

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

July 14, 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**

- Invocation
- Pledge of Allegiance
- 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.

APPOINTMENTS:

1. Designation of Voting Delegates and Alternates for the League of California Cities Annual Conference in San Jose Sept. 16-18, 2009 . . . . . 1

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

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 Item 1 through 12  
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 – 4/28/09. . . . .	5
2.	Resolution No. 2009-57, Adopting a statement of Investment Policy . . . . .	45
3.	Resolution No. 2009-58, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years From Date of Completion Per California Government Code Section 34090 and California Penal code section 832.5. . . . .	61
4.	Report of Investments for May 2009. . . . .	67
5.	Emergency Pavement Repairs at the Intersection of Hargrave Street and John Street Caused by a Ruptured 10-Inch Steel Water Main . . . . .	80
6.	Award of Contract to E. S. Babcock & Sons, Inc. for Water Testing During The 2009/2010 Fiscal Year in the amount not to exceed \$60,000 . . . . .	82
7.	Amending the existing Agreement with A P Engineering to Provide Additional Design Work for the Construction of Downtown Water Main Improvements, Project No. 2008-02W . . . . .	84
8.	Relocation of Southern California Edison Transmission Facilities for the Brinton Reservoir . . . . .	89
9.	Adoption of the City of Banning Sanitary Sewer Management Plan (SSMP). .	94
10.	Approval of Agreement between the City of Banning and County of Riverside, Department of Environmental Health, for the Continued Arrangement of the Certified Unified Program Agency (CUPA) . . . . .	99
11.	Ordinance No. 1388 – 2 <sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Adding Title 18 to the Banning Municipal Code Pertaining to Grading, Erosion, and Sediment Control . . . . .	110
12.	Accept the Right-of-Way Dedication from Bogar A. Ortiz for Street Improvements at Assessor's Parcel Number 541-145-007 (Ramsey Street, Martin Street). . . . .	153

- Open for Public Comments
- Make Motion

**IV. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Service Club Signage on Ramsey Street, Gateway project (*ETA 7/28/09*)
2. Courthouse Development, Land Assembly for Future Development
3. Local Economic Stimulus Program (*ETA 7/28/09*)
4. Golf Cart Lane Policy for City of Banning (*ETA 7/28/09*)
5. Update on Sunset Grade Separation (*ETA 7/28/09*)
6. Schedule Meetings with Our State and County Elected Officials
7. Set New Date for Joint Meeting with Banning School Board (*ETA 8/09*) (*Date to be determined*)
8. Policy for Naming of Street and also Parks – Policy and Procedures (*ETA 8/25/09*)

**V. CLOSED SESSION**

1. Pursuant to Government Code Section 54957.6 Conference with Labor Negotiators and Employee organization: BPOA  
Agency Designated Representatives: Brian Nakamura, David Aleshire, Bonnie Johnson and Hoyl Belt
2. Labor Negotiations Pursuant to Government Code Section 54957.6  
- Dept. Head Contracts
3. The City Council will meet in Closed Session pursuant to Government Code Section 54956.8 to confer with its real property negotiator Brian Nakamura in regards to Pardee Homes.

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

**VI. 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].

**Council Action Required by August 21, 2009**

June 5, 2009

**TO: Mayors, City Managers and City Clerks**

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES**

**League of California Cities Annual Conference – September 16-18, San Jose**

The League's 2009 Annual Conference is scheduled for September 16-18 in San Jose. An important part of the Annual Conference is the Annual Business Meeting, scheduled for 3:15 p.m., Friday, September 18, at the San Jose Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

**In order to establish voting delegate/alternates' records prior to the conference, please complete the attached Voting Delegate form and return it to the League's office no later than Friday, August 21, 2009.**

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. In order to cast a vote, at least one person must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

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- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Jose Convention Center, will be open at the following times: Wednesday, September 16, 10:00 a.m.; Thursday, September 17, 7:30 a.m.; and September 18, 7:30 a.m. The Voting Delegate Desk will also be open at the Business Meeting, but not during a roll call vote, should one be undertaken.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Friday, August 21st. If you have questions, please call Mary McCullough at (916) 658-8247.

Attachments:

- 2009 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



1400 K Street, Suite 400 • Sacramento, California 95814  
Phone: 916.658.8200 Fax: 916.658.8240  
[www.cacities.org](http://www.cacities.org)

## Annual Conference Voting Procedures 2009 Annual Conference

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates) and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a separate area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



**CITY:** \_\_\_\_\_

## 2009 ANNUAL CONFERENCE VOTING DELEGATE/ALTERNATE FORM

**Please complete this form and return it to the League office by Friday, August 21, 2009. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.**

In order to vote at the Annual Business Meeting, voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

**Please note:** Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this special area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

### 1. VOTING DELEGATE

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

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

### 2. VOTING DELEGATE - ALTERNATE

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

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

### 3. VOTING DELEGATE - ALTERNATE

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

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

**PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.**

**OR**

**ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).**

Name: \_\_\_\_\_ E-mail: \_\_\_\_\_

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

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

**Please complete and return by Friday, August 21 to:**

League of California Cities  
ATTN: Mary McCullough  
1400 K Street  
Sacramento, CA 95814

**FAX: (916) 658-8240**  
E-mail: [mccullom@cacities.org](mailto:mccullom@cacities.org)  
(916) 658-8247

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

4/28/09  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on April 28, 2009 at 7:15 p.m. 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 J. Aleshire, City Attorney  
Bonnie Johnson, Finance Director  
Duane Burk, Public Works Director  
Hoyl Belt, Human Resource Director  
Heidi Meraz, Recreation Director  
Leonard Purvis, Police Chief  
Jeff Stowells, Battalion Chief  
George Thacker, Assist. Public Utilities Director  
Fred Mason, Power Contracts & Revenue Administrator  
Chuck Thurman, Electrical Operations Manager  
Nicole Mihld, Purchasing Manager  
Marie A. Calderon, City Clerk

Mayor Botts called the meeting to order and Mayor Pro Tem Hanna invited the audience to join her in the Pledge of Allegiance to the Flag. The invocation was given by Mayor Botts.

PRESENTATIONS:

At this time Mayor Botts moved up the presentation of two proclamations

1. Proclamation – Morongo Band of Mission Indians

Mayor Botts asked the Council to join him at the podium to make a presentation to Chairman Robert Martin of the Morongo Band of Mission Indians. Mayor Botts read the proclamation for the benefit of the audience. This proclamation expressed thanks and appreciation to the Tribe for their support and partnering with the City of Banning and other organizations within the Pass Area.

Chairman Martin thanked the Mayor and Council stating that over the past few months they started to have some meetings with the City Council and he hopes it is a real first step in working closer with the City. He sees things going forward and being very successful for both the Tribe and the City.

## 2. Proclamation – Mental Health Month

Mayor Botts and the City Council presented to Christina Salas a proclamation proclaiming May 2009 as Mental Health Month. Mayor Botts read the proclamation for the benefit of the audience.

Christina Salas said that on behalf of the Mental Health Board she would like to thank the City along with its officials for their commitment in bringing awareness about mental illness to this community and also providing services within the community to those with mental illness along with their family members. She said that she was appointed by the Board of Supervisors as a volunteer to be a representative for consumers and their family members on the Riverside County Mental Health Board. They serve as an advisory board to the Department of Mental Health and will have an upcoming event that is free and open to the public on May 19<sup>th</sup> called “Live Life Well”. It will be held in Riverside from 3 to 7 p.m. and they will bring about awareness of mental illness.

Ms. Salas also said that on May 19<sup>th</sup> there is going to be a Special Election and Proposition 1E will directly be affecting those with mental illness. In 2004 the voters approved and passed the Mental Health Services Act which was meant to reform mental health services in the state of California by posing a 1% tax on any individuals who made over a million dollars. That money has gone into a fund and has been divided amongst the counties to provide and improve the mental health service program and to improve the lives of those with mental illness so that they can understand and see recovery. If that passes, a large portion of that money will be taken. Approximately \$227 million this fiscal year and an additional \$243 million the following year and that is a huge portion of money that has already been designated for programs to help those within our community with mental illness. As the Mental Health Board they are opposed to Proposition 1E and with the Special Election coming up she would like to ask the community members and our officials to exercise the right to vote and to oppose Proposition 1E.

## 3. San Gorgonio Pass Water Agency Presentation by Jeff Davis, General Manager

Mr. Davis addressed the Council and thanked the City Manager for inviting him here to speak this evening. Mr. Davis started his power-point presentation going over some early history of the State Water Project, the East Branch Extension Phase 1, recent history and the East Branch Extension Phase 2, Financing of the East Branch Extension 2, Major Interim Measures, Eastside Activities, the Banning Pipeline, Current Water Status, Benefit of State Water Project “vesting”, Institutional Constraints, Near Term Objectives and Agency Financial Constraints (see Exhibit A).

City Attorney said that obviously Mr. Davis' comments demonstrate the complex relationship between the City of Banning and the Pass Agency and we have identified a number of issues where he thinks we could work on a more cooperative relationship. On a global level we have been meeting the last three months to work out a number of ways in which we can enhance our operation. He thinks that we are close to having something they could bring back to the Council.

They are still working out the details and think it is moving in a positive direction. He thinks it will help solidify some of these areas of cooperation. He thinks the parties have had sort of on a handshake basis a very cooperative relationship. They are trying to get some of that down into a more concrete manner.

Mayor Pro Tem Hanna said for the State Water Management Plan that we are required to do in 2010 is that when your plan is due also.

Mr. Davis said yes. By the Urban Water Management Planning Act all urban water agencies that sell more than a 1000 acre feet of water have to update their plan every five years. They actually didn't have to do one in 2005 because they didn't sell 1000 acre feet of water. They will do their first one in 2010. To some extent the retailers are going to have to piggyback on theirs because they are going to talk about the supplemental so his plan is that they are going to hire their consultant to do that work in the summer of this year and his plan is to have that plan completed by March of next year so that leaves the City and the other retailers in the are plenty of time to take the input from their plan and put it into your plan and get it done by 2010.

Mayor Pro Tem Hanna said that he mentioned in February 2004 was adjudication of the Beaumont Water Basin and as part of that the temporary surplus was allowed for ten years and if that is correct we are about halfway through.

Mr. Davis said that was correct. The adjudication says that Banning and other appropriators can pump more than the safe yield to the Beaumont Basin for ten years your share of 16,000 acre feet per year and in February 2014 that ends which is a valuable supply of water for the City of Banning and for the other retailers. Obviously somebody is going to have to make up for that water and presumably that is with State Water Project Water.

Councilmember Machisic said in building that pipeline from Mentone were the various agencies charged any money to build that pipeline.

Mr. Davis said that was paid for by the San Gorgonio Pass Water Agency and the San Bernardino Valley Municipal Water District and that was paid for by taxes that were set for the property owners in our relative service areas. It would have been on a property tax bill and not through the cities.

4. Western Riverside Council of Governments Red Team Presentation  
by Rick Bishop, Executive Director

Mr. Bishop said that the Red Team that was convened by Supervisor John Tavaglione and Mayor Loveridge. It was comprised of public and private sector representatives. The Red Team is an effort that was actually modeled after something that was put together by then Governor Pete Wilson back in the late 1980's, early 1990's to deal with the issue of growth in California which was moving forward very quickly at that time. The general idea was to get together a group of experts that would meet over a short period of time and develop recommendations that then could be considered by public agencies and the private sector as well. Interestingly enough growth is such a fluid issue and it was at the time back in the late 1980's that by the time the Red Team convened to the time it actually created and forwarded its recommendations the State went from a

very fast growth area to one where the Governor said at the time the Red Team was looking at managing growth by the end of their efforts he was saying that he wished the State had some growth to manage. Mr. Bishop went over his power-point presentation at this time (see Exhibit B).

They contracted with Dr. John Husing to prepare the study and specifically asked Dr. Husing to provide four pieces of information: 1) give us an idea of the magnitude of problems that are existing in the Inland Empire specifically as they relate to the economy and what the associated impacts are of housing; 2) develop some tools in the form of recommendations that the local jurisdictions could discuss for responding to the surge in foreclosed and abandoned properties; 3) examine opportunities for how local jurisdictions might be able to insert themselves in the process of foreclosed property; and 4) had to do with how local jurisdictions might be able to have an impact on the high costs association with new construction today. The Husing Study was funded by a number of entities including WRCOG, City of Riverside, County of Riverside, Greater Riverside Chamber of Commerce and the Building Industry Association, Riverside County Chapter. The first Red Team Report from Dr. Husing was provided to the WRCOG Executive Committee in November. The Red Team was comprised of elected officials, a few city managers, representatives from the banking industry, the environmental community, building industry and so forth. It was not intended to be all inclusive as far as people are concerned but intended to be a spot specific representation of different agencies that have a vested interest and might be able to help make an impact in turning the economy around here in the Inland Empire. After the Red Team and the WRCOG Executive Committee heard Dr. Husing's report they then referred the recommendations back to a Sub-Committee of Red Team to refine them and provide final recommendations back through the committee process. Ultimately on January 5<sup>th</sup> the WRCOG Executive Committee held a special meeting to consider the recommendations that came from the Red Team, its subcommittee and then the City Manager's TAC. He said that Dr. Husing's report is available on WRCOG's website for viewing and is quite an intensive report. Mr. Bishop went over various slides that include Job Growth, 1984 – 2008, Unemployment Rate, Current Market Status, and Pace of Future Problem. Mr. Bishop also went over various recommendations in regards to: 1) Identification/mapping of problem properties; 2) Code Enforcement; 3) Ordinances; 4) Foreclosed homes to first time buyers; 5) Reducing flow of foreclosures/restructuring existing loans; 6) Foreclosed homes in need of reconditioning; 7) Outreach/counseling to homeowners; and 7) Strategies for restoring the new home market.

Mr. Bishop mentioned that on May 16th there will be a session held from 6:00 to 8:30 p.m. at the Beaumont Community Center regarding "I Want to Keep My Home". For those that are interested in Riverside County's Help Program they do have a website which is called [www.freehomeownershiphelp.org](http://www.freehomeownershiphelp.org).

Mr. Bishop said candidly there has been such a mixed bag of reaction on this he is not quite sure where it is going to go. Some jurisdictions have grabbed this and run with it and are looking at reducing their local fees. Others are very wary of it because fees are in fact a mitigation for development and the impacts that it has on development so there is concern about how much can you mitigate a fee before you are no longer mitigating the impacts of that new growth. So his advice is to secure good legal counsel advice on this in determining where you want to go. He said that just this afternoon the Riverside County Board of Supervisors took this issue up and his understanding is that they have taken some action to support this recommendation. He doesn't know how it is going to manifest itself but the reason he is here is that one of the fees they were

talking about were the TUMF fees which is a significant fee amount. They have had their legal counsel take a look at to what extent can TUMF fees be reduced and have shared that with their Administration Finance Committee and shared it with their Executive Committee. Their legal counsel is not real keen on doing this because of a nexus study mitigation requirements and there is also connections to Measure A in the sales tax between TUMF fees and their use with Measure A. So there are sort of additional layers that need to be considered with TUMF. Not notwithstanding that WRCOG has reduced the TUMF fees just a little bit recently as part of a construction index that they take a look at every year but it is a real minor amount and certainly not 80% like what is being recommended. Mr. Bishop said that they continue to monitor all of the activities that are occurring at the state and federal levels. This is a very, very fluid and fast moving issue and hard to keep up with. They try to find ways to make some of these recommendations have some fluidity in the sub-region.

Mayor Botts said that they did respond to the Building Industry Association and we have delayed our fees until certificate of occupancy versus significant up front fees to developers when we issue the permit. He knows that a lot of cities have done that and we are trying to do little pieces.

#### PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

Report by City Attorney – There was nothing to report at this time.

#### Report by City Manager

City Manager said

- Ellen Carr had made a presentation about the animal shelter and our Finance Director met with the County and we are working on the issue she brought forward. It was an issue that had been brought up some time ago about the drainage and there are some long-range plans that the County and the City will be working on and that matter will be brought back to the Council for further information as they proceed and Mr. Miller will probably be part of that presentation.
- The other issue is that Ms. File submitted some questions related to the information on Liberty Energy and staff is working on responses to those questions and that would be provided to the Council prior to distribution to Ms. File.
- The Banning Unified School District 2 x 2 Meeting was held and they are moving forward with their athletic complex and they have chosen to move forward with the artificial turf.
- The big issue that we have been facing is the Swine Flu issue and he did share some information with the reporter of the Record Gazette, Tracey Kratzer today. Also, effective tomorrow Riverside County will be activating their Emergency Operations Center (EOC) on the lowest level possible from 7 a.m. to 7 p.m. and the purpose of opening the EOC at this level is to be able to provide support and assistance to counties, cities and special districts. Essentially it is a process they have to go through and if you have a concern you can call the EOC at 951-955-4700.

#### PUBLIC COMMENTS

Mayor Botts said that there is a three minute limitation however this evening he is going to ask that we first have those that have comments that are non-Liberty Energy related speak first and then they would move into Liberty Energy comments.

Karen Clavelot, 5449 Riviera addressed the Council stating that she was the President of the Banning Cultural Alliance and she wanted to thank the City Council and the City departments and the community for helping them make their Art Hop on Saturday very successful. One addition that they had at the Art Hop was past and present City Council members displayed their art in the Council Chambers. She stated that on April 30<sup>th</sup> at their gallery on San Gorgonio they are going to have a joint mixer with the Beaumont and Banning Chambers. On May 16<sup>th</sup> they are going to have a second reception for Milford Zorens collection at the gallery. He is a wonderful artist from Claremont and his work is all over the world at the Smithsonian and the White House and they are very honored to have his work hanging. On Thursday, May 21<sup>st</sup> they are going to have a wonderful celebration at the Women's Club Building which is also the Alliance Headquarters and they are going to dedicate their Sculpture Garden and it will start at 4:00 p.m. and then their party and fundraiser celebration starts at 5:00 p.m. and they invite everyone to attend. They will have dancing in the street and will have food stations, art auction and a few gaming tables.

Marilyn Miller resident of Banning said that she would like to commend the Cultural Alliance for their excellent work in trying to make Banning the cultural center of the Pass Area. The production of Harvey, the murals having been painted, the bringing of known artists into the area all certainly help this effort. She also commended the City Council on their efforts in the same direction the work to develop the San Gorgonio Inn and other historic buildings are also noteworthy. However, she is really deeply concerned about the seemingly bipolar effects that this City is pursuing. Does anyone think that having the largest sewer incinerator in the United States which she believes Liberty Energy would be would attract tourists from the freeway to stop for meals at an outdoor café? Does anyone think that a sewage spill would never occur? Every sewage plant has had such spills and even once such event with the results and smell permeating our city would forever blight out the artistic and cultural efforts that are being done. Instead of being known as Banning, the Stagecoach Town or Banning the cultural center town it will be known as Banning the sewage dump town. But possibly there are some people who would agree with the City Council that those things don't matter and be interested in coming to Banning anyway.

Ben Goldstein addressed the Council stating that he is one of the three authors of the initiative to ban the burning of sewage sludge in this city. Next week they will be presenting their signatures of those people who are endorsing the measure to ban the sewage sludge in this town. In the last general election 70% of all the registered voters in Banning voted and in a little bit under three months they have collected approximately 40% of all the registered voters who voted in Banning in the last general election and they signed this initiative. He doesn't know why in God's green earth you would not want to simply adopt this measure and save the City of Banning a ton of money in having to put it up on the ballot. To do otherwise for some of the members of this City Council may just be political suicide.

Edward Miller resident of Banning addressed the Council stating that when the City Council voted to prohibit smoking in the parks you the City Council recognized that air pollution can sicken and kill. When the outbreak of Swine Flu occurred in Mexico the Mexican Health Authority closed

the schools and stated that the health of the Mexican citizens comes first. The residents of Banning have spoken to you the City Council in no uncertain terms that they all prize their health and place it first and do not want any sewage incinerator in our city. We have that statement as Mr. Goldstein said from well over 40% of all the voters that voted in the last election. We collected those signatures simply by going door to door and certainly did not visit every family in Banning. You are elected by us your friends and neighbors to help us and protect us. You know that sewage incineration will increase the chances that all of us have in developing cancer, emphysema, heart attacks and all the other horrible diseases that air pollution produces. While there are claims that an incinerator will bring benefits to the city he is convinced that our examination of the facts by this time have demonstrated to you that the incredible use of water in our drought driven arid area which doesn't get water from the water aqueduct system, the excessive traffic, the possibility of sewage spills, poisonous and hydrous ammonia spills, water contamination, property value loss all cry out to prohibit the burning of sewage in our city. The people of this city have spoken with their signatures on this ballot. It is time for you, our City Council to listen to us the people of this city and approve this ordinance.

Lyndon Taylor resident of Banning addressed the Council asking what is the primary purpose of a City Council. How do we the citizens evaluate whether or not the Council is doing its job. Some may say that the Council's purpose is to conduct the business of the City in an efficient and orderly manner. Others would point to fiscal control. Still others would focus on the promotion of growth by attraction of new business and residents. He would submit that the major objective of the Council like the primary purpose of our national government is to protect the health, safety and welfare of the citizens and to insure safety from threats to their personal beings to their families and to their property. When faced with evidence that a new proposal poses dangers to the citizens the Council must act quickly and decisively to insure the citizens that the threat will not be allowed to impinge on the life of the city and to cease consideration of any proposal that is proven to be a threat. This City Council has had many months to consider the proposal from Liberty Energy. Likewise it has been presented with overwhelming evidence that the toxic sludge incinerator presents multiple threats to the city of Banning. Furthermore, literally thousands of citizens have raised their voices to object to this proposal. Yet the Council has chosen to ignore this massive amount of feedback by doing nothing. At this juncture they are forced to ask the question why. Why are they turning a deaf ear to this information? Does the City Council function as a body independent of the voice of the people or the voice of science? Does this City Council work for the citizens or do the citizens have an obligation to blindly accept the will of the Council? Should the City Council listen to warnings from other cities and from every major environmental group with regard to these incinerators or go their own way based on self-developed criteria? Well it would be naive to not think by following the money trail many of these answers to questions can be found. But in the final analysis do whom do the City Council have the greatest allegiance. To the citizens that of the city that elected them or to an outside group offering financial rewards and also posing a catastrophic threat to the health, welfare, lifestyle and financial liability of this city.

Jane Mason addressed the Council she said that people are concerned about potential health risks. There are currently two towns in this country that are having the repercussions of environmental chemical dangers. Her sources for this information are Fox News and Business Week Magazine. The first town is Dover, Ohio and they had a chemical leak from large chemical tanks. This caused a major vapor cloud to cover the entire town. This is a heavily populated area in eastern Ohio.

This cloud occurred at 12:30 a.m. on April 18, 2009. Luckily the town had Reverse 911 and everyone was called and told to stay indoors all day and keep the windows shut. She asked if the city of Banning has Reverse 911 and she was told yes. The second town was St. Joseph, Missouri and they had a sludge chemical problem there which has been going on for quite a while and causing health problems. They have had a cluster of cancer there and other problems and the main cancer cluster was brain tumors. These chemicals leached into the soil and damaged the ground water and the air and it has been going on for years. Currently Erin Brockovich is there working on this case as is the attorney who worked with her on the Hinkley case. We all remember that Erin Brockovich and this attorney, Thomas Giradi, worked on the Hinkley case against PG&E and won the case in 1996 getting the biggest settlement against the private company that ever occurred. She said wouldn't it be better to be proactive and prevent toxic problems than to be reactive and need the services of someone like Erin Brockovich.

Galina Dwyer, 864 Wesley Street addressed Mayor Botts stating that at the last Council meeting when the question arose regarding large indirect donations made by Liberty Company through Sacramento based California Taxpayer Association to Luskey Election Company for City Councilmember's present now Machisic and Robinson. According to present and she hopes still working United States of America legal system it is a conflict of interest. And Council members Machisic and Robinson are not in the position to make fair and unbiased decisions regarding the Liberty project. She stated to Mayor Botts that he cannot ignore this issue any longer and we are waiting for your fair treatment of this sensitive problem. She addressed the Council stating that during this campaign she spoke to hundreds of Banning residents and only four of them were undecided about the Liberty Plant. It means that an overwhelmingly majority is against the toxic sludge plant. And if you are going to take this issue to a consolidated election and spend \$15,000 to \$20,000 of taxpayer's money, you are making a conscious decision to waste taxpayer's money. She said that to all of the community residents Morongo, Cabazon, Beaumont and Cherry Valley you are all going to be affected. In this time of the troubled economy and the most controversial project in the history of Banning we need to make our priorities absolutely clear like they did in Imperial Valley when they voted on the Liberty Company two years ago health and safety first; health and safety first. It is much easier to prevent this toxic sludge from being built than trying to demolish it when it proves to be unsafe and toxic and use all our fresh water supply.

Don Smith resident of the Banning said that he has been to these meetings and to the hearings that Liberty put on and he has had numerous discussions and correspondence with the Liberty and has reviewed the City's files. He is amazed that twenty people were able to go out and get 4,000 for anything which in his mind is going to tell you how overwhelmingly the people of Banning are against this project. He has talked to hundreds of people and has run into exactly two people that are for this project and 95% of them are definite no's and then most of the other 5% will say what project. For a long time Liberty has been controlling the calendar of when this project gets heard, when it doesn't get heard, it's election time so let's pull it off the calendar, let's send a letter that grants ourselves an 90-day extension just because we say so. Well the Council has been very patient in not discussing this because it is not on your agenda and he understands that. Twenty people have convinced 4,000 other people to make you put it on the agenda in the near future and you will have to decide what to do with their petition. If you decide to anything other than adopt the ordinance which he thinks would be a mistake based on his discussions with the public, then he would like the Council to either re-look at or ask him to resend you the letter he sent to Council last October right when Liberty suspended the project. Liberty should not be dictating what this

discussion is about. You are the Council and there are serious issues here. If there is going to be any negotiations in the future between Liberty and your staff, you need to put this on your agenda so you can direct your staff on what you want them to be discussing rather than them reaching all the conclusions and then coming back to the Council with their recommendations. This is too important of an issue. What is your position regarding transportation, health, etc.? Your guidelines should be what is given to Liberty and not their suggestions to you.

Suzanne Holman addressed the Council stating that she lives in an unincorporated area east of Banning on the Morongo Indian Reservation and she is a Tribal Member. She has not heard anyone speak about this but clearly we will be in the path of toxic ash. We have the worst air in the country in the quarter that comes through the I-10 freeway and we will be adding this stuff to it. When she lived in Washington State she did draft documents for Hanford Nuclear Reservation and she was affected by that as a child and she wears the Hanford smile because radio active iodine 129 and 131 settled in the thyroid gland. There are dozens of kinds of cancers that those people suffered. We have a class action lawsuit that will probably never be settled. But she would like us to be proactive and would like the Council to consider that when we stood at the Banning Airport at the end of Westward Ave. ten degrees to the north east you can see our casino and there is our Reservation. So it isn't just about Banning. It is about all those people that will be downwind of this. She said that she survived her first toxic exposure but she doesn't want to go through that again. She was dealing with papers that were explaining strontium and cesium and radio active iodine and other things. Some of these have a half life of a half million years but the stuff that is going to be released in this toxic ash is going to be absorbed into bodies and lead makes children retarded. Mercury is going to cause all kinds of problems. Arsenic is very bad but dioxin it acts like hormones in the body and it will attack reproductive systems and women will have more breast cancer. It is just too ugly to even contemplate. We don't have to do this. We can just tell them to go somewhere else. Let LA keep their crap in LA; we don't need it.

Joan Donahoo resident of Banning said that she has seen a picture of a sludge burning plant and was shocked to see the plume of smoke going up into the air and over this town. They are talking about how it has toxic heavy metals and how it can cause cancer. She is an asthmatic person and already has days where it comes on the television where it says it is good to stay inside because of the smog and pollution in the air. She can't image what having something like this come to our city will cause her life to change and be inside more, be at the doctors more, be on machines more. She really hopes this doesn't take place.

Doree Meinhold resident of Sun Lakes addressed the Council stating that she cannot even believe that you are considering this. This plant as far as she can see offers nothing. Even the bit of money that they are going to give to the City of Banning will be used up in the derogatory things that are going to happen to the city because of it. The drop in property values, the tax revenues, the water usage, the pollution of our groundwater, the odor, the air pollution, the traffic and wear and tear on Highway 10 which is our only artery here. And finally, not least of all the stigma attached to being the crap capital of Southern California. She can't image how you would even consider it.

Mayor Botts said as you know our operating rules and guidelines is that this is not the place to enter into discussion and debate on the subject. You asked a number of things last time and we have, he guesses, a tentative schedule on the back table regarding when this subject would

probably come back to the Council and that is in 2010. He said that the City Manager is trying to answer a number of those questions that were asked. Certainly we welcome, if there is a petition drive and it comes back to us, that is something as a legislative body we will respond to as we are doing as a legislative body and what is called due process. It would be a lot easier to not sit here and listen to all of this but we believe anyone has a fair opportunity to work through the legislative process. For the listening audience this issue has never come to the Planning Commission and it has never come to the City Council. There were two public hearings and so at least four of us want to look at testimony and look at the science of this. He said he would simply defend the process and if you had another issue that you wanted to go through, we would defend your right to simply work through the legislative process and due process.

Mayor Pro Tem Hanna said that she objects to that comment to say that at least four of us. That is very inappropriate.

Meeting recessed at 8:54 p.m. and returned to regular session at 9:02 p.m.

CORRESPONDENCE: There were none.

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

Councilmember Franklin –

- She said that Pass Area Supporting Soldiers had a packing day about a week and half ago and packed 32 boxes and they were very pleased to see one of the young Marines that had served come out and show his support for what we have done. She displayed a picture of Paul Renza and he served in one of the wars and was here safely and wanted to say thank you and that he was very appreciative. She thanked the community because so many came out to make donations and give monetary donations so that the boxes could be mailed out.
- She thanked those that participated in the 4<sup>th</sup> Annual Disaster Preparedness Expo, especially all the City departments. There was a really good response from the community and it was bigger turnout than they have had before. There were over 633 people that attended and not only did they enjoy the Expo but they also enjoyed the improvements of the Community Center.
- An RTA Meeting was held and there are two new routes that are going to start in June but the one of most significance to us is that there is going to be a commuter link which will go from San Jacinto to Escondido and will only take a hour and 45 minutes and the cost each way is only \$3.00. She said that Temecula has a project where they were able to get a developer to play for transit for the residents of the development for a year. She wanted to see if the Council would be in agreement to ask staff to look into this and see what they did to be able to condition a project in such a way that all the residents in this project area are riding the transit free.
- Community Action Partnership met and there are a lot of dollars that have been passed down through the federal government to the Community Action Partnership throughout the county. One area has to do with weatherization of homes. The usual allotment is approximately \$2 million dollars and this year it is closer to \$6 million. This for people who are low income to be able to apply to get grants to have their homes weatherized and Community Action is looking for those people who want weatherization of their homes, as well as, local general contractors who are willing to do the work. We are looking for people in this area who need

work done. They can apply to Community Action at 951-955-4900 and also for anyone who is a licensed general contractor looking for work they can get work throughout the county to be able to do this. Also, in California people are not applying for food stamps. In Riverside County only 52% of the population that is estimated to be qualified have actually applied. There is no limit on the number of people who can apply. There was a concern that some seniors were saying we need to save the food stamps for families. There is plenty of money out there for food stamps. People can apply at the Department of Social Services Office at 4<sup>th</sup> and Ramsey and they can call to get all the requirements they need to have at 922-7000 but California is last in the county for states having people apply for the food stamps that have been allotted to the state. Because of the condition we have with so much unemployment it would seem that we would want people to know that they can apply for food stamps they can get them.

