township	PA
336. Trafford	PA
337. Upper Southampton Township	PA
338. West Pittston	PA
339. York	PA
340. West Warwick	RI
341. Lexington	SC
342. Surfside Beach	SC
343. Johnson City	TN
344. Abilene	TX
345. Bellaire	TX
346. Burleson	TX
347. Coppell	TX
348. Farmers Branch	TX
349. Greenville	TX
350. Haltom City	TX
351. Kaufman	TX
352. Kerrville	TX
353. Laredo	TX
354. Lindale	TX
355. McAllen	TX
356. McKinney	TX
357. North Richland Hills	TX
358. Pearland	TX
359. Portland	TX
360. Prosper	TX
361. Richardson	TX
362. Richland Hills	TX
363. Sugar Land	TX
364. Tyler	TX
365. Beaver	UT
366. Cedar City	UT
367. Davis County	UT
368. Holladay	UT
369. Hooper	UT
370. Logan	UT
371. Orem	UT
372. Salt Lake City	UT
373. Salt Lake County	UT
374. Santa Clara	UT

<b>Municipality</b>	<b>State</b>
375. Smithfield	UT
376. St. George	UT
377. Virgin	UT
378. West Valley City	UT
379. Rutland	VT
380. Bainbridge Island	WA
381. Lake Stevens	WA
382. Mason County	WA
383. Poulsbo	WA

<b>Municipality</b>	<b>State</b>
384. Appleton	WI
385. Columbia County	WI
386. Madison	WI
387. Shorewood	WI
388. Burlington	WY
389. Evanston	WY
390. Pine Haven	WY
391. Rock Springs	WY

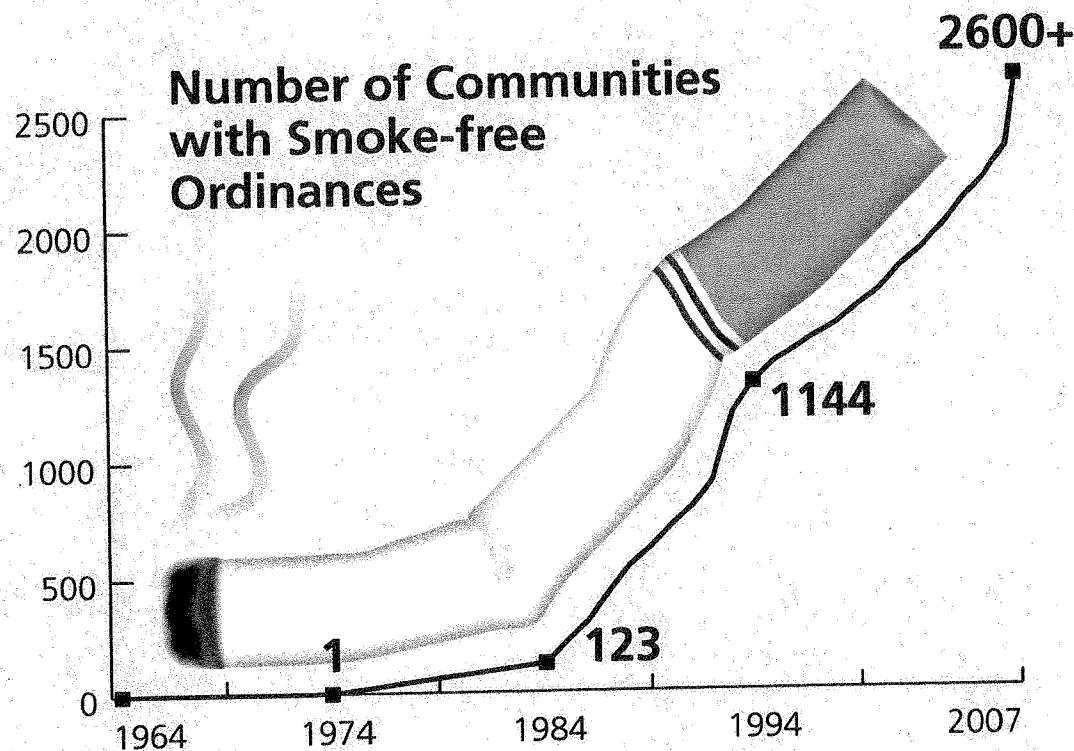
While ANRF has been tracking smokefree laws since the mid-1980s, we didn't start tracking smokefree park laws specifically until recently, when these laws became more common. We will continue to review older laws that may have contained these specific provisions and to update this list to reflect our findings. If you know of a smokefree park law that is not currently listed here, please contact ANRF at (510) 841-3032 or [anr@no-smoke.org](mailto:anr@no-smoke.org).

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## ***Clearing the Air***

In January 1964, the first U.S. Surgeon General's Report on Smoking and Health was released, officially recognizing the harmful effects of cigarette smoking. The landmark report started a major trend in smoke-free initiatives.



Source: American Cancer Society; Americans Nonsmokers' Rights Foundation

# **California Communities Prohibiting Smoking / Tobacco Use in Outdoor Dining, Parks, Beaches, And Sporting Venues**

Revised 11/07

**This is a selection of California communities that, as of November 2007, have adopted policies restricting or eliminating tobacco use in public places. It is not exhaustive and is subject to change. For more information on specific Cities and/or Counties, please refer to the Secondhand Smoke Policy Database located at [www.ccap.etr.org](http://www.ccap.etr.org).**

**Anaheim: (Orange County): Smoke-Free Outdoor Sport Venues**

**Alameda County: Smoke-free Outdoor Dining**

**Albany: (Alameda County): Smoke-free Athletic Fields**

**Anaheim: (Orange County): Smoke-free Athletic Fields**

**Arcata: (Humboldt County): Smoke-free Outdoor Dining, Athletic Fields**

**Baldwin Park: (Los Angeles County): Smoke-free Parks, Outdoor Dining**

**Belmont: (San Mateo County): Smoke-free Outdoor Dining**

**Berkeley: (Alameda County): All Public Places Smoke-Free, Indoors and Outdoors, including Outdoor Dining, and athletic fields**

