

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

June 8, 2010  
**5:00 p.m.**

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

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

*Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Roll Call – Council Members Franklin, Hanna, Machisic, Robinson, Mayor Botts

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

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

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

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

**PRESENTATIONS:**

1. Outstanding Community Service Award Presentation to the Church of Later Day Saints for Participation in the Annual Banning Community Cleanup Event – presented by Julie Goodson, Western Riverside Council of Governments (WRCOG) (ORAL)

*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.*

2. Presentation of Law Enforcement Appreciation Committee (LEAC) Awards to Officer Jeremy Bobo, Sgt. Alejandro Diaz, and Detective Robert Merritt by Chief Purvis (ORAL)

**RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY**

**III. 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 5**

**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 – 05/25/10.....	1
2.	Resolution No. 2010-36, Approving a Short-Term Loan to the San Gorgonio child Care consortium with would be funded on July 1, 2010 and expire September 30, 2010, in the amount of \$25,000.....	16
3.	Resolution No. 2010-39, Calling a General Municipal Election on November 2, 2010 .....	20
4.	Resolution No. 2010-40, Adopting Regulations for Candidates for Elective Office, Pertaining to the Electorate and the Costs Thereof for the general Municipal Election to be Held in the City on Tuesday, November 2, 2010 .....	22
5.	Resolution No. 2010-04UA, Approving the Award of a Professional Services Agreement to Albert A. Webb Associates of Riverside, CA in an Amount “Not to Exceed” \$152,900.00 for the Modification of the Recycled Waterline Design .....	24

- Open for Public Comments
- Make Motion

**Adjourn Joint Meeting of the Banning City Council and the Banning Utility Authority.**

**CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING FINANCING AUTHORITY**

**IV. REPORTS OF OFFICERS**

1. Resolution No. 2010-41 and Resolution No. 2010-01FA, Authorizing Amendments to the Indenture and the Installment Sale Agreement, Each Dated as of June 1, 2007, Executed in Connection With the Issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and Authorizing and Directing Certain Actions With Respect Thereto.

Staff Report .....

Recommendations:

- A) That the City Council adopt Resolution 2010-41 Authorizing Amendments to the Indenture and the Installment Sale Agreement, each dated as of June 1, 2007, executed in connection with the issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and authorizing and directing certain actions with respect thereto, attached herewith as Exhibit "A."**
- B) That the Authority Board adopt Resolution 2010-01FA Authorizing Amendments to the Indenture and the Installment Sale Agreement, Each Dated as of June 1, 2007, Executed in Connection With the Issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and Authorizing and Directing Certain Actions With Respect Thereto, attached herewith as Exhibit "A."**

**V. ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)***

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

**VI. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (6/10)
3. Massage Ordinance (ETA 6/8/10)
4. Consider Sister City Relationship with Township in Haiti
5. Schedule Meeting with Banning Library Board
6. Update on Economic Development Efforts

**VII. ADJOURNMENT**

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/25/10  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on May 25, 2010 at 6:43 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: Andrew Takata, City Manager  
David J. Aleshire, City Attorney  
Kirby Warner, Interim Finance Director  
Duane Burk, Public Works Director  
Leonard Purvis, Police Chief  
Fred Mason, Electric Utility Director  
Heidi Merza, Community Services Director  
Hoyl Belt, Human Resources Director  
Phil Holder, Police Lieutenant  
Brian Guillot, Assistant Planner  
Marie A. Calderon, City Clerk

The invocation was given by Pastor George Rosemier, Banning United Methodist Church. Mayor Pro Tem Hanna invited the audience to join her in the Pledge of Allegiance to the Flag in special memory of Memorial Day to those that have served our Country.

Mayor Botts said that staff is requesting to move up one item from the closed session in regards to negotiations following public comments. **There was Council consensus to move that item up following public comments.**

**PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS**

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

Ellen Carr, 471 W. George Street addressed the Council representing Tender Loving Critters Animal Rescue and the animals of our city and she has a message from them to the Council, "Please, we want to come home now. Please bring us back home."