Councilmember Machisic –

- He said that in regards to cleanup in the city since he has been on the Council there have been a number of cleanup days and last Saturday was a most unusual one. We had the Art Hop, the Disaster Preparedness Expo but most of us didn't know that there was a cleanup and it was by the Mormon Church from Banning, Beaumont and Yucaipa Wards. They brought out 200 plus people and they painted a building down at Dysart Park, they planted 20 trees and they were very organized in various groups and worked all the way from Highland Springs to Hathaway. It was organized around families and went from 8 a.m. to Noon. Duane Burk reported that they picked up about 63 bags of trash. Following this work they all got together at the park and he noticed all of them in yellow shirts. He would like to see the City in some way recognize them because that is an outstanding function by this group. It doesn't happen often and when it does he feels we need to call attention to it.

Mayor Pro Tem Hanna –

- There is a new information network that has gotten started and they had a presence at the Art Hop and they have a web site called: [www.passfood.org](http://www.passfood.org). They have four interests: 1) to encourage people to have personal gardens, 2) they are developing a database of experts who know gardening locally and people who want to learn how to garden, 3) support a community garden and looking at how that might happen, and support local agriculture and 4) free food. They want to make sure that when people have excess produce that you know where you can share it. If you deliver it to H.E.L.P. they will package it and give it out to people who need food. There is going to be a party on Saturday, May 16<sup>th</sup> at 5:00 p.m. and Don and Lee Sax's home in downtown. They will have a presentation by the University of Redlands by a professor on community gardens.
- She and Council Member Franklin and the City Manager attended a two x two meeting with Amy Herr and Deborah Dukes of the school district. They have schedule June 20<sup>th</sup> for a joint meeting with the school district at 9:00 a.m. The City will be looking at their full plan for development. They believe in September will be the groundbreaking for the new sports field.
- The League of California Cities has a new Water Task Force which is volunteered for and she will be on one of the subcommittees on water quality issues, storm water and urban runoff with the City Manager of Signal Hill. She said that she will write a report on that as well as Community Healthy Cities Conference "Lean, Green and Grain" addressing current trends in challenging economic times.

Councilmember Robinson –

- When you drive past Omar and Ramsey either on Ramsey itself or looking down from the freeway you are going to see a lot of stone work done on the center median which serves the purpose of controlling the washout in that area. It really adds another dimension to that area and really cleans it up. He complimented the stone workers that did all that work.
- Also thanks to the Finance Department and department heads for descriptions on accounts payable and warrants. It is much better and it only took him a hour and a half to go all the way through it. He hopes it works better for staff also.
- Channel 10 is a great improvement and he hopes everyone is enjoying it. They are getting a lot of great compliments everywhere they go that now they can actually see something that pertains to our area and he appreciates staff taking care of that.

### CONSENT ITEMS

Mayor Botts pulled Item No. 3 for discussion, Councilmember Franklin pull Consent Item No. 2 for discussion and Councilmember Robinson pulled Consent Item No. 6 for discussion. City Attorney said that he would like to pull Consent Items 8 and 9.

1. Approval of Minutes – Regular Meeting – 3/10/09

Recommendation: That the minutes of the regular meeting of March 10, 2009 be approved.

4. Resolution No. 2009-33, 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.

Recommendation: That the City Council adopt Resolution No. 2009-33, amending the Memorandum of Understanding (MOU) with the City of Banning Association of Managers.

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.

Recommendation: That the City Council adopt Resolution No. 2009-34.

7. 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.

10. Approval of Accounts Payable and Payroll Warrants for the Month of March 2009.

That the City Council review and ratify the following reports per the California Government Code.

**Motion Machisic/Franklin to approve Consent Items 1, 4, 5, 7 and 10.** Mayor Botts asked if there were any comments from the public on these items. There were none. **Motion carried, all in favor.**

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.

Councilmember Franklin said that she wanted to thank staff for the work that was done on the Community Center. Her reason for asking to have this pulled was that in going to the Community Center and realizing that this work was very fresh she saw where it is already being not maintained. She concern is that when groups use the Community Center we need to make sure that we maintain what we have already got. She wanted to see if it would be possible for the Council to consider having a cleaning deposit for any group that uses the Community Center or any community facility so that we can keep it looking nice. For the floor to be only two weeks old you can already see where things have been scraped across the floor, there were food spills that had dried and it wasn't looking like it was a brand new facility. We had to go in and actually clean it. She doesn't think that it is something that staff is supposed to be doing when groups are using the facility. She just wanted to recommend that we look at having some kind of cleaning deposit for any group that uses it.

Mayor Botts asked if there was Council consensus to have staff look at that. **There was Council consensus to have staff look into that.**

**Motion Franklin/Hanna that the City Council adopt 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 and authorize 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. Motion carried, all in favor.**

3. Resolution No. 2009-32, Temporarily Delaying the Collection of the City's Residential Development Impact Fees Until Certificate of Occupancy.

Mayor Botts said he wanted to highlight the fact that a lot of other communities are really calling the fact that they have their own stimulus packages and they are trying to deal with developers and you heard Mr. Bishop talk about what we could do as a local community. The Council knows that a year ago we said rather than levying the fees which are very, very significant on housing projects when we issue the permit, that we get those houses built and then as the developer sells them and starts getting income that is when we require the payment of the fees on the occupancy. We are going to renew that for a year and he wanted to highlight the fact that we are trying to do a little piece of moving residential development along.

City Attorney said that he wanted to clarify in the resolution that Item B in the resolution at the end of the year he thinks that it would be the intent of any project that had a building permit would still not have to make the payment until they had their occupancy permits and the Council could approve it with the understanding that they will make that change to Item B. **There was Council consensus.**

**Motion Franklin/Machisic 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 and as clarified by the City Attorney to make the change to Item B. Motion carried, all in favor.**

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.

Councilmember Robinson said he wanted to make sure that we are doing the most as we could as far as working with local agencies and also that everybody understood that there is a 2% discount for local agencies and we can increase that if we need to. But what it says is however the cost may well may higher due to the smaller quantity by piggybacking. He wanted to make sure that we explored that Diamond Hills and Ramsey Street Ford, local vendors, have had every opportunity to bid this especially when he sees the five plus the Chevrolet Tahoe be about \$25,000 a piece, the Crown Victoria from Ramsey Ford would be \$22,982. He wanted to know how that worked out.

Chief Purvis said that the main factor that he is going to present is a matter of time. Time is of the essence with this grant. They would have loved to have gone locally and purchase the vehicles locally however; our local dealerships do not have those vehicles in stock. We need to be able to purchase these vehicles, equip these vehicles and put them on the streets before the end of this fiscal year. Under AB 158 that was enacted at the end of last year we did receive our check from the State for \$499,500.00 late in March so it really didn't give them much time to start purchasing these items. Under AB 158 they had to spend this money before the end of the fiscal year. Any monies that are not spent can go back to the State. He is not sure if they will take it back or not but he didn't want to take that chance that if we do not spend that money, we might have to give it back because of the State budget. They would have loved to have bought the vehicles locally however; Wondries Ford does have the five interceptors that they can get into their fleet as soon as possible and they can also get that Chevy Tahoe into their hands and equipped very quickly because they have it in stock. With the two stealth vehicles nobody has those right now so they would have to put in their order and wait. They are hoping to get these two vehicles from Ramsey Street Ford before the end of the fiscal year and get them equipped and on the street. Chief Purvis went on to explain the availability of in getting these vehicles and said he didn't want to be outside that June 30<sup>th</sup> deadline and the State say they want that money back. He understands Council's concerns.

Mayor Botts said that we need to figure out how do we buy local and he knows that there is a 2% local preference. He is conflicted and he reluctantly supports this because we so badly need to support our own merchants but he understands the need and the potential to lose money back to the State. If the Council agrees we need to look at that local preference again and we need to factor in what that 2% really represents. **There was Council consensus to look at this.**

**Motion Robinson/Hanna that the City Council Award the Piggyback of Purchases of Five marked Police Interceptor Crow 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.** Mayor Botts asked if there were any comments from the public on these items. There were none. **Motion carried, all in favor.**

8. Emergency Overhaul of Process Water Pump 9-P-2 at the Wastewater Treatment Plant for an Amount Not to Exceed \$10,991.02.
9. Emergency Repair of 110' Rotary Distribution Arm on the Trickling Filter Basin at the Wastewater Treatment Plan with Pascal & Ludwig Constructors of Ontario, Calif. in the Amount of Not to Exceed \$21,955.00.

City Attorney said that in the compensation provision of the contact we need some clear language about when the compensation gets paid so in the Council could just approve these two items in the form approved by the City Attorney he will make those corrections.

**Motion Hanna/Robinson that the City Council 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; and approve 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, California in the amount not-to-exceed \$21,955.00 with the clear language change by the City Attorney to both of these items as to when the compensation gets paid.** Mayor Botts asked if there were any comments from the public on these items. There were none. **Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. A Adoption of Census 2010 Complete Count Proclamation and Complete Count Community Guidelines.  
(Staff Report - Brian Nakamura, City Manager)

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

Councilmember Machisic said the proclamation is fine and certainly in agreement with it but at the same time he is not sure how many of our residents read proclamations. Since census is important to us in a number of ways as far as grants he would be interested in seeing if we could communicate to our people whether it is through utility bills or our local press or channel 10 because he thinks we cannot get too much coverage on this because people look at census as just kind of an item that comes up every ten years.

Mayor Botts said that there is a complete program that we are entering into that will create a committee where the Mayor appoints a number of people to reach out to every segment of the community and see how to get the word out to everyone in the community. The City will be looking for appointees to do this and probably perhaps at the next meeting have a more formal process for them to apply. City Manager said that staff could have something at the next meeting.

**Motion Hanna/Machisic that the Council adopt the Census 2010 Complete Count Proclamation and Complete Count Community Program Guidelines.** Mayor Botts asked if there were any comments from the public on this item. There were none. **Motion carried, all in favor.**

1. B Approve Professional Services Agreement with James Earhart for Public Utility Consulting Services.

(Staff Report – Brian Nakamura, City Manager)

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

**Motion Hanna/Machisic that the City Council approve the attached Professional Services Agreement between the City of Banning and James D. Earhart for Public Utility Consulting Services.** Mayor Botts asked if there were any comments from the public on this item. There were none. **Motion carried, with Councilmember Franklin voting no.**

1. C Utility User Tax Oral Update

(Staff Report – Brian Nakamura, City Manager)

City Manager said one of the tasks for moving forward with the potential for the utility user tax was to have discussions with Tramutola and Godbe regarding the efforts to get a sense of the community and a sense of a utility user tax. He said that he and Bonnie Johnson did have a conversation with Ms. Bonnie Moss of Tramutola. The issue moving forward is that the Council had agreed to an amount for this effort and the polling issues and basically it is our understanding that there could be efforts to move this forward however; the consensus that we reached is that the Council at this time would need to move forward with the intent of eventually setting a date for the election for the UUT and that the outcome of their efforts would then be supported in moving forward with an election. He wanted to bring that information back to the Council for consideration. He knows that there had been discussion about whether or not we would get a sense of the community, there desires to move forward yes or no, and how would we proceed. Essentially where we are at is kind of a crossroads now where we would like the Council to support those efforts for the utility user tax but in doing so the consensus from staff and also from Ms. Moss is that when moving forward we would need to do so with the intent of putting this forward on a ballot for an election cycle for the voters to consider.

Councilmember Franklin said based on what you are telling us right now her understanding is that you are asking us do we want to move forward at this point regarding the utility tax or do we not.

City Manager said that we received direction to move forward to get the polling from the community. The issue he thinks at this point is we need to have basically the discussion that we had at the last meeting which is essentially moving forward with the intent to set a date for the ballot measure. The discussion that we had was essentially revolving around if we move forward with the polling, if we move forward with the educational process the intent is then to move forward with the election.

Mayor Botts asked if he discussed anything about the climate for an election.

City Manager said that there was considerable discussion about the climate. We are clearly in a different economic time than we were two years ago or even a year ago. Again, the direction that we

need to take is based upon the elected body moving forward with the intent of putting this matter to the ballot.

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

Mayor Botts said that he was inundated after the last Council meeting coming at us because of taxes and Liberty Energy. But he has arrived at the conclusion that we ought to not move forward with the utility tax but move forward with a transient occupancy tax (TOT). It certainly one that we all know others would support like the City Treasurer and the Chamber of Commerce. He is going to guess that if we are going to do that that we still have a major effort to move the TOT forward. He has arrived at the point that says just given the climate why even try with a utility tax. His opinion is that we ought to move away from that and go with the TOT and including not spending any more money with Tramutola. We have that \$47,000 and if we decided if we move forward with the TOT, how best to spend that on education.

Mayor Pro Tem Hanna said she agrees that if the Council isn't unified with a utility tax that we should not go forward and that is how she voted last time. She does support also along with the Mayor the hotel bed tax. She thinks that people don't understand what that is. There will be a great deal of education that will be necessary. The City did this before and we attempted to get a hotel bed tax approved and it was turned down so she definitely thinks we need outside help and Tramutola is certainly a qualified company to do that. She doesn't think that we need a year and a half to do that. The other thing that is important is that we need updated information on our best projection on what a hotel bed tax might bring in and it would depend on the amount of bed tax. We also need to understand that's not going to begin to cover our structural imbalance. There is going to be over \$2 million additional cuts and maybe the \$3 million we haven't done yet but it is going to be serious and it is going to be felt and probably affect Banning for the next few years.

Councilmember Robinson asked the City Attorney to shed some light on this as to where we are at this juncture. We have a Section 2.18 of the Code that says we can reconsider this and is that what we are doing now reconsidering withdrawing from the utility users tax and looking at the TOT at this point in time or do we just have to withdraw that and make a new resolution for the TOT.

City Attorneys said first of all the TOT is not on the agenda and you cannot give any direction with respect to the TOT tonight. He appreciates the comments but there cannot be anything official that affects the TOT. He thinks that in the City Manager's report the last direction was to go back and work out the details of the contract so he doesn't think the Council has to reconsider that action. He thinks the City Manager has come forward and given you an update on the conversation so he thinks that in regards to this report if the Council wants to give direction not to proceed with that contract and the utility tax a motion to that effect would be in order.

Councilmember Franklin said given the information that we've had so far without the unanimous agreement of the Council then there is no reason to move forward with it. Although she does think that three months may not be long enough for people to truly understand the TOT based on their rejection of it before. If people had a better understanding of it and it had been better received by the community, then she would go along with the short window. But given the fact that people didn't she thinks that we do need to look and maybe ask the consultants what would be a reasonable amount of

time for educating the public regarding the TOT because that is the only one we all agreed on moving forward with.

City Attorney said his suggestion on the TOT is that you had a little dialogue and he thinks the Council doesn't need to give direction. He thinks that City Manager and Finance Director can go back and talk to the consultant and come back on another agenda item with some information and put it on the agenda so that the Council could have discussion at that point.

**Motion Botts made a motion not to move forward with a utility user tax (UUT). Motion seconded by Mayor Pro Tem Hanna.** Mayor Botts asked if there were any comments from the public on this item. There were none. **Motion carried, all in favor.**

#### 1. D Discussion & Clarification of the Public Comments Section of the Agenda

City Manager said in having dialogue with one of the Council members one of the issues raised was how do we process public comments and public participation in an efficient and effective manner. There was some research on his behalf yielding some issues about comment cards and making sure that the people were given the fair opportunity and basically his desire from the Council is do you want staff to explore this in a more detailed fashion and bring it back with recommendations. Or does the Council want to provide direction because there is language in minutes and other things that kind of identify different processes or handling public comment. We want to do it in a fashion that is acceptable to the public, acceptable to the Council and does allow everyone to participate.

Mayor Botts said that he had discussions with the City Manager after the last meeting and obviously you know and he trusts that he had the Council's support in doing that to be fair tonight we didn't have comment cards but we did ask and it seemed to work out well this evening. Many other Councils and the County and RCTC use the card system rather than simply having everyone come up. He doesn't have a preference and he did try this evening to make it fair to everyone. He asked should we handle it perhaps like we did this evening or is there some support for comment cards.

Councilmember Machisic said the only thing that he would suggest was that tonight there were not very many speakers and in previous nights we had 10 to 20 speakers. It might be a good strategy to say to them to select a speaker representing several of you particularly if they are going to get cut off.

Councilmember Franklin said that RTA does use comment cards and she thinks that comment cards are a good way for people to know that they are going to be called on to speak and they don't have to stand in line for an undo period of time and it also gives the Council, as well as, staff an idea of how many people are planning to speak so that way you could also judge what might need to be done at that time.

Mayor Pro Tem Hanna said she doesn't see any need to change it. It may get complex as to how long in advance of the Council meeting do they have to appear when we have meetings that go over and how does that work. She thinks it complicates things and she doesn't think it is necessary. She thinks it could be viewed as stifling public comment and she doesn't think the Council wants to do that. She doesn't see any reason to change and get more complicated.

Councilmember Robinson said that he would definitely support the comment cards and hopes that we could come back with something like that and make sure that we stick to the thirty minutes. This has worked and he has done a lot of research on the internet recently on this. There is a lot of information out there on using these comment cards and how valuable they are. If we don't put it down in writing they all seem to get confused as to what the process is and obviously they don't understand the due process yet so we still need to get it down to the point of where it is in writing and this is what we are going to go by.

Mayor Botts said he would concur with that and he has done research. He doesn't see this as stifling anything. His personal opinion is to stay with the thirty minutes but the Council does have the right at any given meeting to say we will extend that thirty minutes.

Mayor Botts opened the item for public comments.

Don Smith asked if they are talking about only the things not on the agenda because he often has no idea whether he wants to speak on a topic until he hears the staff report.

Mayor Botts said they are only talking about the public comment section.

Mr. Smith said the key question is like if he wants to talk at the next meeting and he puts his comment card in now is he first in line and how is that going to work. Does the first one in win or somebody looks through them and picks which ones they want to hear.

Mayor Botts said most everywhere when you come to the meeting everyone knows that you fill out a card and hand it to the clerk. The presiding officer decides who is going to be heard.

Mr. Smith said that is where you run into problems.

**Motion Robinson that staff prepare comment cards for both the Community Redevelopment Agency meetings, City Council meetings and any special meetings that we have and that information is filled out in the comment sections for all meetings so that everybody understands the process that could also go onto our website and Channel 10.**

**Councilmember Franklin said she would second the motion with the amendment that we try it and see if it works.**

Mayor Botts said that generally all cards have directions as to how to use them.

Mayor Pro Tem Hanna said she presumes this will come back to the Council as part of their Rules and Regulations or something and will not just be enacted. It could take numerous forms she would image.

City Attorney said that ultimately they will need to put into your Council rules language that creates the amendment. Certainly we are doing it on a temporary basis and we can kind of print something up so the Council could look at the form and see if you are happy with it and then use it for awhile because you may decide to alter it before we finalize what the rule is.

**Motion carried, with Mayor Pro Tem Hanna voting no.**

**FUTURE MEETINGS**

1. Vision & Mission Council Workshop – April 29, 2009 – 8:00 to 11 a.m. – City Hall Large Conference Room

**There was staff and Council discussion on this meeting and there was consensus to start this meeting at 9:00 a.m. and end at Noon.**

**CLOSED SESSION**

City Attorney said that the City Council will meeting in closed session pursuant to Government Code Section 54957.6 to discuss labor relations with our bargaining units: IBEW - Utility Unit and IBEW General Unit, CBAM and BPOA; and also to discuss the evaluation of the City Attorney and the City Manager.

City Attorney said that also there will be closed session items discussed from the Community Redevelopment Agency pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator in regards to: Oddfellows Building, Banning Hotel, Art Park and the Ehline Update.

Meeting went into closed session at 9:53 p.m. and returned to regular session at 10:45 p.m. with no reportable action taken.

**ADJOURNMENT**

By common consent the meeting adjourned at 10:45 p.m.

---

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 of Banning April 28, 2009

### History of SGPWA Providing Supplemental Water

### Early History

- 1960—Burns-Porter Act passed, voters approve statewide bond issue for SWP.
- 1961—SGPWA Act passed; residents incur debt.
- 1961—Agency signs first contract with State for 15,000 AF of State Water Project water.
- 1962—Agency augments supply to 17,300 AF (5.75 billion gallons).
- 1964—Agency makes first debt service payment to State.

## 1970's and 1980's

- 1970—Agency signs 1st joint facilities agreement w/ Valley to bring SWP water 17 miles closer to service area.
- 1978—DWR completes study on extending SWP to Coachella Valley through Pass; desert agencies decline to participate.
- 1986—Agency signs second joint facilities agreement bringing East Branch to Yucaipa.

## 1990's

- 1991—After desert agencies pull out, Agency begins “stand alone” project to extend SWP to its service area.
- 1994—EIR for extension project completed; Agency is sued (lost on appeal).
- 1995—Agency asks DWR to complete SWP to Agency service area; DWR agrees.

## East Branch Extension Phase 1

- 1996—Agency signs agreement with DWR to bring East Branch Extension to Agency.
- 1998—DWR begins awarding construction contracts.
- 2003—First water delivered to Beaumont Basin (no retailers interested in purchasing water at this time).

## Recent History

- 2005—EBX 2 preliminary design begins.
- September 2006—Deliveries begin to BCVWD.
- **December 2006—Agency board commits to constructing and financing EBX 2.**

## Financing of EBX 2

- DWR sells bonds to finance design and construction.
- DWR invoices Valley and Agency to cover cost of bonds.
- Agency sets ad valorem tax rate to cover annual cost of bond payments.
- EBX 1 cost Agency \$190M; EBX 2 to cost roughly \$150 M or more (P and I).



Exhibit "A"

## Major Interim Measures

- EBX 2 expected on-line in 2013 or 2014.
- Agreement revisions to allow pumping beyond capacity when needed.
- Additional pumps at all three pump stations.
- Negotiating agreement with Valley to purchase additional water when available.

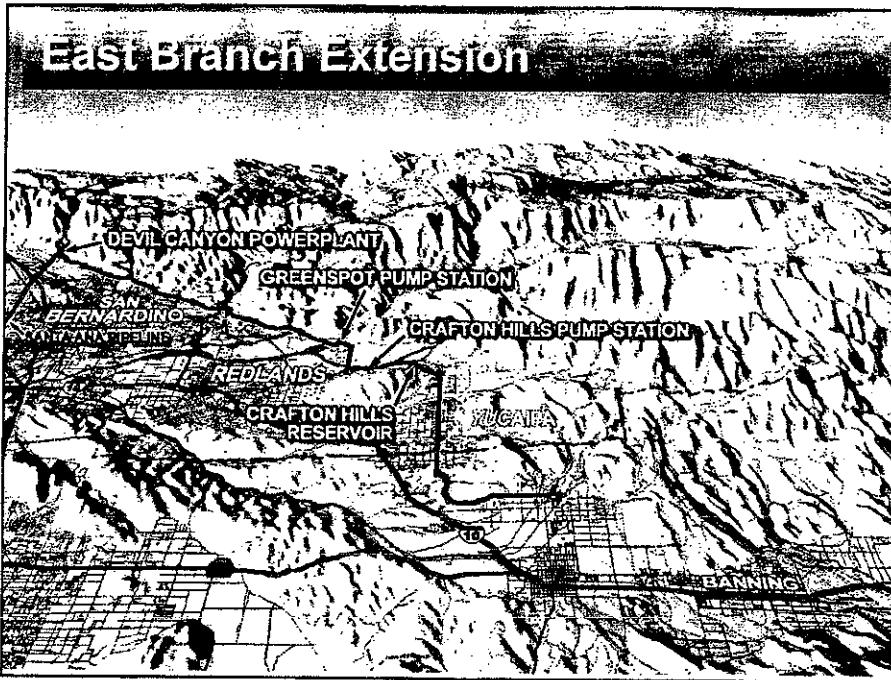


Exhibit "A"

25

reg.mtg.-4/28/09

## Eastside Activities

- Working with City to upsize pipeline from Cherry Valley to Highland Springs.
- Participation w/ desert agencies in SWP extension project to bring SWP water to Whitewater.
- Protection of Edison flume.
- Cabazon well study.

## Banning Pipeline

- Agency will eventually extend EBX to Cabazon (5-10 years). Agency does not have funding at this time (can't use tax rate for internal pipelines).
- City expressed a desire to construct pipeline now.
- Agency does not want to build a pipeline twice, so would prefer to upsize now and pay the difference.
- Banning gets pipeline now.
- Agency gets first part of extension at discount.

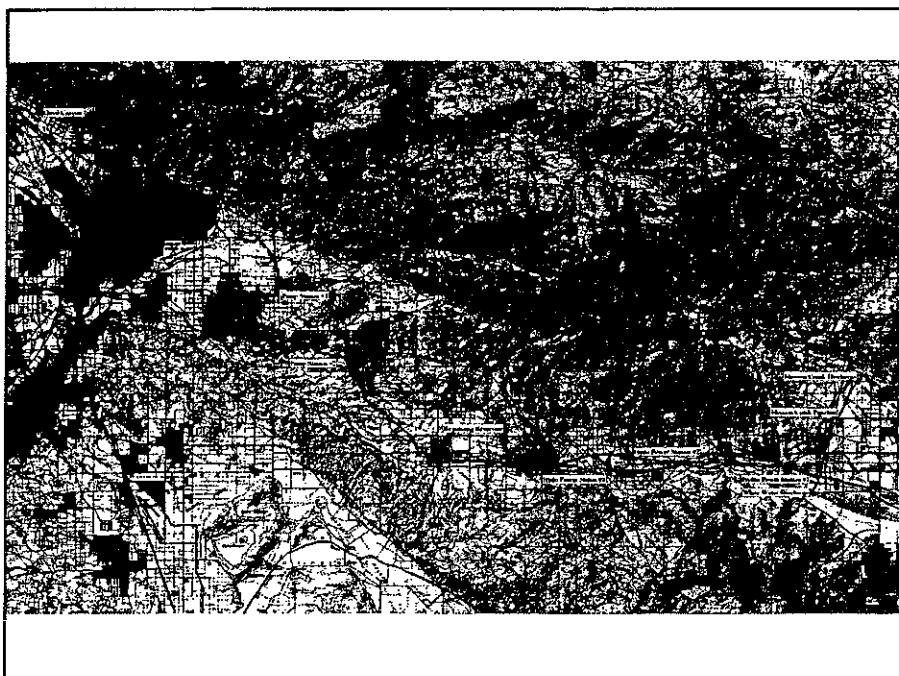
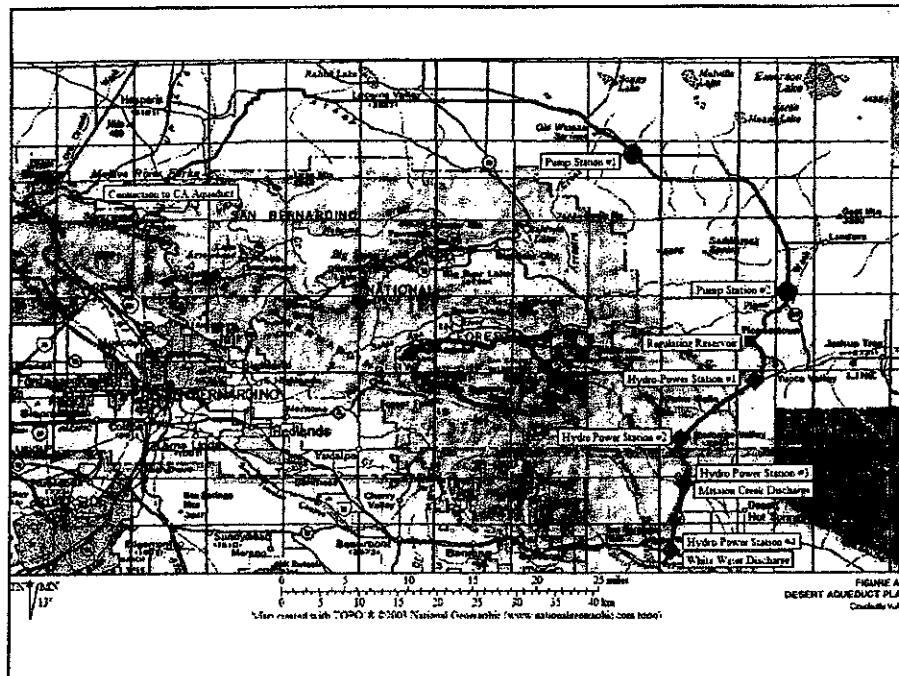


Exhibit "A"  
27  
reg. mtg.-4/28/09

## Current Water Status

- Agency will sell City at least 1400 AF this year (500 M gallons) at 12 gallons for a penny. BCVWD to recharge for City.
- City pays BCVWD \$61 per AF to recharge in BCVWD facility (\$85,000 this year).
- Agency will recharge at no cost to City when new facility built in 2010 or if BSU boundaries were changed.

## Benefits of SWP “vesting”

- Analogous to country club membership.
  - Services available to members of the club.
  - Must still pay for services when used.
- Unquantifiable increase in property values.
- Availability of SWP water in UWMP, Water Supply Assessments.

## Institutional Constraints

- Section 15.5 of SGPWA Act.
  - Highest priority for SWP water is for overdrafted groundwater basins (bad behavior is rewarded).
  - Agency's LSG recharge facility not in adjudicated BSU (currently prevents Agency from recharging for City at no charge).

## Near Term Objectives

- Purchase additional supplemental water (5000-10,000 AF).
- Construct additional BSU recharge facilities.
- Extend EBX to Cabazon basin.
- Construct recharge facilities in Cabazon.

