

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

April 28, 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.

*Our Mission as a City is to provide a safe, pleasant and prosperous  
community in which to live, work and play. We will achieve  
this in a cost effective, citizen friendly and open manner.*

PRESENTATIONS:

1. Proclamation – Morongo Band of Mission Indians ..... 1
2. Proclamation – Mental Health Month. .... 2
3. San Gorgonio Pass Water Agency Presentation by Jeff Davis *(Oral Report)*
4. Western Riverside Council of Governments Red Team presentation  
by Rick Bishop *(Oral Report)*

ANNOUNCEMENTS/COUNCIL REPORTS: *(Upcoming Events/Other Items and Report if any)*

**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 10**

**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 – 3/10/09 ..... 3
2. Resolution No. 2009-31, Approving Change Order No. 1 to the  
Construction Contract awarded to Whitmore Construction, Inc. for  
Project No. 2008-08, Phase II Improvements to the Banning Community  
Center Gym. .... 33
3. Resolution No. 2009-32, Temporarily Delaying the Collection of the City’s  
Residential Development Impact Fees Until Certificate of Occupancy. .... 40
4. Resolution No. 2009-33, Amending Resolution No. 2008-89 for the  
2007-2010 Memorandum of Understanding between the City of Banning  
Association of Manager (CBAM) and the City of Banning. .... 45
5. Resolution No. 2009-34, Authorizing the Destruction of City Records  
As Provided by Section 34090 of the California Government Code and  
Resolution No. 2003-26 of the City of Banning. .... 49
6. Award of Piggyback Purchases of Five Marked Police Interceptor Crown  
Victoria’s and One Chevrolet Tahoe to Wondries Fleet Group in the  
Amount Not to Exceed \$150,837.63 and Award of Purchase of Two  
Unmarked Police Interceptor Crown Victoria’s to Ramsey Street Ford in the  
Amount Not to Exceed \$45,965.36 from the Funds Obtained through the  
FY 08-09 Special Distribution Fund Grant ..... 54
7. Notice of Completion for Project No. 2008-EUCP-01-P “Sunset  
Substation Project”. .... 56
8. Emergency Overhaul of Process Water Pump 9-P-2 at the Wastewater  
Treatment Plan for an Amount Not to Exceed \$10,991.02 ..... 61
9. Emergency Repair of 110’ Rotary Distribution Arm on the Tricking  
Filter Basin at the Wastewater Treatment Plan with Pascal & Ludwig  
Constructors of Ontario, Calif. in the Amount of Not to Exceed \$21,955.00 . 85



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|-----|---|-----|
| 10. | Approval of Accounts Payable and Payroll Warrants for the Month of March 2009. .... | 110 |
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- Open for Public Comments
- Make Motion

#### IV. REPORTS OF OFFICERS

|    |  |     |
|----|--|-----|
| 1. | Brian Nakamura, City Manager   |     |
| A. | Adoption of Census 2010 Complete Count Proclamation and Complete Count Community Guidelines .....  | 112 |
|    | Recommendation: <b>That the Council adopt the Census 2010 Complete Count Proclamation and Complete Count Community Program Guidelines.</b>   |     |
| B. | Approve Professional Services Agreement with James Earhart for Public Utility Consulting Services .....  | 116 |
|    | Recommendation: <b>That the City Council approve the attached Professional Services Agreement between the City of Banning and James D. Earhart for Public Utility Consulting Services.</b> |     |
| B. | Utility User Tax Oral Update   |     |
| C. | Discussion & Clarification of the Public Comments Section Of the Agenda ( <i>Oral Report</i> )   |     |

#### V. FUTURE MEETINGS

1. Meeting with Morongo Tribal Council – April 28, 2009 – Noon to 1:30 p.m. at the Hampton Inn, 6071 Joshua Palmer Way, Banning
2. Vision & Mission Council Workshop – April 29, 2009 – 9:00 to 11 a.m. – City Hall Large Conference Room

#### VI. CLOSED SESSION

1. Pursuant to Government Code Section 54957.6 Conference with Labor Negotiators  
Employee organization: IBEW - Utility Unit and IBEW General Unit, CBAM and BPOA. Agency Designated Representatives: Brian Nakamura, David Aleshire, Bonnie Johnson and Hoyl Belt
2. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to City Manager evaluation and City Attorney Evaluation.

- A. Opportunity for Public to Address Closed Session Items.
- B. Convene Closed Session

## VII. 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].



## PROCLAMATION

**WHEREAS**, the Morongo Indian Reservation was established in 1877 and covers more than 32,000 acres, with a resident population of approximately 950; and

**WHEREAS**, the Morongo Band of Mission Indians is a federally recognized Sovereign Indian Nation and operates the Morongo Casino Resort and Spa, Canyon Lanes Bowling, Hadley Fruit Orchards and other business enterprises; and

**WHEREAS**, The Morongo Band of Mission Indians is the largest private sector employer in the Banning-Beaumont region and a major contributor to the Riverside County and Coachella Valley economies; and

**WHEREAS**, the Morongo people continue to be good neighbors and economic partners in the Pass Area and throughout Riverside County, providing over 2,800 jobs; and

**WHEREAS**, through their own internal programs, as well as grants and partnering with local governmental entities and private non-profit charitable organizations, the Tribe contributes to and improves the lives of many adults and children, in need; and

**WHEREAS**, the Tribe has recently completed, dedicated and held a grand opening for their new state of the art Administrative Center, which will centralize all of their tribal operations and expand services it provides to members of the Morongo Band of Mission Indians; and

**WHEREAS**, the 67,000 square foot Administrative Complex and 8,600 square foot tribal meeting facility is located on Pumarra Road, which means "all of the Morongo's" and is designed as a modern interpretation of traditional Southwest Native American architecture; and

**WHEREAS**, building the Administrative Complex is another example of how the Tribe continues to keep pace with the needs of its people and providing support, to enable them to succeed in the years to come;

**NOW THEREFORE BE IT RESOLVED**, that I, Robert Botts, Mayor of the City of Banning, along with the City Council do hereby recognize the great achievements of the Morongo Band of Mission Indians in their Casino Resort and Spa, their additional business ventures and most recently the completion of their new Administrative Center; and

**BE IT FURTHER RESOLVED**, that the City Council and City of Banning express its thanks and appreciation to the Tribe for their support and partnering with the City of Banning, and other organizations within the Pass Area, to assist in making it a better place in which to live, work and play.

**IN WITNESS WHEREOF**, I have set my hand  
and caused the seal of the City of Banning,  
California to be affixed this 28<sup>th</sup> day of April,  
2009.

ATTEST:

\_\_\_\_\_  
Marie A Calderon, City Clerk

\_\_\_\_\_  
Robert E. Botts, Mayor



## PROCLAMATION

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

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

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

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

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

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

*NOW THEREFORE, I, Robert E. Botts, Mayor of the City of Banning, along with the City Council, do hereby proclaim May 2009 as “MENTAL HEALTH MONTH” in the City of Banning and call upon all citizens, government agencies, public and private institutions, businesses and schools to recommit our community to increasing awareness and understanding of mental illness, improving the array of mental health services for consumers of all ages, and expanding the supply of affordable, supportive housing for people living with mental illness.*

*IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 28<sup>th</sup> day of April, 2009.*

**ATTEST:**

\_\_\_\_\_  
Marie A Calderon, City Clerk

\_\_\_\_\_  
Robert E. Botts, Mayor



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

3/10/09  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on March 10, 2009 at 6:40 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  
John McQuown, City Treasurer  
Duane Burk, Public Works Director  
Hoyl Belt, Human Resource Director  
Matt Bassi, Interim Community Development Dir.  
Tim Steenson, Development Services Manager  
Nicole Mihld, Purchasing Manager  
Chuck Thurman, Electrical Operations Manager  
Jeff Stowells, Battalion Chief  
Gini Sorenson, Development Project Coordinator

Councilmember Robinson said that we have received several complaints that the audio in Sun Lakes is not doing well on Time Warner Cable. There are two phone numbers to call right away if you cannot hear the meetings well and those are: Desert cities (760) 340-2225 or 1-800-964-2783. So if you call in and tell them to come out and fix it, maybe we can get this done and you can have audio in Sun Lakes that is audible.

Councilmember Robinson invited the audience to join him in the Pledge of Allegiance to the Flag. The invocation was given by Pastor Don Vollmer of the Seventh-Day Adventist Church.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS  
ANNOUNCEMENTS/APPOINTMENTS

Report by City Attorney - There was no report.

Report by City Manager

City Manager stated that the new launch for the façade program will become available tomorrow. We give thanks to the Community Redevelopment Agency Board for helping to revise the program and making it a better.

Public Comments – On Items Not on the Agenda

There was none.

CORRESPONDENCE: There was none.

PRESENTATIONS

1. Presentation to Bill Dickson

The City Council presented Bill Dickson with a plaque for his outstanding service on the Planning Commission and thanked him for serving on the Commission from February 7, 2006 to February 3, 2009.

Mr. Dickson said this was really special and said that in serving the community you always walk away with more than you give. He thanked the staff and the City Council for believing in him.

2. Information/Support for 2010 Census - Paula Almanza

Ms. Almanza addressed the Council stating that she was here to try to get everyone involved in a partnership regarding the 2010 Census. The 2010 Census is coming up next year they are going to be sending forms to everyone starting in February and these forms are due back in April. What they need is Council support to let the community know to please complete and return this form. We are losing every year more than three hundred billion dollars of federal funds that are going to be awarded. So, in your community if it says that only 60% is counted, you are losing that much money. It is \$10,000 dollars per person every ten years so if you have 37% that have not responded, you lose all that money. That is more than a million dollars that you can have in your community and those funds can go to schools, hospitals, to road building, and community block grants to create more jobs. So that is why they would like to have your support and would also like to have a Total Count Committee with a lead person assigned that she can contact and they can contact her. They will have material in all different languages and will have sites where people can come and fill out the form and they will also have telephone numbers where people can call. They will have enumerators come into the community for those that do not return the forms. This process is easy and completely confidential and there are only ten questions only take ten minutes of their time to complete it. If they are documented or not documented we do not care, we just want to count every single body in the community.

Councilmember Franklin thanked Ms. Almanza for the information and asked if a person can complete this online or does it have to be a paper copy and is this information shared with any other governmental agency like the IRS.



Ms. Almanza said it has to be a paper copy, because if we do it online we cannot guarantee the confidentiality. And in regards to sharing information Chapter 13 does not allow them to give any information to anybody except the Census.

Councilmember Franklin asked how soon is this going to start.

Ms. Almanza said the forms will be going out in February 2010 so for right now we are going to be canvassing. We are going to be numerating the new homes, the new addresses that have been created for ten years that we do not know about. So if you see them, please do not call the police. They are just getting all the accurate addresses so that we can come back next year and we are starting to let the people know that we are coming. She said that they will be going to various events to hand out material and to the newspapers and would also be contacting the faith base community center and doing everything that is possible.

Councilmember Machisic asked in the last Census what percentage of Banning residents provided the census with the data. Mrs. Almanza said about 67%.

Mayor Botts commented that he had an opportunity of have some advance notice from the Census Bureau in Washington about the Complete Count Committee (CCC) and had an opportunity to discuss it with the City Manager. He would like Council support in forming one of those committees. The information that he had shows that the Mayor normally appoints selected people; anyone interested in serving. It's a broad base number 8-10-12 whatever we want reaching out to the religious communities, ethnic and business communities and so we need to set a goal of getting to 100%. You have already alluded to the fact that you would be a liaison or someone from the census as a staff person supporting a group that we would put together and the goal is how do we market it, how do we get it to the press, how do we reach out to every part of the community because for every person that we miss we are losing money.

**There was Council consensus to the formation a Complete Count Committee in Banning.**

3. Adoption of Resolution No. 2009-20 Supporting the Needs for and Benefits of Liberty Quarry.

Oliver from O'Reilly Public Relations addressed the Council and also passed out some brochures stating that before the Council this evening is a resolution in support of the Liberty Quarry project. It is an aggregate facility in the south west portion of Riverside County and unincorporated Riverside County. He said that he and Garry Johnson from Granite Construction addressed the Council in August of last year talking about the regional need not only for local aggregate but county-wide use for aggregate resources. On that note the brochure in front of you highlights some of the benefits regionally and specifically to the City of Banning. As you are aware, most of the aggregate produced in Riverside County currently comes from Coachella Valley but there is some produced here locally in Banning and it moves through the Pass Area down into Los Angeles, northern San Diego County and into southwest Riverside County providing a local source of aggregate. One of the primary benefits of this quarry is to remove that truck traffic and an ancillary benefit is that it cleans the air by removing a lot of the diesel particulates that are emitted currently on a daily basis from the thousands of trucks moving



through and finally it provides a new source of aggregate source for Riverside County. Both the State of California, Department of Conservation in Mining and Geology Board has recognized the fact that Riverside County faces a critical shortage of aggregate resources. Aggregate is a basic building block for everything we build. It is not a resource that we can go without. From a transportation standpoint it actually saves tax payer dollars if there is a local source of aggregate near the construction sites.

There was some discussion in regards to reduction of truck traffic and cities that have approved this resolution.

Mayor Botts opened the item for public comments.

Bill Dixon, 5700 W. Wilson asked if this is going to have any financial effect on us because of the quarries locally. Will that have any economic effect on them because you see a lot of aggregate coming out of the locals.

Garry Johnson, Granite Construction Co. said no. What it does it really extends the life of the reserves in the eastern part of the county. We have a quarry in Palm Springs and we have shipped sand from that quarry down the I-10, down Lambs Canyon through Hemet, through San Jacinto, through Murrieta, through Temecula into San Diego County to Rancho Bernardo for highway construction jobs because there are not enough aggregate sources over there. A lot of the stuff coming here from Banning goes by train into LA and obviously, he doesn't think it is going to alleviate that. But over the long term if you look at the sheet that was presented, Western Riverside County is going to run out of reserves in less than 16 years. San Bernardino is going to run out of reserves in about 10 years. The Coachella Valley area is going to run out in 30 years. What Liberty Quarry does is it provides the local source over there where a lot of the stuff we are exporting is going, and it is going to continue as more quarries over there shut down. So he doesn't see a financial disincentive over here. He sees a financial incentive for everybody because it makes the tax dollars for transportation projects go further. Instead of spending money for transporting aggregate long distances and tearing up our roads, there will be more funds available for actually building roads, building bridges and building overpasses.

Dorothy Mc Lean, 916 Linda Vista Drive said the people of Banning get a little edgy when we hear any business that begins with the word Liberty. She asked if this company was related to Liberty Energy in any way, shape or form.

Mr. Johnson said he was glad that she asked that question. He said that Liberty Quarry is actually a development that is being pursued by Granite Construction Co. Granite is a publicly traded company and has been doing business in California since 1922. We have offices all over the state and we actually came up with the name of this proposed facility prior to the concept of the Liberty Energy being raised.

There was some discussion about life expectancy of some of these quarries.

Marion Johnson, 541 Repplier Road said does this necessitate an increase in the work that is being done right now at the present time. Because she lives pretty close to the quarry in Banning

and it is a problem up there with the activity that they have over there. She intended to talk about that because there is a serious dust problem in that area.

Mayor Botts asked Mr. Johnson if he would respond to that because Mrs. Johnson is talking about Robertson's and Matich on the east side of the city.

Oliver said that this would have no operational impact on the existing quarries in Banning. It would affect where they are sending the material but in terms of the number of jobs or the actual operations locally it wouldn't affect it. So that would be a question more appropriate for Robertson's or Matich. This shifts where the materials are being sent but it does not affect their daily operations.

Don Smith said it sounds like an interesting project to Murrieta, Temecula, or Canyon Lake. I assume the answer is no, based on the question that Councilmember Hanna asked, has anybody talked to our local aggregate person to see what they think of this proposal, and has anybody spoke to Murrieta or Temecula to see what they think about this proposal. It seems to him like we need to get the input from them and it seems that they are important stakeholders for you to make your decision. In the long run, this is a hard project to open certainly in California. Most of the quarries have probably been here for 100 years so we are probably going to have to open some new ones. But it seems to him that there are a couple of people certainly, Matich and Beaumont Concrete out in Cabazon, has been laying people off recently so he would certainly hate to hurt our jobs although it probably won't because this project won't be built for quite a while. But it seems to him like you should hear from those cities before these cities tell those cities what should be in their neighborhood.

Mr. Johnson said Steve Matich who is the president of Matich Construction is the one who led the charge for the American General Contractors to pass the resolution of support about the need for Liberty Quarry. He said that Granite is a great competitor of mine but we have a definite shortage in Riverside County. He was the one that made the motion to pass the resolutions and the first resolution of support for the project. I will tell you that the City of Temecula is trying to annex the property. They say that they want local control but at the same time they have said that they would rather see aggregate continue to come from the desert instead of building an aggregate source over by Temecula even though the facility can't be seen by the people of Temecula.

Councilmember Machisic said if these permits and approval, what is your best estimate of starting operations for this one.

Mr. Johnson said in the year 2011 we can break ground. They anticipate that the County Board of Supervisors would approve the project at the end of this year. We have to do some permitting next year, somebody is going to file a lawsuit they always do and that is why they want to make sure that the environmental impact report is bullet proof. But it would probably start at full operation as early as 2012.