**Beverly Hills: (Los Angeles County): Smoke-free Outdoor Dining**

**Buellton: (Santa Barbara County): Smoke-free Outdoor Dining, Smoke-free Athletic Fields**

**Burbank: (Los Angeles County): Smoke-Free Parks, Smoke-Free Outdoor Dining, and athletic fields**

**Calabasas: (LA County): Smoke-free Outdoor Dining and Parks**

**Calexico: (Imperial County): Smoke-free Parks, and sporting venues**

**Capitola: (Santa Cruz County): Smoke-free Beaches**

**Carmel: (Monterey County): Smoke-free Beaches**

**Carpinteria: (Santa Barbara County): Smoke-Free Parks, Beaches and sport venues**

**Carson: (Los Angeles County): Smoke-Free Parks**

**Ceres: (Stanislaus County): Smoke-Free Parks**

**Cerritos: (Los Angeles County): Smoke-free Parks**

**Chula Vista: (San Diego County): Smoke-Free Outdoor Dining**

**Clayton: (Contra Costa County): Smoke-free sport venues**

**Clovis: (Fresno County): Smoke-free parks**

**Concord:** (Contra Costa County): Smoke-free sport venues

**Contra Costa County:** Smoke-free Parks & Gardens, Smoke-free Outdoor Dining

**Corona:** (Riverside County): Smoke-free Parks

**Coronado:** (San Diego County): Smoke-free beaches & Piers, and Parks

**Covina:** (Los Angeles County): Smoke-Free Parks

**Culver City:** (Los Angeles County): Smoke-Free Parks

**Davis:** (Yolo County): Smoke-Free Outdoor Public Places, including Outdoor Dining, Public Gardens and sport venues

**Del Mar:** (San Diego County): Smoke-free Parks, Beaches, and outdoor dining

**Dublin:** (Alameda County): Smoke-free Outdoor Dining,

**El Cajon:** (San Diego County): Smoke-Free Parks and outdoor dining

**El Centro:** (Imperial County): Smoke-free sport venues

**El Dorado Hills Community Services District:** (El Dorado County): Smoke-Free skate park

**El Monte:** (Los Angeles County): Smoke-Free Parks

**El Segundo:** (Los Angeles County): Smoke-free Beaches

**Emeryville:** (Alameda County): Smoke-free Outdoor Dining, Parks & Gardens

**Firebaugh:** (Fresno County): Smoke-Free Parks

**Fowler:** (Fresno County): Smoke-Free Parks

**Fremont:** (Alameda County): Smoke-free outdoor areas within a "reasonable distance" of designated nonsmoking areas

**Fresno:** (Fresno County): Smoke-free Parks & Zoos

**Fresno County:** Smoke-free parks

**Gardena:** (Los Angeles County): Smoke-free Parks

**Gilroy:** (Santa Clara County): Smoke-Free outdoor dining

**Glendale:** (Los Angeles County): Smoke-Free Parks

**Goleta:** (Santa Barbara County): Smoke-free Outdoor Dining, smoke-free sport venues

**Grand Terrace:** (San Bernardino County): Smoke-free Parks

**Hawthorne:** (Los Angeles County): Smoke-Free Parks

**Hayward:** (Alameda) Smoke-free outdoor dining

**Healdsburg:** (Sonoma County): Smoke-free Parks

**Hermosa:** (Los Angeles County): Smoke-free Beaches

**Huntington Beach:** (Orange County): Smoke-free Beaches

**Huntington Park:** (LA County): Smoke-Free Parks

**Imperial Beach:** (San Diego County): Smoke-free Beaches & Parks

**Imperial County:** Smoke-Free Parks

**Irvine:** (Orange County): Smoke-Free Parks

**La Mesa:** (San Diego County): Smoke-free Parks

**La Puente:** (Los Angeles County): Smoke-Free Parks

**Lafayette:** (Contra Costa County): Smoke-free sport venues

**Laguna Beach:** (Orange County): Smoke-free Beaches

**Laguna Hills:** (Orange County): Smoke-free Outdoor Dining and Parks

**Laguna Niguel:** (Orange County): Smoke-Free Parks

**Laguna Woods:** (Orange County): Smoke-Free outdoor dining and sport venues

**Lake Forest:** (Orange County): Smoke-Free Parks

**Lathrop:** (San Joaquin County): Smoke-Free Parks

**Lemon Grove:** (San Diego County): Smoke-free sport venues

**Livermore:** (Alameda County): Smoke-free Athletic Fields

**Lomita:** (Los Angeles County): Smoke-Free Parks

**Long Beach:** (Los Angeles County): Smoke-free Beaches

**Los Alamitos:** (Los Angeles County): Smoke-Free Parks

**Los Angeles:** (LA County): Smoke-Free Beaches and Parks,

**Los Angeles County:** Smoke-free beaches

**Los Gatos:** (Santa Clara): Smoke-free Outdoor Dining

**Malibu:** (LA County): Smoke-Free Beaches and Piers

**Mammoth Lakes:** (Mono County): Smoke-free Parks

**Manhattan Beach:** (Los Angeles County): Smoke-free Beaches & Parks

**Marin County:** Smoke-free outdoor dining & sport venues

**Marina Del Rey:** (Los Angeles County): Smoke-free Beaches

**Menlo Park:** (San Mateo County): Smoke-Free outdoor dining

**Milpitas:** (Santa Clara County): Smoke-free sport venues

**Modesto:** (Stanislaus County): Smoke-free Parks

**Monterey County:** Smoke-Free Parks and sport venues

**Monterey Park:** (Monterey County): Smoke-free beaches.

**Monterey Park:** (Los Angeles County): Smoke-Free Parks

**Moreno Valley:** (Riverside County): Smoke-free parks

**Morro Bay:** (San Luis Obispo County): Smoke-Free Beaches

**Newark:** (Alameda): Smoke-free Athletic Fields, Outdoor Dining

**Newport Beach:** (Orange County): Tobacco-Free Parks, Smoke-free Beaches

**Oakland:** (Alameda County) Smoke-free parks

**Oceanside:** (San Diego County): Smoke-free Parks and Beaches

**Ojai:** (Ventura County): Smoke-free Athletic Fields

**Orinda:** (Contra Costa County): Smoke-Free Parks

**Pacific Grove:** (Monterey County): Smoke-free beaches

**Pacifica:** (San Mateo County): Smoke-Free Beaches

**Palm Desert:** (Riverside County): smoke-free parks, sport venues, and city property (except where specific signs are posted permitting such smoking).

**Palmdale:** (Los Angeles County): Smoke-Free Water Park.

**Palo Alto:** (Santa Clara County): Smoke-free outdoor dining

**Pasadena:** (LA County): Smoke-Free Parks.

**Pine Grove:** (Amador County): Smoke-free Parks

**Pismo Beach:** (San Luis Obispo County): Smoke-free Parks & Beaches

**Pittsburg:** (Contra Costa County): Smoke-free sport venues

**Pleasant Hill:** (Contra Costa County): Smoke-free sport venues

**Pleasanton:** (Alameda County): Smoke-free Athletic Fields, Outdoor Dining

**Redlands:** (San Bernardino County): Smoke-free Parks

**Redondo Beach:** (Los Angeles County): Smoke-Free Parks

**Reedley:** (Fresno County): Tobacco-Free Parks, Smoke-Free outdoor dining

**Richmond:** (Contra Costa County): Smoke-free sport venues

**Riverbank:** (Stanislaus County): Smoke-Free Parks

**Riverside County:** Smoking is prohibited on all County Property, whether enclosed or unenclosed, except in a Smoking Area. This applies to outdoor areas when there is a building on the property.