## Agency Financial Constraints

- Sources of revenue
  - Ad valorem taxes (only for aqueduct)
  - 1% taxes (general fund)
  - Water Rates
  - Capacity fee (proposed)

SGPW (San Gorgonio Pass Water Agency)  
SWP (State Water Project)  
AF (Acre Feet)  
DWR (Dept. of Water Resources)  
EIR (Environmental Review)  
EBX (East Branch Extension)  
BCVWD (Beaumont Cherry Valley Water District)  
BSU (Beaumont Basin)  
LSG (Little San Gorgonio Creek)  
UWMP (Urban Water Management Plan)

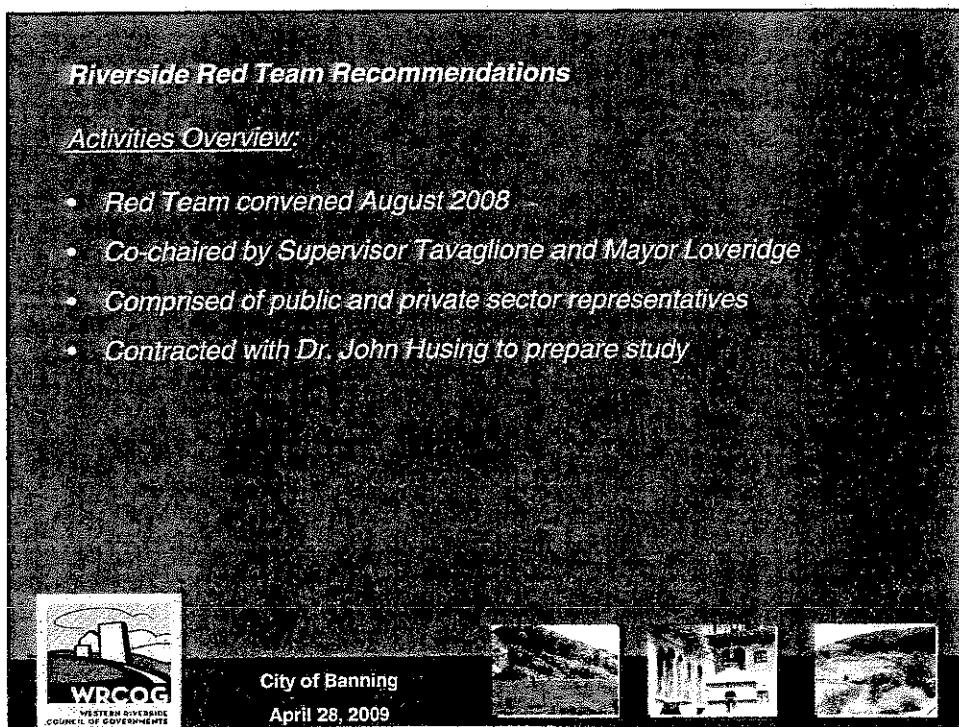
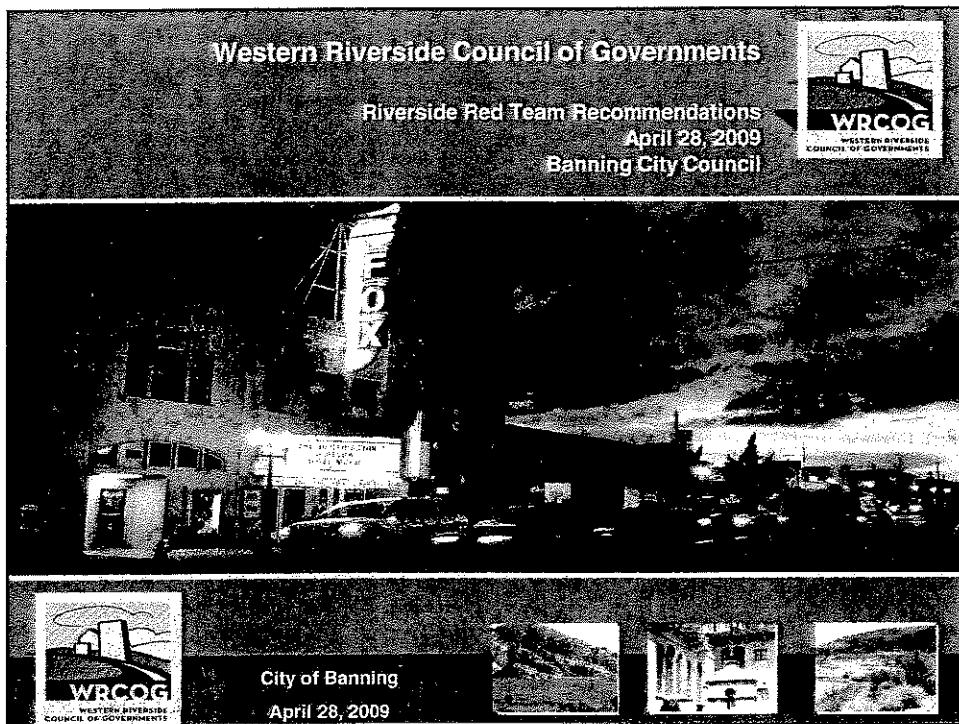


Exhibit "B"

31

reg.mtg.-4/28/09

Activities Overview:

*Housing Study:*

- *Gain understanding of magnitude of problems that are related to downturn of region's economy and associated impacts on housing market;*
- *Develop tools that jurisdictions can consider for responding to surge in foreclosed and abandoned properties;*
- *Examine opportunities for participating in process regarding sale of foreclosed properties; and*
- *Examine opportunities that jurisdictions can consider related to high costs associated with new housing construction.*



City of Banning

April 28, 2009



Activities Overview:

*Red Team study funding participants:*

- *WRCOG*
- *City of Riverside*
- *County of Riverside*
- *Greater Riverside Chambers of Commerce*
- *Building Industry Association, Riverside County Chapter*



City of Banning

April 28, 2009



Exhibit "B"

32

reg.mtg.-4/28/09

Activities Overview:

- *Husing Study presented to:*
  - Oct. 15: Red Team
  - Oct. 16: WRCOG TAC
  - Nov. 3: WRCOG Executive Committee



City of Banning  
April 28, 2009



Activities Overview:

- *Red Team Subcommittee convened to review recommendations, examine feasibility, and make recommendations to Red Team.*
- *Nov. 17: Red Team reviews subcommittee report, makes final recommendations.*
- *Nov. 20: WRCOG TAC reviews Red Team recommendations, forwards recommendations to WRCOG Executive Committee.*
- *Jan. 5: WRCOG Executive Committee reviews recommendations.*



City of Banning  
April 28, 2009

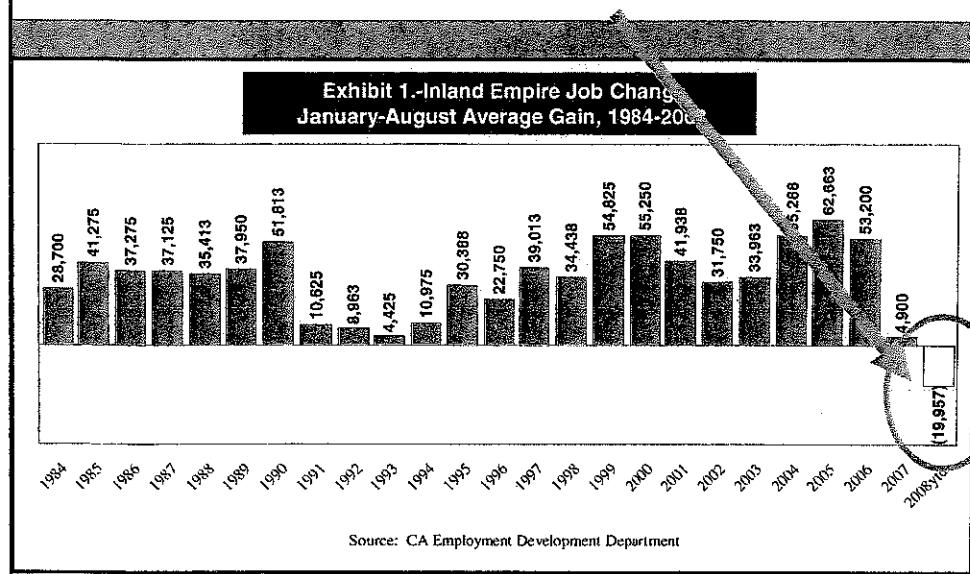


Exhibit "B"

33

reg.mtg.-4/28/09

## Job Growth, 1984-2008 YTD



## Unemployment: 9.2% August

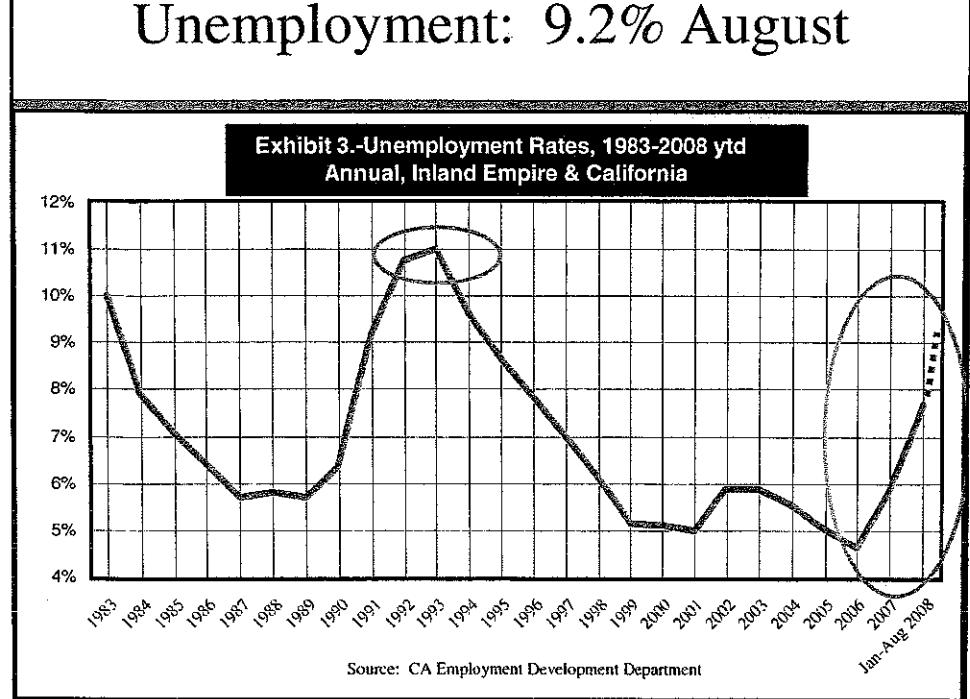


Exhibit "B"

34

reg.mtg.-4/28/09

Activities Overview:

*Issue 1: Identification / mapping of problem properties.*

*Objective: Develop / maintain GIS database for identifying / tracking foreclosures, NODs, and "properties at risk."*

*Cost: \$50,000.*

Recommendations:

*Red Team: Support.*

*WRCOG TAC: Support. Request WRCOG staff to coordinate among jurisdictions to create consistency. Additional expenditure of dollars not recommended.*

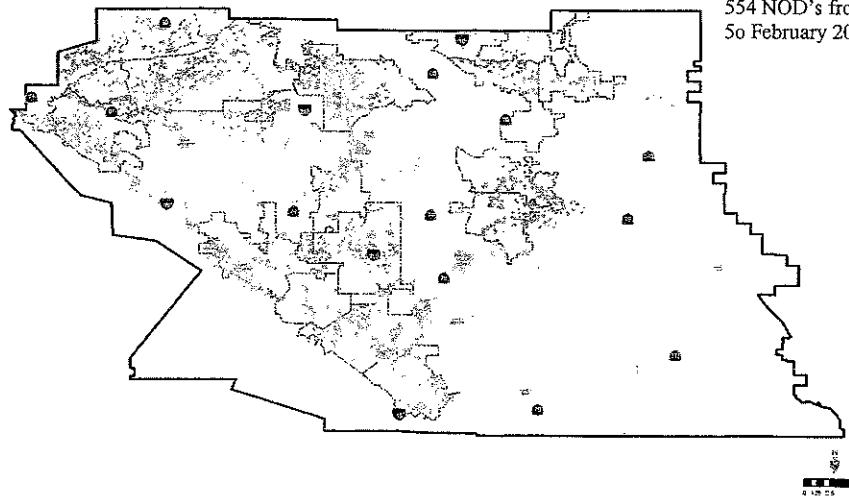


City of Banning  
April 28, 2009



3,248 NOD for Jan. 2009  
3,800 NOD for Feb. 2009

There was an increase of  
554 NOD's from Jan. 2009  
to February 2009



**WRCOG Region's Notice Of Defaults  
for February 2009**

Exhibit "B"

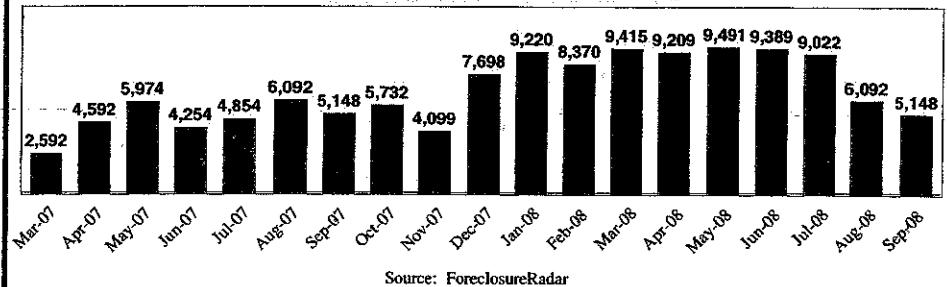
35

reg.mtg.-4/28/09

## Current Market Status

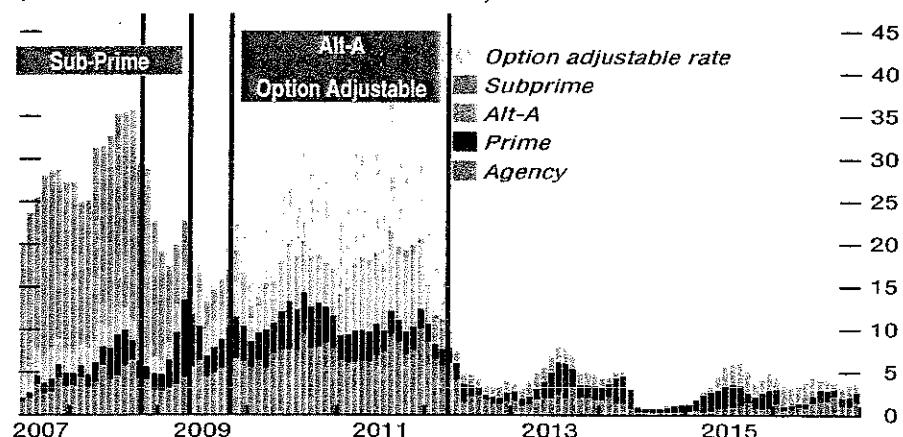
**>126,391 of 359,042 Homes Sold 2002-2007 Notices of Default**  
**>260,803 Upside Down Mortgages Visible**

Exhibit 11.-Notices of Default  
Inland Empire, Mar-07 to Sep-08



## Pace of Future Problem

**Figure 1.7. Monthly Mortgage Rate Resets**  
(First reset in billions of U.S. dollars)

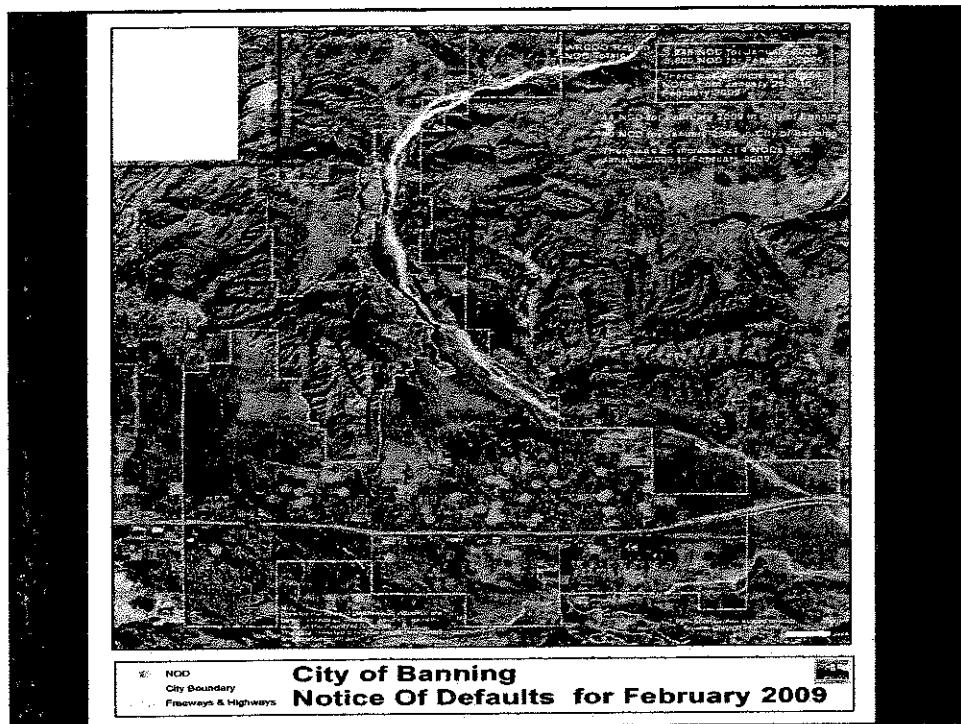


Source: Credit Suisse.

Exhibit "B"

36

reg.mtg.-4/28/09



Activities Overview:

**Issue 2:** *Code Enforcement.*

**Objective:** *Survey jurisdictions to compare / contrast code enforcement practices, funding, commitment and related operations / activities. Examine potential for regional approach to code enforcement.*

**Cost:** *\$20,000 - \$30,000.*

Recommendations:

**Red Team:** *Support survey activities. Explore concept of regional approach.*

**WRCOG:** *Support survey activities to identify "best practices." Expressed concern about implementing mutual aid or regional code enforcement programs. expenditure of dollars not recommended.*

WRCOG logo: WESTON RIVERSIDE COUNCIL OF GOVERNMENTS

City of Banning April 28, 2009

Exhibit "B"

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Activities Overview:

**Issue 3:** *Ordinances.*

**Objective:** *Survey jurisdiction ordinances, etc., compare and contrast, identify "best practices."*

**Cost:** *\$20,000 - \$30,000.*

Recommendations:

**Red Team:** *Support.*

**WRCOG TAC:** *Support. Request WRCOG staff to coordinate among jurisdictions to create consistency. Additional expenditure of dollars not recommended.*



**City of Banning**

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Activities Overview:

**Issue 4:** *Foreclosed homes to first time buyers.*

**Objective:** *Jurisdictions work with lenders, area realtors and others to steer foreclosure home turnover from investors to owner-occupants.*

**Cost:** *Unknown.*

Recommendations:

**Red Team:** *Continue to coordinate activities between jurisdictions and other agencies.*

**WRCOG:** *Support.*



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Exhibit "B"

38

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Activities Overview:

**Issue 5:** *Reducing flow of foreclosures / restructuring existing loans.*

**Objective:** *Encourage elected congressional delegation to support legislation requiring local input to process.*

**Cost:** *Unknown.*

Recommendations:

**Red Team:** *Form subcommittee to explore creating private/non-profit.*

**WRCOG:** *Support.*



City of Banning

April 28, 2009



Activities Overview:

**Issue 6:** *Foreclosed homes in need of reconditioning.*

**Objective:** *Bulk acquisition of homes by jurisdictions at less than current value, repair and resell.*

**Cost:** *Unknown.*

Recommendations:

**Red Team:** *Coordinate between jurisdictions / other agencies. This includes identifying funding, creating database of reliable contractors, and using public works departments to inspect and set standards.*

**WRCOG:** *Supported recommendations, but expressed concern regarding having local jurisdictions holding mortgages on multiple properties given current market instability.*



City of Banning

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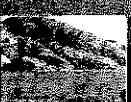


Exhibit "B"

39

reg.mtg.-4/28/09

Activities Overview:

*Issue 7: Outreach / counseling to homeowners.*

*Objective: Work to establish / fund / market a centralized counseling center.*

*Cost: Unknown.*

Recommendations:

*Red Team: Jurisdictions should continue current education programs; WRCOG to research a homeowners collaborative model and support for Fair Housing Council and Springboard organizations.*

*WRCOG: Designated this as its "Top Priority Item" WRCOG to coordinate meetings with FHC, Springboard, and a San Diego collaborative to gain understanding of programs and explore ways for WRCOG jurisdictions to provide funding / marketing assistance.*

Activities Overview:

*Issue 8: Strategies for restoring the new home market.*

*Objective: Consider temporary reduction in fees (40% schools, 80% local and regional fees).*

*Cost: \$25,000.*

Recommendations:

*Red Team: Contract for legal / fiscal review of proposal (complete by January 15, 2009). Explore alternative methods to achieve infrastructure development. Discussed creating "Job Creation Task Force" with city and county economic development teams and private sector.*

*WRCOG: Each jurisdiction / agency undertake examination of fees and make individual determinations. WRCOG should accelerate its CCI review for TUMF. Legal counsel should examine extent to which fee reductions jeopardize nexus to public infrastructure.*

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

**FROM:** **Bonnie J. Johnson, Finance Director**

**SUBJECT: Recommendation to Adopt a Resolution of Approving a Statement of Investment Policy**

**RECOMMENDATION:** "The City Council adopt Resolution No. 2009-57, a Resolution of the City Council of the City of Banning Adopting a Statement of Investment Policy."

**JUSTIFICATION:** City policy requires an annual review of the investment policy.

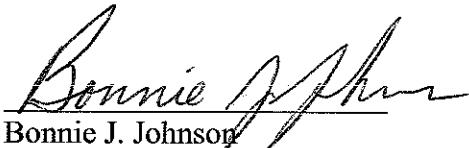
**BACKGROUND/ANALYSIS:** Our current policy focuses on safety, liquidity and availability, rather than on yield. Under the policy, a maximum of 40% of the City's investments may be placed in an investment other than the State of California's Local Agency Investment Fund (LAIF). The other investments cannot exceed a 36 month maturity. Per the State Treasurer's Office, pursuant to the California Government Code monies invested with LAIF cannot be borrowed or withheld by the State of California. These monies are protected by statute.

Currently, approximately 32 percent of the City's available operating money is invested in authorized securities (other than LAIF). The balance is invested in LAIF. The LAIF rate has dropped from 2.787% percent to 1.530% percent from July 1, 2008 to the present. Our current average rate on investments outside of LAIF is 2.628%. Our current average rate on investments overall (excluding bond funds) is 1.831%. In 2007-08, the LAIF rate ranged from 5.255% to 2.894% and the City earned approximately \$3,446,000 of interest on its investments. In 2008-09, the total interest earned has dropped to approximately \$1,500,000.

Staff is not recommending any changes to the policy at this time.

**FISCAL DATA:** No immediate fiscal impact is anticipated. The monthly Report of Investments will track any changes in investment income.

RECOMMENDED BY:

  
\_\_\_\_\_  
Bonnie J. Johnson  
Finance Director

APPROVED BY:

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

**RESOLUTION NO. 2009-57**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING  
A STATEMENT OF INVESTMENT POLICY**

**WHEREAS**, Under the laws of the State of California, it is the responsibility of the City Council to secure and protect the public funds of the City of Banning (hereinafter "City"), and to establish proper safeguards, controls, and procedures to maintain these funds in a lawful, rational and auspicious manner; and

**WHEREAS**, said maintenance shall include the prudent and secure investment of those funds that are not immediately needed to meet cash disbursements, in a manner anticipated to provide additional benefit to the electorate of the City of Banning;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING** as follows:

Section 1.

The following shall constitute the Statement of the Investment Policy of the City of Banning:

**1. SCOPE**

This Statement of Investment Policy pertains to those funds under the control of the City Council, designated for the ongoing operations of the City and the City's Redevelopment Agency; and concerns the deposit, maintenance, and safekeeping of all such funds, and the investments made with these funds. This Policy does not apply to pension moneys, deferred compensation funds, trustee, and certain other non-operating funds.

**2. PURPOSE OF POLICY STATEMENT**

The purpose of this Statement of Investment Policy is to provide the public and those involved in servicing the investment requirements of the City, and any other interested party, a clearer understanding of the Government Codes, regulations and internal guidelines that will be observed in maintaining and investing those funds not immediately needed to meet liabilities.

**3. INVESTMENT OBJECTIVES**

The underlying objective of the City Council is to protect the safety of the principal of the portfolio through the judicious purchase of those legal investments permitted to local agencies, as defined in the State of California Government Codes, consistent with current conditions and the other dominant objectives pursuant to managing a local agency portfolio, namely:

- A. **Safety:** The City Council takes as its primary responsibility to maintain the safe return of all principal placed in investments by avoiding decisions that might result in losses through either fraud, default, or adverse market conditions. Importance is also accorded to the protection of accrued interest earned on any investment instrument.
- B. **Liquidity:** The City Council accepts as an imperative that a majority (a minimum of 60%) of all investments be in items that are immediately negotiable, as the portfolio is a cash management fund. It shall be assumed that all investments shall remain sufficiently liquid in order to meet unexpected cash calls.
- C. **Availability:** Due to the nature of a public funds portfolio, the City Council finds that it is mandatory that moneys be available to meet the monetary requirements inherent to operating a public entity. Thus funds should be invested in such a manner that money will always be available without risk of trading loss to meet normal cash requirements. A vast majority of the moneys invested by the City Council should never require the realization of immoderate losses should an unforeseen cash demand require the sale of investments prior to maturity. A sufficient portion of all funds shall be invested in securities providing a high degree of availability, that is, in securities easily sold or converted to cash in a timely manner, with little or no loss of interest earnings.
- D. **Yield:** While it is considered desirable to obtain a respectable yield, yield shall not be the driving force in determining which investments are to be selected for purchase. Yield is to be given lesser weight in the investment decision than safety, liquidity, or availability.

The City Council shall undertake to place investments with the objective of obtaining a reasonable rate of return under prevailing market conditions. In pursuit of this goal, maximization of yield shall be of lesser concern than either safety of principal, liquidity of the investment, or availability of the invested funds. The City Council undertakes to be prudently cognizant of those factors within the marketplace that may be indicative of either favorable or hazardous conditions relative to the City's investments. The portfolio is to be managed under the strategy of minimal turnover in investments however, with sufficient activity to minimize losses due to adverse changes in market conditions.

#### 4. PRUDENCE

The City Council recognizes that it is subject to the "Prudent Investor Standard" whenever making a decision regarding the investment of the City's funds. This rule states:

*When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, general economic conditions and the anticipated needs of the agency, that a prudent person acting in like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency (Cal. Gov. Code §53600.3).*

The City Council, and those acting under the auspices of the City Council, is deemed to have a fiduciary trustee relationship with the public for the public funds, and all investment decisions will be made in a manner sustaining this responsibility.

## 5. DELEGATION OF AUTHORITY

While the City Council has final responsibility for all investment decisions, other City personnel are required to aid in the day to day administration of those decisions. Those staff members currently authorized to act on behalf of the City Council are listed below. This list is subject to change. Parties involved in investment transactions with the City Council are deemed to be on notice of the contents of the most current copy of this Policy, and all pertinent authorizing documents, at the time of accepting written or verbal instructions from any staff member. The Councilpersons and deputized personnel listed below are designated to perform such approved investment related tasks as the City Council shall from time to time assign, to arrange any required notifications, and to execute the documents necessary to put into effect the decisions of and for the City Council:

**Title**

Mayor

Mayor Pro Tem

City Councilperson

City Councilperson

City Councilperson

Finance Director

City Manager

Other persons, both inside and outside City employment, may act in the role of assistant or advisor to those listed above, to aid in the timely and proper settlement of investment transactions. Such persons may not authorize, approve, or initiate any trading activities. **Only the persons listed above may initiate trading activity and only in a manner consistent with the instructions of the City Council.**

City Council directives to the City Manager and Finance Director are as follows:

- Make investments in accordance with this policy.
- Make phone calls to, or otherwise communicate with, LAIF or brokerage firm for investment purposes and to withdrawal and deposit funds as required to meet the City's cash flow requirements between meetings of the City Council.
- Make transaction withdrawals for cash flow requirements up to a maximum of limit of \$3,000,000 per single transaction without prior approval of the City Council.

## **6. SECURITIES CUSTODY**

As required by the Government Code, the City Council shall establish a third party custody and safekeeping account to which all negotiable instruments shall be delivered upon purchase on a payment versus delivery basis. No negotiable, deliverable, securities or investments will be left in the custody of any brokerage firm or issuing party, including any collateral from Repurchase Agreements.

## **7. AUTHORIZED INVESTMENTS AND LIMITATIONS**

The Government Code of the State of California, primarily within sections 53600 et. seq., sets out the legal authority for inclusion of certain types of investment vehicles in a California local agency's investment portfolio. Consistent with those sections, under no circumstances will the City Council purchase an investment that is not specifically authorized for a local agency under these, or other code sections that may apply, or might later be enacted, pertaining to local agency investments. It shall be a requirement of all investment professionals performing any transaction on behalf of the City that they possess a complete understanding of the acceptability of the subject investment under those code sections.

A "Table of Investments Permitted Local Agencies by the California Government Codes" is attached hereto, marked Attachment "A" and by this reference made a part hereof. Attachment "A" briefly describes the principal types of securities legal within the Government Code sections noted above, and outlines the various limitations included in these sections. From these permitted investments, the Council shall determine those investment types that best meet the needs and abilities of the City.

## **8. AUTHORIZED AND SUITABLE INVESTMENTS**

It is hereby determined by the City Council that, due to the exceptional safety, liquidity and availability provided by the State of California's Local Agency Investment Fund (LAIF), a minimum of 60% of the City's operating moneys shall be placed in the LAIF, with the exception of certain bond proceeds and required deposits that pre-existing contractual obligations restrict to other investment types. Such exceptions shall comply with all appropriate Government Codes, ordinances and other restrictions inherent to the conditions requiring such exceptions.

It is hereby further determined by the City Council that not more than 40% of the City's operating moneys may be placed in the following types of securities:

- Securities issued or guaranteed by the U.S. Treasury or agencies of the United States Government
- Bank Certificates of Deposit
- Shares of savings certificates of savings and loan associations
- Mortgage backed securities

## **9. AUTHORIZED TERM OF INVESTMENTS**

It is hereby determined that the maximum maturity period for any portion of invested operating moneys shall not exceed thirty-six (36) months. This shall not apply to certain bond proceeds or other non-operating moneys of the City.

## **10. AUTHORIZED DEALER LIST – CONFLICT OF INTEREST PROHIBITION**

It is prohibited for a transaction to be entered into with any securities broker, dealer or bank investment department or subsidiary prior to that entity being designated an Authorized Dealer, and placed on the Authorized Dealer List. Authorized Dealers shall be selected on an as needed basis to meet specific needs of the City Council.

No member of the City Council, nor any other official or employee of the City, may accept any gift, honoraria, gratuity or service of value in violation of the regulations set forth by the Fair Political Practices Commission, the Government Code, additional limitations set forth by City ordinance, or internal requirements of the Treasurer and Finance Director. The City Council is prohibited from conducting any business with any broker, dealer, or securities firm that has made a political contribution to the City Treasurer or any member of the City Council, or any candidate for these offices, within the 48 month period immediately following the date of the political contribution, in an amount exceeding the limitation contained in Rule G-37 of the Municipal Securities Rulemaking Board. A copy of Rule G-37 is attached hereto and incorporated herein as Attachment "B."

## **11. REPORTING**

The Finance Director shall maintain investment records legally required or otherwise requested by the City Council and prepare a report for the Council on a monthly basis stating the holdings, status, and earnings of the portfolio. The Statement of Investment Policy will be provided at the start of each fiscal year annually for review and approval of the City Council. Should conditions arise, or legislation become effective that behooves consequential changes within the Policy during the year, the revised policy will again be addressed by the City Council.

### Section 2.

This Statement of Investment Policy shall be reviewed annually and approved by the City Council in an open public meeting. Upon request, it will be provided to banks and brokers and to other effected persons or entities; and to any member of the electorate wishing to review this document. The City reserves the right to provide these documents on a cost recovery basis.

### Section 3.

The Statement of Investment Policy was originally adopted under Resolution 2008-88, which expired by its terms on July 8, 2009.

Section 4.

The Statement of Investment Policy is hereby adopted.