There was further discussion in regards to the Council supporting various interests that may have a major impact on other people, cities and counties.



Councilmember Machisic said he thinks one of the things that has not been discussed here is the effect of traffic. The latest traffic estimate on Highway 10 is about 120,000 thousand cars a day and one of the things that they project in the future, at some point when the economy begins to revive itself, is that we have to consider the amount of traffic because in California we have not been keeping up road building and road repair and it does not appear that we will be doing any in the foreseeable future and he thinks that is a major factor that he would consider for Banning. We have always had very clean air here and we are concerned about Highway 10 and when you look down the future I think this is a major factor getting these trucks off the road at least in our end of the county. Obviously Temecula is not interested in having those trucks in their particular area coming out of a quarry and he can understand their concern but he is concerned about this community in this area.

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2009-20 Supporting the Needs For and Benefits of Liberty Quarry. Motion carried, with Mayor Pro Tem Hanna voting no.**

#### ANNOUNCEMENTS/COUNCIL REPORTS:

Mayor Botts said that we have talked about new things in Banning and one of the new things that is coming is the new courthouse. He introduced the new Superior Court Judge, Jeff Prevost, who is presiding now at the Banning Court.

Judge Prevost thanked everyone for extending an invitation to attend this evening. He said he started as a Deputy District Attorney quite a few years ago and had the pleasure of being out in the one-room Banning courthouse with Judge Peterson. He reassured everybody that Judge Cahraman, the presiding judge, has taken an interest in the Banning district, the Mid-County District in particular where we have had a habit of rotating judges for short periods of time. Judge Cahraman intends that he should stay out here for an indefinite period. He said he likes being here and the court staff is great and the people out here are great. He loves meeting with the jurors here and he has tried a number of cases out here last year for several months and had the pleasure of meeting a lot of local jurors and interacting with them. He wanted to assure the Council that it is his intent to keep a more or less an open door policy. He is always interested in hearing any comments or complaints that there might be about the operation of the court and while he can't speak for the court, only the Presiding Judge can speak for the court, but certainly he will be receptive to any comments or complaints. That would extend also to any citizen that might want to say anything about the operation of the court except he can't get you out of jury duty. He said that they are very excited about the building of the new courthouse here. Judge Cahraman is taking a very close interest in the building that will expand their operations here dramatically.

Councilmember Robinson –

- Stated that he and Councilmember Franklin attended the Annual Family Reading Night Program at Central Elementary School and encouraged people to participate.

- He announced that there will be a Food Drive at First St. Storage. All food donations will go to the local Salvation Army located on 1<sup>st</sup> Street between Pennsylvania and Highland Springs. This event will be held on March 21<sup>st</sup> at 2:00 p.m.

Councilmember Hanna –

- Announced that there are (2) openings for the Parks & Recreation Advisor Committee and the time has been extended to accept applications to March 27, 2009. Application are available at City Hall.
- Said she attended the Banning Chamber of Commerce Board of Directors meeting on February 26, 2009. They have changed their bylaws and expanded their board of directors and along with that bylaw change was the opportunity for the president to appoint four additional members of the board and appointed were Johnny Russo, Gene Kadow, Demario Jackson, and Amy Herr to the Chamber of Commerce Board.

Councilmember Machisic –

- Reporting from RCA (Regional Conservation Authority) that they have had more than enough projects for buying land and since the housing activity has slowed down rather remarkably they don't have enough money for the projects that they have talked about. So the projects that have not been moving forward are going to be eliminated so that we are assured that when one moves ahead we will have the funding for it. Also the fees for RCA conservation are to remain the same for this year with no increase.
- WRCOG – he reminded the Council that he passed out a Red Team report to them recently and they are asking if the Council is ready to have some kind of presentation or are they ready to move ahead with some potential recommendations. There were eight of them so we need to think about having a meeting.
- Dave Willmon from League of California Cities said that the details on the budget should be coming out this week. It is important that the budget be analyzed in detail because a lot of times when they pass legislation it is written that it requires interpretation.
- There is a TUMF project in the Pass Area and it is with the City of Calimesa. They are going to take Desert Lawn Drive and realign it to Cherry Valley Blvd. They are going to widen it from 2 to 4 lanes at the cost of \$3.3 million dollars in TUMF funds.
- There is a Solid Outreach Program for solid waste and it includes some of the programs in some of the elementary schools. This month they are going to have three of them in the city of Banning at Central, at Hemmerling and a second one at Central. If you are interested in attending one of these, the City Clerk will have further information for you.
- The TUMF fees this year will be reduced slightly and the reason it is being reduced is because it is based on the cost of construction and the cost of construction has gone down.
- At the last WRCOG meeting there was a person named Chris Sorenson who represents a non-profit group called HELP (Ownership Education Learning Program). He made a presentation and one of the things he pointed out is that in the housing market today there are a lot of people that are taking advantage of homeowners because they are not aware of their rights. He has given this presentation to Riverside County employees and to the City of Temecula. The presentations are on loan modifications, short sales, refinancing, foreclosures, bankrupt assistance, property tax assessment, mello-roos, and debt relief. He is willing to make a presentation in the City of Banning and he thinks that it would be a good service to our residents if we could provide this under the auspice of the City.



- He said he saw an article in the newspaper that talked about the assessors in LA, Orange County and Riverside and one of the things that they are talking about is that there is going to be a minimum of a 10% drop in the assessed value of homes and as you know a great portion of our funds come from taxes on homes.

#### Councilmember Franklin-

- She said that there was a presentation given by the Community Action Partnership in January regarding mortgages and foreclosure and it was such a good presentation that they asked Shameka Tankerson if she could come out here and give the same presentation at a workshop to be held on March 28<sup>th</sup> at City Hall from 9 a.m. to 1 p.m. There will also be a special presentation by the County Assessor's Office and the Fair Housing Council. The idea is to answer a lot of the questions that people have regarding the assessed values of their homes and what to do in the event of mortgage foreclosure. The topic is Living Well in Today's Economy, How to Work With the Dollars You Have, Coping Skills and Foreclosures and this is part of the Guiding Coalition of Community Action which is working to help people move out of poverty. There are flyers that will go out to all the agencies that receive funding through Community Action. It is open to the public and will be televised on the Government Channel as well.
- At the Passcom Meeting this morning there was a presentation given by the Gas Company. There were a couple of things stated in the presentation that was important and he said that once your gas is turned off whether you do it or somebody else does it do not turn it back on. They only want the Gas Company to come back and turn it on. They are neutral as to whether people need automatic gas shut off devices and they do not recommend them or dis-recommend them. If you have one, they will come out for free to turn you gas back on the first time. After that it is \$60.00 per hour for each time that they have to come back and turn it back on again. There is a new number for anytime that you are going to dig on your property and you can call 811 Dig Alert and they will come out and check to see if you have any gas lines in your area but they do require a 48 hour notice. Also do not extinguish a fire before the leak itself has been contained.
- She said that Passcom will be sending us a request, asking that each City help to support their effort to get the word out to the community regarding emergency preparedness.
- Disaster Survival Expo will be held on April 25<sup>th</sup> from 10 a.m. to 2 p.m. at the Community Center. There will be 28 exhibits inside the building and 10 outside. City, county, state, and private agencies will be participating to get people to be prepared because something will be happening and we want people to be as prepared as possible.
- At the Riverside Transit Agency meeting one of the things they talked about at the last meeting was that the public hearings have closed regarding changes in the fares as well as the routes. And even though we have Pass Transit out here people will be hearing things about routes changes and routes being discontinued. The route that will impact people here the most if they take it will be Route 36 which goes through Calimesa into Yucaipa. There is work that is being done to see if they can keep that route available but right now there has not been enough rider ship to justify maintaining that route.
- She thanked Central School for the opportunity to read. It is really good to see young people that not only want to listen to others read but want to read themselves.

#### CONSENT ITEMS

Councilmember Robinson pulled Consent Item No. 2 for discussion.

1. Approval of Minutes – Regular Meeting – 02/24/09

Recommendation: That the minutes of the Regular Meeting of February 24, 2009 be approved.

3. Ordinance No. 1404 – 2<sup>nd</sup> Reading: Ordinance No. 1404, An Ordinance of the City Council of the City of Banning, California Approving Zone Text Amendment No. 08-97508 to Amend Sections of the Zoning Ordinance Relating to Lot Coverage in the VLDR Zone and Expansion of Non-Conforming Uses in the Commercial and Industrial Zones.

Recommendation: That Ordinance No. 1404 pass its second reading and be adopted.

4. Ordinance No. 1405 – 2<sup>nd</sup> Reading: Ordinance No. 1405, An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment No. 08-97502 to Amend Section 17.28.030 of the Zoning Ordinance Relating to the Parking of Recreational Vehicles, Trailers, Boats, Campers and Like Vehicles.

Recommendation: That Ordinance No. 1404 pass its second reading and be adopted.

5. Amending the Existing Contract with E. S. Babcock for Laboratory Services in the amount of \$35,405.00.

Recommendation: That the City Council amend the existing contract with E. S. Babcock for laboratory services in the amount of \$35,405.00.

**Motion Hanna/Botts to approved Consent Items 1, 3, 4, and 5.** Mayor Botts opened the item for public comments.

Don Smith said in regards to the paved driveway ordinance he wanted to thank the City Attorney for listening to a problem and coming up with a solution and to the City Council for voting in favor of that solution in grandfathering in the houses that don't currently have those paved driveways until such time they pull a permit that would required those necessary improvements. He urged the Council to vote yes in favor of this ordinance. He believes this ordinance creates another problem that would require a completely different ordinance to pass. Certain people in order to be able to park on pavement as required have turned their front yards into paved parking lots. This City needs to consider an ordinance requiring some sort of minimal landscaping so that houses still have front lawns and just not all concrete.

Jeffrey Edger, 175 Santa Rita Place said it has come to his attention that the school intends to drop art, music, and P.E. from their agenda. What he was wondering is what the school intends to do with their brand new gymnasium that they just built for \$12 million dollars. New people with children would have to be told about this.



City Manager said that he would speak with Mr. Edger

**Motion carried, all in favor.**

2. Report of Investments for October 2008 through January 2009

Councilmember Robinson said he needs a little help understanding where we are right now in terms of these investments. He sees that our average rate has changed from 2.521 in October to 2.262 in January 30, 2009. Looking at that we were making interest of about \$113,000 to \$117,000 in October/November and jump up to \$208,000 roughly in December and then we drop down to \$5,000 dollars in January. Our market value went from \$84 million roughly down to \$67.6 million. He asked for an explanation.

Finance Director said as we all know with the current economy the interest rates are relatively volatile right now. Up to 60% of our idle cash is invested in the Local Agency Investment Fund (LAIF) and that is a State pool. Those interest rates have been consistently dropping over the last several months. Our outside investments are basically in T-bills and other federally back investments and those interest rates as well have been dropping. The ones that had any type of a higher interest rate generally are being called and so at any given point in time you will see, on one report there may be an investment that has a term maybe in 2010 perhaps and in fact today she received a message from our investment advisor at Piper-Jaffrey that one that was due in 2010 was called because it had an interest rate of 3% so we are looking at an alternative investment. Those investments are running right around 2% or just over 2%. So there are a lot of different dynamics happening here as well as a significant portion of what shows up on our treasury report as well, has to do with bond funds and as we spend down our bond funds on projects we take draws against those monies to reimburse ourselves and so the balances in several of these accounts are changing daily and certainly monthly. The rate of return are changing significantly over the last few months and we are trying to keep enough idle cash on hand to meet cash flow purposes and to keep the balance of that invested. So there is a lot of fluctuation.

There was some further Council and staff discussion regarding interest rates.

Mayor Botts acknowledge Dr. John McQuown, our City Treasurer for being here tonight and thanked him for coming.

**Motion Hanna/Robinson to approve Consent Item No. 2, to receive and place these required monthly Report of Investments on file.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

REPORTS OF OFFICERS

1. Resolution No. 2008-18, Amending that Transportation Uniform Mitigation Fee (TUMF) Applicable to all Developments in the City of Banning  
(Staff Report - Matthew Bassi, Interim Community Development Director)



Mathew Bassi said that this resolution will amend our TUMF fees that was recommended by Western Riverside Council of Governments (WRCOG) last month. He said that the single family residential fee will drop \$234.00 per dwelling unit; the multi-family residential fee will drop \$164.00 per dwelling unit and the retail fee will drop \$1.47 per square foot. Staff is recommending adoption of Resolution No. 2008-18.

Councilmember Franklin asked if this would be effective immediately.

Mr. Bassi said yes and any new building permits starting tomorrow will be applied new fees and when WRCOG decides to go back it would come back to the Council to adjust them which ever way it needs to be adjusted.

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

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2009-18, Amending that Transportation Uniform Mitigation Fee. Motion carried, all in favor.**

2. Resolution No. 2009-19, Authorizing Expenditure of Funds Obtained for FY 08-09 Through the Special Distribution Fund Grant Process  
(Staff Report - Jeff Stowells, Fire Services Battalion Chief)

Chief Stowells gave the staff report as contained in the agenda packet. He said that the money obtained through the CBC will be used to continue to fund the paramedic program within the City of Banning fiscal year 2008/2009. On November 25, 2008 the fire department on behalf of the City of Banning submitted a proposal for the fiscal year 08/09 SDF to the Morongo Band of Mission Indians in the amount of \$823,331.00. The Morongo Band of Mission Indians forwarded this application to the CBC with their support to continue funding the paramedic program to mitigate impacts of Indian gaming. On February 9, 2009 the CBC voted to approve the 08/09 grant application.

Councilmember Robinson asked if this allows the City to reimburse the General Fund for funds we have already paid for this year or does it carry forward to 2009/2010 so we are going to spend \$823,000 on just the paramedic program for the fiscal year.

Chief Stowells said nothing carries into the next fiscal year. It all has to be spent this fiscal year and so it would be a reimbursement back to the General Fund that has already been expended.

Mayor Botts opened the item for public comments.

Bill Dixon, 5700 W. Wilson St. said he was absolutely thrilled to see this happen and a special thanks to the Morongo Band of Mission Indians. Living in a senior community it's so important that the firefighter get there because they are always there far, far, sooner than the ambulance and he knows that there are a lot of people alive today because of this program.

**Motion Franklin/Machisic that the City Council adopt Resolution No. 2009-19, Authorizing the Expenditure of \$823,331 received from Morongo through the Riverside**

**Indian Gaming Local Community benefits Committee (CBC) under the FY 08-09 Special Distribution fund (SDF) Grant. Motion carried, all in favor.**

3. Recommended Budget Reductions for 2008-09 and 2009-10  
(Staff Report - Bonnie Johnson, Finance Director)

Finance Director gave her staff report as contained in the agenda packet. She said that on January 28<sup>th</sup> we had a budget workshop and staff presented various alternatives for addressing the City of Banning budget issues. One of the recommendations made and the direction given to staff at that time was to go forth and reduce not only the current year budget where we thought we could make reductions but reduce the 2009/2010 fiscal year budget by a minimum of 5% related to none payroll type expenses. What you have before you is the result of that endeavor by the City's executive team. Although we were trying to achieve "across the board bottom line of 5% across the board" that is not always a practical approach. We look at things more programmatically where the needs are where the necessities are but you will see that staff was able to achieve in the General Fund our recommendation for fiscal year 2009/2010 of 5.06% and for other funds City wide an additional 7.73% so those two proposed reductions combined is just over \$2 million dollars off of the bottom line expenses for the City in the non-payroll area. There were other suggestions that were made for the payroll type expenses and we have been pursuing those as well. There were several components to the recommendations that were made and this was one of the components. Under separate cover there were some memos submitted by each department to the Council so you would have more information on potential impacts, if any, of cutting these dollars from the budget. She mentioned for 08/09 Fiscal Year staff also looked at making budget reductions and for the General Fund a recommendation of approximately \$301,000 is recommended and throughout various other City funds recommendation of \$207,000 is recommended. Staff looked at this closely we are three-quarters of the way through the fiscal year and it was very hard to look at it close enough to come up with some current year cuts but staff was committed to doing that. If this is approved this evening there will be formal resolutions required to amend the current year budget and she will bring those back at the next Council meeting. If the 2009/2010 cuts by department are approved staff needs to get started right away preparing a 2009/2010 budget to bring that back for presentation to City Council before June 30<sup>th</sup>.

Councilmember Robinson said in looking at some of these items there is a new maintenance agreement for Spinitar in here for \$32,000.

Finance Director said we do have a maintenance agreement for the technical items that are here in the Council Chambers.

Councilmember Robinson said there is also a maintenance agreement for IT here in city hall along with a call out procedure for any issues that our three guys can't handle so is that something that we have to carry forward because we are paying a monthly fee still for maintenance for or was that dropped now, or do we still need it, or where is that at.

Finance Director said no we have not cut any of the IT maintenance agreements. We still have maintenance agreements on all of our equipment and all of our systems as we move forward.



Councilmember Franklin said that this is the first step so you will be continuing to come back as you come up with other ideas or if other ideas are submitted regarding what we can do to reduce the budget.

Finance Director said absolutely. This was one of the recommended steps in the recommendations that staff presented to address the structural deficit. We are in the process of moving through all those recommended steps but certainly the executive staff working with the City Manager are looking at any and all ways to reduce expenditures and while we are looking at that we are also conscious that we need to be communicating to the City Council as well about potential impacts that happen from those reductions so we will bring back other ideas as well.