**Rohnert Park:** (Sonoma County): Smoke-Free Parks

**Rosemead:** (Los Angeles County): Smoke-Free Parks

**Sacramento:** (Sacramento County): Smoke-Free Outdoor Sport Venues, and Parks

**Salinas:** (Monterey County): Smoke-free Parks and Sport Venues

**San Bernardino:** (San Bernardino County): Smoke-free sport venues

**San Bernardino County:** Smoke-free sport venues

**San Carlos:** (San Mateo County): Smoke-Free outdoor dining

**San Clemente:** (Orange County): Smoke-Free Beaches

**San Diego:** (San Diego County): Smoke-Free Beaches, Parks & Athletic Fields

**San Diego County:** Smoke-Free Parks

**San Dimas:** (Los Angeles County): Smoke-Free Parks

**San Fernando:** (LA County): Smoke-Free Parks

**San Francisco- City and County:** (San Francisco County): Smoke-free Parks & Piers

**San Jose:** (Santa Clara County): Smoke-Free Outdoor Sport Venues

**San Marcos:** (San Diego County): Smoke-Free Parks & Trails

**San Mateo City:** (San Mateo County): Smoke-Free Outdoor Dining

**San Mateo County:** Smoke-free beaches, Smoke-Free Parks

**San Ramon:** (Contra Costa County): Smoke-Free Outdoor Dining Areas for all Restaurants, Smoke-Free Outdoor Areas within 50 feet of an Entrance to any Place where Smoking is prohibited, 50 Ft. Tobacco-Free Zone around Tot Lots, and Smoke-Free Parks

**Sand City:** (Monterey County): Smoke-free beaches

**Santa Barbara:** (Santa Barbara County): Smoke-free Outdoor Dining, sport venues

**Santa Barbara County:** Smoke-free sport venues, outdoor dining

**Santa Clarita (Los Angeles County):** Smoke-Free Parks

**Santa Cruz:** (Santa Cruz County): Smoke-free Beaches and Boardwalk

**Santa Cruz County:** Smoke-Free Parks

**Santa Monica:** (LA County): Smoke-Free Parks, Beaches and Boardwalk, Smoke-free Outdoor Dining

**Santa Rosa:** (Sonoma County): Smoke-Free Public Places

**Scotts Valley:** (Santa Cruz County): Smoke-Free Parks

**Seal Beach:** (Orange County): Smoke-free Beaches, Smoke-Free Parks

**Solano Beach:** (San Diego County): Tobacco-Free Parks and Beaches

**Sonoma:** (Sonoma County): Smoke-free sport venues

**South Pasadena:** (Los Angeles County): Smoke-Free parks, Smoke-free outdoor dining

**South San Francisco:** (San Mateo County): Smoke-free outdoor dining

**Sunnyvale:** (Santa Clara County): Smoke-Free Outdoor dining & Sport Venues

**Thousand Oaks:** (Ventura County): Smoke-free sport venues

**Torrance:** (Los Angeles County): Smoke-free beaches

**Tulare County:** Smoke-Free Parks

**Tuolumne County:** Smoke-free outdoor dining and sport venues

**Union City:** (Alameda County): Athletic Fields, Outdoor Dining

**Vacaville:** (Solano County): Tobacco-Free Parks

**Ventura County:** Smoke-Free Parks

**Vista:** (San Diego County): Smoke-Free Parks

**Walnut:** (Los Angeles County): Smoke-Free Parks

**Watsonville:** (Santa Cruz County): Smoke-Free Parks

**Windsor:** (Sonoma County): Smoke-Free Public Places

**Winters:** (Yolo County): Tobacco-Free Parks

**Woodland:** (Yolo County): Smoke-Free Parks & sport venues

**Yolo County:** Smoke-Free Parks

**Yucaipa:** (San Bernardino County): Smoke-free Parks.

**California's Clean Air Project, a statewide project of ETR Associates**

2210 21<sup>st</sup> Street, Sacramento CA 95818

Phone: (916) 452-8065 Fax: (916) 452-7374 E-Mail: [marinderd@etr.org](mailto:marinderd@etr.org)

This material was made possible by funds received from the  
Tobacco Tax Health Protection Act of 1988 -- Proposition 99.

Under Grant Number 05-45720 with the California Department of Health Services, Tobacco Control Section.  
Rev. 11/07, CCAP

**Results of the Public Opinion Polls  
Banning  
October 2008**

Total surveys: 43

Areas: Banning

- 74.4% support for the statement that "outdoor PRAs should be smoke-free"
- 62.8% agree that "tobacco litter is a problem"
- 65.7% agree that a "smoke-free policy will reduce litter."
- For the sample of 43, 23.3% used tobacco, 38.1% were male, 54.8% were under 40, 40.5% were Hispanic and 35.1% were White. See printout for details.



**Public Recreation Area**  
*Public Opinion Poll*

Please take a minute to complete this survey. Your opinions are important to us.

Check one box for each statement below or question below. Please do not put your name on this survey.

1. Outdoor public recreation areas such as city parks should be smoke-free.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

2. Cigarette butts and other tobacco litter is a problem at parks and recreation areas in my community.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

3. Introducing a smoke-free policy at parks and recreation areas will reduce tobacco litter.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

4. In the past year, have you used tobacco products (cigarettes, cigars, chew, etc.) at all?  
 <sub>1</sub> Yes  
 <sub>2</sub> No, I have not used any tobacco products in past year

5. Gender:    <sub>1</sub> Male    <sub>2</sub> Female

6. Age:    <sub>1</sub> Under 18  
 <sub>2</sub> 18-29  
 <sub>3</sub> 30-39  
 <sub>4</sub> 40-49  
 <sub>5</sub> 50-65  
 <sub>6</sub> Over 65

7. Ethnicity: (check as many as apply)  
 <sub>1</sub> Asian  
 <sub>2</sub> Black/African American  
 <sub>3</sub> Caucasian/White  
 <sub>4</sub> Hispanic/Latino  
 <sub>5</sub> Other \_\_\_\_\_  
 (please specify)

7. Ethnicity: (check as many as apply)  
 <sub>1</sub> Asian  
 <sub>2</sub> Black/African American  
 <sub>3</sub> Caucasian/White  
 <sub>4</sub> Hispanic/Latino  
 <sub>5</sub> Other \_\_\_\_\_  
 (please specify)

8. What city do you live in? \_\_\_\_\_

9. Please feel free to write in any other comments you may have about tobacco litter in public areas in the space below or on the other side of this survey.