Krista Baird, 1036 Charles Street addressed the Council stating that she brought with her something that weighs 180 pounds and also pictures. This is asphalt. This is what the developer buried in their land maintenance down on Victory and Hargrave. She said that there are multiple reasons why she is bringing this to the Council. There is an 8 foot wall that this is helping to support and this is illegal fill and they had come to the Council before asking the Council not to give back bond monies to the developer until issues were resolved. About a month and a half ago she noticed that there was a sprinkler broken back in their land maintenance district and she had come before Council trying to get some resolution through the City and they received nothing. A month went by and about two weeks ago on a Thursday she brought in a much smaller rock to city hall and placed it on the counter and asked someone to go out there and look at this. Apparently someone went out there but they were looking for asphalt in the road instead of what she had described in pictures. She came to city hall the next week and finally talked to a City Engineer and then a City inspector showed up and showed her exactly where this piece of asphalt was. She pulled this out rolled it down the hill and brought it in tonight. What the inspector told her was that this is probably what caused the sprinkler to get broken because it waters it and what is underneath it moves and that is probably what busted the water sprinkler. Now they have to pay somebody to go back out and fix that sprinkler and fix the slope again. This is not the only rock there and she showed pictures of just this one area where there are three different rocks in that area. If you walk up and down there you can see where that whole thing has been filled with asphalt. The other issues are water control, etc. in their landscape maintenance district which they pay for. You can see it was covered with bark which helps maintains the water within the slope. This stuff hasn't been replaced in four to five years. She gave her pictures to the City Clerk.

Jean Rutherford, 707 N. Grove addressed the Council asking them to reconsider the Recreation Department both for the older people and the children. It is very important that our kids are off the streets and very important to have somewhere to play. There is not going to be any summer school and where are our children going to be. We have volunteers and her grandson is a volunteer for basketball and he had two teams last year and he brought his team with him tonight. He has gone on his own as a volunteer taking the kids out of town and spent every Saturday with them and has a pretty good hold on his kids and they like him very much. She thinks it is important to keep our Recreation Department open for our older people and for our younger children. She would like to know where your priorities are and which of these things are important to you.

DaMonte Little, 1231 E. Hoffer Street and a junior at Banning High School addressed the Council stating that he has lived in Banning for almost six years now and since he can remember the community has always done great things for the kids in keeping them in sports and keeping them off the streets and keeping them active. It has done great things for him also and has gotten him recognized by higher classes of basketball and helping him to improve on his skills as a basketball player. He had the 5<sup>th</sup> and 6<sup>th</sup> Grade All-Star Basketball Team stand up at this time and stated that it has also done great things for these kids and they were able to travel because of the community center going to Pasadena, Moreno Valley and Hemet to play other kids and doing good as a team and it has also got two of their team members noted by AAU teams where they will be traveling out of state to play on the traveling team. This is why he is asking the City Council to keep the community center open

to it is doing a good thing for these kids and keeping them active and other activities for kids and keeping them in good places.

Mathew Clarke, 1036 Charles Street addressed the Council regarding ADA compliance. He said that upon arrival back from an army hospital in 1991 he found himself returning from Desert Storm in a wheelchair for three and half years so these issues are a little dear to his heart. We have had current utility poles being installed in sidewalks, we have sidewalk ramps being constructed throughout the city and there is no way that a wheelchair can get by them. He said he witnessed on Sundays young men and women being pushed by parents going down Lincoln Avenue in the middle of the street because there is no way they could utilize these sidewalks. However assuming that the project was done by current building standards there had to have been a minimum of six reviews by inspectors and public officials prior to the completion of this project. How did it get by six officials that they could not see that there is only thirteen inches of clearance there? He said as a veteran, as someone who has put his life on the line I ask that you approach the Public Works Department to correct this. This is not fair and not right. The other issue is storm drains and the residents of Fair Oaks Ranch have been in front of this Council many times in the past and have talked about the intersection of Wesley and Hathaway. He has taken it upon himself to go to the capture basin at that intersection and he pulled the soils samples from this and his results were greater than 80% of the material in the capture basin passed a number 200 siv and that is a lot of technical jargon to tell you that it silted out. It has so much silt in it that the water cannot percolate. He said this picture shows what should be a hundred year flood event and it is not; it is a 20 minute rain shower. This basin is designed for a hundred year event. What happens is when we do get a hundred year event the residents are flooded and cannot even leave their homes at that intersection. He asked that this be taken and looked at at a later time.