Councilmember Franklin said today we just had the conversation about trying to renegotiate some of the vendor contracts and that might be some way to also help us with the budget so those things you can share with us as you move forward with them.

Finance Director said yes and they can look at that particular idea. She knows that one city in our vicinity has already done that and she actually has a copy of the letter they have sent out to their vendors and if that is a direction that the Council would like to head, we can certainly look at that option.

Councilmember Machisic said the Council charged staff with the obligation to cut the budget 5% and he knows that it is difficult to do and he is sure it will reflect on services in the future. Now several Council people have brought suggestions of other things and he is sure that the City Manager and the Finance Director will continue looking for possible cuts but we are looking now at a half a million dollars and a budget of our size is a pretty good chunk of money.

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

Councilmember Franklin said she wanted to thank staff and encourage them because we did ask them to make the cuts and the Council knows that it isn't easy. We appreciate your efforts and ask that you just keep trying to help us survive through this tough time. She said that the one thing that Councilmember Machisic mentioned was the changes that we will have in customer service and the things that we will be able to do as a City and the community should know that it is not going to be business as usual but that is the same as it is across the country. We should make people know not to expect the same things when we can't pay for the same things as we have in the past.

Mayor Botts thanked staff also and he knows that it's not easy and at all levels you work very hard on this but I think we should, if I understand this correctly in reading every director's memo, that said we have accomplished this and we will not reduce any level of service. Did I understand this correctly?

City Manager said that's a good question and with these 5% budget cuts we hope that we can continue the services we provided. We are clearly not out of the woods yet. We have a lot of issues that we have to deal with. As you know we are constantly dealing with personnel issues

and struggling with those issues because basically what we do is to provide services. But I would concur that we are going to try our best to continue to provide those services we can. He would venture to guess that over time if the demand continues or picks up, there could be potential delays. We have made it a commitment to return phone calls and we answer questions when prudent and have staff hopefully to address those key issues. But the reality is we will probably eventually see some of those diminish over time and he can't say exactly which ones those are but again, those response levels will likely diminish over time given a lot of the cuts we are making just now and the future ones that we will have to make.

Mayor Botts said obviously when we get to furloughs, hopefully not to layoffs, when we get to golden handshakes if that goes forward all of those things certainly, he is sure will have a major impact and then we will probably have to say that we might see some drop in service. But this was more along the line of reducing material kinds of things he thought.

City Manager said some of the non-personnel cost vary dramatically. If you notice in his budget, a significant amount was cut out but that means that things that may have been able to get done just with the administration of a contract that'll definitely come back to the Council for approval because we believe that it is important that you understand the impacts of the budget if we take this 5% out. Again, it could end up costing us time or time in service essentially if we make those decisions. They were conscientious decisions but we also want to warrant that yes, we can still provide that service, it just may take some more time.

Mayor Botts said it not on this agenda but could you give us a quick update when you would anticipate coming back with numbers on the Golden Handshake and numbers on furloughs. He knows those are being negotiated and he is not asking for details but time is marching on and we aren't saving money as we go. So just some idea when you will be bringing back those decisions to us.

Finance Director said as you have alluded to and you are aware we are actually meeting and conferring with all bargaining units currently. We will be bringing you information back in closed session every two weeks as we move through the process. The Golden Handshake window is open until June 2<sup>nd</sup> so to have definitive information on that it will take a little while. We do have a couple of folks where we do have confirmed retirements and retirement dates. Please be assured that we are working as quickly as possible and some of these things have a required process and take time to work through so it's hard for her to give you any type of definitive timeline but we will get things back to you as quickly as possible. You need the answers and staff needs the answers in order to develop a budget for 2010 and time is running short in that area as well. If we weren't up against some of these challenges to the extent that we are, we would be up to 2010 budget preparation which is why staff is are trying to bring things forward.

Mayor Pro Tem Hanna said it's very painful to think about certain types of cuts but she has one area that she would like, if the Council is interested in knowing more about, and that is the Police Department's Swat Team. She noticed there is some modest reduction of 5%, \$1,000 dollars or so in staff training, in ordinance that includes it will impact the swat team but she has been told that the Sheriffs Department has a swat team that's in place in Banning and if we were to reduce



the training, equipment, and overtime associated with our swat team that it could be an appreciable amount of money that we could save. It's hard to know how much that is but she thinks that is something we should look at and consider.

There was Council consensus that this is an area worth looking at and asked the City Manager to work with the Police Department on that.

Mayor Botts opened to the public for comments. There were none.

**Motion Franklin/Machisic to direct staff to reduce the 2008-09 budget appropriations in the applicable percentages as presented in the attached Exhibit "A", and conceptually approve the 2009-10 expenditure reduction recommendations as reflected in Exhibit "A" and direct staff to incorporate these reductions into the 2009-10 proposed budget. Motion carried, all in favor.**

3. B. Award of a Professional Services Contract to Tramutola for Public Information and Feasibility Services related to a Potential City Utility Users Tax

Finance Director gave the staff report as contained in the agenda packet. She said this is sort of a companion item to the last item that was approved. This contract has to do with initiation of starting the beginning process to move forward with a proposed utility user's tax which would be a ballot measure. Going forward with the ballot measure was part of staff's recommendation at the January 28<sup>th</sup> Council meeting. Staff presented a recommendation that with relation to the General Fund that basically showed a portion of the money needed to address the deficit on an annual basis being done through expenditure reductions which was just discussed and the other part is what was termed "revenue enhancements" but in this case an actual tax. Staff is recommending the hiring of Tramutola. They are a company that specializes in assisting cities to go forward with their taxes. They assist in the public education phase, feasibility stage, all the way through getting ballot ready and running a successful campaign. We are familiar with them and we started a process similar to this about a year and half ago and we went through Phase I and then Council opted not to move forward. The balance of the monies that were appropriated for the contract still remain appropriated, the appropriation wasn't cancelled so we do have \$47,500.00 currently appropriated that was earmarked for Tramutola. Staff recommends using a portion of the current year savings of \$301,000 to move a portion of that savings toward the contract and have \$100,000 set aside. Approximately half of that would be for Tramutola and the other half would be for things like publications, flyers and the actual art work and some of the other ancillary expenses that would go with preparing for this.

Councilmember Robinson asked if this is the same contractor that was working on the TOT (Transient Occupancy Tax) project and asked if that survey was carried forward.

Finance Director said when we last engaged this firm part of their charge was to do a survey to find out what type of tax measure the citizens would like to see and amongst them there was a TOT that was looked at. The survey was carried forward with results presented to Council. The results, from my memory, indicated that the most favorable type of tax at that time would actually be an increase in our sales tax.

Councilmember Robinson said what he is concerned about is that a lot of people expressed that the survey and the way it was put together is the reason why we don't have the TOT today. He is wondering why we don't go out to bid on something like this or consider somebody else if it didn't go through last time working with them.

Finance Director said she didn't know what the public comment was related to our specific consultant. We had two consultants, Tramutola and their subcontractor, Godbe Research which is a pollster company, polled and the poll results were presented to Council and the Council at that point didn't pursue going forward with Phase 2 of the contract. As Councilmember Hanna started to say, initially Council did approve going forward with Phase 2. We hadn't gotten started with Phase 2 which would have been the public education phase and then staff was pulled back off from that part of the contract and Phase 2 never went forward. But the consultant did what we paid them to do, and they did the poll and did go forward with whatever the City asked them to do.

Mayor Botts said he would like to clarify that we had four members of the City Council and two voted to move forward with the TOT tax and two voted no. So clearly this Council made the decision and this was subsequent to all the rest of this. He recalled the criticism of the pollster more than anything else, but the answer is that this Council decided not to move forward with the TOT by lack of a vote. It was a 2/2 tie.

Councilmember Machisic said that proposal that was voted down was not with an experienced tax preparer of any kind. That proposal to run the TOT was made by the Chamber of Commerce and, to the best of his knowledge, they have not conducted any elections. They don't have the expertise and he thinks that is the reason there was not a favorable vote on it. When we go forward for a tax vote election he wants to make sure we are going with the very best people possible because he wants to have the best possible percentage of success and that is going to cost some dollars.

Councilmember Franklin said she knows that we have been talking about the Utility User's Tax but are we also talking about moving forward with the TOT.

Finance Director said that at the workshop we did discuss different types of tax and what I had presented did show two different types of tax. At the end of that based upon the revenue generation that we were looking at the possibility of actually not only pursuing one tax measure but two tax measures simultaneously is going to be extremely remote and not recommended. The possibility of going to ballot now and then sometime in the near future going to another ballot is again, not highly recommended based on what a utilities user's tax can generate in revenue versus what are transient occupancy tax base is. The direction was to move forward with the Utility User's Tax so at this juncture that is what staff is doing pursuing the UUT and not the TOT.

Mayor Botts opened to the public for comments.



John McQuown, City Treasurer, 4176 Hillside Drive said in his opinion he thinks that it is going to be a hard sell especially in these economic times. He said he sat in on a couple of the TOT committee meetings and somehow we got side tracked. He thinks that this is something that we could have sold and still thinks that we can sell that. It would be of no reflection on our citizens here; it is a tax on people that come into our community. He doesn't know if we can revisit that but that might be a consideration. He thinks that everyone here is correct whether we didn't agree with the results or whether we didn't think they did a good job but he can remember Charlene Sakurai standing in front of you and some of the questions that were asked just were not germane to the subject. He thinks the citizens did not understand what a TOT tax was and thinks that there might be a possibility to revisit that, although it does not raise the revenue that we had talked about on the utility tax he thinks that that is something that we can pass in our community. He commended Brian and the Finance Director for looking at the expenses that were cut and he does appreciate their efforts but thinks that we can dig a little deeper and maybe find some other savings.

Mayor Pro Tem Hanna said she doesn't know if you are prepared tonight but she thought that it was very helpful to them when we directed staff to go forward and to take the next steps in developing this potential vote on a tax, were the alternatives. If we made all the cuts that you had hoped to make, in terms of the Golden Handshake and the cuts you were just proposing and so forth, that the remaining amounts would require either reducing the police department by half or getting rid of Public Works and Planning. There were just enormous kinds of amounts in the General Fund that she thinks we need to bring up every time that we talk about this so that people hear how drastic it is.

Finance Director said as she touched on briefly what we proposed to address the deficit which is at this point projected to be about \$5.5 million annually was to reduce expenditures by about \$2.9 million dollars and then the other half, a little less than half of that but \$2.5 to \$2.8 million dollars to do that through revenue enhancements. She did give some mathematical examples to put it into perspective and we have already talked about that as Councilmember Hanna said our plan includes holding open 10 positions, furloughing employees which is a 5% reduction, it actually includes the possible discontinuation of the paramedic program and third man staffing on fire engines, Golden Handshake, and this piece that we presented this evening the 5% cuts. Those would all still be necessary even if we were to go forward with some type of tax that would generate the other \$2.5 to \$2.7 million dollars that we need annually. If we were not to go forward with the tax measure \$2.5 - \$2.6 million dollars equals 17 police officers, and that is salary and benefits or what Councilmember Hanna referred to as the elimination of the Public Works Department that portion that is General Fund funded, as well as the Community Development Department the part that is General Fund funded. To put that into perspective of what those remaining dollars mean and they are significant and for us to cut the \$5.5 million out of our existing General Fund is a 30% cut and that is a huge cut to our General Fund.

Mayor Botts said you make an assumption here that the future measure here would be a special election what do you base that on.

Finance Director said it is timing. The next general election for us is in November 2010 so the timing and the necessity to get this moving forward, given the urgency, that if we were to go



forward it would be on a special election. Having said that there are some interim dates where the State or County might hold elections and we might be able to piggyback on one of those interim dates. It would still be special election for us but we would get some economies of scale as far as cost if we could piggyback on some of those. Our consultant has looked into some of those things and she was even looking into doing something through mail and she is researching that as well. So if we choose to go forward she can come back to the Council and let you know the interim dates that are available to us and how we can pursue those.

Mayor Botts asked what the cost is for a special election, excluding the mail. We talk about \$47,500 and \$100,000 set aside but is that excluding the cost of a special election.

Finance Director said we don't know yet and we have contacted the Registrar of Voters. The last election that we had in November 08, which was a general election, our cost were right at \$29,000 dollars for a general elections and we shared that cost across the county. It's all dependent, we are looking at around \$45,000 or \$50,000 dollars possibly but she is not sure and we are trying to get a better handle on that from the Registrar.

Mayor Botts said if the City Council makes findings regarding the City's conditions, the tax can be voted on as a general tax i.e. 50% and can you elaborate on that. We have talked about if it's specific it would take a two-thirds vote versus a non-specific but this seems to be a new thing you've added.

Finance Director said generally if you have a special tax, which is specific for a specific purpose, like if we said our tax is going to go forward for police and fire that would require a two thirds vote. We could have a general tax and that would be on a general election when members of the legislative body, in our case Council Members are also on the ballot that is when we would have the opportunity through the normal course of things to put a general tax on the ballot. In talking with our consultant she had indicated that there are laws that allow you if you make certain fiscal findings regarding fiscal emergencies and fiscal urgencies that you can actually have a general tax on a special election and the difference is a majority 50% plus one as far as the votes. The proceeds do not have to be earmarked for a specific purpose such as public safety they can go as general revenue into the General Fund and the Council has those monies as General Fund monies, a general tax and yes, the vote is different and the timing is different but generally like she said the general tax would need to go on the general election when we had council members up for re-election. But there is apparently an avenue that we can take if we choose to go down that road and make the appropriate findings and still have a general tax.

Councilmember Franklin said when you talked about Utility Tax which we talked about all the utilities can you give any range as to what that really means in terms of actual dollars to the regular residents.

Finance Director said we haven't actually gotten that far into the analysis. We have run some general analysis based upon revenue categories. For example, she is anticipating that we can generate just on our City owned utilities up to approximately \$2 million dollars if not more depending on how we structure the tax. We have also talked about including the non-city utilities such as gas, cable, telephones, cell phones and spreading it across a much broader base and if we

did that, we could lower the percentage and we can generate the revenue that we need but more analysis needs to go into the actual revenue base to see what percentages we can set this at and then we would apply those percentages to a typical utility bill and then we could tell you that the typical impact on a resident would be "x" dollars per month. But as far as like the city based utilities we have no way of knowing which residents have cell phones or this or that but we could do more of a detailed analysis on our utilities.

Councilmember Franklin said when you are talking about the city utilities for the \$2 million do you know approximately what percent you are talking about like 2% or 5%.

Finance Director said she did a range that started at a flat 4% and then she did a tiered 4% residential, 6% and 6% non-residential and did some flat rates in between. That 2 million is an average so she would say that just on our utilities it is probably about a 5% across the board

Mayor Botts said he thought we gave direction that said this is the direction we would like to see you go as far as the percentage, as far as specific, to put a sunset in for about 5 years and is that correct.

Finance Director said it was her recollection that they did not actually talk about specific percentages at this point. We talked about moving forward, spreading it across the broader base going outside the city owned utilities and we did speak about a sunset. And that would come once we start with public education and when we start getting ballot ready and how the ballot measure would be structured. But right now she is actually working with Fred Mason in the Electric Department and he is working with her to gather a lot of the data and they are working on the analysis to figure out what percentages work to generate the revenue that we would need.

Councilmember Robinson said that we have a lot of unknowns and some rate structure analyses that are coming in soon from Jim Earhart's department.

Mr. Earhart said yes we do have some rate information coming forward but again, with that we will not be able to shake that completely out to get some final definite numbers until we know how this whole budget picture plays out. So our rates are still pending some more information yet to be determined by the Council.

Councilmember Robinson said what he is trying to get at is if we table this until we get some of these answers shaken out as far as how the budget is shaping up, the furloughs, all the meet and confers and all that stuff is pretty much shaken out and we know what we really have to do is the hard number would that be the time to come back and say we got to go for either the TOT or the user's tax and your rate stability. We are going to increase the rates to all the citizens for water, electric, sewer, and refuse at some point in time, probably on the next year and we don't know what the effect is yet. So if we table this for a month or so till we shake this stuff out, is that stopping the process.

Finance Director said in her opinion and recommendation, yes this is a critical piece of the puzzle that she needs Council direction on where to go with that if we are not going to pursue this tax measure or any tax measure. We need to switch gears quickly and look at where we can



reduce the General Fund, in particular, by another \$2.5 to \$3 million dollars and that is going to be huge but we are looking for Council direction on how you like us to proceed going forward to address this but she thinks this is a critical piece.

Mayor Botts said he shares his colleagues concern but he is not suggesting that we not move forward but that if we are coming in with significant increases to make those departments operate and break even or profitable then add on top of it a utility, that is a piece of information that could be helpful.

Mayor Pro Tem Hanna said it is important to understand that the hotel bed tax at one point it was said \$500,000 and probably given the economy we would be lucky to get an additional \$250,000 or \$300,000 dollars and it doesn't begin to get us where we need to go. She thinks that we need to go forward on this. We can stop it just as we did before but this is not something that we can play with any longer; we have to go forward.