*Thank you very much for completing this survey.*

**Public Recreation Area**  
*Public Opinion Poll*

Please take a minute to complete this survey. Your opinions are important to us.

Check one box for each statement below or question below. Please do not put your name on this survey.

1. Outdoor public recreation areas such as city parks should be smoke-free.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

2. Cigarette butts and other tobacco litter is a problem at parks and recreation areas in my community.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

3. Introducing a smoke-free policy at parks and recreation areas will reduce tobacco litter.  
 <sub>1</sub> Yes    <sub>2</sub> No    <sub>3</sub> Unsure

4. In the past year, have you used tobacco products (cigarettes, cigars, chew, etc.) at all?  
 <sub>1</sub> Yes  
 <sub>2</sub> No, I have not used any tobacco products in past year

5. Gender:    <sub>1</sub> Male    <sub>2</sub> Female

6. Age:    <sub>1</sub> Under 18  
 <sub>2</sub> 18-29  
 <sub>3</sub> 30-39  
 <sub>4</sub> 40-49  
 <sub>5</sub> 50-65  
 <sub>6</sub> Over 65

7. Ethnicity: (check as many as apply)  
 <sub>1</sub> Asian  
 <sub>2</sub> Black/African American  
 <sub>3</sub> Caucasian/White  
 <sub>4</sub> Hispanic/Latino  
 <sub>5</sub> Other \_\_\_\_\_  
 (please specify)

8. What city do you live in? \_\_\_\_\_

9. Please feel free to write in any other comments you may have about tobacco litter in public areas in the space below or on the other side of this survey.

*Thank you very much for completing this survey.*



# Fact Sheet

California Environmental Protection Agency  
Air Resources Board

## Environmental Tobacco Smoke: A Toxic Air Contaminant

### What is environmental tobacco smoke?

- Environmental Tobacco Smoke (ETS) is a complex mixture of over 4,000 gases and fine particles that are emitted by burning tobacco products (side stream smoke) and from the exhalations of smokers (mainstream smoke).
- Many of the substances in ETS have already been identified as toxic air pollutants and have known adverse health effects, these include: 1,3-butadiene, acetaldehyde, acrolein, arsenic, benzene, benzo[a]pyrene, cadmium, hexavalent chromium and formaldehyde.

### How did ARB identify ETS as a TAC?

- In 2001, the ARB entered ETS into the TAC identification phase of the program.
- An exhaustive review of the potential health effects of exposure to ETS was conducted by Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA).
- The Air Resources Board (ARB) staff prepared a comprehensive report on ETS exposure in California.
- In March 2004, ARB held a public workshop to discuss the findings.
- From November 2004 through June 2005, the state's Scientific Review Panel (SRP) held meetings to discuss and approve the ETS reports.

### How are Californians exposed to ETS?

- Four million Californians smoke despite an increasing number of smoking restrictions and a broad awareness of the health impacts.
- Exposure to ETS, especially among infants and children, continues to be a big public health concern.
- A smoker's home may have nicotine levels that are on average 30 times higher than a non-smokers' home. These exposures are especially dangerous for young children because they are likely to recur daily and impact the child's physical development.

- Vehicles with a smoker have very high average particulate concentrations. They can be up to 10 times higher than those found in the homes of smokers.
- According to an ARB study, nicotine concentrations in several different environments, such as outside office buildings, schools, businesses, airports and amusement parks are comparable to those found in some smokers' homes.

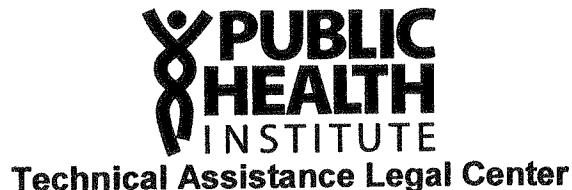
## What are the health effects associated with ETS exposure?

- Developmental effects, including an annual estimated:
  - 21 cases of Sudden Infant Death Syndrome (SIDS)
  - 1,600 cases of low birth weight in newborns
  - 4,700 pre-term deliveries
- Respiratory effects including:
  - acute lower respiratory tract infections in children (e.g., bronchitis and pneumonia)
  - asthma induction in children
  - asthma exacerbation in children (31,000 episodes per year)
  - middle ear infections in children
- Carcinogenic effects: lung cancer, nasal sinus cancer and breast cancer in younger, primarily pre-menopausal, women, with:
  - 400 additional lung cancer deaths per year
- Cardiovascular effects: acute and chronic coronary heart disease morbidity and an annual estimated:
  - 3,600 premature cardiac deaths

## What will happen as a result of identifying ETS as a TAC?

- ARB will develop a risk reduction report on the potential actions to reduce ETS exposures in California.
- The risk reduction report will review state and local anti-smoking programs, public education efforts regarding the effects of exposure and identify additional opportunities to reduce risk.

Please contact Kate MacGregor, MPH at (916) 327-5974 for more information on ETS TAC identification and risk reduction. Please contact the ARB toll-free at (800) END-SMOG/(800) 363-7664 (California only) or (800) 272-4572. You may obtain this document in an alternative format by contacting ARB's Americans with Disabilities Act Coordinator at (916) 322-4505 (voice); (916) 324-9531 (TDD, Sacramento only); or (800) 700-8326 (TDD, outside Sacramento).



## There Is No Constitutional Right to Smoke<sup>1</sup>

February 2004  
Revised April 2005

### I. INTRODUCTION

Laws that limit how and where people may smoke should survive a legal challenge claiming that smoking is protected by the state or federal constitution. Smoking is not mentioned anywhere in either constitution. Nevertheless, some people may claim that there is a fundamental “right to smoke.”<sup>2</sup> These claims are usually made in one of two ways: (1) that the fundamental right to privacy in the state or federal constitution includes the right to smoke, or (2) that clauses in the state and federal constitutions granting “equal protection” provide special protection for smokers. Neither of these claims has any legal basis. Therefore, a state or local law limiting smoking usually will be judged only on whether the law is rational, or even plausibly justified, rather than the higher legal standard applied to laws that limit special constitutionally protected rights.

### II. THERE IS NO FUNDAMENTAL RIGHT TO SMOKE

The argument that someone has a fundamental right to smoke fails because only certain rights are protected by the constitution as fundamental, and smoking is not one of them. The U.S. Supreme Court has held that “only personal rights that can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in the guarantee of personal liberty.”<sup>3</sup> These rights are related to an individual’s bodily privacy and autonomy within the home.