**PASSED, APPROVED AND ADOPTED** this 14th day of July, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2009-57 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of July, 2009 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## Table of Investments permitted Local Agencies by the California Government Codes

Investment Type	Max. % of Portfolio	Max. Maturity	Quality Requirements
a) Bonds issued by a local agency	None	None	None
b) Treasury Obligations	None	None	None
c) State of California Obligations	None	None	None
d) Obligation of Calif. local agency	None	None	None
e) Obligations issued by Federal Agencies, and U.S. and Government sponsored enterprises.	None	None	None
f) Bankers Acceptances	40%	180 days	None
g) Commercial Paper	15 or 25%	270 days max.	U.S. Corporations with \$500MM in assets
	depending on weighted average maturity		A or higher long term rating if any, 10% max. of issue, A1/P1 or better C.P. rating by Moody's and S&P.
h) Negotiable C.D.s	30%	5 years	None
i) Repurchase Agreements	None	1 year	Collateral must by a legal investment
	20% of base		
j) Medium Term Note	30%	92 days maximum, or to maturity	U.S. Corporations, or Banks licensed within any State of the U.S., "A" or better rating by major rating service.
k) Mutual Funds	20%, 10% per fund	NA	A defined money market fund; or invest only in a j, m, n, of this list, as restricted; Highest letter and number ranking of 2 of 3 rating services; or a SEC Registered Advisor with 5 Yrs. experience, managing assets of \$500MM or more; No load.
l) Investments as permitted by provision in agreements of indebtedness	As per bond agreement	NA	Not contrary to 53635 and other pertinent law.
m) Asset secured indebtedness	None	None	As required by 53652.
n) Collateralized Mortgage Obligations	20%	5 years	Issuer must be rated "A" minimum, security must be "AA" by national rating service.
o) Contracted Non-neg. Time Deposits	None	None	None

These tables are not meant to be a replacement for the Government Code. Involved parties should obtain a valid, bona fide current copy of the pertinent Code sections to fully understand all the details included within these Codes.



## Political Contributions and Prohibitions on Municipal Securities Business

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**Rule G-37.** (a) Purpose. The purpose and intent of this rule are to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market and to protect investors and the public interest by: (i) prohibiting brokers, dealers and municipal securities dealers from engaging in municipal securities business with issuers if certain political contributions have been made to officials of such issuers; and (ii) requiring brokers, dealers and municipal securities dealers to disclose certain political contributions, as well as other information, to allow public scrutiny of political contributions and the municipal securities business of a broker, dealer or municipal securities dealer.

(b)(i) No broker, dealer or municipal securities dealer shall engage in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by: (A) the broker, dealer or municipal securities dealer; (B) any municipal finance professional associated with such broker, dealer or municipal securities dealer; or (C) any political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional; provided, however, that this section shall not prohibit the broker, dealer or municipal securities dealer from engaging in municipal securities business with an issuer if the only contributions made by the persons and entities noted above to officials of such issuer within the previous two years were made by municipal finance professionals to officials of such issuer for whom the municipal finance professionals were entitled to vote and which contributions, in total, were not in excess of \$250 by any municipal finance professional to each official of such issuer, per election.

(ii) For an individual designated as a municipal finance professional solely pursuant to subparagraph (B) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply to contributions made by such individual to officials of an issuer prior to becoming a municipal finance professional only if such individual solicits municipal securities business from such issuer.

(iii) For an individual designated as a municipal finance professional solely pursuant to subparagraphs (C), (D) or (E) of paragraph (g)(iv) of this rule, the provisions of paragraph (b)(i) shall apply only to contributions made during the six months prior to the individual becoming a municipal finance professional.

(c) No broker, dealer or municipal securities dealer or any municipal finance professional of the broker, dealer or municipal securities dealer shall solicit any person or political action committee to make any contribution, or shall coordinate any contributions, to an

official of an issuer with which the broker, dealer or municipal securities dealer is engaging or is seeking to engage in municipal securities business.

(d) No broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of this rule.

(e)(i) Except as otherwise provided in paragraph (e)(ii), each broker, dealer or municipal securities dealer shall, by the last day of the month following the end of each calendar quarter (these dates correspond to January 31, April 30, July 31 and October 31) send to the Board Form G-37/G-38 setting forth, in the prescribed format, the following information:

(A) for contributions to officials of issuers (other than a contribution made by a municipal finance professional or a non- MFP executive officer to an official of an issuer for whom such person is entitled to vote if all contributions by such person to such official of an issuer, in total, do not exceed \$250 per election) and payments to political parties of states and political subdivisions (other than a payment made by a municipal finance professional or a non- MFP executive officer to a political party of a state or a political subdivision in which such person is entitled to vote if all payments by such person to such political party, in total, do not exceed \$250 per year) made by the persons and entities described in subclause (2) of this clause (A):

(1) the name and title (including any city/county/state or political subdivision) of each official of an issuer and political party receiving contributions or payments during such calendar quarter, listed by state;

(2) the contribution or payment amount made and the contributor category of each of the following persons and entities making such contributions or payments during such calendar quarter:

(a) the broker, dealer or municipal securities dealer;  
(b) each municipal finance professional;  
(c) each non-MFP executive officer; and

(d) each political action committee controlled by the broker, dealer or municipal securities dealer or by any municipal finance professional;

(B) a list of issuers with which the broker, dealer or municipal securities dealer has engaged in municipal securities business during such calendar quarter, listed by state, along with the type of municipal securities business;

(C) any information required to be included on Form G- 37/G-38 for such calendar quarter pursuant to paragraph (e)(iii);

(D) any information required to be disclosed pursuant to section (e) of rule G-38;

(E) such other identifying information required by Form G- 37/G-38; and

(F) whether any contribution listed in this paragraph (e)(i) is the subject of

an automatic exemption pursuant to section (j) of this rule, and the date of such automatic exemption.

The Board shall make public a copy of each Form G- 37/G-38 received from any broker, dealer or municipal securities dealer.

(ii)(A) No broker, dealer or municipal securities dealer shall be required to send Form G-37/G-38 to the Board for any calendar quarter in which either:

(1) such broker, dealer or municipal securities dealer has no information that is required to be reported pursuant to clauses (A) through (D) of paragraph (e)(i) for such calendar quarter; or

(2) subject to clause (B) of this paragraph (e)(ii), such broker, dealer or municipal securities dealer has not engaged in municipal securities business, but only if such broker, dealer or municipal securities dealer:

(a) had not engaged in municipal securities business during the seven consecutive calendar quarters immediately preceding such calendar quarter; and

(b) has sent to the Board completed Form G-37x setting forth, in the prescribed format, (i) a certification to the effect that such broker, dealer or municipal securities dealer did not engage in municipal securities business during the eight consecutive calendar quarters immediately preceding the date of such certification, (ii) certain acknowledgments as are set forth in said Form G-37x regarding the obligations of such broker, dealer or municipal securities dealer in connection with Forms G-37/G-38 and G-37x under this paragraph (e)(ii) and rule G-8(a)(xvi), and (iii) such other identifying information required by Form G-37x; provided that, if a broker, dealer or municipal securities dealer has engaged in municipal securities business subsequent to the submission of Form G-37x to the Board, such broker, dealer or municipal securities dealer shall be required to submit a new Form G- 37x to the Board in order to again qualify for an exemption under this subclause (A)(2). The Board shall make public a copy of each Form G-37x received from any broker, dealer or municipal securities dealer.

(B) If for any calendar quarter a broker, dealer or municipal

securities dealer has met the requirements of clause (A)(2) of this paragraph (e)(ii) but has information that is required to be reported pursuant to clause (D) of paragraph (e)(i), then such broker, dealer or municipal securities dealer shall be required to send Form G-37/G-38 to the Board for such quarter setting forth only such information as is required to be reported pursuant to clauses (D) and (E) of paragraph (e)(i).

(iii) If a broker, dealer or municipal securities dealer engages in municipal securities business during any calendar quarter after not having reported on Form G-37/G-38 the information described in clause (A) of paragraph (e)(i) for one or more contributions or payments made during the two-year period preceding such calendar quarter solely as a result of clause (A)(2) of paragraph (e)(ii), such broker, dealer or municipal securities dealer shall include on Form G-37/G-38 for such calendar quarter all such information (including year and calendar quarter of such contributions or payments) not so reported during such two-year period.

(iv) A broker, dealer or municipal securities dealer that submits Form G-37/G-38 or Form G-37x to the Board shall either:

(A) send two copies of such form to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending; or

(B) submit an electronic version of such form to the Board in such format and manner specified in the current *Instructions for Form G-37/G-38 and Form G-37x*.

(f) The Board will accept additional information related to contributions made to officials of issuers and payments to political parties of states and political subdivisions voluntarily submitted by brokers, dealers or municipal securities dealers or others provided that such information is submitted in accordance with section (e) of this rule.

(g) Definitions. (i) The term "contribution" means any gift, subscription, loan, advance, or deposit of money or anything of value made: (A) for the purpose of influencing any election for federal, state or local office; (B) for payment of debt incurred in connection with any such election; or (C) for transition or inaugural expenses incurred by the successful candidate for state or local office.

(ii) The term "issuer" means the governmental issuer specified in section 3(a)(29) of the Act.

(iii) The term "broker, dealer or municipal securities dealer" used in this rule does not include its associated persons.

(iv) The term "municipal finance professional" means: (A) any associated person primarily engaged in municipal securities representative activities, as defined in rule G-3(a)(i), provided, however, that sales activities with natural persons shall not be considered to be municipal securities representative activities for purposes of this subparagraph (A); (B) any associated person who solicits municipal securities business, as defined in paragraph (vii); (C) any associated person who is both (i) a municipal securities principal or a municipal securities sales principal and (ii) a supervisor of any persons described in

subparagraphs (A) or (B); (D) any associated person who is a supervisor of any person described in subparagraph (C) up through and including, in the case of a broker, dealer or municipal securities dealer other than a bank dealer, the Chief Executive Officer or similarly situated official and, in the case of a bank dealer, the officer or officers designated by the board of directors of the bank as responsible for the day -to-day conduct of the bank's municipal securities dealer activities, as required pursuant to rule G-1(a); or (E) any associated person who is a member of the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1) executive or management committee or similarly situated officials, if any; provided, however, that, if the only associated persons meeting the definition of municipal finance professional are those described in this subparagraph (E), the broker, dealer or municipal securities dealer shall be deemed to have no municipal finance professionals.

Each person designated by the broker, dealer or municipal securities dealer as a municipal finance professional pursuant to rule G-8(a)(xvi) is deemed to be a municipal finance professional. Each person designated a municipal finance professional shall retain this designation for one year after the last activity or position which gave rise to the designation.

(v) The term "non-MFP executive officer" means an associated person in charge of a principal business unit, division or function or any other person who performs similar policy making functions for the broker, dealer or municipal securities dealer (or, in the case of a bank dealer, the separately identifiable department or division of the bank, as defined in rule G-1), but does not include any municipal finance professional, as defined in paragraph (iv) of this section (g); provided, however, that if no associated person of the broker, dealer or municipal securities dealer meets the definition of municipal finance professional, the broker, dealer or municipal securities dealer shall be deemed to have no non-MFP executive officers.

Each person listed by the broker, dealer or municipal securities dealer as a non-MFP executive officer pursuant to rule G-8(a)(xvi) is deemed to be a non-MFP executive officer.

(vi) The term "official of such issuer" or "official of an issuer" means any person (including any election committee for such person) who was, at the time of the contribution, an incumbent, candidate or successful candidate: (A) for elective office of the issuer which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by the issuer; or (B) for any elective office of a state or of any political subdivision, which office has authority to appoint any person who is directly or indirectly responsible for, or can influence the outcome of, the hiring of a broker, dealer or municipal securities dealer for municipal securities business by an issuer.

(vii) The term "municipal securities business" means:

- (A) the purchase of a primary offering (as defined in rule A-13(f)) of municipal securities from the issuer on other than a competitive bid basis (e.g., negotiated underwriting); or
- (B) the offer or sale of a primary offering of municipal securities on behalf of any issuer (e.g., private placement); or
- (C) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or
- (D) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

(viii) The term "payment" means any gift, subscription, loan, advance, or deposit of money or anything of value.

(h) The prohibition on engaging in municipal securities business, as described in section (b) of this rule, arises only from contributions made on or after April 25, 1994.

(i) A registered securities association with respect to a broker, dealer or municipal securities dealer who is a member of such association, or the appropriate regulatory agency as defined in Section 3(a)(34) of the Act with respect to any other broker, dealer or municipal securities dealer, upon application, may exempt, conditionally or unconditionally, a broker, dealer or municipal securities dealer who is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule from such prohibition. In determining whether to grant such exemption, the registered securities association or appropriate regulatory agency shall consider, among other factors:

- (i) whether such exemption is consistent with the public interest, the protection of investors and the purposes of this rule;
- (ii) whether such broker, dealer or municipal securities dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the contributor involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and

(D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances, and the nature of such other remedial or preventive measures directed specifically toward the contributor who made the relevant contribution and all employees of the broker, dealer or municipal securities dealer;

(iii) whether, at the time of the contribution, the contributor was a municipal finance professional or otherwise an employee of the broker, dealer or municipal securities dealer, or was seeking such employment;

(iv) the timing and amount of the contribution which resulted in the prohibition;

(v) the nature of the election (e.g, federal, state or local); and

(vi) the contributor's apparent intent or motive in making the contribution which resulted in the prohibition, as evidenced by the facts and circumstances surrounding such contribution.

(j) Automatic Exemptions.

(i) A broker, dealer or municipal securities dealer that is prohibited from engaging in municipal securities business with an issuer pursuant to section (b) of this rule as a result of a contribution made by a municipal finance professional may exempt itself from such prohibition, subject to subparagraphs (ii) and (iii) of this section, upon satisfaction of the following requirements: (1) the broker, dealer or municipal securities dealer must have discovered the contribution which resulted in the prohibition on business within four months of the date of such contribution; (2) such contribution must not have exceeded \$250; and (3) the contributor must obtain a return of the contribution within 60 calendar days of the date of discovery of such contribution by the broker, dealer or municipal securities dealer.

(ii) A broker, dealer or municipal securities dealer is entitled to no more than two automatic exemptions per 12- month period.

(iii) A broker, dealer or municipal securities dealer may not execute more than one automatic exemption relating to contributions by the same municipal finance professional regardless of the time period.

- Instructions for Form G-37/G-38 and Form G-37x.
- View and Print Form G-37/G-38
- View and Print Form G-37x

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**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

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

**SUBJECT:** **Resolution No. 2009-58, authorizing the destruction of city records as provided by Section 34090 of the California Government Code, Section 832.5 of the California Penal Code, and Resolution No. 2003-26 of the City of Banning.**

**RECOMMENDATIONS:** "The City Council adopt Resolution No. 2009-58 authorizing the destruction of city records as provided by Section 34090 of the California Government Code, Section 832.5 of the California Penal Code, and Resolution No. 2003-26 of the City of Banning."

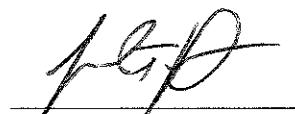
**JUSTIFICATION:** The City Clerk and the City Attorney have certified the records listed in Attachment A to Resolution 2009-58 are no longer required to be kept by the City.

**BACKGROUND:** In March of 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. 2009-58 have all reached the end of their retention period.

**STRATEGIC PLAN INTEGRATION:** Council approval of this request will meet the City's goal to comply with California Government Code Section 34090 and California Penal Code Section 832.5, concerning the destruction of city records.

**FISCAL DATA:** This request requires no funds.

**RECOMMENDED BY:**



Leonard Purvis  
Chief of Police

**APPROVED BY:**

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

**RESOLUTION NO. 2009-58**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE BANNING POLICE DEPARTMENT TO DESTROY INTERNAL AFFAIRS RECORDS IN EXCESS OF FIVE YEARS FROM DATE OF COMPLETION PER CALIFORNIA GOVERNMENT CODE SECTION 34090 AND CALIFORNIA PENAL CODE SECTION 832.5.**

**WHEREAS**, Penal Code Section 832.5 requires that citizen complaints against police department personnel and any related reports or findings be maintained for a period of at least five years; and

**WHEREAS**, Government Code Section 34090 expressly authorizes the Chief of Police for the City of Banning, upon resolution of the City Council and written consent of the City Attorney, to destroy City records, documents, instruments, and other papers under his charge after the same are no longer required; and

**WHEREAS**, the Chief of Police has agreed to review the status of any such citizens complaint investigation in excess of five years for pending related civil or criminal litigation prior to its destruction; and

**WHEREAS**, the City Attorney hereby give his written consent for the destruction of the following records (See Attachment A); and

**NOW, THEREFORE, BE IT RESOLVED**, that the Chief of Police is hereby granted the authority to order the destruction of any and all records, reports, and findings relating to citizen complaints in excess of five years from the date of completion once the Chief of Police has determined that such are no longer required;

**BE IT FURTHER RESOLVED** that nothing in this resolution is intended to supersede or otherwise conflict with any law or any lawful judicial process which might affect retention or destruction of such records.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of July, 2009.

---

Robert E. Botts, Mayor  
City of Banning, California

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

---

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

**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. 2009-58 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of July, 2009, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## Attachment A

BPD INTERNAL AFFAIRS INVESTIGATIONS INVENTORY WORKSHEET

## REQUEST FOR DESTRUCTION OF RECORDS

Date: 07-08-09  
Department: Banning Police Department

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



Date

7-8-09

City Clerk



Date

7-8-09

City Attorney

\_\_\_\_\_

Date

\_\_\_\_\_

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

**FROM:** **Bonnie J. Johnson, Finance Director**

**SUBJECT:** **Report of Investments for May 2009**

**RECOMMENDATION:** "The City Council receive and place these required monthly *Reports of Investments* on file."

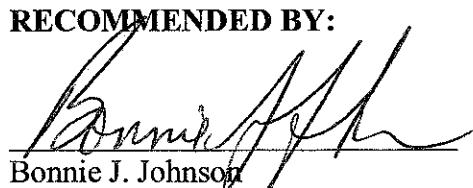
**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

**BACKGROUND:** This report includes investments on hand at the end of May 2009. As of May 31, 2009, the City's operating funds totaled \$75,418,936. Included in operating funds is \$4,180,301 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of May 31, 2009 approximately 32% of the City's unrestricted cash balances were invested in investments other than LAIF.

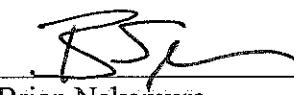
Presented are three months of Investment Reports. May is a first issue, while March and April are included to provide multiple months of statements for comparison.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 1.530 % in May. The average rate for all investments in May was 1.831%.

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Bonnie J. Johnson  
Finance Director

**APPROVED BY:**

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

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>		<u>Amount</u>
<u>Petty Cash</u>		2,305
	Interest	
	Rate	Amount
<u>Bank Accounts</u>		
Wells Fargo Bank	0.000%	80,405
Wells Fargo Bank-Investment Account	0.100%	842,322
Bank of America-Airport	0.300%	5,031
Bank of America-Parking Citations	0.300%	3,258
Bank of America-CNG Station	0.300%	<u>3,232</u>
<i>Money Market and Bank Account Sub-Total</i>		934,249
<u>Government Pools</u>		
Local Agency Investment Fund: Account #1	1.530%	31,009,664
Account #2 Operating Amount	16,422,073	
Account #2 CRA Bond Cash Bal	4,180,301	
Local Agency Investment Fund: Account #2	1.530%	<u>20,602,374</u>
<i>Government Pool Sub-Total</i>		<u>51,612,038</u>
<b>Operating Cash Balance</b>		<b>52,548,592</b>
<u>Restricted Operating Funds at Riverside Public Utilities</u>		
Highmark U.S. Government Money Market Fund	0.110%	1,254,221
<u>Other Investments</u>		
Investments-US Bank/Piper Jaffray - See Page 2	2.628%	21,616,123
<i>Operating Funds Total</i>		<u>75,418,936</u>
<b>Fiscal Agent</b>		
	<u>Amount</u>	
BNY Western Trust Company	538,762	
US Bank	<u>71,408,287</u>	
<i>Fiscal Agent Total</i>		<u>71,947,050</u>
<b>Deferred Compensation</b>		
City Employee Trust Accounts	<u>4,130,512</u>	
<i>Deferred Compensation Total</i>		<u>4,130,512</u>

## Operational Portfolio Individual Investments

Average Rate All = 1.831%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 8, 2008. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 170 days and does not include Bond Reserve Fund Investments.

## City of Banning Investment Report

May 31, 2009

### Individual Investments with Fiscal Agent

TRUSTEE	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve Requirement	Minimum Reserve	Interest May-09	5/31/2002 Market Value
<b>BNY WESTERN TRUST COMPANY</b>								
1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.000%	11/1/2020 daily	522,375		*	522,562 16,200
<b>US BANK</b>								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market	0.150% 0.150%	daily daily	265,580			265,710 0
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	0.030%	daily	190,323		3.07	216,820
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A	4.560% 0.030% 0.025%	daily daily daily	971,763		*	977,081 5,839 8
Surplus Fund								
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>								
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.030%	daily		13.30		733,521
	11/27/2009	Reliance Trust Company GIC # 9AMGGBE37	2.950%					3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGBEU8	0.750%					3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGBEV6	2.950%					8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.030%	daily	1,880,751	26.52		1,875,403
Surplus Fund		First Amer Treas Oblig Fd CL D	0.032%	daily				9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.030%	daily		0.35		2,206
Principal Account		First Amer Treas Oblig Fd CL D	0.030%	daily				457,324
		First Amer Treas Oblig Fd CL D	0.030%	daily				3,686,906
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.042%	daily		1.71		2
Principal Account		First Amer Treas Oblig Fd CL D	0.030%	daily				285
Reserve Fund		First Amer Treas Oblig Fd CL D	0.030%	daily				2,310,890
Project Fund		First Amer Treas Oblig Fd CL D	0.030%	daily				19,080,776
	5/7/2009	Federal Home Loan Banks	2.760%	daily		278.35		1,186,266

## City of Banning Investment Report

May 31, 2009

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Maturity Date	Minimum Reserve Requirement	Interest May-09	5/31/2009 Market Value
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
			First Amer Treas Oblig Fd CL D	0.000%	daily			1,840,192
			First Amer Treas Oblig Fd CL D	0.000%	daily			1,601
		11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%				3,016,509
			First Amer Treas Oblig Fd CL D	0.000%	daily			1,627,814
		11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	2.950%				8,036,457
Acquisition & Construction		5/21/2009	Reliance Trust Company GIC #9AMGGBEX2	0.750%				3,250,000
		11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	2.950%				8,000,000
			<b>Total</b>	<b>409.52</b>				<b>71,947,050</b>

\*Paid Semi-Annually-Deposited into Money Mkt Account

Deferred Compensation		
Balance		
<b>5/1/2009</b>		
954,462	Various Employee Selected Mutual Funds	
2,224,738	Various Employee Selected Mutual Funds	
<b>786,085</b>	Various Employee Selected Mutual Funds	
<b><u>3,965,285</u></b>		
		<b>5/31/2009</b>
		1,023,692
		2,314,026
		<b>792,794</b>
		<b><u>4,130,512</u></b>

ICMA Retirement Corporation  
CALPERS 457 Program  
NATION WIDE-PEBSCO

varies  
varies  
varies

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>		<u>Amount</u>
<u>Petty Cash</u>		2,305
<u>Bank Accounts</u>		Interest
	Rate	Amount
Wells Fargo Bank	0.000%	44,996
Wells Fargo Bank-Investment Account	0.100%	2,052,969
Bank of America-Airport	0.300%	4,180
Bank of America-Parking Citations	0.300%	3,307
Bank of America-CNG Station	0.300%	3,435
<i>Money Market and Bank Account Sub-Total</i>		2,108,886
<u>Government Pools</u>		
Local Agency Investment Fund: Account #1	1.822%	30,863,519
Account #2 Operating Amount		12,944,683
Account #2 CRA Bond Cash Bal		4,456,705
Local Agency Investment Fund: Account #2	1.822%	<u>17,401,387</u>
<i>Government Pool Sub-Total</i>		<u>48,264,907</u>
<b>Operating Cash Balance</b>		<b>50,376,098</b>
<u>Restricted Operating Funds at Riverside Public Utilities</u>		
Highmark U.S. Government Money Market Fund	0.110%	1,148,234
<u>Other Investments</u>		
Investments-US Bank/Piper Jaffray - See Page 2	2.668%	23,595,703
<i>Operating Funds Total</i>		<u>75,120,035</u>

<b>Fiscal Agent</b>		<u>Amount</u>
BNY Western Trust Company		539,162
US Bank		<u>74,784,210</u>
<i>Fiscal Agent Total</i>		<u>75,323,371</u>

<b>Deferred Compensation</b>		<u>Amount</u>
City Employee Trust Accounts		<u>3,812,800</u>
<i>Deferred Compensation Total</i>		<u>3,812,800</u>

## City of Banning Investment Report

March 31, 2009

### Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or Premium)	Market Amortization Value
<b><u>Bank Accounts</u></b>								
44,996	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	44,996	n/a	44,996
2,052,969	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,052,969	n/a	2,052,969
4,180	Bank of America-Airport	n/a	0.30%	daily	varies	4,180	n/a	4,180
3,307	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,307	n/a	3,307
3,435	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,435	n/a	3,435
	Sub-total							2,108,886
<b><u>Government Pools</u></b>								
30,863,519	L.A.I.F. account #1	n/a	1.822%	daily	varies	30,863,519	n/a	30,863,519
17,401,387	L.A.I.F. account #2	n/a	1.822%	daily	varies	17,401,387	n/a	17,401,387
								48,264,907
<b><u>Investments-US Bank/Piper Jaffray</u></b>								
6,000,000	Fedl Natl Mtg Assn	n/a	3.750%	6/10/2011	9/11/2008	6,000,000	0	6,015,000
2,000,000	Fedl Home Loan Bank	n/a	3.100%	10/29/2010	4/29/2008	2,000,000	0	2,003,760
2,000,000	Fedl Home Loan Bank	n/a	3.280%	12/9/2010	6/9/2008	2,000,000	0	2,008,760
1,500,000	Fedl Natl Mtg Assn	n/a	1.790%	6/24/2010	12/24/2008	1,500,000	0	1,499,535
3,000,000	Fedl Natl Mtg Assn	n/a	2.000%	12/30/2010	12/30/2008	3,000,000	0	3,010,080
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000	0	6,002,040
3,000,000	Federal Farm Credit Banks	n/a	2.040%	12/30/2011	12/23/2008	3,000,000	0	3,009,390
47,138	Money Market	n/a	0.980%	daily	varies	47,138	0	47,138
	US Bank/Piper Jaffray Average Rate=							2.668%
								23,595,703

Average Rate All= 2.042%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 8, 2008. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 203 days and does not include Bond Reserve Fund Investments.

## City of Banning Investment Report

March 31, 2009

### Individual Investments with Fiscal Agent

TRUSTEE	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve Requirement	Minimum Reserve	Interest Mar-09	3/31/2009 Market Value
<b>BNY WESTERN TRUST COMPANY</b>								
1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt.	6.270% 0.200%	11/1/2020 daily	522,375		*	522,562 16,600
US BANK		AIM U.S. Treasury Money Market	0.124% 0.150%	daily	265,580	45.90 0.16		265,683 0
1991 Wilson St. Assessment District	2012	First Amer Treas Oblig Fd CL D	0.200%	daily	190,323	13.17		216,806
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	4.560%	daily	971,763		*	984,017
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A	0.200%	daily		1.92		5,839
Surplus Fund		First Amer Treas Oblig Fd CL D		daily				8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>								
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.200%	daily		57.59		940,207
	11/27/2009	Reliance Trust Company GIC # 9AMGGGBF37	2.950%					3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGGBEU8	2.400%					3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGGBEV6	2.950%					8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.200%	daily	1,880,751	125.24		1,875,280
Special Fund		First Amer Treas Oblig Fd CL D	0.200%	daily		0.66		0
Surplus Fund		First Amer Treas Oblig Fd CL D	0.270%	daily				9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.140%	daily				21
Principal Account		First Amer Treas Oblig Fd CL D	0.200%	daily		0.01		109
		First Amer Treas Oblig Fd CL D	0.200%	daily		247.46		3,701,010
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.200%	daily		0.89		13,286
Principal Account		First Amer Treas Oblig Fd CL D	0.200%	daily		0.02		285
Reserve Fund		First Amer Treas Oblig Fd CL D	0.200%	daily		154.00		2,313,052
Project Fund		First Amer Treas Oblig Fd CL D	0.150%	daily		1,302.80		18,816,262
	5/7/2009	Federal Home Loan Banks	2.740%	daily				6,190,325

## City of Banning Investment Report

March 31, 2009

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Mar-09	3/31/2009 Market Value
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
			First Amer Treas Oblig Fd CL D	0.2000%	daily		0.11	835
			First Amer Treas Oblig Fd CL D	0.2000%	daily		0.21	1,601
		11/17/2011	Reliance Trust Company GIC # 9AMGGBEZ7	3.650%		0.00		3,016,508
			First Amer Treas Oblig Fd CL D	0.2000%	daily		84.40	2,319,943
		11/27/2009	Reliance Tr Co Contract # 9AMGGBF29	2.950%				8,036,457
		5/21/2009	Reliance Trust Company GIC #9AMGGBEX2	2.400%				3,250,000
		11/19/2009	Reliance Trust Company GIC #9AMGGBEY0	2.950%				8,000,000
							<b>Total</b>	<b>2,034.54</b>
								<b>75,323,371</b>

\*Paid Semi-Annually-Deposited into Money Mkt Account

## Deferred Compensation

01/01/09 to 3/31/2009 Quarterly Activity		
	Contributions	Withdrawals
<b>1/1/2009</b>	206,064	(2,700)
ICMA Retirement Corporation	184,288	(53,399)
CALPERS 457 Program	3,651	(24,913)
NATION WIDE-PEBSCO		
<b>3,636,019</b>		

01/01/09 to 3/31/2009 Quarterly Activity		
	Contributions	Withdrawals
<b>3/31/2009</b>		
ICMA Retirement Corporation	206,064	(31,177)
CALPERS 457 Program	184,288	(91,985)
NATION WIDE-PEBSCO	3,651	(13,048)
<b>3,812,800</b>		

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>		<u>Amount</u>
<u>Petty Cash</u>		2,305

<u>Bank Accounts</u>		<u>Interest</u>
	Rate	Amount
Wells Fargo Bank	0.000%	58,588
Wells Fargo Bank-Investment Account	0.100%	900,073
Bank of America-Airport	0.300%	7,034
Bank of America-Parking Citations	0.300%	5,003
Bank of America-CNG Station	0.300%	4,282

*Money Market and Bank Account Sub-Total* 974,980

Government Pools

Local Agency Investment Fund: Account #1 1.607% 31,009,664

Account #2 Operating Amount 14,837,207

Account #2 CRA Bond Cash Bal 4,340,167

Local Agency Investment Fund: Account #2 1.607% 19,177,374

*Government Pool Sub-Total* 50,187,038

**Operating Cash Balance** 51,164,322

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.110% 1,157,629

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 2.628% 21,617,663

***Operating Funds Total*** 73,939,615

**Fiscal Agent**

	<u>Amount</u>
BNY Western Trust Company	644,610
US Bank	70,743,784

***Fiscal Agent Total*** 71,388,393

**Deferred Compensation**

City Employee Trust Accounts 3,965,285

***Deferred Compensation Total*** 3,965,285

## City of Banning Investment Report

April 30, 2009

### Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium)	Amortization	Market Value
<i><b>Bank Accounts</b></i>									
58,588	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	58,588	n/a		58,588
900,073	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	900,073	n/a		900,073
7,034	Bank of America-Airport	n/a	0.30%	daily	varies	7,034	n/a		7,034
5,003	Bank of America-Parking Citations	n/a	0.30%	daily	varies	5,003	n/a		5,003
4,282	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,282	n/a		4,282
	Sub-total								974,980
<i><b>Government Pools</b></i>									
31,009,664	L.A.I.F. account #1	n/a	1.607%	daily	varies	31,009,664	n/a		31,009,664
19,177,374	L.A.I.F. account #2	n/a	1.607%	daily	varies	19,177,374	n/a		19,177,374
									50,187,038
<i><b>Investments-US Bank/Piper Jaffray</b></i>									
6,000,000	Fedi Natl Mtg. Assn	n/a	3.750%	6/10/2011	9/11/2008	6,000,000			6,011,280
2,000,000	Fedi Home Loan Bank	n/a	3.280%	12/9/2010	6/9/2008	2,000,000			2,005,620
1,500,000	Fedi Natl Mtg Assn	n/a	1.790%	6/24/2010	12/24/2008	1,500,000			1,500,945
3,000,000	Fedi Natl Mtg. Assn	n/a	2.000%	12/30/2010	12/30/2008	3,000,000			3,016,380
6,000,000	Federal Farm Credit Banks	n/a	2.120%	9/23/2011	3/24/2008	6,000,000			6,023,160
3,000,000	Federal Farm Credit Banks	n/a	2.040%	12/30/2011	12/23/2008	3,000,000			3,013,140
47,138	Money Market	n/a	0.980%	daily	varies	47,138	0		47,138
	US Bank/Piper Jaffray Average Rate=								21,617,663
									2.628%
									Average Rate All= 1.889%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 8, 2008. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 182 days and does not include Bond Reserve Fund Investments.