Councilmember Machisic said this survey was taken over a year ago and he agrees with John McQuown that times have changed in the last year and they have gotten more difficult and unemployment has jumped up. Also tied in with that we are talking about a need for a water and electricity rate increase and as you all know there is a high rate of delinquency right now with electricity and water. So if we go ahead and increase those rates and then we add a utility tax on top, he would be very concerned. One of the things he would like to remind the Council although, Councilmember Robinson was not on the Council at that time, is that we argued about taxes and the different types of taxes and the whole litany was lined up for us and we talked about it for several weeks and we eliminated every single tax except the TOT and we had unanimous opinion favoring that. When we talked about utility tax we bypassed it. When we talked about sales tax we couldn't get unanimous support from the Council Members. And remember that is when the advisor said the tax has to be unanimous among all five Council Members otherwise it is probably doomed for defeat and he has some concerns about that. Our General Fund is in trouble and he certainly doesn't want our water and electricity to get in trouble. So those rates as Councilmember Robinson mentioned need to be adjusted. How or how much he doesn't know. But we supported a TOT after we discussed it many times.

Mayor Botts said that is true but at our last meeting when staff brought this we voted 5/0 and the consensus was to ask staff to move forward with the utility tax. Now we can change our mind tonight or some other time but you ask for that and we said yes, to move forward. Finance Director said that was correct.

There was some further Council and staff discussion in regards to rate increases and the need for more information to come forward in regards to studies on water, wastewater and electricity.

**Motion Hanna that the City Council of the City of Banning award a professional services contract in the amount of \$48, 000 plus expenses to Tramutola for public information and feasibility services related to a potential city utility users tax ballot measure and The City Council authorize the City Manager to reallocate existing appropriations within the General fund to a maximum of \$100,000 to fund the contract and other related expenses.**

Mayor Botts said hearing no second, the motion dies.

Councilmember Robinson asked the City Attorney is there any problem with tabling this issue for 30 days.

City Attorney said you can legally do that, it's just the issues that Bonnie was raising in terms of moving forward with the process of trying to get in place and go through the studies and so forth. You certainly can continue it and if you are uncomfortable with acting, what you may need to do is try and direct what additional information you need. There is no problem continuing it but you are delaying the schedule of getting a consultant onboard. You can authorize the contract but not have staff issue a notice to proceed in terms of providing services until you have gotten to some point where you are ready to have staff do that or give the City Manager some authority in terms of the point and time at which they would actually do some of this. Another possibility is maybe there is a certain number of preliminary things that they can do that is not spending a significant amount of money but they are kind of getting rolling and so that some of the things they need to do to get ready can occur while you are continuing with this process of trying to gather information so that you feel comfortable that you are ready to dedicate yourself to going down this track.

Councilmember Robinson said that the City Manager has \$47,500 still in his budget allocated to this, if he understands that right. Why can't that money be used to do some preliminary work on a scaled down contractor or whatever you want to call it that already knows about the City of Banning and how to do things here.

City Attorney said the City Manager only has authority to enter into a contract for up to \$25,000 dollars so even if he has money in the budget he has limitation in terms of awarding a contract. Now you could award a contract and you could in awarding that contract tell the City Manager to start doing some preliminary things not to exceed \$10,000 dollars until we get to this point so you could actually award the contract but limit the amount of money that is spent under that contract until you get to some point where you are far enough down the road that some of the concerns that you are raising has been alleviated.

Mayor Botts said that is a path that he was trying to look for earlier, however he would ask Councilmember Robinson if we wait, what are we waiting for.

Councilmember Robinson said he has the money allocated already for that and he could spend up to \$25,000 dollars already researching and you could ask them the question do they feel that we should go with the TOT or should we go with the user's tax and give us some feed back if it is really a good idea and not go back to that TOT and go to the User's Tax this time on their opinion. Any quick survey they can do in this area would be good because we've got new hotels and this is brand new to this situation here in town and they are starting to fill up and we got more hotels coming online.

City Attorney said there is no doubt that a TOT is easier to pass and presents fewer political problems. But the issue is that it doesn't raise anything like the amount of money that you would get out of a utility tax when you just think of the tax base and think how many hotels you



have versus all the people that pay utilities you can see that the revenue raising potential utility tax is much greater. So although that is clear that it's a larger political hurdle the problem is that the utility tax in and of itself is not going to solve the problem and if you do both of them at the same time, you actually probably adversely effect the ability to get either one of them adopted.

Councilmember Robinson said he doesn't want to do both of them but we don't really know where we stand yet as far as Golden Handshakes and we don't have the survey done yet. There is a lot of information that we don't have yet and if we just delay this 30 days and go ahead and award a contract that's fine with him with the proviso that it stays at \$10,000 or whatever and give us some preliminary information on this.

Finance Director said this may be a possible solution for the interim period. The proposal that they have submitted for this is actually split into to phases. The first phase is called the Public Information and Feasibility Phase and phase two is the Ballot Measure, Planning and Preparation phase. So in Phase I which is \$32,000 dollars plus some travel expenses they would propose to start the public education process, move through that process and at the end of that make a survey at that point to recommend to us whether or not it is even feasible to go forward with the ballot measure. So perhaps we could approve Phase I which is \$32,000 plus expenses which is within the existing appropriation in the City Manager's budget and at that point we can keep Council informed. We can give you progress reports along the way however, you would like this report back to you as far as progress but certainly at the conclusion of Phase I regardless we would be back in front of the City Council to say here is some results, here is where we are at, here is what we asked the community and here is what they said.

Mayor Pro Tem Hanna said given two possibilities one is that the survey would come back negative that there is no way that the voters are going to be convinced to pass this utility tax and she would focus it on a utility tax alone because the hotel bed tax cannot begin to deal with this issue. She would also recommend that the staff prepare a budget that would cut \$2.5 million additionally out of the budget. She thinks that we have to be realistic that there is reluctance on the part of the Council at this point given the information available to proceed with it and that the survey might come back negative. So she thinks that it would be irresponsible for them not to direct staff to prepare that possibility in the budget.

Mayor Botts said he sort of concurs with that. When we started this whole process we did say give us a balanced budget and you've done that with taxation enhancement. But he would agree that if we get down to this point and he would support the first phase calling it Phase I for \$32,000 and it would take us to a point where we then say go or no go based upon significant data from them saying no, forget it or yes, here is where the numbers are. He said he could support that and I would entertain a motion.

**Motion Franklin/Robinson to go with Phase I in the amount of \$32,000 plus expenses.**

City Attorney said to clarify are you approving the whole contract amount. He said first of all he does think that this proposal in terms of a contract needs to be broken down a little more detailed. For example, the \$32,000, how much of that is for the polling versus the educational aspect. What he thinks we can do in finalizing that contract is provide that additional detail and



some time frames to do those various tasks and the Council would basically be authorizing the contracts in a form approved by the City Attorney and we would let you see that schedule and we can identify points at which there is a report back to the Council on some of that so you kind of stay in touch with that. You could authorize the contract in the full amount but basically the first phase budget is \$32,000 and we will be back reporting to you in accordance with the schedule that we put in there well before the \$32,000 is spent.

Finance Director said this is Tramutola's proposal. We are using one of our standard contracts and we are working process with them right now. We are laying out the time lines and they attempted to get that done before this meeting and they didn't have all of those things worked out but certainly like City Attorney said the contract will have time lines, deliverables and all of those things and will be set out in more details than this proposal is. So we are heading in that direction and it will be very definitive.

Mayor Botts asked what happens when we get to \$32,000 into this, the public education and the survey and he would expect the Council to say here is what we want for the \$32,000 and we get to the point where we say this it's a no go, we have already authorized \$100,000 or plus and we have to go back and say we have changed our minds.

City Attorney said the contract will provide for that whole program and for each step you have to approve that step before they can go forward to the next step. It is not like you get to \$32,000 and you say no, we don't want to go forward and now you own them \$100,000. In fact, what he is saying is that they will put the schedule together so that well before you have spent \$32,000 we will be back with more detail. He doesn't think that we would even initiate the polling without coming back to make sure that you have seen that schedule in the contract and that that schedule ties into the comfort level on your budget process. What he is suggesting is that you approve that contract in a form approved by the City Attorney but he would like to work with the Finance Director and Nicole to make sure we have that schedule and he is not intending that you would basically not see this again until you have spent the \$32,000. He is sure that this can be brought back to the Council before that amount of money has been spent. They will break the schedule down in a little bit more detail on that \$32,000 and they will be sure at some reasonable point in the middle of all to make sure the Council ratifies that whole timing and that it ties in to where you are in your budget deliberations and that you are comfortable with that.

Finance Director said before the consultant can proceed at all they will have a contract in place that will include the detail that the City Attorney is referring to that will include the timetable and deliverables and those types of things. If you approve this tonight, it can come back to the Council by way of information or it can be agenized for your information. But before the consultant will do any work on our behalf there will be a contract in place.

Mayor Pro Tem Hanna said the proposed contract was only for \$48,000 plus expenses for Tramutola. The remainder of that \$100,000 is for other related expenses. Her question is whether you want to approve the first portion, \$48,000 plus expenses and to reallocate something less than the \$100,000 at this time to fund the contract?

City Attorney said he thinks that was the recommendation in the staff report with regard to the other \$100,000 and when we are coming back we can clarify that for you. He thinks that we can just go with the \$48,000 for tonight.

Mayor Botts said we have a motion and a second on that amount of \$48,000. Councilmember Franklin said she would amend her motion to what the City Attorney just said. The motion was seconded by Councilmember Robinson.

Dr. John McQuown said in this polling data the money that we are going to spend he thinks the critical issue here is that we get the polling data that says yes, lets move forward or no, its never going to pass. Also the in regards to sun setting the automatic termination of these fees should be included in the polling data. You mentioned 5 years but 2 years sticks in his mind but he thinks this should be in the questions that go out that they understand that after a period of 2 to 5 years this will be terminated.

**Motion carried, all in favor.**

Meeting recessed at 9:12 p.m. and reconvened at 9:22 p.m.

4. City Council Donation and Sponsorship Policy for Community Events and Programs  
(Staff Report - Brian Nakamura, City Manager)

City Manager said before you is a recommendation to approve or amend, according a recommendation that staff put together based on the comments received by the City Council, related to donations and sponsorships. As you know this is a critical component of our community and the Council is aware of the importance of having community events and supporting those events. He put together what came out of the budget committee recommendations and also out of the City Council communications to him related to what the thoughts were for developing an effective policy. He went over the criteria needed which was listed in the staff report. He said in the past we have budgeted approximately \$20,000 for this and he has heard the City Council say that they would like to reduce the budget for the fiscal year. We recommend cutting the budget in half and to date the City has spent about \$300,000 towards donations out of this contingency fund. As you may be aware we have had two presentations already requesting funds for programs which he has found to be a tremendous benefit to the community and one is the Legacy Church Easter Event and the other is the Relay for Life. Subsequent to this staff report he received a call from the Chamber of Commerce and they submitted documentation related to the annual golf tournament and they were seeking \$2,500 dollars. Basically all three of those events when looked at, based on that criteria, would qualify for funding. At this time he would recommend that those events be supported to some extent, the Legacy Church Easter Event for \$1,000, Relay for Life for \$1,000, and the Chamber of Commerce for \$2,500. That again, is up to the Council based on the criteria if you would like to move forward or make amendments accordingly and we'll take those into consideration.

Councilmember Machisic said one of the things that he thinks is important is that anyone who is requesting money of the City has to put it in writing. The other thing is to put a maximum award out because if we are going to cut this budget we ought to put a cap on it as to how much you



donate to each individual organization. Not that you have to give them the maximum but at least list it. He thinks that it's important that you announce the policy once it is adopted to the organizations that might be seeking it and at some point in time when we run out of the \$10,000, if that is the maximum allocation to the fund, he thinks that it needs to be announced to the various organizations that we have now spent our maximum amount because it is first come first serve.

Mayor Pro Tem Hanna said the list of information that you would like each individual or group to submit is not really a criteria; its information. It does not say how you are going to use that information. It may be obvious to you but it is not necessarily inherent in the actual data that they would provide. In terms of examples of the most recent requests, she doesn't see how \$2,500 dollars to the Chamber would meet those implied criteria in terms of how many City of Banning residents shall be impacted by or affected by the program assuming the more people the better. What benefits shall be received by the City, she guesses that is sponsorship benefits that you are thinking of there. The financial status of the individual of the organization what are you looking for in terms of financial status.

City Manager said essentially, his understanding of that is what is the viability of the organization. It ties in to the question of received approvals of responses within the last 12 to 24 months. For example, the Relay for Life we have supported for the past several years and the same thing with the Legacy Church Easter Event. Those types of consistencies where it is not a one time thing. We had a little league baseball that came in for a one-time donation and that may not be consistent with policy/criteria adopted here so therefore it would not be as a qualifier now for funding but the Chamber of Commerce has given its partnership with the City as an organization that would probably consistently be around in the future.

Mayor Pro Tem Hanna said but it is not in terms of financial status you weren't thinking of favoring say low income residents versus others. City Manager said no, that was not part of the criteria.

Councilmember Franklin said when we talked about doing this criteria she agrees with Councilmember Machisic that we did talk about this being in writing. But she was wondering when you are talking about the amount that you want to give to different organizations are we looking at the list of all the organizations that have been funded like for the last 12 months because your recommendation now is for half of the \$10,000 just about and that is only three organizations but she would like know have we looked to see how many organizations did we actually fund last year. Is this recommendation for the fiscal year or the calendar year?

City Manager said it is for the fiscal year. Again it is a difficult situation because you have many groups that he thinks the Council believes are worthwhile. If we adopt the first come first serve policy, we would move forward from there. If we put a cap, that would be fine. The concerns we've heard is that if we make donations to these organizations, are they worthwhile. For example, if an organization request \$1,000 and we say give \$250.00 he is not going to discount the fact that \$250 is not meaningful, but what is the overall impact to the program and that is one of the other criteria that we would have to look at.

There was further Council discussion in regards to the first come, first served issue.

Councilmember Franklin said that we are talking about two different things. One is recommendations regarding which organizations to give to and the other is the criteria that we are asking them to submit. She would like the Council to focus on what kind of things we want to make sure we have in terms of information from the organization first and then agree on that and then maybe move into yes or no on some of the requests that have been made so far if they have been made in writing.

Mayor Botts asked what has been made in writing.

City Manager said the ones in writing were the Chamber of Commerce and an email from Legacy Christian Center.

Mayor Botts clarified that we agree that it has to be made in writing and it needs to be announced. If it ends up at budget time, then we would announce that if anyone is interested in advance tell us what your request is and put that request in and ultimately we would make that choice. **There was consensus for a cap to be put on this for the remainder of the year and the fiscal year and the cap would be in the amount of \$1,000.**

City Attorney asked if the Council wanted to pick a date for the announcements so that it is an annual thing. **The consensus of the Council was for March 15<sup>th</sup>. The Council also agreed that it should be announced on Channel 10 and on the Chamber of Commerce website.**

Mayor Botts opened the item for public comments.

Don Smith said we have heard that there is a \$2.5 million dollar short fund so he knows that \$10,000 is a small number and is a good place to start and he is not saying get rid of the donations. He doesn't understand why these donations are not being paid for sponsorship out of the utility accounts like Verizon, Edison and IID and every other utility does or out of the tax increment money which a certain percentage of the tax increment money can go to this type of endeavors as well and shift this budget completely out of the General Fund. You might even have more money and be able to pay for it out of the other funds.

Bill Dickson, 5700 W. Wilson said he certainly agrees that there is a financial problem. The only thing that he questions is the Chamber of Commerce. That is a fundraiser and he thinks that we are here to help people put on the existing program, not to go out and raise money. He thinks that should be on the extreme bottom of the list

**Mayor Botts said he would entertain a motion on the issue of the recommendations for guidelines as amended to put it in writing, a cap of \$1,000 and proper announcement at budget time.**

**Motion Franklin/Robinson to approve. Motion carried, all in favor.**



Mayor Botts said there are three immediate requests that City Manager has mentioned and he asked if the City Manager wanted direction on that.

City Manager said he would be glad to do additional research for the Council if they wish. He knows that there is some immediate attention on the part of the Chamber of Commerce and some others for planning purposes.

There was some Council discussion in regards to the Chamber of Commerce golf tournament request for support and support of the Chamber of Commerce in general.

**Motion Hanna/Machisic to support the Relay for Life in the amount of \$1,000. Motion carried, all in favor.**

**Motion Robinson/Hanna to support the Christian Legacy Easter Event in the amount of \$1,000. Motion carried, all in favor.**

**Motion Botts/Robinson to support the Banning Chamber of Commerce Golf Tournament. Motion died with Councilmembers Botts and Robinson voting yes, and Councilmembers Hanna, Franklin and Machisic voting no.**

#### 4. B. Donation and Sponsorship of City of Banning Disaster Preparedness Expo

City Manager said this is a recommendation to sponsor the City of Banning Disaster Preparedness Expo. The expenditure would be in an amount of \$1,904.65. This is a City program that benefits the community that we have held before and it is a great opportunity to understand more on how to be prepared for a disaster in your community. Clearly it is for the residents and the citizens of Banning and staff would recommend that the City Council approve the \$1,904.65 for the Banning Disaster Preparedness Expo to be held in April 2009 and this would be from the City's Public Benefit Fund.