Proponents of smokers’ rights often claim that smoking falls within the fundamental right to privacy, by arguing that the act of smoking is an individual and private act that government cannot invade. Courts consistently reject this argument. The privacy interest protected by the U.S. Constitution includes only marriage, contraception, family relationships, and the rearing and educating of children.<sup>4</sup> Very few private acts by individuals qualify as fundamental privacy interests, and smoking is not one of them.<sup>5</sup>

<sup>1</sup> This material was made possible by funds received from the California Department of Health Services, under contract # 99-85069. This fact sheet was created to provide general information only and is not offered or intended as legal advice.

<sup>2</sup> Common usage of the term “rights” conflates two distinct legal meanings: those rights that are specially provided for or protected by law (e.g., free speech); and those rights that exist simply because no law has been passed restricting them (e.g., the right to use a cell phone while driving). The latter type of right is always subject to potential regulation. Therefore, this memo addresses only those rights provided for or protected by law. This memo also does not address whether an employer may refuse to employ someone who smokes. While prohibiting smoking at work is permissible, Cal. Labor Code §96(k) protects employees from discrimination based on off-work conduct, though one court held that this statute does not create new rights for employees but allows the state to assert an employee’s independently recognized rights. *Barbee v. Household Auto. Finance Corp.*, 113 Cal. App. 4th 525 (2003).

<sup>3</sup> *Roe v. Wade*, 410 U.S. 113, 152 (1973).

<sup>4</sup> See, for example, *Griswold v. Connecticut*, 381 U.S. 479, 484 (1964) (recognizing the right of married couples to use contraceptives); *Meyers v. Nebraska*, 262 U.S. 390 (1923) (recognizing the right of parents to educate children as they see fit); and *Moore v. East Cleveland*, 431 U.S. 494 (1977) (protecting the sanctity of family relationships).

<sup>5</sup> *City of North Miami v. Kurtz*, 653 So.2d 1025, 1028 (Fla. 1995) (city requirement that job applicants affirm that they had not

**Example:** A firefighter trainee challenged a city fire department requirement that trainees must refrain from cigarette smoking at all times, by arguing that “although there is no specific constitutional right to smoke, [there is an] implicit . . . right of liberty or privacy in the conduct of [] private life, a right to be let alone, which includes the right to smoke.”<sup>6</sup> The court, however, disagreed and distinguished smoking from the recognized fundamental privacy rights.<sup>7</sup> The court went on to find that the city regulation met the fairly low standard for regulating non-fundamental rights because there was a perfectly rational reason for the regulation, namely the need for a healthy firefighting force.

### III. SMOKERS ARE NOT A PROTECTED GROUP OF PERSONS

The second common constitutional claim made by proponents of smokers’ rights is that laws regulating smoking discriminate against smokers as a particular group and thus violate the equal protection clause of the U.S. or the California constitutions. No court has been persuaded by these claims.

The equal protection clauses of the United States and California constitutions, similar in scope and effect,<sup>8</sup> guarantee that the government will not treat similar groups of people differently without a good reason.<sup>9</sup> Certain groups of people – such as groups based on race, national origin and gender – receive greater protection against discriminatory government acts under the U.S. and California constitutions than do other groups of people.<sup>10</sup> Smokers have never been identified as one of these protected groups.<sup>11</sup> Generally, the Supreme Court requires a protected group to have “an immutable characteristic determined solely by the accident of birth.”<sup>12</sup> Smoking is not an “immutable characteristic” because people are not born as smokers and smoking is a behavior that people can stop. Because smokers are not a protected group, laws limiting smoking must only be rationally related to a legitimate government purpose.<sup>13</sup>

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used tobacco in preceding year upheld because “the ‘right to smoke’ is not included within the penumbra of fundamental rights protected under [the federal constitution’s privacy provisions]”).

<sup>6</sup> *Grusendorf v. City of Oklahoma City*, 816 F.2d 539, 541 (10th Cir. 1987).

<sup>7</sup> *Id.* The court relied heavily on the U.S. Supreme Court decision *Kelley v. Johnson*, 425 U.S. 238 (1976). In *Kelley*, the Court held that a regulation governing hair grooming for male police officers did not violate rights guaranteed under the Due Process Clause even assuming there was a liberty interest in personal appearance.

<sup>8</sup> U.S. Const. amend. XIV, Cal. Const. art.1 §7. See *Serrano v. Priest*, 5 Cal. 3d 584, 597 n.11 (1971) (plaintiff’s equal protection claims under Article 1 §11 and §21 of state constitution are “substantially equivalent” to claims under equal protection clause of Fourteenth Amendment of U.S. Constitution, and so the legal analysis of federal claim applies to state claim).

<sup>9</sup> Equal protection provisions generally permit legislation that singles out a class for distinctive treatment “if such classification bears a rational relation to the purposes of the legislation.” *Brown v. Merlo*, 8 Cal. 3d 855, 861 (1973).

<sup>10</sup> See, for example, *Brown v. Board of Education*, 347 U.S. 483 (1954) (race); *Sugarmen v. Dougall*, 413 U.S. 634 (1973) (exclusion of aliens from a state’s competitive civil service violated equal protection clause); *Craig v. Boran*, 429 U.S. 190 (1976) (classifications by gender must serve important governmental objectives and must be substantially related to the achievement).

<sup>11</sup> Even some potentially damaging classifications, such as those based upon age, mental disability and wealth, do not receive any special protections. See, for example, *City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985) (mentally disabled adults are not protected under Equal Protection Clause); *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973) (education and income classifications are not protected).

<sup>12</sup> *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973).

<sup>13</sup> *Fagan v. Axelrod*, 550 N.Y.S. 2d 552, 560 (1990) (rejecting the argument that a state statute regulating tobacco smoking in public areas discriminated against members of a subordinate class of smokers on the basis of nicotine addiction by holding that “the equal protection clause does not prevent state legislatures from drawing lines that treat one class of individuals or entities differently from others, unless the difference in treatment is ‘palpably arbitrary’ ”). Note, too, that nonsmokers also are not recognized as a protected class, so equal protection claims brought by nonsmokers exposed to smoke in a place where smoking is permitted by law are unlikely to succeed.