## City of Banning Investment Report

April 30, 2009

### Individual Investments with Fiscal Agent

TRUSTEE	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve Requirement	Minimum Reserve	Interest Apr-09	4/30/2009 Market Value
<b>BNY WESTERN TRUST COMPANY</b>								
1997 Admin Building C0Ps Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.200%	11/1/2020 daily	522,375		*	522,562
US BANK		AIM U.S. Treasury Money Market	0.096% 0.150%	daily daily	265,580	27.95 0.08		265,710
1991 Wilson St. Assessment District	2012	First Amer Treas Oblig Fd CL D	0.150%	daily	190,323	11.34	*	0
2005 Fair Oaks Ranch Estates	2035	First Amer Treas Oblig Fd CL D	0.150%	daily	971,763			216,817
2003 CRA Tax Allocation Bonds	2028	Forward Delivery Agreement - B of A	4.560% 0.200%	daily daily				980,835
Surplus Fund		First Amer Treas Oblig Fd CL D		daily		0.30		5,839
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>								
Redevelop Fund	2037	First Amer Treas Oblig Fd CL D	0.150%	daily		48.52		940,256
	11/27/2009	Reliance Trust Company GIC # 9AMGGBF37	2.950%					3,336,669
	5/21/2009	Reliance Trust Company GIC # 9AMGGBEU8	2.400%					3,500,000
	11/19/2009	Reliance Trust Company GIC # 9AMGGBEV6	2.950%					8,000,000
Reserve Fund		First Amer Treas Oblig Fd CL D	0.150%	daily	1,880,751	96.78		
Surplus Fund		First Amer Treas Oblig Fd CL D	0.270%	daily				9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.140%	daily				262,887
Principal Account		First Amer Treas Oblig Fd CL D	0.150%	daily		0.01	109	
		First Amer Treas Oblig Fd CL D	0.150%	daily		191.01		3,686,853
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
Bond Fund		First Amer Treas Oblig Fd CL D	0.150%	daily		0.69		1,154,922
Principal Account		First Amer Treas Oblig Fd CL D	0.150%	daily		0.01		285
Reserve Fund		First Amer Treas Oblig Fd CL D	0.150%	daily		119.38		2,313,171
Project Fund		First Amer Treas Oblig Fd CL D	0.150%	daily		971.12		19,080,497
	5/7/2009	Federal Home Loan Banks	2.760%	daily	83,625.00	1,190,325		

City of Banning Investment Report

April 30, 2009

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Maturity Date	Minimum Reserve Requirement	Interest Apr-09	4/30/2009 Market Value
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
	First Amer Treas Oblig Fd CL D			0.150%	daily		0.03	835
	First Amer Treas Oblig Fd CL D			0.150%	daily		0.06	1,601
	Reliance Trust Company GIC # 9AMGGBEX77			3.650%				3,016,509
Reserve Fund	11/17/2011							
Acquisition & Construction	11/27/2009	First Amer Treas Oblig Fd CL D		0.150%	daily		80.93	1,627,813
	Reliance Tr Co Contract # 9AMGGBF29			2.950%				8,036,457
	5/21/2009	Reliance Trust Company GIC #9AMGGBEX2		2.400%				3,250,000
	11/19/2009	Reliance Trust Company GIC #9AMGGBEY0		2.950%				8,000,000

\*Paid Semi-Annually-Deposited into Money Mkt Account

## Deferred Compensation

	<u>4/30/2009</u>
ICMA Retirement Corporation	954,462
CALPERS 457 Program	2,224,738
NATION WIDE-PEBS CO	786,085
	<u>3,965,285</u>

ICMA Retirement Corporation  
CALPERS 457 Program  
NATIONWIDE-PEBSSCO



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** July 14, 2009

**TO:** City Council

**FROM:** Perry Gerdes, Water/Wastewater Superintendent

**SUBJECT:** Emergency Pavement Repairs at the Intersection of Hargrave Street and John Street Caused by a Ruptured 10-inch Steel Water Main.

**RECOMMENDATION:** Approve the asphalt concrete pavement and concrete sidewalk repairs ( $\pm 2,000$  sq ft) at the intersection of Hargrave Street and John Street caused by a ruptured 10-inch steel water main in the amount of \$14,600.00 and direct the City Clerk to record the *Notice of Completion* once the project is completed.

**JUSTIFICATION:** The existing asphalt concrete pavement and concrete sidewalk was undermined, lifted and then eroded away due to the high pressure and large volume of water discharged from a ruptured 10-inch steel water main. The damage caused by the ruptured main triggering safety concerns for both the driving public and pedestrians.

**BACKGROUND:** On April 27, Date, 2009, a 10-inch steel high pressure water main ruptured at the intersection of Hargrave Street and John Street. The rupture split the steel water main and allowed a large volume of water under high pressure to undermine, lift and erode about a 2,000 square feet of asphalt concrete pavement and concrete sidewalk. The damage to the street pavement and sidewalk facilities was kept to a minimum due to the quick action of the City of Banning Water Field Forces.

The approximation of the damage to the street pavement and sidewalk is a major safety concern for the driving public and pedestrians visiting a local church and several storefront business. Final repairs to the street pavement and sidewalk need to be completed within a timely manner. Therefore, staff requested from three street paving firms proposals to complete the repair work.

Listed below are two proposals sent to the Water Department for review. The third firm did not respond.

1. Roquet Paving -	\$14,600.00
2. JB Paving and Engineering -	\$15,675.00
3. Matich -	No Response

Roquet Paving, Inc. was selected, started work, and completed the project on July 14, 2009. Authorization for this emergency repair work is consistent with City Policy as set forth in Ordinance No. 1266 for emergency water main repairs.

**FISCAL DATA:** The funds for repairs to the roadway shall be utilized from the FY 2009-2010 Water Division Operation Budget, Water Mains Account No. 660-6300-471-95,10.

**RECOMMENDED BY:**

Perry Gerdes  
Perry Gerdes  
Water/Wastewater Superintendent

**REVIEWED BY:**

Bonnie J. Johnson  
Bonnie J. Johnson  
Finance Director

**APPROVED BY:**

Brian Nakamura  
Brian Nakamura  
City Manager

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

**FROM:** **Ernest P. Marquez, Jr., Senior Civil Engineer**

**SUBJECT:** **Award of Contract to E. S. Babcock & Sons, Inc., for Water Testing during the 2009/2010 Fiscal Year in the amount not to exceed \$60,000.**

**RECOMMENDATION:** The City Council award a contract for water testing to E S. Babcock & Sons, Inc. (Babcock), in the amount not-to-exceed \$60,000.

**JUSTIFICATION:** The State of California Department of Health Services Division of Drinking Water and Environmental Management has mandated the water sampling and laboratory testing of all public water systems in the state of California.

**BACKGROUND:** The State of California Department of Health Services is responsible for the enforcement of the Federal and California Safe Drinking Water Acts (SDWAs) and the regulatory oversight of approximately 8,700 public water systems to assure the delivery of safe drinking water to all Californians. This includes the City of Banning.

The California State Drinking Water Act prescribes regulations that limit the amount of certain contaminants in water. The City of Banning Water Division staff takes over 1,500 samples and sends them for laboratory testing each year from over 33 sample points throughout the City.

Laboratory testing is performed locally by E.S. Babcock & Sons, Inc., of Riverside, California. E.S. Babcock & Sons is certified by the California Department of Public Health (CDPH) since 1928 for the analysis of drinking water for public health protection. They offer a full range of inorganic, organic and microbiological testing for drinking water supply as per California Title 22 requirements. The City has been using E. S. Babcock & Sons, Inc. for over 6 years and they have remained competitive in their pricing. Their knowledge of the City of Banning water infrastructure, their experience and working relationship with the City makes E. S. Babcock & Sons, Inc. a valuable partner in the Water Department and the City.

Therefore, in order to keep the City of Banning's water sampling and testing program moving without interruptions, which can be caused by the introduction of a new laboratory, staff is recommending that the Banning City Council authorize staff to move forward with issuing a City of Banning contract to E. S. Babcock & Sons Inc., for water testing in the amount not-to-exceed \$60,000. Section 18A-9 (c) of the City of Banning purchasing ordinance states in part: "In the event that it is determined by the City Manager, that it would be in the best interest of the City for services to be provided by a specific consultant, a contract may be awarded based on negotiations with the specific consultant. Contracts for more than twenty five thousand dollars (\$25,000) will awarded by the City Council."

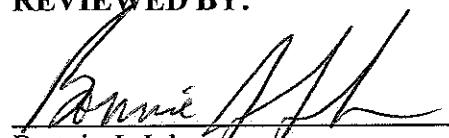
**FISCAL DATA:** Funding for the contract in the amount not-to-exceed \$60,000 is available in the Water Operation Budget, Laboratory Services Account No. 660-6300-471-23.32 for the FY 2009/2010.

**RECOMMENDED BY:**



Ernest P. Marquez, Jr., PE  
Senior Civil Engineer

**REVIEWED BY:**



Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**



Brian Nakamura  
City Manager

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

**FROM:** **Ernest Marquez, Senior Civil Engineer**

**SUBJECT:** **Amending the Existing Agreement with A P Engineering, to Provide Additional Design Work for the “Construction of Downtown Water Main Improvements, Project No. 2008-02W”.**

**RECOMMENDATION:** The City Council approve amending the existing Consultant Services Agreement for Project No. 2008-02W, “Construction of Downtown Water Main Improvements” with A P Engineering, for extra design work in the amount not-to-exceed \$10,747.00.

**JUSTIFICATION:** The original proposed water main alignments were changed as per approval of the previous City of Banning Public Utilities Director.

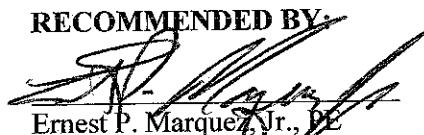
**BACKGROUND:** On April 22, 2008 at the City of Banning’s regular council meeting, the Council approved an Engineering Design Services Agreement for Project No. 2008-02W, Construction of Downtown Water Main Improvements”, to A P Engineering. The Agreement amount was for \$34,990.00. The scope of work for A P Engineering was to design the relocation of old, undersized water mains in the downtown area. This would bring the downtown area up to modern day fire flow requirements. However, after an eighty percent design package was completed by A P Engineering, further analysis by staff added an additional 2,500 linear feet of water main and a traffic control plan for Ramsey Street.

The original Agreement amount is for \$34,990.00. The additional work by AP Engineering is for \$8,747.00. However, staff would like to increase the extra work by \$2,000.00 for finalizing the design plans, specifications and provide assistance with bidding and printing. This would bring the total requested amount to \$10,747.00. The assistance in bidding and print is due to staff reduction in the Water/Wastewater Department.

Therefore, the amended Agreement amount will be for not-to-exceed \$10,747.00. The total Agreement amount will be \$45,737.00.

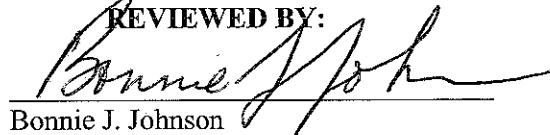
**FISCAL DATA:** The funds in the amount of \$10,737.00 for this amendment is budgeted and available in the FY 2009-2010 Wastewater Division Operation Budget, Water Mains Account No. 660-6300-471-95.10.

**RECOMMENDED BY:**



Ernest P. Marquez, Jr., PE  
Senior Civil Engineer

**REVIEWED BY:**



Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**



Brian Nakamura  
City Manager

**FIRST AMENDMENT TO CONSULTANT SERVICES AGREEMENT  
FOR  
ENGINEERING DESIGN OF PROJECT No. 2008-02W, CONSTRUCTION OF  
DOWNTOWN WATER MAIN IMPROVEMENTS"  
BETWEEN THE CITY OF BANNING  
AND  
A P ENGINEERING,  
Sole Proprietor**

**ARTICLE 1. PARTIES AND DATE**

**1.1** This First Amendment to Consultant Services Agreement for Engineering Design of Project No. 2008-02W, "Construction of Downtown Water Main Improvements" ("First Amendment") dated as of the 14<sup>th</sup> day of July, 2009, is entered into by and between the City of Banning ("City") and A P Engineering., a sole proprietor ("Consultant").

**ARTICLE 2. RECITALS**

**2.1** City and Raftelis Consultant entered into that certain Consultant Services Agreement for Engineering Design Project No. 2008-02W, "Construction of Downtown Water Main Improvements", dated the 22nd day of April, 2008 ("Agreement"), whereby Consultant agreed to provide professional services for the design of water main facilities for the downtown area.

**2.2** City and Consultants now desire to amend the Agreement to include additional compensation of not-to-exceed \$10,747.00 to the original Contract Amount and revises the Scope of Services. The original Scope of Work and tasks are modified and revised to include the additional design of 2,500 linear feet of water main and traffic control plan.

## **ARTICLE 3. TERMS**

**3.1 Contract Amount:** Original Amount of \$34,990.00 plus \$10,747.00 (Amendment No. 1) equals a Total Amount of \$45,737.00 (30.71% increase).

**3.2 Continuing Effect of Agreement.** Except as amended by this First Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment to the Consultant Services Agreement.

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

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

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

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

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

**CITY OF BANNING**

**CONSULTANT: A P Engineering**

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

By: \_\_\_\_\_  
(Authorized Officer)

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

Print Name \_\_\_\_\_

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

(Authorized Officer)

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

Print Name \_\_\_\_\_

**APPROVED AS TO FORM:**

David Aleshire, Aleshire & Wynder, LLP  
City Attorney

Wednesday, April 22, 2009

City of Banning  
Water Department  
Attn: Ernest P. Marquez Jr.  
176 E. Lincoln Street  
P.O. Box 998  
Banning, CA 92220-0998  
PH: 951-922-3281  
FAX: 951-849-4573

RECEIVED JUN 25 2009

Subject: 1. Downtown Water Main Improvements City of Banning P.O. # 20984.  
2. Your email 3/13/09.

Dear Ernest;

Following is the breakdown of extra work authorized by Assistant Director George Thacker.

1. Provide 12" Dia new water main on Ramsey Street between 2<sup>nd</sup> Street & 4<sup>th</sup> Street.  
Engineers 6 hrs @ 110 + Designer 25 hrs @ 70 = \$2,410.00.
2. Provide 12" Dia new water main on Ramsey Street between the Alley east of San Gorgonio to Alessandro St.  
Engineers 6 hrs @ 110 + Designer 25 hrs @ 70 = \$2,410.00.
3. Provide 8" Dia new water main on Hays Street between the Alley east of San Gorgonio to Murry Street.  
Engineers 6 hrs @ 110 + Designer 25 hrs @ 70 = \$2,410.00.
4. Prepare a traffic control plan during construction for the referred project.  
Engineers 3 hrs @ 110 + Designer 16 hrs @ 70 = \$1,450.00.
5. Printing & Material = \$67.00.

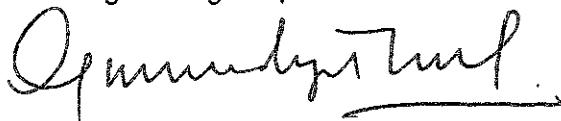
Total \$8,747.00

The above changes have created extra design and drawing work developing in 3 more drawing sheets. The cost of incorporating these changes in the referred project will be \$8,747. Thus the original work of P O # 20984 will be increased to \$43,737 (\$34,990 + \$8,747 = \$43,737).

We request you to get this approved from the City Council ASAP. We have already completed a substantial portion of the extra work and it is due for payment now.

Thank you,

Submitted Respectfully,  
A P Engineering Corporation



Gurinder Jit Singh



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

**FROM:** **Ernest P. Marquez, Jr., Senior Civil Engineer**

**SUBJECT:** **Relocation of Southern California Edison Transmission Facilities for the Brinton Reservoir**

**RECOMMENDATION:** Approve the funding for the relocation of Southern California Edison (SCE) Transmission Facilities in the amount of \$109,000.

**JUSTIFICATION:** The eight (8) million gallon Brinton Reservoir is within an easement for electrical transmission facilities owned by SCE. SCE has deemed a safety hazard exists for their overhead transmission facilities and the reservoir restricts any future use of their easement.

**BACKGROUND:** The Brinton Reservoir is a buried eight (8) million gallon reinforced concrete water storage reservoir currently being built for the City of Banning. The reservoir is being constructed within the foothills of the northwest part of the City of Banning adjacent to the Morongo Indian Reservation. This area is also known as the Brinton Ranch.

In May 2006 a final report was prepared by MHW titled "Investigation of Alternative Pipeline Alignments and Reservoir Sites". The report did not identify the SCE easement within the 4.8 acre parcel proposed reservoir site. Most studies of this type do not go into the full entitlements attached to the proposed property until a final location has been determined.

During the preconstruction meeting for the Brinton Reservoir, SCE addressed a potential conflict within their easement. SCE claims that the Brinton Reservoir Project causes a safety issue with a portion of the reservoir being below an 115 kV transmission line and it also restricts any and all future use of their easement. Research from easement documents confirms SCE's claim.

Staff has negotiated with SCE for the relocation cost concerning the overhead transmission facilities. Included in the cost of the relocation was a credit by SCE of \$6,000. This was due to the recent fire within the foothills that damaged a nearby power pole that was scheduled to be replaced by SCE's crew.

The attached letter dated June 10, 2009 by SCE lists the items that will be done for the relocation of the overhead transmission facilities. The total cost for the work is estimated to be \$109,000 less \$10,000 paid as an engineering advancement. The \$10,000 engineering advancement was paid in January 2009. Therefore, the balanced due to SCE is in the amount of \$99,000.

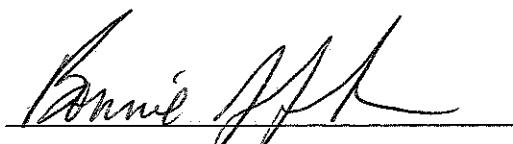
**FISCAL DATA:** Funds for the relocation of SCE's electrical transmission facilities is available from the FY 09-10 Water Division Operation Budget, Reservoirs Account No. 661-6300-471-95.09.

**RECOMMENDED BY:**



Ernest P. Marquez, Jr., PE  
Senior Civil Engineer

**REVIEWED BY:**



Bonnie J. Johnson  
Finance Director/Assistant City Manager

**APPROVED BY:**



Brian Nakamura  
City Manager

CC: Attachments

1. Letter Dated June 10, 2009 from Albert Ramirez of SCE

June 10, 2009

**City of Banning**

Attention: Ernest P. Marquez, Jr. P.E.  
176 E. Lincoln St., P.O. Box 998  
Banning, CA 92220

**SUBJECT:** Relocation of Edison's Transmission Facilities  
City of Banning's Brinton Reservoir Project  
Devers-Banning-Windpark-Zanja 115kV T/L  
Location: West of Sunset Avenue adjacent to the Morongo Indian  
Reservation. WBS File Number: WEP-00547

Dear Mr. Marquez:

Southern California Edison (SCE) has reviewed your request to provide a cost estimate for relocating our existing overhead transmission facilities to accommodate a new city reservoir. We have revised our original cost estimate and deducted the cost of the replacement pole, including the associated materials, as these cost will be at SCE's expense. SCE has also included the cost to prepare the replacement easement documents and the survey of the new line route as requested by the city.

SCE's Transmission Department will move forward as follows:

- Replace and relocate one 65 foot wood pole with one 75 foot wood pole.
- Reframe two existing wood poles.
- Install approximately 865 circuit feet of overhead conductor.
- Remove approximately 756 circuit feet of overhead conductor.
- Replace all associated hardware and provide guying for the new angles.

SCE's Corporate Real Estate Department will move forward as follows:

- Prepare the exhibit A/B for the replacement easement documents.
- Survey the new line route.
- Map and describe the new easement.

The revised estimated cost to relocate our existing transmission facilities is \$109,000 (One hundred and nine thousand dollars), which includes 22 percent income tax component of contribution (ITCC).

SCE acknowledges receipt of \$10,000 as an engineering advance, therefore the balance due at this time is \$99,000 (Ninety nine thousand dollars). Please issue your check payable to Southern California Edison Company and forward to me at the address shown below. Please identify your check with our WBS file number: WEP-00547.

SCE will require a new 40 foot wide by 893 foot long replacement easement prior to the installation of our facilities. Our Corporate Real Estate group will draft the document and forward for signature. Upon receipt of the funds, the signed acknowledgement set forth below, and the recorded easement, your project will be released for construction. SCE will require 90 to 120 days to order material and schedule crews.

This estimate is based on unsigned plans; any changes to the final plans that may delay the project or increase the final project cost will be the responsibility of the customer.

Please note that the preliminary cost estimate presented in this letter is based on conceptual engineering and system unit costs, and is subject to change based on the actual costs. All prices quoted and/or written are applicable for 120 days, from receipt of this letter.

Upon completion of our work and closure of the subject work order, the originally estimated cost will be reconciled to actual costs, at which time the necessary billing adjustments will be made. Please provide the Tax I.D. Number for the city of Banning. SCE must have this number in order to issue a refund check at the end of the project, if one is necessary.

Therefore, at the completion of the project, you will be sent a final invoice and be billed or refunded any difference covering the actual cost of the project. Please allow approximately one year after job completion for the final invoice to be prepared. Any amount owed by you to SCE at the completion of the project shall be due no later than 30 days after receipt of the final invoice.

Please acknowledge your understanding of SCE's billing process, as stated above, by signing and returning the copy of this letter.

If your project will be delayed or canceled, please notify me immediately at 951-492-1313.

Sincerely,



Albert Ramirez

Project Manager

Transmission Project Management

**ACKNOWLEDGEMENT OF SCE'S BILLING PROCESS**

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

Signature - City of Banning manager or authorized representative

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

Print Name

cc: Robert Franzo  
James Lee  
Barbara Miljkovic  
Doug Holloway  
Mike Maxwell  
Amir Shaterian  
File



**CITY COUNCIL  
CONSENT ITEM**

**DATE:** July 14, 2009

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

**FROM:** Perry Gerdes, Public Utilities Water/Wastewater Superintendent

**SUBJECT: Adoption of the City of Banning Sanitary Sewer Management Plan (SSMP)**

**RECOMMENDATION:**

The Public Utilities Department recommends that City Council approve Resolution 2009-56 adopting the City of Banning Sanitary Sewer Management Plan.

**JUSTIFICATION:**

On May 2, 2006, the State of California Water Resources Control Board (WRCB) adopted Waste Discharge Order No. 2006-0003-DWQ (Order). The Order contains Statewide General Waste Discharge Requirements (GWDR) for sanitary sewer systems. It applies to all public agencies that own more than one mile of sewer line. The City of Banning's sewer collection system meets this criteria and requires compliance with the Order.

**BACKGROUND:**

The City of Banning owns and operates over 110 miles of sewer mainline within the City limits. Therefore, by owning and operating more than one mile of sewer line and being a public agency, the City is obligated to comply with the permitting requirements as directed by the State of California WRCB.

The goal of the GWDR is to eliminate the occurrence of preventable sanitary sewer overflows by requiring public agencies to develop and implement written programs that improve the effectiveness and sustainability of existing sewer systems. Currently, the City of Banning has several programs and plans in place as required by the Order. One element of the Order requires affected agencies to adopt a Sanitary Sewer Management Plan (SSMP) that identifies practices, procedures, and goals that comply with the provisions of the GWDR prior to August 2, 2009.

Since the City has several different programs and plans in place, staff considered consolidating all these different procedures into a single document. This document will be the SSMP for the City. It will simplify and consolidate all of the requirements of the Order. Therefore, staff worked with a consultant to produce a final version of the SSMP for the City of Banning. A copy of the City of Banning's SSMP is attached to this report.

**ENVIRONMENTAL DETERMINATION:**

None

**FISCAL DATA:**

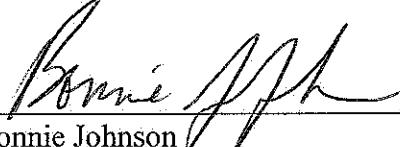
Proposed Resolution 2009-56 has no new fiscal impact on the Wastewater Department associated with its adoption. This is due to that the practices and procedures identified in the SSMP are already in place.

**RECOMMENDED BY:**



Perry Gerdes  
Water/Wastewater Superintendent

**REVIEWED BY:**



Bonnie Johnson  
Director of Finance

**APPROVED BY:**



Brian Nakamura  
City Manager

**RESOLUTION NO. 2009-56**

**A RESOLUTON OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA, ESTABLISHING A SEWER SYSTEM  
MANAGEMENT PLAN**

**WHEREAS**, the City of Banning owns and operates more than 1-mile of public sewer line; and

**WHEREAS**, on May 2, 2006, the State of California Water Resources Control Board adopted Waste Discharge Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements (GWDR) for Sanitary Sewer systems that applies to all public agencies that own more than 1-mile of sewer line; and

**WHEREAS**, the goal of the GWDR is to eliminate the occurrence of preventable sanitary sewer overflows by requiring public agencies to develop and implement written programs that improve the effectiveness and sustainability of existing sewer systems; and

**WHEREAS**, the City is required by the GWDR to adopt a Sewer System Management Plan (SSMP) that identifies practices, procedures, and goals that comply with the provisions of the GWDR prior to August 2, 2009;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning does hereby adopt the attached, (Exhibit "A") Sewer system Management Plan.

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of July, 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. 2009-56, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of July, 2009, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

RESOLUTION NO. 2009-56  
EXHIBIT "A"

CITY OF BANNING  
PUBLIC UTILITIES DEPARTMENT  
SEWER SYSTEM MANAGEMENT PLAN

Dated: July 2009

AVAILABLE IN THE  
CITY CLERKS OFFICE  
FOR REVIEW

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

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

**SUBJECT:** **Approval of Agreement between the City of Banning and County of Riverside, Department of Environmental Health, for Continued Arrangement of the Certified Unified Program Agency (CUPA).**

**RECOMMENDATION:**

That the City Council approve the continuation Agreement with the County of Riverside, Department of Environmental Health, for Continued Arrangement of the Certified Unified Program Agency (CUPA), for facilities and operations of the underground storage tank program, hazardous waste generation and inventory program, hazardous materials management plans and inventory permits, and above ground storage tank spill prevention program.

**JUSTIFICATION:**

The City of Banning and County of Riverside, Department of Environmental Health share a common goal in the protection of the general public and wish to continue the implementation of a cooperative program for the management of hazardous materials within the City of Banning.

**BACKGROUND & ANALYSIS:**

The County, acting as the Certified Unified Program Agency agrees to administer the Unified Program elements listed within the Agreement. The County also agrees to represent participating agencies with regard to meetings and public hearings involved in the application and certification process and maintain documentation related to Title 27 of the California Code of Regulations Sections 15260 and 15270.

Historically, the City's Fire Marshal participated in providing documentation and certifications of local businesses. It is anticipated that the incoming Asst. Fire Marshal shall undertake the duties associated with this program to insure the City is in compliance. The City cooperates with the County to submit data and implement the inspection enforcement plan and anticipates implementing the consolidated permit program plan.

Additionally, by January 1, 2013, Assembly Bill 2286 requires Unified Programs to report electronically, all data pertaining to the program. All regulated businesses, handling hazardous materials, are required to pay a minimum state surcharge fee of \$24 to their Unified Program Agencies (UPA). To pay for the costs of implementing electronic reporting statewide, the legislature is temporarily increasing the minimum surcharge by



**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **July 14, 2009**

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

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

**SUBJECT:** **Approval of Agreement between the City of Banning and County of Riverside, Department of Environmental Health, for Continued Arrangement of the Certified Unified Program Agency (CUPA).**

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Historically, the City's Fire Marshal participated in providing documentation and certifications of local businesses. It is anticipated that the incoming Asst. Fire Marshal shall undertake the duties associated with this program to insure the City is in compliance. The City cooperates with the County to submit data and implement the inspection enforcement plan and anticipates implementing the consolidated permit program plan.

Additionally, by January 1, 2013, Assembly Bill 2286 requires Unified Programs to report electronically, all data pertaining to the program. All regulated businesses, handling hazardous materials, are required to pay a minimum state surcharge fee of \$24 to their Unified Program Agencies (UPA). To pay for the costs of implementing electronic reporting statewide, the legislature is temporarily increasing the minimum surcharge by

\$25 per year for three years. This means that the amount of the state surcharge will increase from \$24 per year to \$49 per year. In other words, this electronic reporting surcharge will be in addition to the “local” state surcharge fee. The additional \$25 will be used for system development, outreach and training, and technical support for UPAs to be able to accept the information electronically.

**FISCAL IMPACT:**

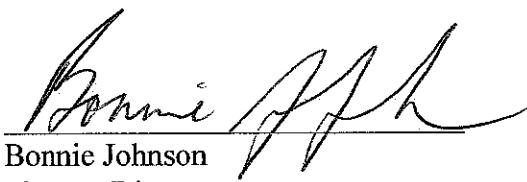
The anticipated fiscal impact of administering this program is associated to the Asst. Fire Marshal position and is funded in the City’s adopted FY 2009/10 budget. The fees are collected, disbursed, and accounted for in accordance with the Agreement.

**RECOMMENDED BY:**



Brian Nakamura  
City Manager

**REVIEWED BY:**



Bonnie Johnson  
Finance Director

# **AGREEMENT**

## **CERTIFIED UNIFIED PROGRAM**

This Agreement, made and entered into by and between the City of Banning, hereinafter called "CITY," and the County of Riverside, through its Community Health Agency, Department of Environmental Health, Hazardous Materials Management Division, hereinafter called "COUNTY," hereby establishes the responsibilities of each party concerning the Certified Unified Program Agency.

### **RECITALS**

WHEREAS, Health & Safety Code (H&SC) §25404.1(b)(1) requires the County to act as a Certified Unified Program Agency (CUPA), to implement and operate a Unified Program in the unincorporated area of the county and within all incorporated cities that have not been certified as a CUPA, and;

WHEREAS, the certification of the County as a CUPA under Health & Safety Code §25400 et seq., enables the County to carry out the responsibilities of administering such regulatory programs, and;

WHEREAS, the City of Banning and the County of Riverside recognize that it is in the public interest to establish and implement a cooperative program for the management of hazardous materials within the City of Banning,

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NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the Parties hereto mutually agree as follows, and in any exhibits or attachments attached hereto and incorporated herein.