Councilmember Franklin said the actual cost of the expo runs about \$8,000 dollars. In the past the City has helped with some of the expenses such as paying for t-shirts and other marketing expenses that they have had. This year they are trying to be as streamlined as possible on it. The money that is requested is actually to pay for the booths because we do set up the inside of the Community Center to have it as professional looking as possible which has actually helped to have some of the vendors come back because they say this is one of the most professional expos that they have actually participated in. This is really for the benefit of all residents across the city. This is something that is actually organized by one city staff and the rest are all volunteers. So the effort is big and put forth to cut cost as much as possible but to still put on a professional event so that people will want to come and get something out of it.

Councilmember Robinson asked if there was any way that water conservation could be included with disaster preparedness or a similar conference to that and is there was room to do that.

Councilmember Franklin said there is part of the City staff that will be doing some issues on water conservation. In fact the packet that we had last year included water conservation

information that was handed out but that is part of it as well as wastewater, electric, and code enforcement.

Mr. Earhart said that they use this opportunity from the utilities to use a bit of the Public Benefit Funds and that is where the \$1,900 dollars comes from and this will be their third year participating from the utilities in the Disaster Expo. It gives us the opportunity to give out a lot of our conservation giveaways of this nature to the people.

**Motion Machisic/Hanna to authorize the expenditure of \$1,904.65 for the City of Banning Disaster Preparedness Expo to be held in April 2009. Motion carried, with Councilmember Franklin abstaining because she is on the Disaster Preparedness Committee.**

4. C. Approve the Amendment to the Professional Agreement with Holt Architects, Inc. for Construction Phase Services related to Project No. 2006-07, Construction of the New Banning Police Station.  
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet. He said the recommendation is for the construction phase services for \$188,640.00 and authorizing staff to utilize the funds appropriated out of the contingency budget which has already been appropriated. He said in regards to background per the California Codes, Essential Services Facility and Emergency Operations Center falls under Chapter 2 of the Building Code. Buildings like this are not constructed very often in within communities. There are actually a couple of buildings within this community, one is the hospital and the City of Banning Police department essential services facility and operations center. They are under a different scrutiny as it relates to the building code and when everything else is falling down these buildings should still stand. In 2004, the City entered into agreement with Holt Architect to design the first phase of it that was 42,000 square feet. We took the building out to bid and it came back extremely too high and staff took it back to Council and the Council said cut it back and do a redesign. It was reduced based on the needs assessment study that was done by then Chief Brooks, from 30,000 sq ft. The Council and the community asked how did they come up with this number. They did a needs assessment that says that when the city reaches a certain level of population this building would accommodate for the growth 25-30 years out and at that time there was a lot of development. During the transition between the 30,000 sq. ft. and building it now there was a desire to have a constructability review because the first project failed to be too costly and too large of a project so we hired a construction management firm CalK-12. They were kind of the oversight committee for the Council through the City not being biased of what he may want out there versus what the architect may design. During that portion we hired CalK-12 and he is happy to tell you that today we are on time and at budget. However one of the goals of June 24, 2008 was that the Council had asked us not to dip into the contingency money. He said he was remiss in not bringing forward the essential services certification of the building with the architect. The State Department of Architecture has to sign off on this building for it to become or be label certified essential services facility and an emergency operations center. The only person that can sign off on that are the disciplines that designed that building so that the contractor that is building it built it to the criteria to the Department of Architecture so basically we still have a



contract out there with Holt Architect to sign off on that building. The bottom line is that he missed it, and he is here now asking the Council for the \$188,640 dollars from the contingency money to certify the building.

Councilmember Franklin said when you say this is an emergency operations center what does that mean as opposed to it being a police department building.

Mr. Burk said during the design phase of the building the community got to come out and they said that they would like to have a community room, an information room during a disaster. It is a community room as it relates to emergency operations interacting with Passcom could be one of the ideas and interacting with fire department. Our current Emergency Operations Center (EOC) is in the fire department building on Mountain Ave. is somewhat tight in space. This is a lot bigger space and all your dispatch and communications would go through there. In the dispatch area currently this facility would not only accommodate the City of Banning but it would accommodate multiple agencies as it relates to the City of Beaumont and their 911 systems, City of San Jacinto, County of Riverside, and at times the State Highway Patrol. It is kind of more a regionally based operations center and during a catastrophe like that he thinks you would want to have that type of communication.

Councilmember Franklin said if all those things that you said can be done in the building as it is being built, what different does it make whether or not it is certified.

Mr. Burk said that during the course of construction to build that building at that level of essential services to the interpretation of those plans you need those disciplines to sign off that that happened and that is what was missed in the original contract and he explained. Holt Architect is assuming the liability of this building and we would be inheriting that liability if we let them go.

There was some council discussion in regards to this issue and there was some further discussion in regards to the furniture for the police station building.

Councilmember Robinson said he understands how these things works and as he understands you did not start the project so when you start a project and you carry it all the way through that is totally different than starting a project, changing a project, changing the leadership of the project things are going to fall between the cracks and this is basically what has happened here as he understands it. There is no way that we could know when you change the scope of the project and change the guy in charge of the project things are going to fall through, and this fell through and it is not a big deal but it may lead us to having additional federal or state money because its now built to a certified code. If it fell between the crack because we can't keep all of our ducks in a row and keep the same man on the same job for eight years so be it, we are going to have to pay for it and it is worth it.

Mayor Pro Tem Hanna said the report says out of the contingency amount is \$890,000 and is that part of the \$14 million so this \$188,640 will reduce that amount. It seems to her that the furniture should be reduced out of the contingency also. Maybe we can get a reporting at some point about that.

Mr. Burk said it was his interpretation that it was. He is pretty sure that it was but he can check with the Finance Director. Mr. Burk explained why the furniture was bought at that time to save 15 % on the markup which is about \$150,000 dollars.

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

**Motion Robinson/Machisic to approve an Amendment to the Professional Services Agreement with Holt Architects, Inc. for Construction Phase Services, in the amount not to exceed \$188,640, and authorize staff to utilize funds appropriated for the project contingency budget. Motion carried, all in favor.**

#### CLOSED SESSION

City Attorney said that the Council will meet in closed session pursuant to the provision of Government Code Section 54956.9(a) to confer with legal counsel with regards to James C. Smith et al v. Barbara Hanna – Superior Court Case No. RIC 474602; pursuant to Government Code Section 54957.6 conference with Labor Negotiations with our bargaining units; and pursuant to Government Code Section 54957 with regard to City Manager evaluation personnel matters.

**Motion Machisic/Robinson to continue the Council Meeting past the 10:00 curfew to go into closed session. Motion carried, all in favor.**

Meeting went into closed session at 10:15 p.m. and returned to regular session at 11:50 p.m. with no reportable action.

#### ADJOURNMENT

By common consent the meeting adjourned at 11:50 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.**



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** April 28, 2009

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** Resolution No. 2009-31, "Approving Change Order No. 1 to the Construction Contract Awarded to Whitmore Construction, Inc. for Project No. 2008-08, 'Phase II Improvements to the Banning Community Center Gym'"

**RECOMMENDATION:** The City Council adopt Resolution No. 2009-31:

- I. Approving Change Order No.1 to the Construction Contract awarded to Whitmore Construction, Inc. for Project No. 2008-08, "Phase II Improvements to the Banning Community Center Gym."
- II. Authorizing the Director of Finance to make the necessary budget appropriations from the Capital Expenditures Building Improvement Fund to Account No. 470-4000-413.90-15.

**JUSTIFICATION:** Due to unforeseen conditions, the approval of this change order is necessary in order to complete Project No. 2008-08, "Phase II Improvements to the Banning Community Center Gym."

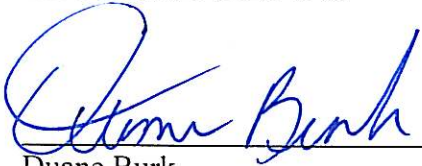
**BACKGROUND:** On December 10, 2008 the City Council adopted Resolution No. 2008-122, "Awarding the Construction Contract for Project No. 2008-08, "Phase II Improvements to the Banning Community Center Gym."

The scope of work under this project includes the renovation of the gymnasium at the existing Community Center building. The principal items of work include: framing of the walls and installing insulation, enclosing wall framing at top portion of existing walls with GWB (sheetrock), and upgrading electrical outlets, installing new hi-low drinking fountain, painting the interior walls and exposed piping of the gymnasium, replacing the gym carpeting with a new "Tile Flex" sports flooring, installing floor sockets for new volleyball net, providing two exit sign/emergency lights, replacing subpanel and installing new 600 amp NEMA panel, installing new 2" conduits with sweeps, installing new electrical conduits and a gas line through the roof, replacing existing lights with impact resistant ceiling mounted 2' by 4' fluorescents, and other miscellaneous work necessary for a complete and finished project.

In order to complete the project, Change Order No.1 in the amount of \$18,095.90, as shown as attached Exhibit "A", is necessary. This work should be done now at a reasonable price from the contractor and prior to completion of the job. The extra work includes additional electrical work, replacement of the old steel doors and hardware with steel craft 20 gauge doors, at the main entrance to the gym, and replacement of eight skylights with new aluminum curb dual pane clear skylights.

**FISCAL DATA:** The original contract amount for this project was \$153,297.00. The proposed Change Order No.1 will total \$18,095.90, an increase of approximately 11.8% of the original contract amount. If approved, the new contract amount will be \$171,392.90. An appropriation from the Capital Expenditures Building Improvement Fund to Account No. 470-4000-413.90-15 in the amount of \$18,095.90 is necessary to cover expenses. The estimated balance remaining for Community Center renovations is \$19,457.00.

**RECOMMENDED BY:**

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

**REVIEWED BY:**

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

**APPROVED BY:**

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



## **RESOLUTION NO. 2009-31**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING CHANGE ORDER NO. 1 TO THE CONSTRUCTION CONTRACT AWARDED TO WHITMORE CONSTRUCTION, INC. FOR PROJECT NO. 2008-08, "PHASE II IMPROVEMENTS TO THE BANNING COMMUNITY CENTER GYM"**

**WHEREAS**, on December 10, 2008 the City Council Approved Resolution No. 2008-122, "Awarding the Construction Contract for Project No. 2008-08, 'Phase II Improvements to the Banning Community Center Gym'" to Whitmore Construction, Inc. of Banning, California; and

**WHEREAS**, due to unforeseen conditions it is necessary to issue Change Order No. 1 in order to make adjustments to the contract allowing for the additional electrical work, replacement of old doors with steel craft 20 gauge doors and replacement of the eight skylights with new aluminum curb dual pane clear skylights; and

**WHEREAS**, the original contract amount for this project was \$153,297.00 and if approved, the change order will total \$18,095.90 and the new contract amount will be \$171,392.90.

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

- Section I.** Approve Change Order No. 1 to the Construction Contract awarded to Whitmore Construction, Inc., for Project No. 2008-08, "Phase II Improvements to the Banning Community Center Gym."
- Section II.** Authorize the Director of Finance to make the necessary budget adjustments and appropriation of funds to Account No. 470-4000-413.90-15 in the amount of \$18,095.90.
- Section III.** Authorize the Director of Public Works to approve and sign said Change Order No. 1 prepared by staff and accepted by Whitmore Construction, Inc. and attached hereto as Exhibit "A". This authorization will be rescinded if the Change Order is not executed by both parties within thirty (30) day of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 28th day of April, 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. 2009-31 was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 28th day of April, 2009.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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



**EXHIBIT “A”**

**CHANGE ORDER NO. 1**

**PROJECT NO. 2008-08, “PHASE II IMPROVEMENTS TO THE BANNING COMMUNITY  
CENTER GYM”**

SECTION 1.11  
OF  
PROCEDURAL DOCUMENTS

CHANGE ORDER

Order No. 1

Date April 14, 2009

Agreement Date December 10, 2008

Sheet 1 of 2

Owner: CITY OF BANNING

Project: **PROJECT NO. 2008-08, "PHASE 2 IMPROVEMENTS TO THE BANNING  
COMMUNITY CENTER GYM"**

Contractor: Whitmore Construction, Inc.

The following changes are hereby made to the Contract Documents:

1. The installation of two 3/4" raceway in column for future thermostat wiring
2. The installation of additional receptacles along east wall of gym
3. The installation of two switches in the front office for restroom and hallway lighting currently operated from the circuit breakers in the gym office
4. The drywall patching and paint of new holes for electrical
5. The removal of the existing pair of old steel doors and hardware on the west side of the community center gym.
6. The installation of a new pair of Steelcraft 20 gauge doors with a 6" x 30" fire safety rated glass window in each door.
7. The installation of 99 Series panic hardware and lever handle with new lock, door coordinator, three pairs of ball bearing hinges, two door closers, weatherstripping and 5 1/2" x 6' long aluminum handicapped threshold.
8. The removal of the eight existing broken skylight panels at the Banning Community Center Gym.
9. The furnish and installation of eight new aluminum curb dual pane clear skylights (48" x 96").



### JUSTIFICATIONS:

The work performed under this Change Order was not listed in the original scope of work and is therefore justified. Change Order No.1 was approved under Resolution No. 2009-31, "Approving Change Order No.1 to the Construction Contract Awarded to Whitmore Construction, Inc. for Project No. 2008-08 Phase II Improvements to the Community Center Gym " on April 28, 2009.

### CHANGE TO CONTRACT PRICE

|  |                      |
|--|----------------------|
| Original Contract Price  | \$ <u>153,297.00</u> |
| Current Contract Price adjusted by previous<br>Change Order(s)             | \$ <u>0</u>          |
| Contract Price due to this Change Order will<br>be (increased) (decreased) | \$ <u>18,095.90</u>  |
| New Contract Price including this Change Order                             | \$ <u>171,392.90</u> |

### CHANGE TO CONTRACT TIME

|   |                                  |
|---|----------------------------------|
| Contract Time will be (increased) (decreased) | <u>0</u><br>(Working Days)       |
| Date for Completion of all Work               | <u>August 18, 2009</u><br>(Date) |

### APPROVALS REQUIRED

To be effective, this order must be approved by the Owner, or as may otherwise be required by the Supplemental General Conditions.

|  |                      |
|--|----------------------|
| Requested by: <u>Steve D. Piche</u>              | Date: <u>4/14/09</u> |
| Recommended by: <u>Ann Marie Jacinto</u>         | Date: <u>4/14/09</u> |
| Accepted By: <u>Meg Whitmore</u><br>(Contractor) | Date: <u>4-15-09</u> |
| Approved by: _____<br>(Director of Public Works) | Date: _____          |

**CITY COUNCIL  
CONSENT CALENDAR**

**DATE:** April 28, 2009

**TO:** City Council

**FROM:** Kim Clinton, Senior Planner

**SUBJECT:** Resolution No. 2009-32, temporarily delaying the collection of the City's residential development impact fees.

**RECOMMENDATION:** That the Council adopt Resolution No. 2009-32, temporarily deferring the collection of certain residential development fees until the Certificate of Occupancy (C of O) permits are issued.

**JUSTIFICATION:** The City has the ability to establish fees and collection protocols for such fees.

**BACKGROUND:**

Last year the Riverside chapter of the Building Industry Association (BIA) requested that the City assist the home builders during the challenging market conditions by deferring the collection of fees until the home is ready to be occupied (Certificate of Occupancy). In response to this request, the City passed Resolution 2008-32 in March of 2008 allowing for the deferral for one year. The deferral period expired on March 5, 2009. Staff is recommending a new resolution be approved to extend the residential fee deferral for another year.

Attached to this report is Resolution No. 2009-32. This would defer the collection of Impact fees until the C of O until April 28, 2010. Impact fees are collected by Banning to pay for such things as roadway improvements, including signals. The following is a list of the Banning Impact Fees:

- 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




This resolution would improve the home builders' cash flow by allowing the flexibility of paying fees at the end of the building process. Developers would still have the option of paying fees when the building permit is issued.

Cities such as Hemet, San Jacinto, Moreno Valley, Corona, Riverside, Perris, Lake Elsinore and Riverside County have agreed to similar fee deferrals. Please note that Banning has also deferred the collection of fees on a case-by-case basis, including deferring fees beyond the C of O phase. This Resolution would affirm the Council's commitment to that policy.

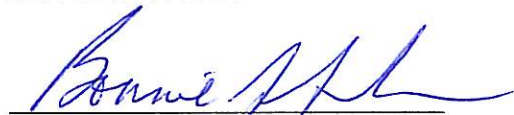
**FISCAL DATA:** None, except that the collection of fees would be deferred.

RECOMMENDED BY:



Kim Clinton  
Senior Planner

REVIEWED BY:



Bonnie Johnson  
Finance Director

APPROVED BY:



Brian Nakamura  
City Manager

Exhibits:

1. Resolution No. 2009-32

*DEFERRAL OF  
RESIDENTIAL  
DEVELOPMENT  
IMPACT FEES*

*RESOLUTION  
NO. 2009-32*

**EXHIBIT “1”**



**RESOLUTION NO. 2009-32**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA, TEMPORARILY DELAYING THE  
COLLECTION OF THE CITY'S RESIDENTIAL  
DEVELOPMENT IMPACT FEES UNTIL CERTIFICATE OF  
OCCUPANCY**

**WHEREAS**, due to the effects of the current housing conditions and other economic factors, the Riverside Chapter of the Building Industry Association (BIA) has asked that collection of residential development impact fees be delayed until certificate of occupancy and

**WHEREAS**, the BIA has made verbal representations to City staff that other cities and counties that have been contacted by them with a similar request to defer collection of the development impact fees until certificate of occupancy have done so, and

**WHEREAS**, given the need to promote economic development during the slowdown in the current housing market, the City Council hereby finds the temporary deferral of the collection of such fees until certificate of occupancy, to be in the best interest of the City.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES  
RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:**

**CITY COUNCIL ACTION.**

The City Council hereby takes the following action:

- a. Effective immediately, as of April 28, 2009 the collection of the City's Residential Development Impact Fees shall be temporarily deferred until Certificate of Occupancy.
- b. This Resolution shall be in effect for a period of one year from the effective date.