**Example:** New York City and New York State enacted laws prohibiting smoking in most indoor places in order to protect citizens from the well-documented harmful effects of secondhand smoke. The challenger argued that the smoking bans violated the Equal Protection Clause because they cast smokers as “social lepers by, in effect, classifying smokers as second class citizens.”<sup>14</sup> The court responded that “the mere fact that the smoking bans single out and place burdens on smokers as a group does not, by itself, offend the Equal Protection Clause because there is no . . . basis upon which to grant smokers the status of a protected class.”<sup>15</sup> The court proceeded to uphold the smoking bans since they were rationally related to the legitimate government purpose of promoting the public health.

The equal protection clause not only protects certain groups of people, the clause also prohibits discrimination against certain fundamental “interests” that inherently require equal treatment. The fundamental interests protected by the equal protection clause include the right to vote, the right to be a political candidate, the right to have access to the courts for certain kinds of proceedings, and the right to migrate interstate.<sup>16</sup> Smoking is not one of these recognized rights.

If a government classification affects an individual right that is not constitutionally protected, the classification will be upheld if there is any reasonably conceivable set of facts that could provide a rational basis for it.<sup>17</sup> So long as secondhand smoke regulations are enacted to further the government goal of protecting the public’s health from the dangers of tobacco smoke, the regulation should withstand judicial scrutiny if challenged.<sup>18</sup>

#### IV. CONCLUSION

There is no constitutional right to smoke. Claims to the contrary have no legal basis. The U.S. and California constitutions guarantee certain fundamental rights and protect certain classes of persons from all but the most compelling government regulation. However, no court has ever recognized smoking as a protected fundamental right nor has any court ever found smokers to be a protected class. To the contrary, every court that has considered the issue has declared that no fundamental “right to smoke” exists. So long as a smoking regulation is rationally related to a legitimate government objective such as protecting public health or the environment, the regulation will be upheld as constitutional.

<sup>14</sup> *NYC C.L.A.S.H., Inc. v. New York*, 315 F. Supp. 2d 461, 480, 482 (S.D.N.Y. 2004).

<sup>15</sup> *Id.* at 492.

<sup>16</sup> See, for example, *Baker v. Carr*, 369 U.S. 186 (1962) (improper congressional redistricting violates voters’ rights under equal protection); *Turner v. Fouche*, 396 U.S. 346 (1970) (all persons have a constitutional right to be considered for public service); *Shapiro v. Thompson*, 394 U.S. 618 (1969) (residency requirement for receipt of state benefits violates equal protection).

<sup>17</sup> *People v. Leung*, 5 Cal. App. 4th 482, 494 (1992).

<sup>18</sup> *Dutchess/Putnam Restaurant & Tavern Ass’n, Inc. v. Putnam County Dep’t of Health*, 178 F. Supp. 2d 396, 405 (N.Y. 2001) (holding that County code regulating smoking in public places does not violate equal protection rights); *City of Tuscon v. Grezaffi*, 23 P.3d 675 (2001) (upholding ordinance prohibiting smoking in bars but not in bowling alleys because it is rationally related to legitimate government interest); *Operation Badlaw v. Licking County Gen. Health Dist. Bd. of Health*, 866 F.Supp. 1059, 1064-5 (Ohio 1992) (upholding ordinance prohibiting smoking except in bars and pool halls); *Rossie v. State*, 395 N.W.2d 801, 807 (Wis. 1986) (rejecting equal protection challenge to statute that banned smoking in government buildings but allowed it in certain restaurants).



## SMOKE-FREE PARKS ENFORCEMENT BEST PRACTICES

*California State law has protected tot lots and play areas in parks from secondhand smoke for the past five years (Health & Safety Code Section 104350-104495). Enforcement has been accomplished through well-placed signage at playgrounds throughout the state. Today, scores of California cities and counties are taking even greater steps to reduce or eliminate secondhand smoke from outdoor venues, including parks, gardens, outdoor dining and beaches.*

- In the last four years, over 90 California cities and/or counties have adopted ordinances making local parks smoke-free. Thus far, California's Clean Air Project (CCAP) which keeps records of local tobacco control measures from around the state, has received no reports of noncompliance in regard to local smoke-free parks ordinances.
- Local officials do report that the key to successful smoke-free outdoor policy compliance is the posting of clear comprehensive signage in the parks. Signage is often used by members of the public to reinforce the ordinance. Strategic signage creates gentle reminders of the smoking ban. It is a simple matter for a member of the public to point to a sign if they see someone smoking.
- Notice, Notice, Notice!! A critical component in addressing smoking in parks is to create an environment that makes the law known to park users. It is important to publicize the law in as many forms of media as possible – especially through City Parks and Recreation Departments.
- Based upon reports California cities and counties, the 90 smoke-free park ordinances currently enacted have been, by and large, self-enforcing.
- Eighty six percent of Californians do not smoke. The vast majority of people do not wish to be subjected to secondhand smoke. The public is demanding that parks – a major place for family gatherings – be smoke-free. Public demand and expectation have made enforcement a non-issue.

CCAP- California's Clean Air Project, a statewide project of ETR Associates

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This material was made possible by funds received from the

Tobacco Tax Health Protection Act of 1988–Proposition 99,

Under Grant Number 05-45720 with the California Department of Health Services, Tobacco Control Section.

Dev. 04/07, CCAP



# Secondhand Smoke Survey

## California Voters' Attitudes About Secondhand Smoke Exposure

Public Opinion Research Survey: November 2008

### Background

There is a growing body of scientific evidence that documents the harmful effects of secondhand smoke exposure, including the US Surgeon General's finding that there is no risk-free level of exposure to secondhand smoke, and the California Air Resources Board designation of secondhand smoke as a toxic air contaminant. Yet Californians are still exposed to secondhand smoke in outdoor areas, in multi-unit housing and in Indian casinos. Many cities and counties throughout the state have passed laws to restrict smoking in outdoor areas such as parks, beaches, farmer's markets and outdoor seating at bars and restaurants and some cities have passed laws to create nonsmoking sections of apartments in multi-unit housing. In addition, some California Indian tribes have voluntarily created nonsmoking sections in Indian casinos.

In November 2008, the Center for Tobacco Policy & Organizing commissioned a survey of 600 California voters to assess their views about secondhand smoke and to gauge their level of support for reducing exposure to secondhand smoke. Specifically, the survey explored general attitudes about restricting smoking in outdoors areas, in outdoor dining areas, in multi-unit housing, and in Indian casinos.

This document highlights the Summary of Key Findings for the entire secondhand smoke survey. Additionally, there are three distinct Summary of Key Findings that highlight the results for outdoor dining, the results for multi-unit housing and the results for Indian casinos. The survey was conducted by Goodwin Simon Victoria Research. Complete survey results and the other summary documents are available at [www.Center4TobaccoPolicy.org/polling-shs](http://www.Center4TobaccoPolicy.org/polling-shs).