CITY

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

ADDRESS \_\_\_\_\_  
\_\_\_\_\_COUNTY

BY \_\_\_\_\_

TITLE \_\_\_\_\_

DATE \_\_\_\_\_

ATTEST BY \_\_\_\_\_

TITLE \_\_\_\_\_

**AGREEMENT**

The COUNTY, acting as the CUPA, agrees to administer the Unified Program elements relating to the following facilities and operations within the jurisdiction of the CITY:

- 1.1 Underground Storage Tank Program
- 1.2 Hazardous Waste Generator Program, including hazardous waste generators conducting onsite treatment under permit-by-rule, conditional authorization and conditionally exempt authorizations.
- 1.3 Aboveground Storage Tank Spill Prevention Control and Countermeasure Program
- 1.4 Risk Management Program

The parties further agree to the following procedures this complying with Health and Safety Code §25404 et seq.:

The CITY acting as a Participating Agency (PA), within the Unified Program, shall administer the program elements relative to the following facilities and operations within the incorporated area of the CITY:

- 2.1 Hazardous Materials Release Response Plans and Inventory Program
- 2.2 Hazardous Materials Management Plans and Inventory and permits for the handling, use and storage of hazardous materials, pursuant to the Uniform Fire Code

COUNTY agrees to:

- 3.1 Maintain State Certification under H&SC §25404 et seq.
- 3.2 The COUNTY shall represent the agencies within the Unified Program at meetings and public hearings involved in the application and certification process.
- 3.3 Maintain documentation that the COUNTY meets the education, training, and experience pursuant to Title 27 of the California Code of Regulations (CCR) Sections 15260 and 15270, and has adequate resources to

implement the program elements it administers pursuant to 27 CCR §15170, specified in certification requirements.

3.4 Conduct at a minimum, quarterly meetings of agencies within the Unified Program pursuant to 27 CCR §15180, for the purpose of establishing policies and procedures, resolving duplication and regulatory overlap issues, encouraging uniformity and communicating enforcement actions. The COUNTY and the CITY as a Participating Agency will have equal input into the decision-making process. Disputes will be resolved through the established Dispute Resolution Process.

3.5 Abide by the CUPA/PA Dispute Resolution Process, pursuant to 27 CCR §15180 and §15210, as developed by agencies within the Unified Program and established in the application package submitted to the State for certification.

3.6 Collect and maintain the necessary data to implement and manage the Unified Program, pursuant to 27 CCR §15180 et. seq., including fee information, facility inventories, inspection and enforcement data, and permit information, facility inventories, inspection and enforcement data, and permit information. The data and information required by Cal-EPA must be submitted on a timely basis and according to established time lines.

3.7 Implement the Single Fee Billing System, pursuant to 27 CCR §15210, which incorporates fees and surcharges necessary to cover the costs incurred in implementing the Unified Program. Fees for CITY administered program elements will be collected by the COUNTY and dispersed to the CITY within 45 days or as mandated by statute and regulations.

3.8 Implement a fee accountability program, pursuant to 27 CCR §15220, to encourage efficient and cost effective operation of the Unified Program.

3.9 Collect the State Surcharge, pursuant to 27 CCR §15250, from regulated facilities and submit collected surcharges to Cal-EPA as mandated by the statute and regulations.

- 3.10 Implement the Inspection and Enforcement Plan, pursuant to 27 CCR §15200, in cooperation with the CITY in a manner consistent with the statute and certification.
- 3.11 Implement the Consolidated Permit Program, pursuant to 27 CCR §15190, and consistent with certification.
- 3.12 Conduct an annual audit of the CITY program elements pursuant to 27 CCR §15180 and §15290, or as necessary to maintain the Unified Program standards, as mandated by the statute and certification. Guidelines for content and conduct of the audits shall be developed in cooperation with the agencies within the Unified Program.
- 3.13 Enter into a Program Improvement agreement, pursuant to 27 CCR §15330(b), with the CITY, if the CITY ceases to meet minimum qualifications or fails to implement its program element(s) agreed upon by the agencies within the Unified Program and established certification. The Program Improvement Agreement shall specify the areas of improvement, minimum accomplishments necessary, and time frames, which shall be met by the CITY.
- 3.14 Comply with all statutory and regulatory requirements.
- 3.15 The COUNTY shall indemnify and hold CITY, its officers, agents employees and independent contractors free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of COUNTY, its officers, agents, employees and independent contractors, for property damage, bodily injury or death or any other element of damage of any kind or nature, occurring in the performance of this Agreement between the parties to the extent that such liability is imposed on the CITY by the provisions of Section 895.2 of the Government Code of the State of California, and COUNTY shall defend, at its own expense, including attorney's fee, CITY, its officers, agents, employees and independent contractors in any legal action or claim of any kind based upon such alleged acts or omissions.
- 3.16 The COUNTY agrees this agreement shall be effective as of July 1,

2009 and continue in effect through June 30, 2011, unless terminated by either party within six (6) months.

The CITY agrees to:

- 4.1 Provide Documentation/Certification that the CITY meets the education, training, and experience requirements identified in 27 CCR §15260 and §15270, and has adequate resources to implement the program element(s) it administers pursuant to 27 CCR §15170, specified in certification requirements.
- 4.2 Attend and participate in all scheduled meetings, pursuant to 27 CCR §15180, with agencies within the Unified Program.
- 4.3 Abide by the procedures established in the Dispute Resolution Process, pursuant to 27 CCR §15180 and certification requirements.
- 4.4 Provide the COUNTY with data needed to manage the Unified Program, pursuant to 27 CCR §15180 et. seq., including fee information, facility inventories, inspection and enforcement data, and permit information. The data and information must be submitted in a timely manner, according to a frequency agreed upon by the agencies within the Unified Program, allowing the COUNTY to meet established time lines.
- 4.5 Cooperate with the COUNTY in the development of a Single Fee System and comply with all provisions established in the Single Fee System Implementation Plan, as developed by the agencies within the Unified Program and as specified within certification.
- 4.6 Adopt fees for program elements the CITY administers that are in compliance with all requirements pertaining to fee accountability program.
- 4.7 Implement the Inspection and Enforcement Plan, pursuant to 27 CCR §15200, in cooperation with agencies within the Unified Program and, in a manner consistent with the statute and certification.
- 4.8 Implement the Consolidated Permit Program Plan, pursuant to 27 CCR §15190, in cooperation with agencies within the Unified Program and in a

manner consistent with certification.

4.9 Assist the COUNTY with the annual audit of the CITY program elements, pursuant to 27 CCR §15180 and §15290. Guidelines for the content and conduct of the audit and program improvement agreements shall be developed by the agencies with the Unified Program.

4.10 Comply with all statutory and regulatory requirements.

4.11 To cover the COUNTY'S cost of administering the Certified Unified Program Agency the CITY agrees that the COUNTY will be paid in the following manner:

- a) The cost of the COUNTY to administer the Unified Program will be paid for by the businesses regulated under the program elements within the Unified Program.
- b) The CITY will work cooperatively with the COUNTY in the development of any fees for recovering administrative costs. A public hearing will be held by the Board of Supervisors following public notice duly given, as required by law and following reasonable prior written notice to the CITY.

4.12 The CITY shall indemnify and hold COUNTY, its officers, agents, employees and independent contractors free and harmless from any claim or liability whatsoever, based or asserted upon any act or omission of CITY, its officers, agents, employees and independent contractors, for property damage, bodily injury or death or any other element of damage of any kind or nature occurring in the performance of the Agreement between the parties to the extent that such liability is imposed on the COUNTY by the provisions of Section 895.2 of the Government Code of the State of California, and CITY shall defend at its expense, including attorney's fees, COUNTY, its officers, agents, employees and independent contractors in any legal action or claim of any kind based upon such alleged acts or omissions.

5.1 Either party may terminate this agreement by giving the other party six (6) months written notice at the following address:

<u>CITY</u>	<u>COUNTY</u>
City of Banning	County of Riverside
Fire Department	Community Health Agency
99 East Ramsey Street	Department of Environmental Health
Banning, CA 92220	4065 County Circle Drive
	Riverside, CA 92503
	P.O. Box 7849
	Riverside, CA 92513-7849

5.4 No Third Party Beneficiary. This agreement between CITY and COUNTY is intended for the mutual benefit of the two signing parties only and to comply with the requirements of H&SC §25404.1(b)(1). No rights are created under this agreement in favor of any third party or any party who is not a direct signatory to this agreement.

5.5 This agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This written agreement may be changed or modified only upon the written consent of the parties hereto.

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**ATTACHMENT 1**

The State of California Health and Safety Code, §25404 et seq., requires the County to apply for Certification to establish a Unified Program to consolidate the implementation of the following hazardous materials program requirements:

1. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.5, §25100 et seq., applicable to hazardous waste generators and hazardous waste generators conducting on-site treatment of hazardous wastes authorized under permit-by-rule, conditional authorization pursuant to H&SC §25200.3, and conditional exemption pursuant to H&SC §25201.5 (generally supplemented by Division 4.5, Title 22 of the California Code of Regulations).
2. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.67, §25270.5 (c), applicable to the Aboveground Ground Storage Tank Program Spill Prevention Control and Countermeasure Plan.
3. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.67, §25280 et seq., applicable to the Underground Storage Tank Program.
4. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.95, Article 1, §25500 et seq., applicable to Hazardous Material Management Plans and Hazardous Materials Inventory Statements. (generally supplemented by Title 19 of the California Code of Regulations, Sections 2620-2734).
5. Requirements adopted pursuant to H&SC, Division 20, Chapter 6.95, Article 2, §25531 et seq., (generally supplemented by Title 19 of the California Code of Regulations, Sections 2735.1 – 2785.1), applicable to Cal ARP.
6. Requirements adopted pursuant to Section 8001.3.2 and 8001.3.3, Part 9 of Title 24, California Fire Code, applicable to Hazardous Material Management Plans and Hazardous Materials Inventory Statements.



**CITY OF BANNING**

*2nd Read.*

**ORDINANCE NO. 1388**

**GRADING, EROSION, AND SEDIMENT CONTROL**

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## ORDINANCE NO. 1388

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADDING TITLE 18 TO THE BANNING MUNICIPAL CODE PERTAINING TO GRADING, EROSION, AND SEDIMENT CONTROL, AND AUTHORIZING THE CITY ENGINEER TO PREPARE A GRADING MANUAL SETTING FORTH THE ADMINISTRATIVE PROCEDURES AND TECHNICAL REQUIREMENTS NECESSARY TO IMPLEMENT THIS ORDINANCE

The City Council of the City of Banning, does ordain as follows:

**Section 1:** Growth and development have created permanent changes to the City's landscape and its natural resources. Open space and naturally vegetated areas have been permanently altered through clearing and grading activities associated with construction and land development. Loss of ground cover, coupled with grading, excavation, and compaction of the land contributes to decreased groundwater infiltration, increased storm water flow, erosion and increased sediment runoff into washes, streams and other water bodies. Controlling erosion and sedimentation represents a vital component of protecting the water quality of our watercourses, water bodies and wetlands.

**Section 2:** Grading and land clearing activities also impact the City's aesthetic value and community character. Establishing minimum standards and requirements relating to land grading, clearing, excavations and fills, and procedures by which these standards and requirements may be enforced, will help to ensure soil is not stripped and removed from lands in the City, leaving them unsightly and susceptible to erosion, subsidence, faulty drainage and sediment deposition.

**Section 3:** It is desirable to adopt regulations for grading private property that will help to ensure that future grading, clearing and development of land within the City occurs in the manner most compatible with surrounding areas, and is paramount to protecting life, limb and property, and promoting and enhancing the general public welfare and a superior community environment.

**Section 4:** The Banning Municipal Code is hereby amended by adding TITLE 18, consisting of Articles 1 through 11, and the various Chapters and Sections within each Article, to read as follows:

## **TITLE 18**

### **THE CITY OF BANNING GRADING, EROSION, AND SEDIMENT CONTROL ORDINANCE**

#### **Chapter 18.01**

#### **ARTICLE 1. GENERAL PROVISIONS**

##### **Sections:**

- 18.01.020      Title**
- 18.01.040      Grading Manual**
- 18.01.060      Purpose**
- 18.01.080      Scope**

##### ***18.01.020      Title***

The ordinance codified in these Titles shall be known as the “City of Banning Grading, Erosion, and Sediment Control Ordinance” and will be referred to herein as “this Ordinance.”

##### ***18.01.040      Grading Manual***

The City Engineer (“City Engineer”) shall formulate a manual setting forth the administrative procedures and technical requirements necessary to implement the provisions of this Ordinance. Such rules, procedures, and requirements shall be entitled “The City of Banning Administrative and Technical Procedures Manual for Grading, Erosion, and Sediment Control” (“Grading Manual”). The City Engineer shall have the authority to change, update or revise the Grading Manual as necessary in order to implement the provisions of this Ordinance and all revisions thereto arising from time to time.

In the event of any conflict between the Grading Manual and this Ordinance, the more restrictive provisions shall govern. The provisions of the Grading Manual shall, to the extent they are made conditions of a permit by the City Engineer, be binding upon the permittee and those claiming under said permittee.

##### ***18.01.060      Purpose***

This Ordinance is enacted for the purpose of regulating grading activity on property within the city limits of the City of Banning to safeguard life, limb, health, property and the public welfare; to avoid discharges of pollutants such as sediment, hazardous materials, wastes and debris from entering public or private storm water conveyance facilities and surface waters; and to ensure that the intended use of a graded site within the city limits is consistent with the City’s General Plan, any specific plans adopted thereto and all applicable City ordinances and zoning regulations.

Ordinance No. 1388

### **18.01.080      *Scope***

This Ordinance sets forth rules and regulations, which reflect the minimum acceptable methods or actions to control land disturbances, landfill, soil storage, pollution, and erosion and sedimentation resulting from construction, grading, excavation, and land clearing activities. This Ordinance establishes procedures for issuance, administration and enforcement of permits for such activities. Any such grading activities within the city limits of the City of Banning shall conform to the provisions of this Ordinance and the Grading Manual and other applicable provisions of the City's Municipal Code and the California Building Code, as adopted and amended by the City, together with all other conditions of approval.

In the event that a particular topic is not covered in either this Ordinance or the Grading Manual, the applicable provisions of the City's Municipal Code or the California Building Code, as adopted and amended by the City, shall govern. If a conflict arises between this Ordinance and the City's Municipal Code or the California Building Code, the more restrictive provision shall govern, unless otherwise approved by the City Engineer.

## **Chapter 18.03**

### **ARTICLE 2. PERMITS REQUIRED**

#### **Sections:**

- 18.03.020      Permits Required**
- 18.03.040      Permit Exemptions**

#### ***18.03.020      Permits Required***

No person shall conduct any grading, stockpiling, excavating, paving, earth moving, filling, clearing, disking, brushing, or grubbing on natural or existing grade, or perform work that is preparatory to grading, without first having obtained a permit in accordance with this Ordinance, except as specified below in Section 18.03.040, "Permit Exemptions" of this Ordinance and without having obtained coverage under the State Water Resources Control Board (SWRCB) National Pollution Discharge Elimination System (NPDES) permit for construction activity (if applicable).

#### ***18.03.040      Permit Exemptions***

Grading permits are not required for:

- A. An excavation below the existing finished grade for recompaction within the building zone (within five feet (5') of footings) or for basements and footings for a building, mobile home, retaining wall, septic system, well, or structure authorized by a building permit. This shall not exempt any fill made with the material from such excavation or exempt any excavation having an unsupported height greater than two feet (2') after the completion of such structure.

- B. Cemetery graves;
- C. Refuse disposal sites controlled by other statutorily authorized regulations or agencies;
- D. Earthwork or construction controlled by the Federal, State, County, or City Governments, or by a local agency as defined by Government Code Section 53090 through 53095 (Special Districts). This exemption, however, shall apply only when the grading activity takes place on the property, or dedicated rights-of-way or easements of the above agencies;
- E. Excavation and backfill for installation of underground utilities by public utilities or companies operating under the authority of a franchise or public right-of-way permit;
- F. Mining, quarrying, excavating, processing stockpiling of rock, sand, gravel, aggregate or clay for commercial purposes where established and provided for by a conditional use permit, provided such operations do not affect the lateral support of any adjacent or adjoining properties, or alter the direction of, or contribute to, sedimentation to natural watercourses.
- G. Exploratory excavations under the direction of civil engineers, geotechnical engineers, engineering geologists, and/or archaeologists or paleontologists, or pursuant to a well permit, provided all excavations are properly backfilled or otherwise restored. All such elevations and trenches are subject to the applicable sections of Title 8 of the State Orders, Division of Industrial Safety and the following:
  - 1. When such work involves removal of any native vegetation, it shall be accompanied by an administrative clearing permit in accordance with Section 18.09.120(D), "Administrative Clearing Permit" of this Ordinance. Any access roadways or pads constructed for this work shall only be constructed as approved in the administrative clearing permit and shall be restored as required in the permit.
- H. An excavation not intended to support structures or mobile homes and which, (a) is less than two feet (2') in vertical depth, or (b) which does not create a cut slope greater than three feet (3') in vertical height and steeper than two horizontal to one vertical (2:1). This exemption shall not apply when finish grading is proposed, subsequent to a permit authorizing rough grading in accordance with Section 18.09.120(A), "Types of Grading Permits" of this Ordinance.
- I. A fill less than one foot (1') in vertical depth, placed on natural terrain with a slope flatter than five (5) horizontal to one (1) vertical (5:1), or less than three feet (3') in depth, not intended to support structures or mobile homes, which does not exceed fifty (50) cubic yards on any one site and does not obstruct a drainage course. This exemption shall not apply when finish grading is proposed, subsequent to a permit authorizing rough grading in accordance with Section 18.09.120(A), "Types of Grading Permits" of this Ordinance.

- J. The construction or maintenance of roads or facilities for the generation, storage or transmission of water including floodwaters or electrical energy by public agencies or their agents. Work may be subject to Water Quality Management Plan (WQMP) requirements. A WQMP project includes the construction or reconstruction of 5,000 square feet of impervious surface in a parking lot, street, roadway or highway.
- K. The maintenance of private roads by private individuals or their agents, but not the construction or widening of such roads.
- L. Clearing and brushing when directed by the Fire Chief to mitigate a potential fire hazard in accordance with Section 8.48.50 "Fire Hazard" of the Banning Municipal Code.
- M. Clearing and brushing, expressly for the following purposes:
  - 1. Routine landscaping and maintenance of already landscaped areas, and the removal of dead or diseased trees or shrubs.
  - 2. Clearing which conforms to the location, extent and purpose authorized explicitly by a construction permit pursuant to a discretionary land use permit or a discretionary development permit. An Administrative Clearing Permit, in accordance with Section 18.09.120 (D) of this Ordinance, shall be required for any purpose that is not specifically addressed by the construction permit.
- N. Repaving, resurfacing, and maintenance of existing private roads and parking lots and the preparation necessary for that work, provided no grading beyond the limits of other exemptions is performed.
- O. Minor maintenance and alterations to natural drainage areas that do not:
  - 1. Obstruct or redirect drainage from adjacent properties, nor
  - 2. Divert the outflow of drainage from the existing or natural discharge point of the property, nor
  - 3. Concentrate or accelerate the flow of drainage as it leaves the property, nor
  - 4. Create ponding, siltation, or erosion in or of the streambed, nor
  - 5. Disturb wetlands.

Note: The above listed exemptions do not apply to clearing, grubbing, brushing, disking or grading when:

- a. Work will occur in, or physically impact, designated or dedicated open space or environmentally sensitive areas as designated in the General Plan, or the finally adopted plan of any public agency or governmental office with jurisdiction over the site, or as shown on any approved Specific Plan; or,

- b. Work will occur in any waterway or wetland, stream, river, channel, pond, lake, marsh, bog, lagoon, vernal pool, or riparian habitat except as provided in exemption "O" of this section, minor maintenance; or,
- c. Work will occur in any floodway or floodplain as shown on the Federal Emergency Management Agency (FEMA) Flood Plain Maps, or on City revised maps except as provided in exemption "O" of this section, minor maintenance.

## **Chapter 18.06**

### **ARTICLE 3. GRADING APPLICATION REQUIREMENTS**

#### **Sections:**

- 18.06.020      Grading Application**
- 18.06.040      Plans and Specifications**
- 18.06.060      Geotechnical (Soils) Reports**
- 18.06.080      Seismicity Reports**
- 18.06.100      Dust Prevention and Control Plan**
- 18.06.120      Haul Route Plan**
- 18.06.140      Erosion and Sediment Control Plan**
- 18.06.160      Expiration and Renewal of Grading Application Submittals**

#### ***18.06.020      Grading Application***

To obtain a grading permit, the applicant shall first file an application in writing on a form furnished by the City Engineer for that purpose.

#### ***18.06.040      Plans and Specifications***

- A. Each application for a grading permit shall be accompanied by plans and specifications, soils engineering and geological reports, erosion and sediment control plans, proof of application for coverage under the State Water Resources Control Board (SWRCB) National Pollution Discharge Elimination System (NPDES) permit for construction activity, and all other information required by the City Engineer as specified in Subarticle 3 of the Grading Manual, and payment of the appropriate fees. Additionally, a Water Quality Management Plan (WQMP) as specified in the MS4 permit must be accepted by the City Engineer prior to issuance of a grading permit. The information required on the application form shall be kept current until the conclusion of the permitted activities.
- B. Plans and specifications for grading projects requiring permits as defined in Section 18.03.020, "Permits Required" of this Ordinance shall be prepared and signed by the Engineer of Record. This requirement may be extended to any project when, in the opinion of the City Engineer, drainage or geologic factors may warrant a need for civil engineering design and control.

C. Grading plans and specifications shall be prepared in accordance with Subarticle 3 of the Grading Manual.

***18.06.060 Geotechnical (Soils) Reports***

A. Surface and Subsurface Conditions. The City Engineer shall require a geotechnical report to correlate surface and subsurface conditions with the proposed grading plan. The results of the investigation shall be presented in a report in conformance with the requirements of this Ordinance and Subarticle 3 of the Grading Manual.

B. Supplemental Reports/Data. The City Engineer shall require such supplemental reports and data, as he deems necessary upon his review of the site and the reports and other data submitted. Such required data may include tests for soil fertility and agricultural suitability to be performed at the conclusion of rough grading by a recognized agronomic soil-testing laboratory, with written analysis and recommendation, to be utilized during any required revegetation.

C. Waiver of Geotechnical Report Requirements. For a specific project, the City Engineer may determine that the geological and geotechnical conditions at the site are such that public safety is adequately protected and no mitigation is required. This finding shall be based on a report presenting evaluations of site in the immediate vicinity having similar geologic and geotechnical characteristics. The report shall be prepared by a certified engineering geologist or registered civil engineer, having competence in the field of seismic hazard evaluation and mitigation. The City Engineer shall provide a written commentary that addresses the report conclusions as justification for waiving the requirement of a geotechnical report for the project. All such waivers shall be recorded with the Riverside County Recorder and a separate copy, together with the report and commentary, filed with the State Geologist within 30 days of the waiver, in accordance with Public Resources Code Section 2697(a).

***18.06.080 Seismicity Reports - Alquist-Priolo Earthquake Fault Zoning Act***

A seismicity report shall be required as a condition for issuance of a grading permit for all grading applications associated with subdivisions (tracts); all grading projects that propose development with occupancy category II, III, IV structures as shown in table 1604A.5 of the California Building Code; and all real estate development that lies within an earthquake fault zone. Said reports shall comply with the requirements of the Alquist-Priolo Earthquake Fault Zoning Act (Public Resources Code, Section 2621, et seq.) and as specified in the Grading Manual.

***18.06.100 Dust Prevention and Control Plan***

Dust control and prevention procedures shall be employed while construction activity occurs to minimize wind borne particles. At the minimum, all grading operations, land clearing, loading, stockpiling, landscaping, vehicular track-out and haul routes shall comply with South Coast Air Quality Management District (SCAQMD) Rule 403 (Fugitive Dust Emissions) and the Grading Manual.

#### ***18.06.120 Haul Route Plan***

Where soil or construction materials are moved on public roadways from or to the site of a grading operation, a haul route shall be approved by the City Engineer in accordance with the Grading Manual. Deviation from the designated haul route shall constitute a violation of the conditions of the permit issued under this Ordinance. Vehicular track-out shall be controlled, as directed by the City Engineer, to prevent sediment deposition outside of the project site boundaries.

#### ***18.06.140 Erosion and Sediment Control Plan***

All grading plans, regardless of the date of submittal, shall include an erosion and sediment control plan designed to limit erosion and sediment of all disturbed portions of the property and to minimize the transport of soil onto adjacent properties or into streets, storm drains, or drainage ways in accordance with the provisions of Chapter 18.15 of this Ordinance and Subarticle 6 of the Grading Manual.

#### ***18.06.160 Expiration and Renewal of Grading Application Submittals***

- A. Applications for which no permit is issued within 180 days following the date of application shall expire, and plans submitted for checking may thereafter be returned to the applicant or may be destroyed by the City Engineer without additional notice to the applicant.
- B. The City Engineer may extend the time for action by the applicant for a period not exceeding 180 days upon written request by the applicant showing that circumstances beyond the reasonable control of the applicant have prevented action from being taken.
- C. In order to renew action for an application after expiration, the applicant shall resubmit grading application submittals and pay the most current plan check fees.
- D. Plan check fees shall be forfeited for all expired permits.

#### ***18.06.180 Slope Analysis Plan***

For Hillside developments a slope analysis plan shall be submitted with all development applications of five acres or more in any Hillside development area, or as requested by the Community Development Director. A slope analysis plan shall distinguish existing slopes 0-15% grade, 16-20% grade, 21-24% grade and those grades greater than 25% in accordance with the provisions of Section 18.12.180 of this Ordinance and Subarticle 5 of the Grading Manual.

## Chapter 18.09

### ARTICLE 4. GRADING PERMIT REQUIREMENTS

#### Sections:

- 18.09.020      Permit Issuance – Terms and Conditions**
- 18.09.040      Responsibility of Permittee**
- 18.09.060      Contractor Qualifications**
- 18.09.080      Right of Entry**
- 18.09.100      Tentative Subdivision or Conditional Use Permit Required**
- 18.09.120      Types of Permits**
- 18.09.140      Protection of Adjoining Property**
- 18.09.160      Protection of Utilities**
- 18.09.180      Maintenance of Protective Devices**
- 18.09.200      Time of Operations**
- 18.09.220      Debris on Public Streets**
- 18.09.240      Disposal of Materials**
- 18.09.260      Expiration and Renewal Issued of Permits**
- 18.09.280      Denial of Permit**

#### ***18.09.020      Permit Issuance – Terms and Conditions***

- A. Upon receipt and approval of the required application, fees, plans, reports, and other requirements of this Ordinance, the City Engineer may issue a permit, subject to any terms and conditions deemed necessary to ensure conformance with the provisions of this Ordinance and the Grading Manual.
- B. The City Engineer shall have the discretion to impose or modify conditions as necessary to prevent a possible nuisance or hazard, or to eliminate a nuisance or hazard, to persons or to public or private property in accordance with Section 18.27.060, “Hazardous Conditions” of this Ordinance.
- C. The issuance of a permit shall constitute an authorization to do only that work which is described or illustrated on the application for the permit, or on the plans and specifications attached to the permit and approved by the City Engineer. A separate permit shall be required for each (noncontiguous) grading project.

#### ***18.09.040      Responsibility of Permittee***

It shall be the responsibility of the permittee to be knowledgeable of the conditions and/or restrictions placed on the permit as outlined in the applicable sections of this Ordinance, the Grading Manual, and as contained on the approved grading plans and geotechnical reports. The permittee shall also be responsible for maintaining a copy of the permit and approved plans at the work site, and implementing the applicable requirements of the City’s Standard Notes, as identified in the Grading Manual.

### ***18.09.060 Contractor Qualifications***

All persons performing work pursuant to this Ordinance shall have all valid licenses and insurance required by the State of California and by the City of Banning.

### ***18.09.080 Right of Entry***

As a prerequisite for issuance of any grading permit, the owner, contractor, or authorized agent of the site to be graded acknowledges and grants permission to the City for right of entry into the site for inspection, emergency work, or correction of grading not performed in compliance with the terms and conditions of the permit. The owner, contractor, or authorized agent shall agree to indemnify the City for any claims or damages, which may result from the City's entry onto the property including any corrective or emergency action taken pursuant to such right of entry.

### ***18.09.100 Tentative Subdivision or Conditional Use Permit Required***

Under either of the following circumstances, a permit shall not be issued unless and until a tentative map or a Conditional Use Permit (CUP) has been approved by the City:

- A. If the purpose of the proposed grading or clearing is to prepare the land for a subdivision or for some use for which a conditional use permit is required; or
- B. Notwithstanding the purpose of the proposed grading or clearing as stated in the application, if the City Engineer finds that the purpose of the proposed grading or clearing is to prepare the land for subdivision or for some use for which a conditional use permit is required.

### ***18.09.120 Types of Permits***

- A. Mass, Rough, or Precise Grading. The City Engineer may issue a mass, rough, or precise grading permit for grading work upon completion of an application in accordance the Grading Manual. The issuance of building permits shall be determined as follows:
  1. Building permits may be issued for a site graded under a precise grading permit upon completion and approval of the rough grade inspection as specified in the Grading Manual.
  2. Building permits shall not be issued for a site graded under a rough grading permit unless a precise grading permit has been issued.
- C. Stockpiling. Upon approval by the Planning Commission of a Conditional Use Permit (CUP), a stockpile permit may be issued for the stockpile of soil materials on a lot or parcel provided that the soil materials shall be removed from the site or compacted and graded thereon under a subsequently issued mass, rough, or precise grading permit

within six (6) months of issuance of a stockpile permit, unless modified by the Planning Commission, in accordance with the Grading Manual.

- D. Administrative Clearing. No person shall commence any clearing and grubbing operation without first obtaining a grading or administrative clearing permit in accordance with the Grading Manual.
- E. Borrow Sites. A grading and/or administrative clearing permit shall not be issued when, in the opinion of the City Engineer, a significant amount of borrow or waste material is to be removed from a grading site for commercial purposes unless a Conditional Use Permit in accordance with Chapter 17.52, "Conditional Use Permits" of the Banning Municipal Code has been issued for the operation of a borrow pit on the grading site.
- F. Paving. No person shall construct concrete or bituminous pavement surfacing on natural or existing grade in excess of five thousand (5,000) square feet for any commercial, industrial, multi-residential, or other parking lot, without a valid grading permit for such paving. Maintenance and repaving of existing paved sections shall be exempt from this requirement.
- G. Watercourse Alteration. No person shall alter an existing watercourse, channel, or revetment by excavating, or placing fill, rock protection or structural improvements therein without a grading permit unless (i) the requirement for a grading permit is waived by the City Engineer, or (ii) the grading is performed as interim protection in an emergency to prevent flooding, or (iii) a separate improvement plan for such alteration is approved by applicable state agencies and the City Engineer.
- H. Rock Blasting. No rock blasting shall be permitted until a preblast survey of the surrounding property is conducted to the satisfaction of the City Engineer. During rock blasting, seismic recordings shall be taken for all blasts at locations and levels approved by the City Engineer. All blasting shall conform to the requirements of the City Engineer, as specified in the Grading Manual.