**PASSED, APPROVED AND ADOPTED** this 28<sup>th</sup> day of April, 2009.

---

Robert E. Botts, Mayor  
City of Banning

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

---

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

**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. 2009-32, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28<sup>th</sup> day of April, 2009 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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



**CITY COUNCIL AGENDA  
CONSENT CALENDAR**

**DATE:** April 28, 2009

**TO:** Honorable Mayor and City Council

**FROM:** Hoyl E. Belt, Human Resources Director

**SUBJECT:** City of Banning Association of Managers (CBAM) Amendment to Memorandum of Understanding

**RECOMMENDATION:** Adopt Resolution No. 2009-33 amending the Memorandum of Understanding (MOU) with the City of Banning Association of Managers.

**JUSTIFICATION:** The City's existing MOU with CBAM contains language under Management Incentive Pay which needs to be changed in order for the employees to receive the benefit as PERSable as agreed upon between the City of Banning and City of Banning Association of Managers (CBAM).

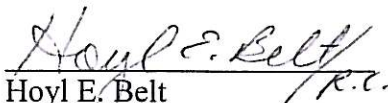
**BACKGROUND:** The City has an existing MOU with CBAM for the period July 1, 2008 to June 30, 2010. Article 23.1 of the MOU states "Commencing July 1, 2008, the additional two percent (2%) of the employee's gross annual salary previously provided as part of the cafeteria benefit will be discontinued and represented employees shall instead receive two percent (2%) of the employee's gross annual salary as management incentive pay. This management incentive pay shall be considered as salary for the purposes of PERS contribution." Based on the above language the City has been treating this compensation as PERSable income for retirement purposes.

We were recently notified by the California Public Employees Retirement System (CalPERS) that the current MOU language is not adequate for this incentive pay to be considered reportable compensation for retirement purposes. If the MOU language for management incentive is not amended, it cannot be reported as special compensation under the terms of the regulations. Further, that would be a violation of the spirit of the benefit under the existing MOU.

The required new language is attached to the proposed resolution.

**FISCAL DATA:** There is no fiscal impact for the amending the section of the CBAM MOU.


**RECOMMENDED BY:**

  
Hoyl E. Belt  
Human Resources Director

**REVIEWED BY:**

  
Bonnie J. Johnson  
Finance Director

**APPROVED BY:**

  
Brian S. Nakamura  
City Manager

**RESOLUTION NO. 2009-33**

**A RESOLUTION OF THE CITY COUNCIL FO THE CITY OF BANNING AMENDING  
RESOLUTION NO. 2008-89 FOR THE 2007-2010 MEMORANDUM OF  
UNDERSTANDING BETWEEN THE CITY OF BANNING ASSOCIATION OF  
MANAGERS (CBAM) AND THE CITY OF BANNING**

WHEREAS, the City of Banning has recognized the City of Banning Association of Managers (CBAM) is the bargaining unit representing a group of its employees; and,

WHEREAS, the City and CBAM entered into a Memorandum of Understanding (MOU) for a period of three years, which was approved by the City Council on July 22, 2008, by the adoption of Resolution No. 2008-89; and

WHEREAS, Section 23.1 of said MOU must be amended as to read as follows:

Effective April 28, 2009, the Employer agrees to pay an amount equal to two (2%) of Employee's annual salary as management incentive due to the unique nature of the job. The Management Incentive Pay will be reported as special compensation every pay period and will be for duties performed during normal business hours.

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

1. The City Council approved the amendment to the CBAM MOU, a copy of which is attached hereto and by this reference made a part hereof.
2. The Mayor is authorized to execute the original document.

PASSED, APPROVED, AND ADOPTED this 28<sup>th</sup> day of April, 2009.

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Robert E. Botts, Mayor  
City of Banning, California

APPROVED AS TO FORM AND  
LEGAL CONTENT

---

David Aleshire, Attorney  
Aleshire & Wynder, LLP

ATTEST:

---

Marie A. Calderon  
City Clerk of the City of Banning



CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2009-33 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of April, 2009, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_

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

**AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CITY OF BANNING ASSOCIATION OF MANAGERS (CBAM) AND THE CITY OF  
BANNING FOR THE PERIOD JULY, 2008 TO JUNE 30, 2010**

Article 23 is amended by the amendment to Paragraph 23.1, as follows:

**ARTICLE 23 – MANAGEMENT INCENTIVE PAY**

23.1 - Effective April 28, 2009, the Employer agrees to pay an amount equal to two (2%) of Employee's annual salary as management incentive due to the unique nature of the job. The Management Incentive Pay will be reported as special compensation every pay period and will be for duties performed during normal business hours.

All other provisions of this MOU remain unchanged.

FOR THE CITY OF BANNING

FOR CBAM

\_\_\_\_\_  
Robert E. Botts, Mayor

\_\_\_\_\_  
Fred Mason, President

\_\_\_\_\_  
Representative



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** April 28, 2009

**TO:** City Council

**FROM:** Bonnie Johnson, Finance Director

**SUBJECT:** Recommendation to Adopt Resolution No 2009-34 Authorizing the Destruction of City Records as Provided by Section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning.

**RECOMMENDATION:** The City Council adopt Resolution No. 2009-34, "Authorizing The Destruction of City Records As Provided By Section 34090 of The California Government Code and Resolution No. 2003-26 of The City of Banning."

**JUSTIFICATION:** The City Clerk has certified that the records listed in Attachment A to Resolution No. 2009-34, are no longer required to be kept by the City.

**BACKGROUND:** On April 8, 2003, the City Council adopted Resolution No. 2003-26, setting forth the schedule for destruction of City Records. The records listed in Attachment A of Resolution No. 2009-34, have all reached the end of their retention period. This request is part of the initial implementation of the City's new records policy. It represents those records most easily identified by staff as ready for destruction. As a more comprehensive inventory of records is done, additional records will likely be identified for destruction.

**FISCAL DATA:** Funds are available for the outsourcing of the shredding of the documents in the FY 08/09 budget of the Finance Department.

**RECOMMENDED BY:**

  
Bonnie Johnson  
Finance Director

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING THE DESTRUCTION OF CITY RECORDS AS PROVIDED BY  
SECTION 34090 OF THE CALIFORNIA GOVERNMENT CODE AND  
RESOLUTION NO. 2003-26 OF THE CITY OF BANNING.**

WHEREAS, the City Council has adopted Resolution No. 2003-26 setting forth the schedule for the destruction of records; and

WHEREAS, Section 34090 of the California Government Code provides a procedure whereby any City record that has served its purpose and is no longer required may be destroyed;

WHEREAS, the City Clerk has endorsed on Attachment A to this resolution her determination that the Records set forth in Attachment A are not required to be kept by the City;

WHEREAS, the City Attorney has endorsed on Attachment A to this resolution his determination that the Records set forth on Attachment A are not required to be kept by the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning that the Records described in Attachment A to this Resolution may be destroyed.

**PASSED, APPROVED, AND ADOPTED** this 28<sup>th</sup> day of April, 2009.

---

Bob Botts, Mayor

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. 2009-34, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of April, 2009, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

ATTACHMENT "A"

REQUEST FOR DESTRUCTION OF RECORDS

Date: April 23, 2009  
Department: Utility Billing/Finance

We are requesting destruction of the attached records due to:

- ☐ A copy has been made in accordance with Administrative Policy #A-28.  
☒ The retention period on the following records has elapsed.

Approvals:

Department Head Nicole Muhl Date 4-23-09

City Clerk Mary A. Calderon Date 4-23-09

City Attorney \_\_\_\_\_ Date \_\_\_\_\_

|                   |               |          |
|-------------------|---------------|----------|
| Destruction Date: | Destroyed By: | Remarks: |
|                   |               |          |

Return signed original to City Clerk when completed.



**UTILITY BILLING DEPT**  
**ITEMS TO BE DESTROYED:**

|   |                               |                |
|---|-------------------------------|----------------|
| -Utility Billing Updates                          | 7/01/04-6/30/05               | 48 registers   |
| -Utility Billing Registers                        | 7/01/04-6/30/05               | 42 registers   |
| -Utilities Payment Stubs                          | 7/01/04-6/30/05               | 55 small boxes |
| -Daily Cash Balance Sheets                        | 7/01/04-6/30/05               | 1 large box    |
| -Adjustment Vouchers                              | 9/95-2/02                     | 1 box          |
| -Connect orders                                   | 73-91                         | 10 boxes       |
| -Disconnect orders                                | 02-03                         | 1 box          |
| -Delinquent Processing registers through 6/30/05  |                               | 4 registers    |
| -Deposit reports end of fiscal years              | 6/30/03<br>6/30/04<br>6/30/05 | 3 registers    |
| -Deposit slips—applied to account 7/01/04-6/30/05 |                               | 1 small box    |

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 28, 2009

**TO:** City Council

**FROM:** Leonard Purvis, Chief of Police  
Bonnie Johnson, Finance Director

**SUBJECT:** Award of Piggyback Purchases of Five marked Police Interceptor Crown Victoria's and One Chevrolet Tahoe to Wondries Fleet Group in the amount not to exceed \$150,837.63 and Award of Purchase of Two unmarked Police Interceptor Crown Victoria's to Ramsey Street Ford in the amount not to exceed \$45,965.36 from the funds obtained through the FY08-09 Special Distribution Fund Grant

**RECOMMENDATION:** "Award of Piggyback Purchases of Five marked Police Interceptor Crown Victoria's and One Chevrolet Tahoe to Wondries Fleet Group in the amount not to exceed \$150,837.63 and Award of Purchase of Two unmarked Police Interceptor Crown Victoria's to Ramsey Street Ford in the amount not to exceed \$45,965.36 from the funds obtained through the FY08-09 Special Distribution Fund Grant."

**JUSTIFICATION:** Purchase of these vehicles will allow the City of Banning Police Department to have the necessary Patrol vehicles for the Entertainment District.

**BACKGROUND:** On February 28, 2009 the City Council adopted Resolution 2009-16 authorizing expenditures of funds obtained through the FY08-09 Special Distribution Fund Grant for the purchase of various vehicles and equipment for the Entertainment District Patrol. The Police Department submitted a proposal that identified the police department's need for the Entertainment District Patrol equipment. The Police department is in need of the vehicles for the District as soon as possible. Staff has solicited quotes for availability and price from Ramsey Street Ford and from Wondries Fleet Group, the vendor awarded the County of Los Angeles and City of Los Angeles bids. The quotes were evaluated based on availability and price. Wondries Fleet Group currently has 5 marked police interceptors available for immediate delivery. Ramsey Street Group would not have these 5 vehicles available for 4-6 weeks. Wondries Fleet Group and Ramsey Street Ford both quoted a 4-6 week lead time for the 2 unmarked police interceptors. Wondries Fleet Group additionally has a Chevrolet Tahoe available for delivery immediately.


Section 18A-13 "D" of the City's Purchasing Ordinance allows the City to enter into agreements with other agencies for the purchase of supplies, services and equipment. In such instances, the procedures of that agency shall satisfy all city requirements for the bid and award of those purchases. The City of Banning can piggyback onto the County of Los Angeles Bid #DPO-FR-36501761-1 for the 5 marked police interceptors and City of Los Angeles Bid #0000959618 for the Chevrolet Tahoe, under their cooperative purchasing provision. This will save the City the cost of the formal bid process and allow us to take advantage of the volume discount afforded to County of Los Angeles and City of Los Angeles.



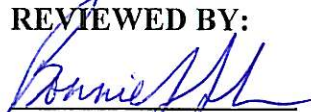
**ALTERNATIVES:** Solicit sealed bids for the purchase of all vehicles. However, the cost may well be higher due to the smaller quantity and by piggybacking onto the County of Los Angeles and the City of Los Angeles contracts the City of Banning can still take advantage of the volume discount pricing afforded to the Agencies.

**FISCAL DATA:** Sufficient Grant funds are available for the purchase of the vehicles in the Police Department Entertainment District Patrol Vehicle account #001-227-421.90-52

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

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

**APPROVED BY:**

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

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** April 28, 2009

**TO:** Honorable Mayor and City Council

**FROM:** Bonnie Johnson, Finance Director  
James Earhart, Public Utilities Director

**SUBJECT:** Notice of Completion for Project No. 2008-EUCP-01-P "Sunset Substation Project"

**RECOMMENDATION:** That the City Council accept Project No. 2008-EUCP-01-P, "Sunset Substation Project," as complete and direct the City Clerk to record the Notice of Completion.

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

**BACKGROUND:** At the City Council meeting of January 11, 2005 the Council accepted the City of Banning Electrical Systems Master Plan. This master plan included the study of projected growth in the City of Banning and evaluated the current electrical infrastructure. Upon completion of the master plan it was found that the City's current infrastructure is not adequate to carry the current maximum load and the additional electrical load the City will incur. The adopted master plan recommends the construction of two additional electric substations, one on the West side of Banning and one on the East side of Banning, to relieve the current overloading on the existing substations and to meet the demand of new customers. It was recommended that the City move immediately forward with the plan to build the first of two substations, Sunset Substation.

On September 14 & 18, 2007 the Purchasing Division of the Finance Department posted a notice inviting bids and on September 21 & 28 advertised for sealed bids in two newspapers of general circulation for the Sunset Substation Project No. 2008-EUCP-01-P for the Electric Department. Three (3) bids were received and evaluated. The successful low bidder, Pouk and Steinle, Inc. was able to meet all of the City of Banning terms and conditions and has a project timeline that will meet the Electric Departments timeline for the new substation to go online. At the City Council meeting of November 13, 2007 the City Council Awarded the Construction Contract for the Sunset Substation Project to Pouk and Steinle, Inc. in the amount of \$14,763.952 plus the 10% contingency of \$1,476,395.00 for a total of \$16,240,347.00 and adopted Resolution 2007-142 appropriating the necessary funds for the project from the 2007 Electric bond proceeds.



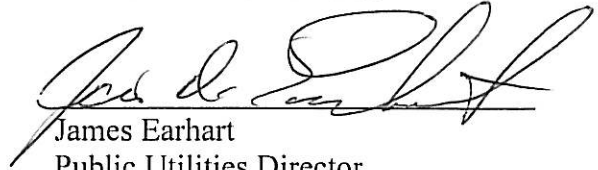
**FISCAL DATA:** Funds appropriated for the project were in the amount not to exceed \$16,240,347.00, and the final contract amount is \$15,693,884.04.

**RECOMMENDED BY:**



Bonnie Johnson  
Finance Director

**RECOMMENDED BY:**



James Earhart  
Public Utilities Director

**APPROVED BY:**

---

Brian Nakamura  
City Manager

WHEN RECORDED MAIL TO:

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

FREE RECORDING:  
Exempt Pursuant to  
Government Code §6103

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NOTICE OF COMPLETION

Sunset Substation Project

THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of the State of California, and is hereby accepted by the City of Banning pursuant to authority conferred by the City Council this April 28, 2009, and the grantees consent to recordation thereof by its duly authorized agent.

(1) That the OWNER, the City of Banning and Pouk and Steile, Inc., the Contractor entered into a written Agreement dated November 19, 2007, for the Sunset Substation Project ("Work of Improvement"). The scope of work under this project was the new construction of the Sunset Substation and related overhead and underground transmission and distribution system improvements in the with the Sunset Substation Project Drawings and Technical Specifications.

(2) That the Work of Improvement was substantially completed on March 30, 2009, and the Nature of Interest is in fee simple owner.

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

(4) That the said Work of Improvement was performed approximately 1,000 feet northwest of the northern end of Mountain Avenue.

(5) That the original contractor for said improvement was Pouk and Steinle, Inc., State Contractor's License No. 576274.

(6) That the performance and payment bonds were required for this project.

Dated: April 28, 2009

CITY OF BANNING

A Municipal Corporation

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

APPROVED AS TO FORM:

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

### JURAT

State of California  
County of Riverside

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

(S e a l)

\_\_\_\_\_  
Notary Public in and for said County  
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)



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

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

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

\_\_\_\_\_  
City Clerk of the City of Banning

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 28, 2009

**TO:** City Council

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

**SUBJECT:** Emergency Overhaul of Process Water Pump 9-P-2 at the Wastewater Treatment Plant

**RECOMMENDATION:** Approve the emergency overhaul of the process water pump 9-P-2 at the Wastewater Treatment Plant for an amount not to exceed \$10,991.02.

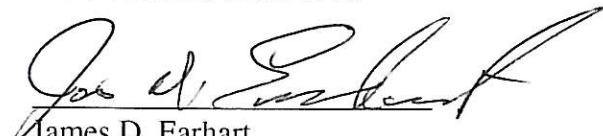
**JUSTIFICATION:** Overhaul of the process water pump at the WWTP was essential to ensure uninterrupted water supply to the plant for wash down, irrigation, and other miscellaneous uses.