### Summary of Key Findings

#### Secondhand Smoke Restrictions in Outdoor Areas

California voters know that secondhand smoke is harmful and are bothered by secondhand smoke in outdoor areas:

- 97% believe that secondhand smoke is harmful to those who inhale it
- 88% believe that secondhand smoke is harmful to those who inhale it in outdoor areas
- 65% have been bothered by secondhand smoke exposure in outdoor areas in the past year

California voters strongly support a law that restricts smoking in all outdoor areas of a community and support restricting smoking in specific outdoor areas to varying degrees (see table on next page):

- 73% support a comprehensive ban on outdoor smoking in all areas accessible to the public except for designated smoking areas

The table below lists California voters' level of support for restricting smoking in various outdoor areas:

Outdoor Area	Percent who Support	Outdoor Area	Percent who Support
In front of doors and windows into offices, restaurants and other buildings	77%	Bus Stops	56%
Outdoor areas of nursing homes, hospitals and long-term care facilities	70%	Outdoor areas of bars and restaurants, such as patios and outdoor eating areas	56%
Farmer's markets	69%	City and Regional Parks	55%
Nature areas, trails and campgrounds	65%	Fairs and Rodeos	55%
Outdoor concerts and sporting events	62%	Outdoor areas of downtown business zones	49%
Outdoor areas of shopping malls and shopping centers	60%	Outdoor worksites, such as construction zones	46%
Beaches	59%	Public sidewalks	44%
Outdoor areas of college campuses	57%	Parking lots	40%

California voters are receptive to statements in favor of restricting smoking in outdoor areas. The four statements rated as most important are listed below:

- 91% think an important reason to support smoking restrictions is that burning cigarettes tossed by careless smokers cause fires in parks and recreation areas and prohibiting smoking in these areas can protect the environment and save lives and money
- 89% think an important reason to support smoking restrictions is that scientific studies show that secondhand smoke can be harmful even in outdoor areas
- 87% think an important reason to support smoking restrictions is that cigarette butts are the number one cause of litter on beaches, parks and sidewalks and restricting smoking will greatly reduce litter
- 86% think an important reason to support smoking restrictions is that discarded cigarette butts are eaten by wildlife and can cause injury or death

### **Secondhand Smoke Restrictions in Outdoor Dining Areas**

California voters were asked several questions specifically focused on restricting smoking in outdoor seating areas of bars and restaurants:

- 60% have been bothered by secondhand smoke exposure in outdoor dining areas in the past year
- 56% support restricting smoking at outdoor areas of bars and restaurants

California voters are receptive to the arguments in support of restricting smoking in outdoor dining. The top two statements are listed below:

- 74% were more likely to support smoking restrictions when they heard that it would protect workers at restaurants and bars from having to inhale dangerous secondhand smoke
- 72% were more likely to support smoking restrictions when they heard that it would protect diners from having to inhale dangerous secondhand smoke while dining

Opposition statements to restricting smoking at outdoor dining were less effective. In fact, opposition arguments were more likely to have no impact on voters or to make them more likely to support smoking restrictions. The top two opposition statements are listed below:

- 38% were more likely to oppose smoking restrictions when they heard that it would hurt bars and restaurants and drive away customers, while 61% said this argument had no effect or made them more likely to support smoking restrictions
- 36% were more likely to oppose smoking restrictions when they heard that it would be difficult to enforce and would place an unfair burden on bar and restaurant owners, while 63% said this argument had no effect or made them more likely to support smoking restrictions

## **Secondhand Smoke Restrictions in Multi-Unit Housing**

California voters were also asked a series of questions about restricting smoking in multi-unit housing and are supportive of many types of policies to protect people from secondhand smoke exposure in multi-unit housing:

- 69% support a law to restrict smoking in outdoor common areas of apartments
- 78% support a law requiring apartment buildings to offer nonsmoking sections
- 74% support requiring 50 percent of apartments to be nonsmoking
- 58% support requiring 75 percent of apartments to be nonsmoking
- 42% support requiring 100 percent of apartments to be nonsmoking
- 56% feel that a law requiring apartment buildings to offer nonsmoking sections should apply to condominiums as well
- 70% think that a person moving into an apartment should be told if the tenant next door smokes

California voters are receptive to the arguments in support of restricting smoking in multi-unit housing.

The top two statements are listed below:

- 76% were more likely to support smoking restrictions when they heard that scientific studies prove that secondhand smoke is harmful in apartment buildings and nonsmokers are exposed to dangerous secondhand smoke in the one place where they spend the most time
- 76% were more likely to support smoking restrictions when they heard that restricting smoking in apartment buildings will reduce the risk of fire

Opposition statements to restricting smoking in multi-unit housing were less effective. In fact, opposition arguments were more likely to have no impact on voters or to make them more likely to support smoking restrictions. The top two opposition statements are listed below:

- 40% were more likely to oppose smoking restrictions when they heard that it would take away a person's right to smoke in their home if they wanted to, while 58% said the argument had no effect or made them more likely to support smoking restrictions
- 37% were more likely to oppose smoking restrictions when they heard that it would discriminate against smokers and make it difficult for them to find a place to rent, while 61% said this argument had no effect or made them more likely to support smoking restrictions

California voters were also asked about a problem faced by decision makers when considering whether to restrict smoking in public housing. 64% of California voters agree with those who argue that it is more important to protect low-income children and families who cannot move away from secondhand smoke exposure. Only 17% of voters agree with those who argue that it is more important to protect tenants who smoke and cannot afford to move and who might be evicted if they smoke in their apartment should it be designated as nonsmoking.

## **Secondhand Smoke Restrictions in Enclosed Areas (Indian Casinos, Foster Homes, Cars)**

California voters were also asked about restricting smoking in certain enclosed areas including California Indian casinos, foster homes, and cars. Overall, voters are supportive of restricting smoking in these areas:

- 90% would either be more inclined to visit or would be unaffected if smoking were prohibited in California Indian casinos, while only 8% would be less inclined to visit the casinos
- 69% feel that employees in California Indian casinos should have the same protections from secondhand smoke as other employees in California
- 77% support having child protective agencies require foster homes to be nonsmoking in order to protect children in foster homes from being exposed to secondhand smoke
- 80% support the new state law that prohibits smoking in vehicles where minor children are present

# Support Smoke-free Parks

- There is no safe level of exposure to secondhand smoke. Allowing smoking even in large outdoor areas does pose a health risk.
- Secondhand smoke created by smokers is harmful to both children and adults.
- Littered cigarette butts are hazardous to children. Young children may pick up the butts and put them in their mouths and ingest them (7,917 cases in 1995, Poison Control Center).
- Cigarette butts make our parks and beaches look dirty and uninviting and cause long-term damage to the environment.
- Cigarettes pose a risk of starting fires.
- Cal-Trans spends \$41 million each year for litter prevention, clean-up, and disposal (2004).
- Smoking sends a wrong message, that it is an acceptable activity.
- 88% of the Californians believe that secondhand smoke is harmful to those who inhale it in outdoor areas.