#### ***18.09.140 Protection of Adjoining Property***

Each adjacent owner is entitled to the lateral and subjacent support that his land receives from the adjoining land, subject to the right of the property owner of the adjoining land to make proper and usual excavations on the same for purposes of construction or improvement, as follows:

- A. Any person causing an excavation to be made to a depth of ten feet (10') or more below the grade and within ten feet (10') of the property line(s) shall protect the excavation so that the soil of adjoining property will not cave in or settle. The person making or causing the excavation to be made shall provide written notification to the adjoining property owner(s) not less than ten (10) days before such excavation is to be made, stating the depth for which such excavation is to be made and when the excavation will begin.

- B. If at any time it appears that the excavation is of greater depth than are the walls or foundation of an adjoining building or other structure, and the distance from the edge of the excavation to an adjoining building or other structure is less than the depth of the excavation, the person causing the excavation shall notify the owner of the adjoining building or other structure not less than ten (10) days before such excavation is to be made to protect the same from any damage, or to brace or extend the foundations of the noted building or other structure from possible damage from the excavation.
- C. Excavations shall meet all State and Federal regulations, including but not limited to, obtaining CAL OSHA permits
- D. No grading shall be approved which, in the opinion of the City Engineer, physically prevents the use of existing legal access to any parcel.

#### ***18.09.160 Protection of Utilities***

- A. During grading operations, the permittee shall be responsible for the prevention of damage to public utilities or services and for confining grading activities to the area permitted on the approved plans. This responsibility applies within the limits of grading or clearing and along any routes of travel of equipment.
- B. Before starting any excavation work, the permittee shall be responsible to contact Underground Service Alert of Southern California and coordinate the proposed excavation with all interested utility companies, districts, and agencies.

#### ***18.09.180 Maintenance of Protective Devices***

The owner or agent in control of such property on which a grading activity has occurred pursuant to a permit granted under the provisions of this division, shall maintain in good condition and repair all structures, planting and other protective devices as per the approved plans or required by the permit. Any facilities dedicated for public use and accepted by a public agency are exempt.

#### ***18.09.200 Time of Operations***

- A. Time of any grading, clearing and equipment operations pursuant to this Ordinance shall be consistent with Chapter 8.44 "Noise" of the Banning Municipal Code. Grading operations within one-quarter (1/4) mile of an occupied residence shall not be conducted between the hours of 6:00 p.m. and 7:00 a.m., Monday through Friday; or between the hours of 6:00 p.m. and 7:00 a.m. on Saturdays. Further, no such activity shall be undertaken on Sunday or nationally recognized holidays. The City Engineer may extend the hours permitted for grading or equipment operations if the City Engineer determines that such operations are not detrimental to the health, safety or welfare of the inhabitants of nearby structures. Permitted hours of operation may be shortened by the City Engineer's finding of a previously unforeseen effect on the health, safety or welfare of the surrounding community.

B. Public Works projects of any Federal, State or local entity or emergency work by public utilities are exempt from the provisions of this Ordinance. Residents working on their property are exempt from the prohibition of construction activities on Sundays and holidays but shall comply with the hourly restrictions set forth for Saturday when working on Sundays and holidays.

***18.09.220 Debris on Public Streets***

The throwing, leaving, maintaining, keeping, placing, dumping, depositing or spilling soil materials, or debris on public streets or any portion of the public right-of-way is strictly prohibited. The permittee shall be responsible for the complete removal and cleanup of such materials from the street or any portion of the public right-of-way. If the permittee fails to immediately remove said spillage or deposit from the street and/or public right-of-way, and it is necessary for the City to cause such removal to be made, the cost of such removal work shall be the responsibility of the permittee. The City may use the grading deposit in accordance with Section 18.24.120, "Grading and Erosion Control Securities" of this Ordinance for this purpose without notice to the owner. An additional cash deposit may be required prior to resumption of grading to insure the cleanup of public streets.

***18.09.240 Disposal of Materials***

The disposal of all waste and recycling materials removed as part of any grading project shall be in compliance with the City's Solid Waste Franchise Agreement, as specified within the provisions of Chapter 8.28 "Garbage Collection and Disposal" of the Banning Municipal Code and the Grading Manual.

***18.09.260 Expiration and Renewal Issued Permits***

A. A grading permit shall be valid for a period of one-hundred eighty (180) days from the date of issuance.

B. The time limitation for all grading permits is also subject to the following provisions:

1. Change of ownership. A permit issued in accordance with these requirements shall terminate upon a change of ownership if the work for which said grading permit was issued has not been completed. In such instances, a new permit shall be required for completion of the work.
  - a. If the time limitations of paragraph (A) of this section are not applicable, and no changes have been made to the plans and specifications last submitted to the City Engineer, no charge shall be made for the issuance of a new permit.
  - b. If changes have been made to the plans and specifications last submitted to the City Engineer, fees based on the valuation of the additional or new work, such as additional earthwork and necessary plan checking shall be charged to the permit applicant.

- c. New securities and/or deposits shall be submitted by the new owner in accordance with Section 18.24.120, "Grading, Erosion and Sediment Control Securities" of this Ordinance.
- 2. Permit Extensions. The City Engineer may extend the time limit on permits by one (1) or more successive periods of up to one-hundred eighty (180) days upon written request by the applicant showing to the satisfaction of the City Engineer that circumstances beyond the control of the applicant have prevented, delayed or extended the time required to complete the grading operations.
- 3. Weather-related delays. The City Engineer may require that grading operations and project designs be modified if delays occur which incur weather-related problems not considered at the time the permit was originally issued.

C. As a condition of the extension of any time period, the City Engineer may require the payment of additional permit, plan checking, inspection, and/or soils review fees required to cover the administration of the extensions and/or increased costs to the City and to bring the project into conformance with any fee schedule in effect at the time of extension.

***18.09.280 Denial of Permit***

- A. Hazardous Conditions. A permit shall not be issued in any case where the City Engineer determines that the work as proposed by the applicant will:
  - 1. Expose any property to landslide or geologic hazard; or
  - 2. Adversely interfere with existing drainage courses or patterns; or
  - 3. Cause erosion and/or flooding, which could result in the depositing of mud, silt, or debris on any other property or public or private street; or
  - 4. Create any hazard to person or property; or
  - 5. Damage or endanger any environmentally sensitive species and habitats, rocks and/or archaeological artifacts.
- B. General Conditions. A permit shall not be issued if any of the following apply:
  - 1. If the submittal is incomplete;
  - 2. If the plan as submitted does not comply with the provisions of this Ordinance;
  - 3. If the required security is not posted;
  - 4. If the application contains false information.
- C. Other. The City Engineer shall deny the issuance of a permit if any of the following conditions apply:
  - 1. If prohibited by a duly elected moratorium, court order, injunction, or other legal order;
  - 2. If the applicant or owner has failed to comply with the provisions of this Ordinance;
  - 3. If the work proposed is not consistent with the City's General Plan, or any element thereof, or any specific plan, conditional use permit, land use ordinance

or regulation, zoning ordinance or regulation, or permit, or approved subdivision map.

## Chapter 18.12

### ARTICLE 5. GRADING DESIGN STANDARDS

#### Sections:

- 18.12.020      Cuts**
- 18.12.040      Fills**
- 18.12.060      Setbacks**
- 18.12.080      Terraces and Terrace Drains**
- 18.12.100      Subsurface Drainage**
- 18.12.120      Pad Grading**
- 18.12.140      Asphalt Concrete Pavement**
- 18.12.160      Disabled Access**
- 18.12.180      Hillside Grading**

#### **18.12.020      Cuts**

Unless otherwise recommended by the geotechnical engineer, and engineering geology reports, or both, and approved by the City Engineer, cuts slopes shall be no steeper than two (2) horizontal to one (1) vertical (2:1). All cuts and excavations shall conform to the provisions of this Ordinance and the Grading Manual.

Exception: In the absence of an approved geotechnical engineering report, these provisions may be waived by the City Engineer for minor cuts not intended to support structures.

#### **18.12.040      Fills**

Unless otherwise recommended by the geotechnical engineer or engineering geology reports, or both, and approved by the City Engineer, fills shall conform to the provisions of the Grading Manual.

Exception: In the absence of an approved geotechnical engineering report, these provisions may be waived by the City Engineer for minor fills not intended to support structures.

#### **18.12.060      Setbacks**

All setbacks and other restrictions specified by the Grading Manual are minimum and may be increased by the City Engineer, pursuant to the recommendation of a civil or geotechnical engineer, to prevent damage to adjacent properties from erosion or to provide access for slope and drainage structure maintenance. Retaining walls may be used to reduce the required setbacks when approved by the City Engineer.

#### ***18.12.080 Terraces and Terrace Drains***

Drainage facilities and terraces shall conform to the provisions of the Grading Manual unless otherwise approved by the City Engineer.

#### ***18.12.100 Subsurface Drainage***

- A. Cut and fill slopes shall be provided with subsurface drainage as necessary for stability, and as recommended by the geotechnical engineer, geologist, and/or engineering geologist.
- B. All canyons and buttress fills shall be provided with sub drains approved by the City Engineer.

#### ***18.12.120 Pad Grading***

Storm water runoff from lots or adjacent properties shall not be carried over cut or fill slopes steeper than five (5) horizontal to one (1) vertical (5:1). Such runoff shall conform to the provisions of the Grading Manual.

#### ***18.12.140 Asphalt Concrete Pavement***

Asphalt concrete pavement for surfacing of parking lots, private streets, driveways or other similar uses shall conform to the provisions of the Grading Manual unless otherwise approved by the City Engineer.

#### ***18.12.160 Disabled Access***

All site development and precise grading shall be designed to provide access to all entrances and exterior ground-floor exits and to normal paths of travel in accordance with California Disabled Access Regulations (California Code of Regulations, Title 24, Part 2).

#### ***18.12.180 Hillside Grading***

Development proposed in any hillside zoning district, open space district, or any hillside site shall conform to the following standards:

- A. Development on lands with slopes of more than 25% is prohibited.
- B. Development on plateaus shall include a one-hundred foot (100') building setback from all ridgelines or edge of plateau.
- C. Ridgelines are to be preserved.
- D. Natural hillsides above the toe of slope shall be preserved. The toe of slope for the purposes stated herein shall mean the dividing line between the land or rock formations where there is a noticeable break in the angle of slope.

## Chapter 18.15

### ARTICLE 6. EROSION AND SEDIMENT CONTROL

#### Sections:

- 18.15.020      Construction Runoff Compliance**
- 18.15.040      Erosion and Sediment Control Plans Required**
- 18.15.060      Erosion and Sediment Control Systems**
- 18.15.080      Temporary Site Vegetation – When Required**
- 18.15.100      Erosion and Sediment Control Maintenance**
- 18.15.120      Erosion and Sediment Control – Agricultural**
- 18.15.140      Additional NPDES Requirements**

#### ***18.15.020      Construction Runoff Compliance***

- A. All individual construction and grading projects shall implement measures to ensure that pollutants are not discharged from the site, will be reduced to the Maximum Extent Practicable (MEP), and will not cause or contribute to an exceedance of water quality objectives in the local natural watercourses. All construction and grading activities will be in compliance with applicable ordinances, permits and other Federal, State and local requirements.
- B. The permittee shall adhere to the following requirements:
  - 1. Develop and implement an erosion and sediment control plan to manage storm water and non-storm water discharges from the site at all times in accordance with the Grading Manual. Projects disturbing, exposing or stockpiling one (1) acre or more of soil are also required to have coverage under the State General Construction Permit and generate a Storm Water Pollution Prevention Plan (SWPPP) per the State General Construction Permit;
  - 2. Conduct phased grading operations and minimize grading activities during the rainy season. Coincide grading with dry weather periods to the extent feasible. Implement additional “Best Management Practices” (BMP’s) for all rain events;
  - 3. Install a combination of erosion and sediment control measures to effectively prevent erosion and retain sediment on-site throughout the duration of all construction activities.
  - 4. Minimize exposure time of disturbed soil areas;
  - 5. Temporarily stabilize and re-seed disturbed soil areas as rapidly as possible;
  - 6. Permanently re-vegetate or landscape as early as feasible;
  - 7. Stabilize all slopes;
  - 8. The permittee shall abide by all of the provisions set forth in the State Water Resource Control Board (SWRCB) NPDES General Permit for construction activity. The City must be provided with a Waste Discharge Identification (WDID) number issued by the SWRCB prior to an issuance of a grading permit.
  - 9. Implement the applicable requirements of the City’s Standard Erosion and Sediment Control Notes, as identified in the Grading Manual.

Note: The above requirements are applicable to all construction sites regardless of whether the construction site is subject to the State General Construction Permit or other individual National Pollutant Discharge Elimination System (NPDES) permit.

**18.15.040    *Erosion and Sediment Control Plans Required***

- A. No grading work will be allowed on any single grading site under permit unless the City Engineer has approved an erosion and sediment control plan.
- B. All grading plans, regardless of the date of submittal, shall include an erosion and sediment control plan designed to limit erosion of all disturbed portions of the property and to minimize the transport of soil onto downgrade perimeters, curbs, gutters, streets, drainage inlets, private and public storm water conveyance systems, environmentally sensitive areas, adjacent properties and watercourses in accordance with the provisions of this Ordinance and the Grading Manual.
- C. All erosion and sediment control "Best Management Practices" (BMPs) outlined in the Storm Water Pollution Prevention Plan (SWPPP), if applicable, will be shown on the erosion and sediment control plan and implemented prior to October 1<sup>st</sup> of each year.

**18.15.060    *Erosion and Sediment Control Systems***

- A. The permittee shall be responsible for the control of erosion and sediment discharge on and from all disturbed areas of grading until issuance of certificate of occupancy at which time the BMP's of the WQMP shall be in place.
- B. No grading work shall be allowed on any site when the City Engineer determines that erosion, mudflow or sediment discharge may adversely affect downstream properties, drainage courses, storm drains, streets, easements, or public or private facilities or improvements unless an approved erosion and sediment control system has been implemented on the site. If the City determines that it is necessary for the City to cause erosion and sediment control measures to be installed or cleanup to be done, the permittee shall pay all of the City's direct and indirect costs including extra inspection, supervision and reasonable overhead charges in accordance with Section 18.24.100, "Cost Recovery Fees" of this Ordinance.
- C. All protective devices shown on the erosion and sediment control plan and in the SWPPP, if applicable, shall be in place within seven (7) days prior to any forecasted rain. If the permittee does not install or maintain erosion and sediment controls, the City Engineer may order City crews to do the work or may issue contracts for such work and charge the cost of this work along with reasonable overhead charges to the cash deposits or other instruments implemented for this work without further notification to the owner. No additional work on the project except erosion and sediment control work shall be performed until the full amount drawn from the cash deposit, in accordance with Section 18.24.120, "Grading, Erosion and Sediment Control Securities" of this Ordinance is restored by the permittee.

D. "Best Management Practices" (BMP's) shall be implemented on a continual basis during construction activities. The following minimum criteria shall be met:

1. An effective combination of erosion and sediment controls shall be implemented within seven (7) working days of clearing or inactivity in construction.
2. Soil stockpiles must be stabilized with a combination of erosion and sediment controls and have a daily maintenance frequency or as directed by the City Engineer.
3. Waterway and watercourse protection shall include, but not be limited to, stabilization of the channel before, during and after in-channel work.
4. Additional erosion and sediment control materials shall be stockpiled at various locations throughout the site for immediate implementation within seven (7) days of a forecasted rain. The developer/contractor shall make available equipment and workers for emergency work to protect the site.

E. Cut and fill slopes shall be protected to control against erosion and sediment discharge.

F. Permittee shall implement BMP's year round. Additional site specific BMP's shall also be implemented, as necessary, to comply with this Ordinance which may be more stringent than those required under the General Construction Permit.

G. Permittee shall implement additional controls for construction sites tributary to Clean Water Act (CWA) Section 303(d) water bodies impaired for sediment. Each Permittee shall implement additional controls for construction sites within, adjacent, or discharging directly to receiving waters within environmentally sensitive areas.

H. Permittee shall conduct construction site inspection for compliance with this Ordinance and all applicable permits.

***18.15.080      Temporary Site Vegetation – When Required***

Temporary site vegetation shall be required, as determined by the City Engineer, on any disturbed soil areas of the site for prolonged periods of grading inactivity or expiration of a grading permit in accordance with Section 18.09.260, "Expiration and Renewal of Issued Permits" of this Ordinance. Temporary vegetation shall not negate any City requirement or condition of approval to install permanent landscaping.

***18.15.100      Erosion and Sediment Control Maintenance***

- A. Prior to and after each rainstorm, all on-site and off-site flow-lines, storm water conveyance systems, check dams, chevrons, silt fences and desilting basins shall be free of sediment, construction materials, waste, miscellaneous debris and deteriorated erosion and sediment controls at all times.
- B. Prior to and after each rainstorm, the erosion and sediment control system shall be evaluated and revised and repaired as necessary.

- C. The permittee shall be responsible for and shall take necessary precautions to prevent public trespass onto areas where impounded water, due to erosion and sediment control devices, creates a hazardous condition. Signage indicating "ponded water – do not enter" shall be posted.
- D. The permittee shall be responsible for continual maintenance of the devices during all construction activities.
- E. In the event the City Engineer must cause emergency work to be done, he or she may revoke the grading permit. The permit shall not be renewed until an approved erosion and sediment control system has been installed and the owner has paid any applicable fees.
- F. If any grading or clearing subject to Section 18.03.020 "Permits Required" of this Ordinance has commenced on private property without a valid grading permit, the property owner will be required to stop work, prepare and implement an erosion and sediment control plan which has been approved by the City and obtain a valid grading permit.

#### ***18.15.120 Erosion and Sediment Control – Agricultural***

- A. Resource Conservation Plans. For all lands used for agricultural purposes within the City of Banning, the property owner shall cause to be prepared a resource conservation plan, utilizing the best management practices for the prevention of erosion and sedimentation. The resource conservation plan shall be prepared by the USDA Soil Conservation Services or a registered agricultural engineer consultant.
- B. Implementation of Resource Conservation Plans. The resource conservation plans to be prepared for best management practices implementation is to be prioritized based upon the soil conservation service "soil erosion hazard map" with those areas of high erosion hazard receiving top priority. Resource conservation plans for agricultural areas shall be submitted for review and filing by the City after acceptance by the Regional Water Quality Control Board
- C. Annual Report. The property owner of agricultural land shall be responsible for the preparation and submittal to the City Engineer an annual report setting forth their progress in the preparation of resource conservation plans and best management practices implementation. Progress reports may be required more frequently if deemed necessary by the City Engineer.

#### ***18.15.140 Additional NPDES Requirements***

- A. General Requirements. All grading activities subject to the regulations of this Ordinance shall be designed and conducted to minimize runoff of all pollutants onto public or private properties and into waters of the United States as required by this Ordinance and City Municipal Code Chapter 13.24 "Stormwater Management System".

B. Responsibility. It shall be the permittee's responsibility to obtain coverage under the SWRCB General Construction Permit, submit a Notice of Intent (NOI) and appropriate fee to the SWRCB, complete all site-specific Storm Water Pollution Prevention Plans (SWPPP), monitoring and reporting program plans, reports, certifications, and other information required by the permit and or requested by the Regional Water Quality Control Board (RWQCB), United States Environmental Protection Agency (USEPA), or the City Engineer. The permittee shall update all plans as construction activities are modified from their original schedule and/or progress as originally planned. The permittee shall also maintain all erosion and sediment control measures at the site throughout the duration of the project as required by the permit. All of the information noted above shall be maintained on-site during construction and shall be presented upon demand by the SWRCB and/or City of Banning inspectors. NPDES requirements will remain in effect until Notice of Termination (NOT) requirements are fulfilled.

## **Chapter 18.18**

### **ARTICLE 7. GRADING INSPECTION**

#### **Sections:**

- 18. 18.020     Inspections Required**
- 18. 18.040     Grading Requirements**
- 18. 18.060     Transfer of Responsibility**
- 18. 18.080     Notification of Noncompliance**
- 18. 18.100     Special Inspections**
- 18. 18.120     Stopping and Correction of Work**

#### ***18. 18.020     Inspections Required***

All grading operations for which a permit is issued pursuant to the provisions of this Ordinance shall be subject to inspection by the City Engineer or his or her representative.

#### ***18. 18.040     Grading Requirements***

A. Civil Engineer. It shall be the responsibility of the civil engineer who prepared the grading plans to incorporate the applicable recommendations from the geotechnical engineer and engineering geologist and to incorporate any City Engineer approved alternatives into the grading plan.

1. The civil engineer shall be responsible for establishing line and grade for the grading and drainage improvements and shall act as the coordinating agent in the event the need arises for liaison between the other professionals, the contractor and the City Engineer.
2. The civil engineer shall be responsible for the preparation of plan revision, and upon completion of the work, the submission of as-graded drawings incorporating all changes and/or additions made during construction.

3. Prior to issuance of building permits for any given lot or lots, the civil engineer shall be responsible for submitting a pad certification letter stating line and grade as evidence that the grading activity has been completed within standard tolerances in accordance with the approved plans and that all embankments and cut slopes and pad sizes are as shown on the approved plans.

B. Geotechnical Engineer. The geotechnical engineer's area of responsibility shall include, but not be limited to, performing the preliminary geotechnical engineering investigation and preparing the preliminary geotechnical engineering report, determining the suitability of soils during grading, providing compaction inspection and testing, and preparing the final geotechnical engineering report.

C. Engineering Geologist. The engineering geologist's area of responsibility shall include, but not be limited to, professional inspection and approval of the stability of cut slopes with respect to geological matters, and the need for subdrains or other groundwater drainage devices. He shall report his findings to the geotechnical engineer for engineering analysis.

D. Landscape Architect. The landscape architect shall incorporate applicable recommendations from the geotechnical engineering reports into the landscape and irrigation plans. The landscape architect shall also prepare plan revisions, to be approved by the City Engineer, and shall submit as-graded drawings incorporating all changes and/or additions made during construction.

1. All ground cover shall provide one hundred percent (100%) coverage within nine (9) months of planting, or additional landscaping shall be required in order to meet this standard.

***18. 18.060 Transfer of Responsibility.***

If the civil engineer, engineer of record, the geotechnical engineer, the engineering geologist, or the grading contractor of record is changed during the course of the work, the project shall be stopped until:

1. The permittee submits a letter of notification verifying the change of the responsible professional; and
2. The new responsible professional submits in writing that he has reviewed all prior reports and/or plans (specified by date and title) and work performed by the responsible professional party, and that he concurs with the findings, conclusions and recommendations, and is satisfied with the work performed. He or she must state that they assume all responsibility within his or her purview as of a specified date. All exceptions shall be justified to the satisfaction of the City Engineer.

Exception: Where clearly indicated that the firm, not the individual engineer and/or geologist, is the contracting party, the designated engineer or geologist may be

reassigned and another engineer and/or geologist within the firm may assume responsibility.

#### ***18. 18.080 Notification of Noncompliance***

If, in the course of fulfilling their responsibility under this division, the engineer of record, the geotechnical engineer, the engineering geologist, or the testing agency finds that the work is not being performed in accordance with approved plans, specifications, or this Ordinance, the discrepancies shall be reported immediately in writing to the grading contractor, the permittee and the City Engineer. Recommendations for corrective measures shall be submitted for approval to the City Engineer.

#### ***18. 18.100 Special Inspections***

The City Engineer may establish special inspection requirements in accordance with Chapter 17, "Structural Tests and Special Inspections", of the California Building Code, as amended, for special cases involving grading or paving related operations. Special cases may apply to work where, in the opinion of the City Engineer, it is necessary to supplement the resources or expertise available for inspection.

#### ***18. 18.120 Stopping and Correction of Work.***

- A. The provisions of Section 114, "Stop Work Order", of Appendix Chapter 1 "Administration" of the California Building Code, as amended, shall apply to all grading work. Whenever the City Engineer or his or her representative determines that any work does not comply with the terms and conditions of the permit, or that the work is being done improperly or in a hazardous manner, he or she may order the work stopped by notice in writing served on any persons engaged in doing or causing such work to be done, and any such persons shall stop conducting such work until authorized by the City Engineer to proceed with the work.
- B. Whenever any work on which inspections are required is covered or concealed by additional work without first having been inspected, the City Engineer may require that such work be exposed for examination. Such work may be subject to additional inspection fees in accordance with Section 18.24.040(D), "Grading Permit and Inspection Fee" of this Ordinance.
- C. If the City inspector finds the soil or other conditions not as stated in the approved plans and geotechnical reports or in additional information which was required for issuance of the grading permit, he may issue a stop work order until a revised grading plan has been approved by the City Engineer.
- D. If, during the course of any clearing, grubbing or grading operations, discovery is made of items of archaeological or paleontological interest, the permittee shall immediately cease operation in the area of discovery and notify the City inspector. Discoveries that may be encountered include, but are not limited to, dwelling sites, stone implements or other artifacts, animal bones, and fossils. The permittee shall obtain the services of a

qualified archeologist or paleontologist to investigate the site and assess the significance of the find. Under no circumstances shall anyone remove or disturb any artifacts or remains. Work shall be resumed in the area of discovery at the direction of the City Engineer.

- E. Work may resume and the stop order shall be rescinded upon the City Engineer's determination that conditions have changed, corrections have been made, or the causes or actions which required a stop order have been remedied or alleviated to his or her satisfaction.

## **Chapter 18.21**

### **ARTICLE 8. COMPLETION OF WORK**

#### **Sections:**

- 18.21.020      Final Reports**
- 18.21.040      Notification of Completion**

#### ***18.21.020      Final Reports***

Upon completion of the rough grading work and at final completion of the work, the City Engineer may require the written approvals, reports, plans and supplements specified in Subarticle 8 of the Grading Manual.

#### ***18.21.040      Notification of Completion***

The permittee or his agent shall notify the City Engineer when the grading operation is ready for final inspection. Final approval shall not be given until all work, including installation of all drainage facilities and their protective devices, and all erosion and sediment control measures, including landscaping and its irrigation system, have been completed in accordance with the approved grading plan, and the required reports have been submitted. Where landscape planting for erosion and sediment control has been installed, final clearance, i.e., release of security deposits, shall not be granted until the plantings have become established. The establishment of such erosion and sediment control plantings shall be certified by a licensed landscape architect and approved by the City Engineer.

## **Chapter 18.24**

### **ARTICLE 9. GRADING FEES AND SECURITIES**

#### **Sections:**

- 18.24.020      Grading, Erosion and Sediment Control Plan Checking Fee**
- 18.24.040      Grading Permit and Inspection Fee**
- 18.24.060      Review of Geotechnical Reports Fee**
- 18.24.080      Refunds**

**18.24.100      Cost Recovery Fees**

**18.24.120      Grading, Erosion and Sediment Control Securities**

***18.24.020      Grading, Erosion and Sediment Control Plan Checking Fee.***

Before accepting an application and a set of plans and specifications for review, the City Engineer shall collect a plan-checking fee. Separate permits and fees shall apply to retaining walls or major drainage structures. All applicants submitting plans as required by this Ordinance shall pay all fees and/or deposits as required by this Ordinance and by City Council resolution establishing applicable fees and deposits.

***18.24.040      Grading Permit and Inspection Fee***

- A. All applicants requesting a mass, rough, or precise grading permit, stockpile permit, or administrative clearing permit as required by this Ordinance shall pay all fees and/or deposits as required by this Ordinance and by City Council resolution.
- B. The fee for a grading permit authorizing additional work to that under a valid permit shall be the difference between the fee paid for the original permit and the fee shown for the entire project as indicated in the City's fee schedule.
- C. A separate permit shall be required for each separate (noncontiguous) site. One permit may cover both an excavation and a fill on the same site.
- D. Failure to pay fees and obtain a permit before commencing work shall be deemed a violation of this Ordinance, except where it can be proven to the satisfaction of the City Engineer that an emergency existed that made it impractical to first obtain the permit. A violation shall result in an assessment of double permit fees for work done prior to permit issuance. Payment of a double fee shall not relieve any person from fully complying with the requirements of this Ordinance.

***18.24.060      Review of Geotechnical Reports Fee***

Before accepting a geotechnical (soils) report for review, the City Engineer shall collect a report review fee. A separate fee will be charged for each individual report fee submitted for review. The amount shall be as set forth by City Council resolution.

***18.24.080      Refunds***

After submittal and commencement of processing by the City, no fee collected pursuant to this division, shall be refunded in whole or in part, except as provided as follows:

- A. Inspection fees may be refunded, less any City expenses incurred, including an overhead charge of twenty percent (20%), at any time prior to the start of the work authorized by the permit, upon the applicant's written request, provided the grading application has expired or has been withdrawn.

- B. No refund shall be made if corrective work remains to be done on the grading work itself.
- C. No refund shall be made pursuant to this section if a request for refund is submitted to the City more than one (1) year from the date of payment of the fee as to which a refund is claimed.

#### ***18.24.100 Cost Recovery Fees***

If the City Engineer performs emergency work relating to grading and erosion and sediment control on private property, he shall charge the property owner all direct and indirect costs that are necessary to complete the work to his satisfaction. Any costs assessed against the property owner under this section may be appealed to the City Council in accordance with Section 18.27.100, "Appeals" of this Ordinance.

#### ***18.24.120 Grading, Erosion and Sediment Control Securities***

- A. Security required. A grading permit shall not be issued unless the permittee first posts a security with the City comprised of a cash deposit, letter of credit, or a combination cash deposit and a corporate surety bond issued by a surety authorized to do business in the State of California, in an amount specified in Subarticle 9 of the Grading Manual. The security amount is required to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate any deficiency or hazard created by the work or its lack of maintenance, as follows:
  1. A cash deposit, in accordance with Subarticle 9 of the Grading Manual, may be required by the City Engineer to ensure the elimination of hazardous conditions and the emergency maintenance of erosion and sediment control systems.
  2. A cash deposit, in accordance with Subarticle 9 of the Grading Manual, may be required by the City Engineer for stockpiles to ensure their removal in accordance with Section 18.09.120(C), "Types of Permits" of this Ordinance.
  3. On developments where progressive individual grading projects or several concurrent projects are being constructed by one owner, a continuing (blanket) bond or other approved security that covers all such projects may be accepted in an amount determined by the City Engineer.
- B. Failure to Complete the Work. In the event of failure to complete the work and failure to comply with all of the conditions and terms of the permit, the City Engineer may order work required by the permit to be completed or put in a safe condition to his satisfaction. The surety executing such bond, deposit, instrument of credit, or letter of credit shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended in causing any and all such required work to be done.
- C. Default in Performance Conditions. Whenever the City Engineer finds or determines that a default has occurred in the performance of any requirement of a condition of a permit issued under the provisions of this Ordinance, written notice thereof shall be

given to the principal and to the surety named on the bond. Such notice shall specify the work to be done, the estimated cost thereof and the period of time deemed by the City Engineer to be reasonably necessary for the completion of such work. After receipt of such notice, the surety shall, within the time specified, cause or require the work to be performed, or failing therein, shall pay the estimated cost of doing the work as set forth in the notice. The surety shall pay the City for actual costs in accordance with Section 18.24.100, "Cost Recovery Fees" of this Ordinance.

## Chapter 18.27

### ARTICLE 10. ORGANIZATION AND ENFORCEMENT

#### Sections:

- 18.27.020      Powers and Duties of the City Engineer**
- 18.27.040      Violations and Penalties**
- 18.27.060      Hazardous Conditions**
- 18.27.080      Public Nuisance**
- 18.27.100      Appeals**

#### ***18.27.020      Powers and Duties of the City Engineer***

The provisions of the California Building Code Section 104, "Duties and Powers of the Building Official", of Appendix Chapter 1 "Administration" shall apply to the City Engineer and his or her representative for all grading construction and earthwork to be done as required by any conditions of a permit issued pursuant to this Ordinance.