**BACKGROUND:** The City of Banning owns and operates its own wastewater system throughout the City. The process water pump 9-P-2 at the WWTP began vibrating and leaking excessively. MMC, Inc., a reputed contractor to perform the repairs on an emergency basis, was contacted by staff. MMC then pulled the pump assembly and made the required maintenance to the water pump.

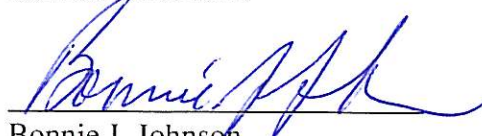
This repair work was authorized consistent with the City Policy as set forth in Ordinance No. 1266 for emergency equipment breakdown.

**FISCAL DATA:** The funds in the amount of \$10,991.02 for this work shall be utilized from the FY 08-09 Wastewater Division Operation Budget, Treatment Plant Improvement Account No. 680-8000-454-9512.

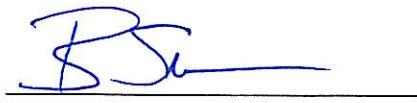
**RECOMMENDED BY:**

  
James D. Earhart  
Director of Public Utilities

**REVIEWED BY:**

  
Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**

  
Brian Nakamura  
City Manager

**AGREEMENT FOR MAINTENANCE SERVICES  
BETWEEN  
THE CITY OF BANNING  
AND  
MMC, INC.  
FOR  
EMERGENCY OVERHAUL OF PROCESS WATER  
PUMP  
9-P-2 AT THE WASTEWATER TREATMENT PLANT**



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**AGREEMENT FOR MAINTENANCE SERVICES**  
**BETWEEN**  
**THE CITY OF BANNING**  
**AND**  
**MMC, INC.**  
**FOR**  
**EMERGENCY OVERHAUL OF PROCESS WATER PUMP 9-P-2 AT THE**  
**WASTEWATER TREATMENT PLANT**

This Agreement for Maintenance Services ("Agreement"), is made and entered into this 22<sup>nd</sup> day of March, 2009, by and between the City of Banning, a California municipal corporation organized under the laws of the State of California with its principal place of business at 99 E. Ramsey Street, Banning, CA 92220 ("City") and MMC, INC., a California Corporation ("Contractor").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1.           CONTRACTOR**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing the necessary labor, material, and equipment for maintenance and repair services at Wastewater Treatment Plants to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that they are familiar with the plans of the City.

**SECTION 2.           PROJECT**

City desires to engage Contractor to render such emergency services to Overhaul of Process Water Pump 9-P-2 at the Wastewater Treatment Plant ("Project") as set forth in this Agreement.



### **SECTION 3. TERM OF AGREEMENT**

The term of this Agreement shall be from March 1, 2009 to December 31, 2009, unless earlier terminated as provided in Section 11 "Termination of Agreement". Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

### **SECTION 4. SCOPE OF SERVICES**

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional personnel for the overhaul of process water pump 9-P-2 and provide the maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

### **SECTION 5. EXTRA WORK**

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

### **SECTION 6. COMPENSATION AND METHOD OF PAYMENT**

A. Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in EXHIBIT "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed ten thousand nine hundred ninety one dollars and two cents (\$10,991.02) without written approval of City's representative. Extra work may be authorized, as described above, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

B. Payment of Compensation. Each month the Contractor shall submit to the City an itemized statement, which indicates work, completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will, within 30 days of receiving such statement, review the statement and pay all approved charges thereon. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

- C. Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

## **SECTION 7. RESPONSIBILITIES OF CONTRACTOR**

A. Control and Payment of Subordinates; Independent Contractor.

(1) The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirement of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

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

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

B. Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractors' submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

C. Conformance to applicable requirements. All work prepared by Contractor shall be subject to the approval of the City.

D. City's Representative. The City Hereby designates George Thacker, Assistant Water/Wastewater Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.



E. Contractor's representative. Contractor hereby designates Rob Temple, Project Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

F. Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

G. Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

H. Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.



I. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

J. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

K. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

L. Accounting Records

(1) Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.



(2) Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

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

N. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

## **SECTION 8. INDEMNIFICATION**

A. Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all

consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

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

## **SECTION 9. INSURANCE**

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

## **SECTION 10. BONDS**

A. Performance Bond. If specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

B. Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.



C. Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

D. Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

## **SECTION 11.        TERMINATION OF AGREEMENT.**

A. Grounds for Termination. City may, by written notice to Contractor, terminate with or without cause the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services, which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

B. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

C. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

D. Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Contractor.

## **SECTION 12. EXCUSABLE DELAYS**

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

## **SECTION 13. COOPERATION; FURTHER ACTS**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services", shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

## **SECTION 14. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS**

City reserves right to employ other contractors in connection with this Project.

## **SECTION 15. CONSTRUCTION; REFERENCES; CAPTIONS**

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

## **SECTION 16. NO THIRD PARTY BENEFICIARIES.**

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

## **SECTION 17. PROHIBITED INTERESTS**

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting



from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

## **SECTION 18. DELIVERY OF NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CITY:** City of Banning  
Attention: George Thacker  
Assistant Water/ Wastewater Director  
P. O. Box 998  
Banning, CA 92220  
  
Phone: (951) 922-3282  
Fax: (951) 849-4573

**CONTRACTOR:** MMC, INC.  
Attention: Jay Mehta, Project Manager  
5901 Fresca Drive  
La Palma, CA 90623  
  
Phone: (714) 521-2022  
Fax: (714) 521-2440

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and address to the part at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **SECTION 19. AUTHORITY TO EXECUTE**

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

## **SECTION 20. BINDING EFFECT**

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



## **SECTION 21. MODIFICATION OF AGREEMENT**

Except as modified in Exhibit "D" "Modifications to Contract", no amendment to or modification of this Agreement shall be valid unless made in writing and approved by the City and the Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **SECTION 22. WAIVER**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

## **SECTION 23. GOVERNING LAW**

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

## **SECTION 24. ATTORNEYS FEES, COSTS AND EXPENSES**

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

## **SECTION 25. LABOR CERTIFICATION**

By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

## **SECTION 26. SUBCONTRACTING**

Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

## **SECTION 27. COUNTERPARTS**

This Agreement may be signed in counterparts, each of which shall constitute an original.

**SECTION 28. ENTIRE AGREEMENT**

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

**SECTION 29. SEVERABILITY**

If a 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).

**SIGNATURES ON FOLLOWING PAGE**

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

**CITY OF BANNING**

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

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

**ATTEST:**

\_\_\_\_\_  
Marie Calderon  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Aleshire & Wynder, LLP.  
City Attorney

**CONTRACTOR**

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

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

Two signatures are required if a corporation.

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



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

### OPTIONAL

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

- CAPACITY CLAIMED BY SIGNER**
- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED  
☐ ATTORNEY-IN-FACT ☐ GENERAL  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_

**DESCRIPTION OF ATTACHED DOCUMENT**

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

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

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

### OPTIONAL

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

- CAPACITY CLAIMED BY SIGNER**
- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED  
☐ GENERAL
- ☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

**SIGNER IS REPRESENTING:**  
(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_  
TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_  
NUMBER OF PAGES

\_\_\_\_\_  
DATE OF DOCUMENT

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

## EXHIBIT "A" SCOPE OF SERVICES

Contractor to furnish labor, material, and equipment for the following *Scope of Work* on the Overhaul of the Process Pump 9-P-2 at the WWTP:

- 1) Overhaul of Process Water Pump 9-P-2
  - a) Materials Used in above
  - b) Installation of spare pump
  - c) Repair Impellers
- 2) Labor for Installation of repaired pump



## EXHIBIT "B" COMPENSATION

*Scope of Work* to be provided at a lump sum of "Not to Exceed" \$10,991.02

- 3) Overhaul of Process Water Pump 9-P-2
  - a) Materials Used in above
  - b) Installation of spare pump
  - c) Repair Impellers
- 4) Labor for Installation of repaired pump

## EXHIBIT "C" INSURANCE

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

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

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

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

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

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

(1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit.

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

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

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

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

2. General Liability and Automobile Liability Coverages.

(1) City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor ; or automobiles owned, leased, hired or borrowed by Contractor. The

coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers.

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

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

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

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

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

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

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

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



**EXHIBIT “D” CONTRACT MODIFICATIONS**

**“Intentionally Left Blank”**

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 28, 2009  
**TO:** City Council  
**FROM:** George Thacker, Assistant Water/Wastewater Director  
**SUBJECT:** Emergency Repair of 110' Rotary Distribution Arm on the Trickling Filter Basin at the Wastewater Treatment Plant

**RECOMMENDATION:** The City Council approves an agreement for Maintenance Services for the "Repair of 110 foot Rotary Distributor for the Trickling Filter Basin at the Wastewater Treatment Plant" with Pascal & Ludwig Constructors of Ontario, CA in the amount of "Not to Exceed" \$21,955.00.

**JUSTIFICATION:** Repair of the leaking seals supporting the Rotary Distribution Arm is essential to ensure proper treatment of the wastewater flowing through the Trickling Filter Basin.

**BACKGROUND:** The City of Banning owns and operates its own wastewater system throughout the City. Recently, the water seals on the Rotary Distribution Arm for the Trickling Filter Basin started leaking and causing a short circuiting of the treatment process. It is necessary to replace these seals to prevent poor quality water to be discharge to the percolation ponds.

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

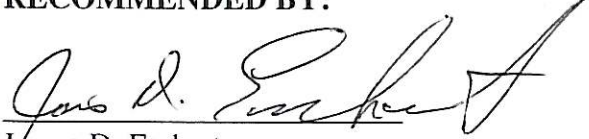
|    | <b><u>Firm</u></b>                              | <b><u>Amount</u></b> |
|----|---|----------------------|
| 1) | Pascal & Ludwig Constructors, Ontario, CA       | \$21,955.00          |
| 2) | J.R. Filanc Construction, Company Escondido, CA | \$45,068.00          |

Pascal & Ludwig Constructors is a reputable firm in the Wastewater Utility Industry and has extensive experience with Wastewater Treatment Plants, pumping equipment, design, and construction. This company has successfully completed several projects for 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 in the amount of \$21,955.00 for this work shall be utilized from the FY 08-09 Wastewater Division Operation Budget, Treatment Plant Improvement Account No. 680-8000-454-9512.


**RECOMMENDED BY:**

  
James D. Earhart  
Director of Public Utilities

**REVIEWED BY:**

  
Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**

  
Brian Nakamura  
City Manager



**AGREEMENT FOR MAINTENANCE SERVICES**

**BETWEEN**

**THE CITY OF BANNING**

**AND**

**PASCAL & LUDWIG CONSTRUCTORS**

**TO**

**REPAIR OF 110 FOOT ROTARY DISTRIBUTOR FOR**

**THE TRICKLING FILTER BASIN AT THE**

**WASTEWATER TREATMENT PLANT**

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**AGREEMENT FOR MAINTENANCE SERVICES**  
**BETWEEN**  
**THE CITY OF BANNING**  
**AND**  
**PASCAL & LUDWIG CONTRACTORS**  
**TO**  
**REPAIR OF 110 FOOT ROTARY DISTRIBUTOR FOR THE TRICKLING FILTER**  
**BASIN AT THE WASTEWATER TREATMENT PLANT**

This Agreement for Maintenance Services ("Agreement"), is made and entered into this 22<sup>nd</sup> day of March, 2009, by and between the City of Banning, a California municipal corporation organized under the laws of the State of California with its principal place of business at 99 E. Ramsey Street, Banning, CA 92220 ("City") and PASCAL & LUDWIG CONTRACTORS, a California Corporation ("Contractor").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

**SECTION 1. CONTRACTOR**

Contractor desires to perform and assume responsibility for the provision of certain maintenance services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing the necessary labor, material, and equipment for maintenance and repair services at Wastewater Treatment Plants to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that they are familiar with the plans of the City.

**SECTION 2. PROJECT**

City desires to engage Contractor to render such services to Repair of 110 foot Rotary Distributor for the Trickling Filter Basin at the Wastewater Treatment Plant ("Project") as set forth in this Agreement.

### **SECTION 3. TERM OF AGREEMENT**

The term of this Agreement shall be from March 20, 2009 to December 31, 2009, unless earlier terminated as provided in Section 11 "Termination of Agreement". Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

### **SECTION 4. SCOPE OF SERVICES**

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional personnel to install new retainer and steel wear rings and provide the maintenance services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

### **SECTION 5. EXTRA WORK**

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

### **SECTION 6. COMPENSATION AND METHOD OF PAYMENT**

A. Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in EXHIBIT "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed twenty one thousand nine hundred fifty five dollars and no cents (\$21,955.00) without written approval of City's representative. Extra work may be authorized, as described above, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

B. Payment of Compensation. Each month the Contractor shall submit to the City an itemized statement, which indicates work, completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will, within 30 days of receiving such statement, review the statement and pay all approved charges thereon. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.



- C. Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

## **SECTION 7. RESPONSIBILITIES OF CONTRACTOR**

A. Control and Payment of Subordinates; Independent Contractor.

(1) The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirement of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City.

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

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

B. Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractors' submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

C. Conformance to applicable requirements. All work prepared by Contractor shall be subject to the approval of the City.

D. City's Representative. The City Hereby designates George Thacker, Assistant Water/Wastewater Director, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.



E. Contractor's representative. Contractor hereby designates Rob Temple, Project Manager, or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

F. Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

G. Standard of Care; Performance of Employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

H. Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.



I. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

J. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

K. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

L. Accounting Records

(1) Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.



(2) Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

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

N. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Contractor shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

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

## **SECTION 8. INDEMNIFICATION**

A. Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all



consequential damages and attorneys fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents or volunteers.

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

## **SECTION 9. INSURANCE**

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

## **SECTION 10. BONDS**

A. Performance Bond. If specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

B. Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

C. Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

D. Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

## **SECTION 11.           TERMINATION OF AGREEMENT.**

A. Grounds for Termination. City may, by written notice to Contractor, terminate with or without cause the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services, which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

B. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

C. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

D. Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Contractor.



## **SECTION 12. EXCUSABLE DELAYS**

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

## **SECTION 13. COOPERATION; FURTHER ACTS**

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services", shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

## **SECTION 14. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS**

City reserves right to employ other contractors in connection with this Project.

## **SECTION 15. CONSTRUCTION; REFERENCES; CAPTIONS**

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit augment, or describe the scope, content, or intent of this Agreement.

## **SECTION 16. NO THIRD PARTY BENEFICIARIES.**

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

## **SECTION 17. PROHIBITED INTERESTS**

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting



from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

## **SECTION 18. DELIVERY OF NOTICES**

All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CITY:** City of Banning  
Attention: George Thacker  
Assistant Water/ Wastewater Director  
P. O. Box 998  
Banning, CA 92220  
  
Phone: (951) 922-3282  
Fax: (951) 849-4573

**CONTRACTOR:** PASCAL & LUDWIG CONSTRUCTORS  
Attention: Rob Temple, Project Manager  
2049 East Francis Street  
Ontario, CA 91761  
  
Phone: (909) 947-4631  
Fax: (909) 947-4722

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and address to the part at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

## **SECTION 19. AUTHORITY TO EXECUTE**

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

## **SECTION 20. BINDING EFFECT**

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

## **SECTION 21. MODIFICATION OF AGREEMENT**

Except as modified in Exhibit "D" "Modifications to Contract", no amendment to or modification of this Agreement shall be valid unless made in writing and approved by the City and the Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **SECTION 22. WAIVER**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

## **SECTION 23. GOVERNING LAW**

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

## **SECTION 24. ATTORNEYS FEES, COSTS AND EXPENSES**

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

## **SECTION 25. LABOR CERTIFICATION**

By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

## **SECTION 26. SUBCONTRACTING**

Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

## **SECTION 27. COUNTERPARTS**

This Agreement may be signed in counterparts, each of which shall constitute an original.

**SECTION 28. ENTIRE AGREEMENT**

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

**SECTION 29. SEVERABILITY**

If a 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).

**SIGNATURES ON FOLLOWING PAGE**



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

**CITY OF BANNING**

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

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

**ATTEST:**

\_\_\_\_\_  
Marie Calderon  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Aleshire & Wynder, LLP.  
City Attorney

**CONTRACTOR**

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

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

**Two signatures are required if a corporation.**

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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA  
COUNTY OF

On \_\_\_\_\_, \_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

## OPTIONAL

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

## CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)      ☐ LIMITED  
☐ GENERAL

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

**SIGNER IS REPRESENTING:**

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

**DESCRIPTION OF ATTACHED DOCUMENT**

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

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

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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: \_\_\_\_\_

### 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  |   | DESCRIPTION OF ATTACHED DOCUMENT          |
|---|---|---|
| <input type="checkbox"/>  | INDIVIDUAL  | _____                                     |
| <input type="checkbox"/>  | CORPORATE OFFICER   | _____                                     |
| <input type="checkbox"/>  | PARTNER(S) <input type="checkbox"/> LIMITED<br><input type="checkbox"/> GENERAL | TITLE OR TYPE OF DOCUMENT<br>_____        |
| <input type="checkbox"/>  | ATTORNEY-IN-FACT  | _____                                     |
| <input type="checkbox"/>  | TRUSTEE(S)  | NUMBER OF PAGES<br>_____                  |
| <input type="checkbox"/>  | GUARDIAN/CONSERVATOR  | _____                                     |
| <input type="checkbox"/>  | OTHER _____   | DATE OF DOCUMENT<br>_____                 |
| SIGNER IS REPRESENTING:<br>(NAME OF PERSON(S) OR ENTITY(IES))<br>_____<br>_____ |   | SIGNER(S) OTHER THAN NAMED ABOVE<br>_____ |



## EXHIBIT "A" SCOPE OF SERVICES

Contractor to furnish labor, material, and equipment for the following *Scope of Work* on the Trickling Filter Basin at the WWTP:

- 1) Disassemble the existing 110' Rotary Distributor and replace the following items:
  - a) 3 ea. Oil Seals, PN 17767
  - b) 1 ea. Center Column Bearing, PN 4067
  - c) 1 ea. White Felt Seal, PN 38449 (replaces the cork seal)
- 2) Reassemble the existing 110' Rotary Distributor.