If you are interested in supporting this project or have questions, please call the Tobacco Control Project at (951) 358-7125.

## For the Health of Our Children

**ATTACHMENT 4**  
**COPY OF SECTION 8.56**  
**(CURRENT ORDINANCE SECTION OF THE B.M.C.)**

## Chapter 8.56

## SMOKING

## Sections:

- 8.56.010 Purpose and findings.
- 8.56.020 Definitions.
- 8.56.030 Regulation of smoking in city facilities.
- 8.56.040 Prohibition of smoking in certain enclosed spaces.
- 8.56.050 Regulation of smoking in places of employment.
- 8.56.060 Posting requirements.
- 8.56.070 Enforcement.
- 8.56.080 Penalties.
- 8.56.090 Other applicable laws.

## 8.56.010 Purpose and findings.

The city council of the City of Banning does hereby find that:

- A. Numerous studies have found that tobacco smoke is a major contributor to indoor air pollution.
- B. Reliable studies have shown that breathing side-stream or secondhand smoke is a significant health hazard, especially for certain population groups, including elderly people, individuals with cardiovascular disease, and individuals with impaired respiratory function.
- C. Health hazards induced by breathing side-stream or secondhand smoke including lung cancer, respiratory infection, decreased respiratory function, bronchoconstriction, and bronchospasm.
- D. Nonsmokers with allergies, respiratory disease and those who suffer other ill effects of breathing sidestream or secondhand smoke may experience a loss of job productivity or may be forced to take periodic sick leave because of adverse reactions.
- E. The Surgeon General of the United States had advised nonsmokers to avoid exposure to tobacco smoke wherever possible, and, in particular, to protect infants and children from this smoke.
- F. The breathing of smoke from tobacco or any other weed or plant is a proven danger to health.

Accordingly, the health, safety and general welfare of the residents of, persons employed in, and persons who frequent this city would be benefited by the regulation of smoking in designated enclosed places. (Code 1965, § 8-90.)

## 8.56.020 Definitions.

As used in this chapter:

“Employee” means any person who is employed by the City of Banning in consideration for direct or indirect monetary wages or profit.

“Employer” means the City of Banning.

“Enclosed” means closed in by roof and four walls with appropriate opening for ingress and egress.

“Place of employment” means any enclosed area under the control of employer which employees normally frequent during the course of employment, including but not limited to work areas, employee lounges, conference rooms, and employee cafeterias.

“Smoking” means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind. (Code 1965, § 8-91.)

## 8.56.030 Regulation of smoking in city facilities.

All enclosed facilities owned by the City of Banning shall be subject to the provisions of this chapter. (Code 1965, § 8-92.)

## 8.56.040 Prohibition of smoking in certain enclosed spaces.

Smoking shall be prohibited in the following places within the city:

- A. All enclosed areas available to and customarily used by the general public and patronized by the public.
- B. Hearing rooms, conference rooms, chambers and places of public assembly in which public business is conducted, when the public business requires or provides direct participation or observation by the general public. (Code 1965, § 8-93.)

**8.56.050 Regulation of smoking in places of employment.**

A. It shall be the responsibility of the city to provide smoke-free areas for nonsmokers within facilities to the maximum extent possible, but the city is not required to incur any expense to make structural or other physical modifications in providing these areas.

B. Within ninety days of the effective date of the ordinance codified in this chapter, the city manager shall adopt, implement, make known, maintain, and promulgate a written smoking policy which shall contain at a minimum the following regulations:

1. Smoking shall be prohibited in restrooms, hallways, employee work areas and in any space in use for employee conferences, meetings or classes, except for a private closed office or a room occupied exclusively by smokers.

2. Any employee shall have the right to designate his or her immediate work area as a nonsmoking area and to post the same with an appropriate sign or signs to be provided by the city. The policy adopted by the city shall include a reasonable definition of the term "immediate work area."

3. In any dispute regarding the implementation of this smoking policy, the health concerns of the nonsmoker shall be given preference.

4. A separate and contiguous nonsmoking area of not less than forty percent of the seating capacity and floor space shall be provided and maintained in lunchrooms and employee lounges.

C. This smoking policy shall be communicated to new employees upon hiring. The city manager shall communicate this smoking policy to all existing employees within sixty days of its adoption.

D. Notwithstanding the provisions of subsection A of this section, the city shall have the right to designate any place of employment, or portion thereof, as a nonsmoking area.

E. Employees whose work area is divided into a public area and a place of employment which is off limits to the public shall be allowed to smoke in their place of employment at a reasonable distance from the public area, but only if consistent with the other provisions of this chapter. (Code 1965, § 8-94.)

**8.56.060 Posting requirements.**

"Smoking" or "No Smoking" signs with letters of not less than one inch in height, or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it) shall be clearly, sufficiently and conspicuously posted, in every building or other place where smoking is controlled by this ordinance, by the manager or other person having control of such building or other place. (Code 1965, § 8-95.)

**8.56.070 Enforcement.**

A. Administration of this chapter shall be by the city manager or his designees.

B. Any employee who desires to register a complaint hereunder may initiate enforcement consideration with the city manager or his designees.

C. A violation of any of the provisions of this chapter shall constitute a public nuisance and may be abated by the city or by any affected employee of the city through civil process by means of restraining order, preliminary or permanent injunction or in any other manner provided by law for the abatement of such nuisance.

D. Any employee or manager of any department controlled by this chapter may inform persons violating this chapter of the appropriate provisions thereof. (Code 1965, § 8-96.)

**8.56.080 Penalties.**

A. It is unlawful for any person who owns, manages or otherwise controls the use of any premises subject to the restrictions of this chapter to fail to:

1. Post signs required hereunder;
2. Provide signs for the use of employees in designating their areas as properly set aside "No Smoking" areas; or
3. Comply with any other requirements of this chapter.

B. It is unlawful for any person to smoke in any area in which smoking is prohibited by the provisions of this chapter.

**8.56.090**

C. Any person who violates subsections A or B of this section, or any other provision of this chapter, shall be guilty of an infraction, and shall also be punishable by disciplinary action. (Code 1965, § 8-97.)

**8.56.090 Other applicable laws.**

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws or regulations. (Code 1965, § 8-98.)