#### ***18.27.040      Violations and Penalties***

- A. It shall be unlawful for any person, firm or corporation to do grading work in the City of Banning, or cause the same to be done, contrary to or in violation of any of the provisions of this Ordinance or State or Federal Law.
- B. The issuance of a building permit, performance of building permit inspections, or issuance of a certificate of occupancy may be withheld on property on which a violation of the provisions of this Ordinance exist, including work not performed in accordance with the approved plans, until such violation(s) has been corrected to the satisfaction of the City Engineer.
- C. Any person, firm, or corporation violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor. Each such person, firm or corporation shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violations of any provisions of this Ordinance are permitted, continued or committed by such person, firm or corporation and shall be punishable as provided for in Chapter 1.28, "General Penalty" of the Banning Municipal Code.

### **18.27.060    *Hazardous Conditions***

- A. Hazardous conditions exist when the state of any natural ground, natural slopes, excavation, fill or drainage devices are situated on private property in such a manner that they are a hazard to life or limb, or a danger to public safety, or endangers the safety, usability, or stability of adjacent property, structures or public facilities.
- B. The City Engineer or their designee (including City Code Enforcement) may examine, or cause to be examined, every condition reported as hazardous as set forth in subsection (A) of this section.
- C. Upon confirmation of a hazardous condition, the City Engineer or their designee (including City Code Enforcement) shall provide written notification to the permittee, owner or agent in control of property with confirmed hazardous condition, requiring mitigation of said hazardous condition and stipulation of an acceptable time frame for compliance.
- D. The permittee, owner or agent in control of the property shall comply with any demand for corrective work or repairs as required. In the event that corrective action is not completed within the period specified in writing, the City may exercise any available recourse for correction of said hazardous condition in accordance with Chapter 8.48, "Nuisances" of the Banning Municipal Code.

### **18.27.080    *Public Nuisance***

For purposes of this Ordinance, the following shall constitute a public nuisance:

- A. Any grading or other work conducted without a permit where it is required by this Ordinance.
- B. Any grading or other work done in violation of any of the conditions imposed thereon by a permit issued pursuant to this Ordinance.
- C. Any grading or other work, which fails to be done as required by any conditions of a permit, issued pursuant to this Ordinance.
- D. The existence of a hazardous condition as defined in Section 18.27.060, "Hazardous Conditions" of this Ordinance upon the determination by the City Engineer that such condition exists.

### **18.27.100    *Appeals***

- A. The applicant, permittee, or any person(s) not satisfied with the decision by the City Engineer in regards to issuance of a grading permit or the performance of the permitted work, may file a written appeal to the City Clerk for a hearing before the City Council.
- B. Any such appeal must be made within three (3) calendar days following the decision.

- C. The City Council will set a hearing to consider the appeal at the earliest possible regularly scheduled City Council meeting.
- D. The City Council, after receiving and considering all testimony and pertinent documents, may:
  - 1. Uphold the City Engineer's decision; or
  - 2. Approve the appeal; or
  - 3. Modify the City Engineer's decision, consistent with the requirements of this Ordinance.

## Chapter 18.33

### ARTICLE 11. DEFINITIONS OF TERMS

Whenever, in this Ordinance and the Grading Manual, or in any resolution or standard adopted by City Council pursuant to this Ordinance, the following terms are used, they shall have the meaning ascribed to them in this section, unless it is apparent that some other meaning is intended:

**“Administrative Clearing Permit”** means a permit that authorizes the clearing, brushing, or grubbing of a portion of land beyond that scope exempted from the permit process by this Ordinance.

**“As-Graded”** means the site configuration upon completion of grading. This includes all horizontal and vertical dimensions and relationships and all physical features installed, reconstructed, eliminated, or altered by the grading operations as shown on the record drawings prepared by the Engineer of Work.

**“Accessibility”** is the combination of various elements in a building, facility, site or area, or portion thereof which allows access, circulation and the full use of the building and facilities by persons with disabilities in conformance with the Chapter 11B of the California Building Code.

**“Accessible Route of Travel”** means the continuous unobstructed path connecting all accessible elements and spaces in an accessible building or facility that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by persons with other disabilities, and that also is consistent with the definition of “Path of Travel” in this section. Interior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, sidewalks, ramps and lifts. An accessible route does not include stairs, steps or escalators.

**“Accessibility”** means the combination of various elements in a building or area, which allows access, circulation, and the full use of the building and facilities by handicapped persons.

**“Applicant”** means any person, corporation, partnership association of any type, public agency or any other legal entity who submits an application for a grading permit pursuant to this Ordinance.

**“Approval”** means that the proposed work or completed work conforms to the requirements of this Ordinance, in the opinion of the City Engineer.

**“ASTM Standards”** means the American Society for Testing Materials, which develops standardized test methods, specifications, practices, guides, classifications and terminology in such subject areas as metals, paints, construction, consumer products and many others.

**“Base”** means a layer of specified material of planned thickness placed immediately below the pavement or surfacing.

**“Bedrock”** means in-place solid rock.

**“Best Management Practices” (BMPs)** means the management practices, operating procedures, and devices implemented to prevent or reduce the discharge of pollutants directly or indirectly to public or private drainage systems.

**“Bench”** means a relatively level step excavated into soil materials on which fill is to be placed.

**“BMP’s”** means the management practices, operating procedures, and devices implemented to prevent or reduce the discharge of pollutants directly or indirectly to public or private storm water conveyance systems.

**“Borrow”** means soil material acquired from an off-site location for use in grading on a site.

**“Buttress Fill”** means an engineered fill designed to stabilize an adverse geologic condition (landslide, adverse bedding, etc.).

**“Certify” or “Certification”** means a signed written statement that the specific inspections and/or tests required to be performed on real property have been performed and that the works comply with the applicable requirements of this Title, the plans, and the permit.

**“City Engineer”** means the City Engineer of the City of Banning or his or her duly delegated representative.

**“Civil Engineer”** means a professional engineer registered in the State of California to practice in the field of civil engineering.

**“Clearing, Brushing and Grubbing”** means the removal or disturbance of vegetation (grass, brush, trees, and similar plant types), weed abatement, manmade structures, environmentally sensitive species and habitats, rocks, archaeological artifacts and sites, or other environmentally sensitive features by any means for purposes of development or compliance with laws, rules or regulations. For purposes of this Title, references to “clearing” means clearing, brushing and grubbing individually and separately.

**“Community Development Director”** means the individual responsible in the City of Banning for community development and/or community planning as appointed by the City Manager or his or her duly delegated representative.

**“Compaction”** means the densification of a fill by mechanical or other acceptable means.

**“Construction Site”** means any project requiring a local grading or building permit, including projects requiring coverage under the General Construction Permit.

**“Contour Grading”** means grading that creates or results in land surfaces that reflect the pre-graded natural terrain, or that simulates natural terrain (i.e. rounded, non-planer surfaces and rounded, non-angular intersections between surfaces).

**Crib Wall** means a crib type wall as described in the most recent publication of "Standard Plans", Department of Transportation, State of California.

**Cross-Lot Drainage** means any drainage course created through grading or excavation that crosses on to another lot either within or outside the subdivision or construction site.

**Curb Cut** means the interruption of a curb at a pedestrian way, which separates surfaces that are substantially at the same elevation.

**Curb Ramp** means a sloping pedestrian way, intended for pedestrian traffic, which provides access between a walk, or sidewalk to a surface located above or below an adjacent curb face.

**Cut** see definition for "Excavation."

**Dry Season** means May 1<sup>st</sup> thru September 30<sup>th</sup> of each year.

**Engineer of Record** means the professional engineer holding a current registration in the State of California who supervised the design and signed the grading plan accepted by the City Engineer.

**Erosion** means the wearing away of the ground surface as a result of the movement of wind, water or ice.

**Erosion Control** means anything that keeps soil in place.

**Erosion and Sediment Control Plan** is a plan prepared under the direction of and signed by a civil engineer competent in the preparation of such plans and knowledgeable about current erosion and sediment control methods. Said plan shall be submitted to the City and shall provide for protection of exposed soils and desiltation of runoff at frequent intervals prior to discharging from a site or to a storm water conveyance system (natural watercourses, streets, flow-lines, inlets, outlets, etc.).

**Erosion and Sediment Control System** means combination of erosion and sediment controls (including effective planting and the maintenance thereof) to protect the project site, adjacent private property, watercourses, public facilities, graded improvements, existing natural features, archaeological artifacts, and to relieve waters of suspended sediments or debris prior to discharge from the site.

**Excavation** or **Cut** means an act by which soil, sand, gravel, or rock is cut into, dug, quarried, uncovered, removed, or relocated, and shall include the conditions resulting there from.

**Expansive Soils** is any soil with an expansion index greater than twenty (20), as determined by the Expansive Index Tests of the California Building Code.

**Fault** means a fracture in the earth's crust along which movement has occurred. A fault, as defined by the California Division of Mines and Geology, is considered active if the movement has occurred within the last eleven thousand years (Holocene geologic time).

**Flow-line** means v-ditches, brow-ditches, terrace drains, ribbon gutters, curb gutters, etc.

**Fill** means a deposit of soil, sand, gravel, rock, or other material placed by artificial means.

**Fugitive Dust** means the particulate matter entrained in the ambient air as a result of man-made fugitive dust sources as determined by South Coast Air Quality Management District Rule 403.

**General Construction Permit** means the permit issued by the SWRCB to regulate discharges from construction activity.

**Geohydrology** means all groundwater information, water-well usage rate requirement, seepage elevations, pollution evaluations, projected usage rate considerations, evaluations of impact on existing and future users, and long term projections appropriate to site development.

**Geologic Hazard** means any geologic feature capable of producing structural damage or physical injury. Geologic hazards include:

- A. Landslides and potential slope instabilities resulting from bedding faults, weak clay stone beds, and over steepened slopes.
- B. Deposits potentially subject to liquefaction, seismically induced settlement, severe ground shaking, surface rupture, debris flows, and rock falls resulting from fault activity.
- C. Deposits subject to seepage conditions or high-ground water table.

**Geotechnical Engineering Report** means a geotechnical report prepared under the responsible supervision of a geotechnical engineer and approved by the City Engineer or his representative, which includes:

- A. Preliminary information concerning engineering properties of soil and rock on a site prior to grading, present, historical, and future groundwater levels, analysis for both gross and surficial slope stability, fill settlement, liquefaction potential, alluvium deposits, describing locations of these materials and providing recommendations for preparation of the site for its intended use.
- B. A grading report which includes information on site preparation, compaction of fills placed, providing recommendations for structural design and approving the site for its intended use.

**Grade** means the vertical elevation of the ground surface, and:

- A. **“Existing grade”** means the ground surface prior to any grading activity.
- B. **“Finish grade”** means the final grade of the site, which conforms precisely to the City-approved plans, approved construction changes or approved record drawings.
- C. **“Natural grade (or natural ground)”** means the ground surface unaltered by artificial means.
- D. **“Rough grade”** means the stage at which the work is in to precise conformance with the approved plan and when all excavations for drainage structures and retaining walls are complete.

**“Grading,”** means any process of excavation or filling or combination thereof.

**“Greenbook Standards,”** means the most recent publication of the Standard Specifications for Public Works Construction, which provides specifications that, have general applicability to public works projects.

**“Hillside Site,”** means a site where the existing grade is 20 percent (%) or greater and which may be adversely affected by drainage and/or stability conditions within or from outside the site, or which may cause an adverse affect on adjacent property.

**“Key”** means a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.

**“Keyway”** means an excavated trench into competent earth material beneath the toe of the proposed fill slope.

**“Landslide”** means a perceptible down slope movement of rock, soil, or artificial fill ranging in speed from moderately slow (slump) to very rapid (avalanche).

**“Maximum Extent Practicable (MEP)”** means the standard established by Congress in the Clean Waters Act that operators of MS4 permits must meet. To achieve the MEP standard, Best Management Practices must be implemented that are technically feasible (i.e. are likely to be effective) in combination with treatment methods serving as a backup.

**“Mined Lands”** includes the surface, subsurface, and groundwater’s of an area in which surface mining operations will be, are being, or have been conducted. This includes private ways and roads appurtenant to any such area, land excavations, mining waste, and areas in which structures, facilities, equipment, machines, tools, or other related materials or property are located.

**“Municipal Separate Storm Sewer System/MS4 (Permit)”** means the certification/regulation requirements that the City must meet to allow storm water discharges into the Waters of the State.

**“Natural Terrain”** means the lay of the land prior to any grading or other artificial landform modification.

**“National Pollutant Discharge Elimination System (NPDES)”** means the permitting and program requirements established by the Federal Clean Water Act and administered by the Environmental Protection Agency to regulate the discharge of pollutants to waters of the United States.

**“Owner”** means a person who owns a site upon which is located grading, clearing, mining, quarrying, and/or commercial extraction operations that are being conducted or may be conducted.

**“Path of Travel”** means a passage that may consist of walks and sidewalks, curb ramps and pedestrian ramps, lobbies and corridors, elevators, other improved areas, or a necessary combination thereof, that provides free and unobstructed access to and egress from a particular area or location for pedestrians and/or wheelchair users. A “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of exits, and which connects a particular area with an exterior approach (including sidewalks, streets and parking areas), an entrance to the facility and other parts of the facility. In existing buildings, when alterations, structural repairs or additions are made, the term “path of travel” also includes the sanitary facilities, telephones, drinking fountains and signs serving the altered area.

**“Permit”** means the authorization issued pursuant to this Ordinance, together with the application for the same, the conditions upon which it was issued, and any plans, specifications, reports, and approved modifications thereto.

**“Permittee”** means any person, property owner, contractor or authorized agent to whom a permit is issued pursuant to this Ordinance.

**“Person”** means any individual, firm, association, corporation, organization, or partnership or any city, county, district, the State or any department or agency thereof. (14 Cal. Code of Regulations, Sec. 3501)

**“Pollutant”** means any agent that may cause or contribute to the degradation of water quality. The term may include, but is not limited to, dredged spoil, rock, sand, silt, solid and liquid waste, oil, fuels, construction related materials, debris and other contaminates.

**“Precise Conformance”**, for purposes of this ordinance, means:

- A. Pad elevations within plus or minus four-tenths of a foot of planned elevation or approved construction change;
- B. Street subgrade within plus or minus four hundredths of a foot of planned elevation or approved construction change;
- C. Slope grades within plus or minus one foot of planned elevation or approved construction change;

- D. Rock slopes (rip-rap armoring) and horizontal locations within two feet of planned elevation and location or approved construction change;
- E. Drainage gradient to within two-tenths of one percent of planned slope or approved construction change; and
- F. Structures within the tolerances specified in the latest adopted version of the "Standard Specifications for Public Works Construction" (Green Book).

**"Precise Grading Permit"** means a permit that is issued on the basis of approved plans that show the precise locations of structures, finished elevations, drainage details and all on-site improvements on a given property.

**"Priority Development Projects"** means new development and redevelopment projects, as indicated in the City's MS4 permit requirements.

**"Private Roads"** are roads that have been dedicated to the public, but not accepted for public use or that have been retained as "Private" for private use by the owners or may simply be a road created by private use or easement.

**"Quarrying"** means the process of removing or extracting stone, rock, or similar materials from an open excavation for financial gain.

**"Rainy Season"** means the period beginning October 1<sup>st</sup> and ending April 30<sup>th</sup> the next calendar year.

**"Record Drawings"** means plans prepared by the engineer of work subsequent to the completion of all work on the approved plans and approved changes thereon depicting the as-graded condition.

**"Regional Water Quality Control Board" (RWQCB)** means the Regional Water Quality Control Board for the San Diego Region, which includes the City of Banning.

**"Retaining Wall"** means a wall designed to resist the lateral displacement of soil or other materials.

**"Rough Grading Permit"** means a permit that is issued on the basis of approved plans that show finished elevations, interim building pad elevations and drainage.

**"Sediment Control"** means anything that captures soil particles after being displaced.

**"Site"** means the real property on which activities subject to this Ordinance may occur.

**"Slope"** means an inclined ground surface of fill, excavation or natural terrain, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

**“Slope Revegetation”** means the planting of graded slopes with native and/or naturalizing plant species, which, after an initial establishment period, usually requiring irrigation, will survive with normal precipitation.

**“Slope Stability”** shall be defined as follows:

- A.     **“Gross stability”** means the factor of safety against failure of slope material located below a surface approximately three to four feet deep, measured from and perpendicular to the slope face.
- B.     **“Surficial stability”** means the factor of safety against failure of the outer three to four feet of slope material measured from and perpendicular to the slope face.

**“Soil”** means any rock, natural soil, or fill, and/or any combination thereof.

**“South Coast Air Quality Management District” (SCAQMD)** means the regulatory authority for all or portions of Los Angeles, Orange, San Bernardino and Riverside Counties that oversees air pollution emissions from stationary sources, including fugitive dust sources generated by construction activity.

**“State Water Resources Control Board” (SWRCB)** means the regulatory authority that allocates water rights, adjudicates water right disputes, develops statewide water protection plans, establishes water quality standards, and guides the nine Regional Water Quality Control Boards located in the major watersheds of the state.

**“Stockpile”** means a temporary uncompacted fill or embankment placed by artificial means, which is designated or intended to be moved, or relocated at a later date.

**“Stop Work Order”** means an order issued by a City official who requires that specific activity or all activity on a work site be stopped.

**“Storm Water”** means surface runoff and drainage associated with storm events.

**“Storm Water Conveyance System”** means any natural watercourses, curbs, gutters, streets, flow-lines, inlets, outlets, etc., either public or private, leading to waters of the State.

**“Storm Water Management Plan (SWMP)”** means a plan submitted in connection with an application for a City permit or other City approval, identifying the measures that will be used for storm water and non-storm water management during the permitted activity.

**“Storm Water Pollution Prevention Plan” (SWPPP)** means a document which meets the requirements set in the State’s NPDES General permits for Construction and Industrial activities. The SWPPP must describe the BMP’s to be implemented to meet the requirements of the General Permits and this Ordinance.

**“Sub-base”** means a layer of specified material of planned thickness between a base and the subgrade.

**“Subgrade”** means the soil prepared to support structures, or that portion of the roadbed on which pavement, surfacing, base or subbase, or layer of other material is placed.

**“Terrace”** means a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

**“Topsoil”** means soil which is within the uppermost horizon of a soil profile, and which contains organic matter, nutrients, and microorganisms necessary for plant growth.

**“Ultimate Right-of-Way”** means the right-of-way shown as ultimate on an adopted precise plan of highway alignment, or a street right-of-way shown within the boundary of a recorded tract map, or a recorded parcel map. The latest adopted or recorded document in the above cases shall take precedence. If none of these exist, the Ultimate Right-of-Way shall be considered to be the right-of-way required by the highway classification as shown on the Master Plan of Arterial Highways. In all other instances, the Ultimate Right-of-Way shall be considered to be the existing right-of-way.

**“Water Quality Management Plan (WQMP)”** means a plan submitted in connection with an application for a City permit or other City approval, identifying the measures that will be used to mitigate the impacts of urban runoff from development projects.

**“Watercourse”** means a permanent or intermittent stream or other body of water, either natural or improved, which gathers or carries surface water.

**“Watershed”** means the geographical area which drains to a specified point on a water course, usually a confluence of streams or rivers (also known as a drainage area, catchment, or river basin).

**“Waters of the State”** means any water, surface or underground, within the boundaries of the State, including those covered by the MS4 permit.

**Section 5:** The provisions of TITLE 18, Articles 1 through 11, shall apply to all grading permits issued on or after the effective date of this Ordinance.

**Section 6:** The City Council authorizes and directs the City Engineer to prepare and utilize a manual of standards setting forth the administrative procedures and technical requirements necessary to implement the provisions of this Ordinance. Such rules, procedures, and requirements shall be entitled "Administrative and Technical Procedures Manual for Grading, Erosion, and Sediment Control" in substantially the form set forth in Exhibit A.

**Section 7:** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or application, and to this end, the provisions of this Ordinance are declared to be severable.

**Section 8:** The potential grading and land clearing activities regulated by this Ordinance represent components of the adopted General Plan that has already received the appropriate review when the General Plan was approved. Based on this fact, the City Council hereby finds that the adoption of this Ordinance is exempt from further review pursuant to CEQA Guideline Sections 15162(a) and 15061(b)(3) of the CEQA Guidelines. Section 15162 states that when an EIR has been certified for a project, no additional environmental review is required unless there is substantial evidence that the project has changed. The Final EIR for the City General Plan was certified on January 31, 2006.

**Section 9:** The City Clerk shall certify the Ordinance and cause it to be published as required by law. This Ordinance shall take effect on the 30<sup>th</sup> day after adoption pursuant to state law.

**PASSED, APPROVED AND ADOPTED**, by the City Council of the City of Banning on the 14th day of July, 2009.

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Robert E. Botts, Mayor

**ATTEST:**

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Marie A. Calderon, City Clerk

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, do certify that the foregoing Ordinance No. 1388 was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 23<sup>rd</sup> day of June, 2009, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 14<sup>th</sup> day of July, 2009 by the following vote:

AYES:

NOES:

ABSENT:

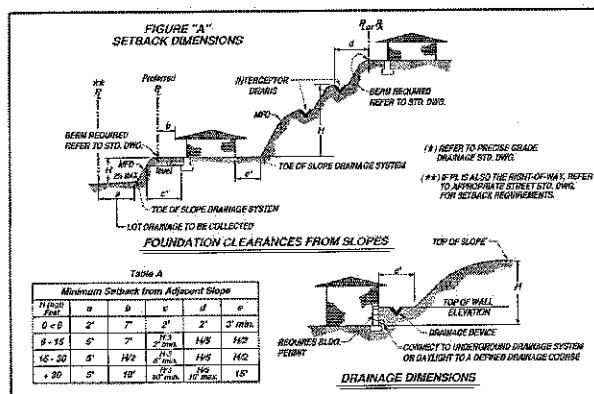
ABSTAIN:

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

AVAILABLE IN CITY CLERK'S OFFICE FOR REVIEW

# **City of Banning Grading Manual Public Works Department**



City of Banning  
99 E. Ramsey Street  
P.O. Box 998  
Banning, CA 92220  
Telephone: (951) 922-3130  
Facsimile: (951) 922-3141



**CITY COUNCIL MEETING  
CONSENT ITEM**

**DATE:** July 14, 2009

**TO:** Honorable Mayor and City Council

**FROM:** Kahono Oei, City Engineer 

**SUBJECT:** Accept the Right-of-Way dedication from Bogar A. Ortiz for Street Improvements at Assessor's Parcel Number 541-145-007

**RECOMMENDATION:** Accept the Right-of-Way dedication from Bogar A. Ortiz for Street Improvements at Assessor's Parcel Number 541-145-007, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

**JUSTIFICATION:** It is essential to obtain the right-of-way in order to construct the street improvements at their ultimate location.

**BACKGROUND:**

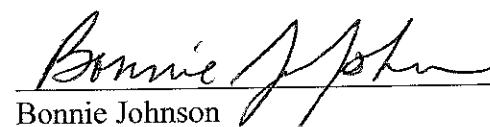
The City of Banning is in the planning stages for constructing street improvements within the vicinity of Assessor's Parcel Number 541-145-007. The City of Banning must accept the right-of-way dedication in order to be able to construct the street improvements at their ultimate location.

**FISCAL DATA:** Not applicable.

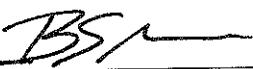
**RECOMMENDED BY:**

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

**REVIEWED BY:**

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

**APPROVED BY:**

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

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

CITY CLERK  
CITY OF BANNING  
99 EAST RAMSEY STREET  
BANNING, CA. 92220-0998

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**  
(RIGHT-OF-WAY DEDICATION)

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
BOGAR A. ORTIZ

hereby GRANT(S) to the City of Banning, a Municipal Corporation, for street right-of-way purposes, all that real property situated in the City of Banning, County of Riverside, California, described as follows:

SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

Assessor's Parcel Nos. 541-145-007

Executed on 6-18-09, 2009, at Banning, California  
Dated: 6/18/09

STATE OF CALIFORNIA  
COUNTY OF Riverside (MS):

On June 18, 2009  
before me, Mike A. Guendling, a notary public  
personally appeared  
Bogar A. ORTIZ who proved to me  
on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same  
in his/her 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 the 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 Mike A. Guendling

Printed Name: Mike A. Guendling

The County of my principal business is: San Diego



(This area for official notarial seal)

## EXHIBIT "A"

### LEGAL DESCRIPTION (RIGHT OF WAY DEDICATION) Portion APN: 541-145-007

THAT PORTION OF LOT 5 IN BLOCK 5 OF AMENDED MAP OF BANNING LAND COMPANY, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 44 OF MAPS, RECORDS OF SAN BERNARDINO COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTH RIGHT OF WAY LINE OF RAMSEY STREET (30.00 FEET NORTH OF CENTERLINE) AND THE WEST RIGHT OF WAY LINE OF MARTIN STREET (30.00 FEET WEST OF CENTERLINE); THENCE NORTH 89°57'45" WEST, ALONG SAID NORTH RIGHT OF WAY LINE OF RAMSEY STREET, A DISTANCE OF 140.00 FEET; THENCE NORTH 00°32'43" WEST, PARALLEL WITH THE CENTERLINE OF SAID MARTIN STREET, A DISTANCE OF 10.00 FEET; THENCE SOUTH 89°57'45" EAST, PARALLEL WITH SAID NORTH RIGHT OF WAY LINE OF RAMSEY STREET, A DISTANCE OF 113.95 FEET FEET; THENCE NORTH 44°44'46" EAST, A DISTANCE OF 36.65 FEET TO THE WEST RIGHT OF WAY LINE OF SAID MARTIN STREET; THENCE SOUTH 00°32'43" EAST, ALONG SAID WEST RIGHT OF WAY LINE OF MARTIN STREET, A DISTANCE OF 36.05 FEET TO THE POINT OF BEGINNING.

THE AREA OF THE DESCRIBED DEDICATION IS 1,742 SQUARE FEET (0.04 ACRES), MORE OR LESS.

(SEE EXHIBIT "A" AND "B")

Prepared under my supervision:

Henry C. Poquiz  
L.S. 6048



5/18/09

# EXHIBIT "B"



SCALE: 1"=40'

MARTIN STREET

APN: 541-145-007

LOT 5, BLOCK 5,  
M.B. 9/44 S.B.

EXIST. RIGHT OF WAY

40'

N89°57'45"W 113.95'

AREA=1,672 S.F.

N89°57'45"W 140.00'

N44°44'46"E 36.65'

EXIST. RIGHT OF WAY

30'

36.05'

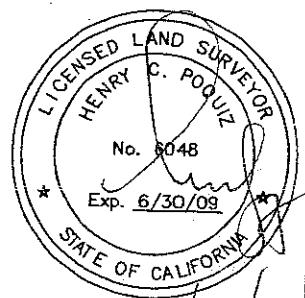
N00°32'4.3"W

P.O.B.

N89°57'45"W

30'

RAMSEY STREET



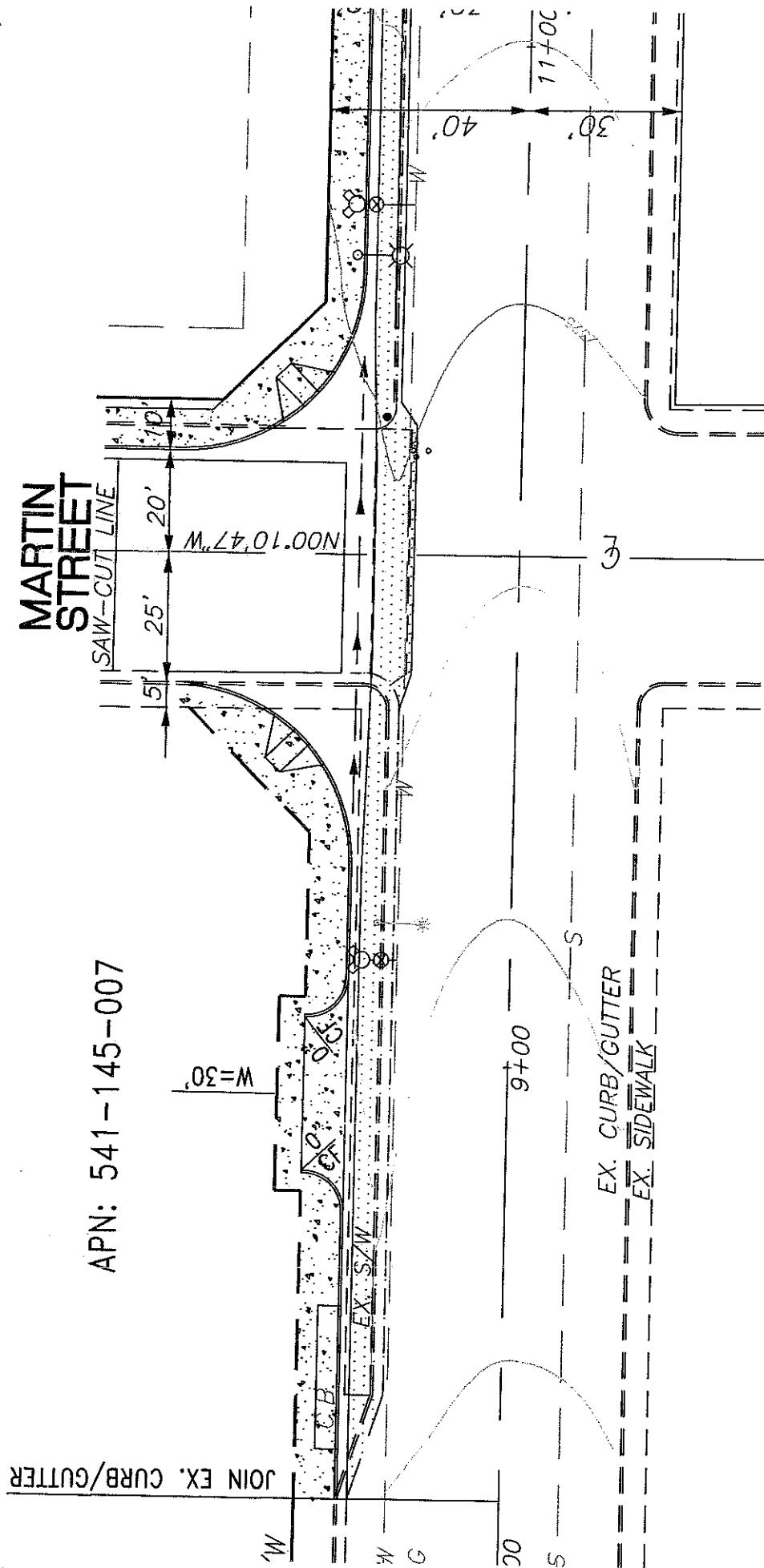
CITY OF BANNING, CALIFORNIA  
DEED PLAT  
RAMSEY STREET, MARTIN STREET

DRAWN BY: HCP  
CHECKED BY: A.V.  
APPROVED BY: K.O.  
DATE: APRIL 20, 2009

156

APN: 541-145-007

MARTIN  
STREET



CITY OF BANNING  
PROPOSED IMPROVEMENTS ON  
RAMSEY STREET



STAGECOACH TOWN USA  
ESTABLISHED 1853