The letter dated January 8, 2009, from PASCAL & LUDWIG CONSTRUCTORS is attached to support the work to be performed.

## **EXHIBIT “B” COMPENSATION**

*Scope of Work* to be provided at a lump sum of “Not to Exceed” \$21,955.00

## EXHIBIT "C" INSURANCE

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

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

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

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

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

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

(1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract/location or the general aggregate limit shall be twice the required occurrence limit.

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

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

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

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

2. General Liability and Automobile Liability Coverages.

(1) City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor ; or automobiles owned, leased, hired or borrowed by Contractor. The



coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers.

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

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

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

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

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

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

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

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

**EXHIBIT “D” CONTRACT MODIFICATIONS**

**“Intentionally Left Blank”**

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** April 28, 2009

**TO:** City Council

**FROM:** Bonnie Johnson, Finance Director

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of March 2009

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

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of March 2009

The reports are:

Expenditure approval lists

|                             |                                |
|-----------------------------|--------------------------------|
| March 5, 2009               | 869,555.67                     |
| March 12, 2009              | 342,782.53                     |
| March 19, 2009              | 515,373.09                     |
| March 26, 2009              | 673,858.82                     |
| March 31, 2009 Manual Check | -945.77                        |
| April 9, 2009               | 3,713,357.06 (March Month End) |

Payroll check registers

|                             |           |
|-----------------------------|-----------|
| March 13, 2009              | 5,287.02  |
| March 27, 2009              | 6,965.23  |
| March 31, 2009 Manual Check | 2,548.06  |
| March 31, 2009 Manual Check | 1,428.99  |
| March 31, 2009 Manual Check | 13,206.50 |
| March 31, 2009 Manual Check | 5,120.42  |

Payroll direct deposits\*

|                |            |
|----------------|------------|
| March 13, 2009 | 333,872.58 |
| March 27, 2009 | 332,981.17 |



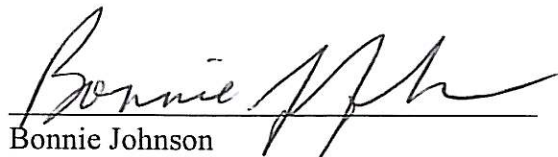
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

\* Included on the March month end expenditure approval list of 04/09/2009.

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

Report Prepared by: Robin Anderson, Accounts Payable

**RECOMMENDED BY:**

A handwritten signature in blue ink, appearing to read "Bonnie Johnson", written over a horizontal line.

Bonnie Johnson  
Finance Director

**APPROVED BY:**

A handwritten signature in blue ink, appearing to read "Brian Nakamura", written over a horizontal line.

Brian Nakamura  
City Manager

**CITY COUNCIL AGENDA  
REPORTS OF OFFICERS**

**Date:** April 28, 2009

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

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

**SUBJECT:** Adoption of Census 2010 Complete Count Proclamation and Complete Count Community Guidelines

**RECOMMENDATION:**

That the City Council adopt the Census 2010 Complete Count Proclamation and Complete Count Community Program Guidelines.

**JUSTIFICATION:**

Participation in the Census 2010 Complete Count program provides for achieving accurate census data and positively impacts the City of Banning in many ways, which includes eligibility for specific population based programs, grants, and other funding opportunities.

**BACKGROUND & ANALYSIS:**

At the March 10, 2009 City Council meeting regional Census 2010 representative Ms. Paula Almanz made a presentation to the City Council regarding the importance of "Being Counted" and participating in the local Complete Count program. Participation in Census 2010's Complete Count program begins with the establishment a Complete Count Committee and Proclamation adoption. City staff will assist the Mayor and Council with participation.

**FISCAL IMPACT:**

Census 2010 Complete Count is anticipated to be nominal as the program relies primarily on volunteer participation. Associated costs are expected to be in-kind City staff costs, printing, noticing of public meetings, and communications.

**RECOMMENDED BY:**



---

Brian Nakamura  
City Manager



## PROCLAMATION

*WHEREAS*, the next Decennial Census will be taken in the year 2010, and political representation to the United States House of Representatives, state legislatures and local governments is determined by the Decennial Census, and the City of Banning recognizes the equal importance of each resident in the 2010 Census count; and

*WHEREAS*, the City of Banning has agreed to partner with the U.S. Bureau of the Census; and

*WHEREAS*, the City of Banning understands that it's primary role in the partnership is to formulate a Complete Count Committee that should include, but is not limited to the following: Government, Education, Media, Religious, Community-based Organizations, Business, Recruiting, and Special Housing; and

*WHEREAS*, the roles of the Complete Count Committee shall be to:

- Bridge all gaps between the community and the Census Bureau on geographic matters, outreach activities, and information centers; and
- Create census awareness programs for pre-kindergarten to college age students, coalesce with educational institutions, distribute Census Bureau Education Programs, and to encourage parents and college students to apply for Census jobs; and,
- Make the community aware of the many ways Census is used to obtain Funding for essential services and programs; and,
- Encourage all area businesses to advertise the Census message in sales advertisements, promotional materials and to sponsor Census 2010 community awareness activities; and,
- Disseminate to all segments of the community, information regarding the availability of Census jobs in the local area.

*NOW, THEREFORE*, I, Robert E. Botts, Mayor of the City of Banning along with the City Council do hereby proclaim full support and participation in the overwhelming success of Census 2010 through the formulation of a **COMPLETE COUNT COMMITTEE**.

*IN WITNESS WHEREOF*, I have set my hand and caused the seal of the City of Banning, California to be affixed this 28<sup>th</sup> day of April, 2008.

**ATTEST:**

\_\_\_\_\_  
Marie A Calderon, City Clerk

\_\_\_\_\_  
Robert E. Botts, Mayor



## **Complete Count Committee Program Guidelines**

The Complete Count Committee (CCC) is a group of community leaders appointed by Mayor Robert E. Botts for the purpose of developing and implementing a comprehensive 2010 Census awareness campaign in partnership with the U.S. Census Bureau aimed at ensuring every resident of Riverside County is counted in the 2010 Census.

The goals of the CCC are to ensure an accurate count of every City and County of Riverside resident; achieve a 75 percent return rate of mailed surveys; make every Banning resident aware of the Census; and make every Banning resident aware that the information they provide for the Census is kept in complete confidence.

Complete Count Committee Subcommittees will work to reach the undercounted populations through schools, faith-based communities, speaker's bureaus, door-knocking, public events, neighborhoods, community based organizations, niche communities and questionnaire answer centers that will be located at libraries, community facilities, Banning schools and grocery stores.

### **CCC Committees**

Committee Chairs: Mayor Appoints 2 Co-Chairs.

Subcommittee Chairs: Members of the Community Appointed by Mayor Botts.

The Complete Count Committee strives to involve every aspect of a local community in its subcommittee structure. The City of Banning and County of Riverside has as part of its Complete Count Committee the following subcommittees in place:

**Education** - Facilitates Census awareness for local schools from pre-kindergarten through twelfth grade, as well as post-secondary education institutions in the City of Banning and County of Riverside area. The Mayor also encourages school administrators, teachers, and students to use Census in Schools materials.

**Faith Based Organizations** - Creates and coordinates activities and materials that can be used by any local faith based institution in the promotion of the 2010 Census awareness and participation.

**Public Relations & Marketing** - Creates and facilitates ways to get the Census message to all community residents, using all available sources such as local newspapers, newsletters, fliers, local festivals, billboards, radio and television.

**Questionnaire Assistance Centers** - Create and facilitate a space where the community can reach out to for questions and answers regarding the Census.

**Neighborhoods** - Collaborate with City neighborhoods in the promotion of the 2010 Census. The Mayor encourages participation in the Census awareness and participation efforts.

**Community Based Organizations** - Collaborates with community organizations to inform residents of the importance of participating in the 2010 Census, and the benefits derived from census data.

**Niche Communities** - Assists in Census promotion, outreach, and encourages participation with the populations that are at risk of being undercounted in the 2010 Census.

**Recruiting** - Disseminate information about census job openings for the 2010 Census. Information will include the number of jobs available, types of jobs available, and the locations of testing and training sites.

**Data** - Assist in gathering and deciphering data and maps which will support the other subcommittees in Census promotion and outreach.

### **How can I help?**

The 2010 Census Complete Count Committee is seeking volunteers to be sub-committee members.

Expectations for committee members\*:

- Attend the quarterly Complete Count Committee meetings
- Attend the scheduled subcommittee meetings (vary by subcommittee, average every other month)
- Assist in recruiting members to the Complete Count Committee
- Emphasize the Census Bureau's commitment to confidentiality to further increase participation in the Census.
- In partnership with the Census outreach specialist and subcommittee chair/s assist in developing and executing a local targeted plan to influence members of their community to complete the Census questionnaire in a timely and accurate manner.
- The time commitment requirements are as follows:
  - Committee co-chairs 3 to 4 hours a month
  - Subcommittee chairs 2 to 4 hours a month
  - Subcommittee members 1 to 2 hours a month

\*the time commitment and frequency of meetings is from January to December of 2009. This may change as Census Day in 2010 approaches.

If you are interested in participating, please call Daisy Ordaz at 951-922-3101 or e-mail [dordaz@ci.banning.ca.us](mailto:dordaz@ci.banning.ca.us)

If you are looking for a job with the US Census Bureau call 1-866-861-2010.

**CITY COUNCIL AGENDA  
REPORTS OF OFFICERS**

**Date:** April 28, 2009

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

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

**SUBJECT:** Approve Professional Services Agreement with Mr. James Earhart for Public Utility Consulting Services

**RECOMMENDATION:**

That the City Council approve the attached Professional Services Agreement between the City of Banning and Mr. James Earhart for Public Utility Consulting Services.

**BACKGROUND & ANALYSIS:**

On February 27, 2009 Mr. Earhart submitted his intent to resign from the position of Public Utility Director. Acceptance of Mr. Earhart's resignation prompted the City Manager to initiate recruitment for a replacement. Based upon timing and the necessity to insure an effective transition to a newly appointed director, it is in the best interest of the City to retain, on an as needed basis, the professional services of Mr. Earhart.

**FISCAL IMPACT:**

The Professional Services Contract provides for an hourly rate of \$135.00, not to exceed \$30,000 over an eight month period. Funds are available within the existing budgetary appropriations in the Electric Operations Fund to fund this contract.

**RECOMMENDED BY:**

A handwritten signature in blue ink, appearing to be 'BN', is written over a horizontal line.

Brian Nakamura  
City Manager



## **PROFESSIONAL SERVICES AGREEMENT FOR UTILITY SERVICES**

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this 1<sup>st</sup> day of May, 2009, by and between the CITY OF BANNING, a municipal corporation herein ("City") and JAMES EARHART (herein "Consultant").

WHEREAS, Consultant was originally hired on September 19, 2005, to serve as the City's Electric Utility Director, interim Public Utility Director in December 2007, and permanent Public Utility Director in May 2008. Consultant has done an outstanding job and gained intimate knowledge concerning electrical and water utility services. Consultant has announced his intention to retire from the service of the City on April 30, 2009.

WHEREAS, the City is actively recruiting a new Director, but it is anticipated that it will be a number of months until the hiring is complete and thereafter a period will be necessary for training and for the Director to become familiar with projects.

WHEREAS, the extremely critical projects now pending include water projects and studies affecting major development projects including Pardee, the Pass Agency, joint agreement with Edison, and other projects as specified in Exhibit A.

WHEREAS, it is the desire of the City to secure and retain the services of the Consultant and to carry on with existing projects during the recruitment of the new Director and to provide services thereafter to the City Manager and new Director as needed for the efficient operation of City.

NOW, THEREFORE, the parties hereto agree as follows:

### **1. SERVICES OF CONSULTANT**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Consultant warrants that all work and services shall be performed in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provide in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Reporting. Consultant shall have the obligation to act timely, to act in the best interests of City, and fully and completely report to the Contract Officer, both orally and in writing, and keep the Contract Officer fully briefed as to the performance of services hereunder.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated at an hourly rate of \$135.00, but not exceeding the maximum contract amount of Thirty Thousand Dollars (\$30,000) ("Contract Sum"). The Contract Sum is projected to cover eight (8) months of services. Consultant shall only be compensated for services detailed in Exhibit A, and when requested in writing by the City Manager. The Contract Sum may be amended with the approval of the parties.

2.2 Method of Payment. Consultant shall keep track of all services rendered, and the date and time the services are performed, and may invoice the City monthly for such services.

2.3 Reimbursable Costs. When pre-approved by the City Manager, the following costs when incurred by the Consultant shall be reimbursable: travel, copy costs, sustenance if applicable, and lodging.

## COORDINATION OF WORK

2.4 Contract Officer. Brian Nakamura, City Manager, is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Consultant.

2.5 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

2.6 Independent Consultant. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent Consultant consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City.

## 3. INSURANCE AND INDEMNIFICATION

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

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than either (i) a combined single limit of \$500,000.00 per occurrence and \$500,000.00 products and completed operations and property damage limits of \$100,000.00 per occurrence and \$100,000.00 in the aggregate.



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

(c) Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$250,000.00 per person and \$500,000.00 per occurrence and property damage liability limits of \$100,000.00 per occurrence and \$250,000.00 in the aggregate or (ii) combined single limit liability of \$500,000.00. Said policy shall include coverage for owned, non-owned, leased, and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees, and agents as additional insured's. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are canceled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 4.1 to the Contract Officer. No work Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance of binders are approved by the City.

The Consultant agrees that the provisions of this Section 4.1 shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Director of Administrative Services or designee of the City due to unique circumstances.

3.2 Indemnification. Consultant agrees to indemnify the City, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its agents, employees, subcontractors, or invites, provided for herein, or arising from the negligent acts or omissions of Consultant hereunder, or arising from Consultant's negligent performance of or failure to perform any term, provisions covenant liabilities to the extent caused by the sole negligence or willful misconduct of the City.



3.3 Immunities for Consultant. Pursuant to Government Code Sections \_\_\_\_\_, City, its officers, employees and agents, are entitled to immunities when acting in the course and scope of their employment. City shall afford Consultant of the full protection of its insurance and these immunities as provided by law if Consultant is acting in the course and scope of services under this Contract.

#### 4. TERM

4.1 Term. Unless earlier terminated in accordance with Section 5.2 below, this Agreement shall continue in full force and effect until December 2009.

4.2 Termination Prior to Expiration of Term. Either party may terminate this Agreement at any time, with or without cause, upon forty-five (45) days' written notice to the other party. Upon receipt of the notice of termination, the Consultant shall immediately cease all work or services hereunder except as may be specifically approved by the City, Consultant shall be entitled to compensation for all services rendered prior to the effectiveness of the notice of termination and for such additional services specifically authorized by the Consultant Officer and City shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

#### 5. MISCELLANEOUS

5.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

5.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

5.3 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. Consultant shall not accept any other work which would create an ethical, financial, or professional conflict in performing the services hereunder and shall avoid any appearance of impropriety. Consultant shall advise City of the identity of any other clients during the term of this Agreement.

5.4 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, Brian Nakamura and in the case of the Consultant, to the person at the mailing or electronic address designated on the execution page of this Agreement.

5.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

5.6 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

5.7 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

5.8 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

5.9 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

5.10 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties have executed and entered into this Agreement as of the date first written above.

**CITY**

CITY OF BANNING, a MUNICIPAL  
CORPORATION

\_\_\_\_\_  
Brian S. Nakamura  
City Manager

**ATTEST**

\_\_\_\_\_  
Marie Calderon  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Alshire & Wynder, LLP  
City Attorney

**CONSULTANT**

**James D. Earhart**

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

Its: \_\_\_\_\_

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

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

e-mail Address: \_\_\_\_\_

Phone: \_\_\_\_\_

[END OF SIGNATURES]



## EXHIBIT "A"

### SCOPE OF SERVICES

Consultant shall provide professional consulting services in the form of verbal and written communication as related to the administration and operations electric, water, and wastewater utilities for the City of Banning. Said communications shall include in depth professional analysis of current and future legislative actions and activities affecting the City of Banning's electric, water, and wastewater utilities. Consultant shall be available to City staff and respective City hired consultants to provide verbal and written recommendations pertaining to electric, water, and wastewater utilities by applying current economic trends, market feasibility, cost benefit analysis, and opportunity costs. Consultant at the request of the City Manager shall also make himself available to assist the new utility director during his/her transition into the City. Consultant understands that services rendered during this contractual period shall be preauthorized by the City Manager on an as needed basis.