Stan Stossell, 782 S. University Dr., Riverside addressed the Council stating that he was the Assistant Business Manager for I.B.E.W. (International Brotherhood of Electrical Workers) Local 47 and they represent both the General Unit and the Utility Employees here at the City. He said that these are very challenging times and he appreciates and agrees with the concerns of the seniors and the youth but he also wanted to add to that mix your employees here at the City because in one fashion or another what you do to them affects the seniors, the youth and that needs to be taken into consideration. For him leadership is a difficult thing and it requires the Council to be inspirational. You have to make some tough choices and inspire other people to agree with that. He said that he is concerned at times and in Lewis Carroll's Alice in Wonderland the Queen always said "off with their heads, off with their heads." He thinks that most of us when we read that book even as kids we recognized that it wasn't the best answer to everything. What he has said time and time again even a year ago when this issue came up tough times require shared sacrifice and this is our approach and we are saying we need to take a look at all of these issues and we cannot put the entire weight on anyone of these entities. We cannot put it on the seniors, we can't put it on the youth, and we can't put it on the workers. When the table is full and there is food for all we all enjoy the feast. When times are tough we all have to tighten our belts a little bit and we are willing to do that. We came last year with proposals and ideas and maybe they didn't make it to the Council last time but had you accepted some of our proposals a year ago we would probably still be in trouble but we wouldn't be in as bad of trouble as we are today. He said he is here today to

tell the Council, "I told you so a year ago" and please listen to us this time and take our concerns and perspectives into consideration.

Krista Baird, 1036 Charles Street said she wanted to add to the comment that Matthew made about the water capture basin being silted over in that one of the City's own inspectors told her that it was silted over and that he had reported it and nothing has been done about it. But one of the homeowners when they put their water sprinklers in they were originally about an inch above the grass and now because there is so much moisture there their land looks like it is rising and now they have had to put extensions up to eight inches just so their water sprinklers can water their grass.

Don Smith addressed the Council stating that as someone who potentially benefits from a downstream retention basins it would be nice if they worked. He thinks that they should all be checked regularly and do the measures required so that they actually retain the amount of water and don't cause downhill damage but actually do their jobs. We have 15 young guests here today and it is always nice to see young people in the building seeing how our system works. At the last meeting his time was up so he didn't actually get to finish so he is going to finish tonight. He said he believes that eliminating the pool, the senior center and the youth recreational programs in the long run is going to cost you more money than it is going to save you. He believes that not waiting three months to see if the Chief can get a grant to save all these police officers when it will cost \$120,000 dollars to keep the four police officers for the three months to find out. When he tells you that there is a good chance that he can get that grant would be a waste of the resources we have spent thus far on these four officers. He would strongly urge that the Council reconsider your cannot spend a dime of our reserve mentality and spend next year \$500,000 of the three point something million dollars you still have in reserves. Keep the senior center, keep the pool, keep the recreational department and give the Chief his three months to see if he can get his grant. He said that he believes this is what a fiscally, conservative Council would do.

Charlene Sakurai, 4985 Bermuda Dunes said that this weekend is Memorial Day and there are many celebrations going on but one of them is going to be an exhibit honoring our veterans and all of the art is by veterans. It will be held at the Banning Center for the Arts and is a wonderful exhibit. Among the artists that are featured are David Fairrington, Stan Mosberg, Jim Intravia, Marty Contreras, Buddy Hawkins, Milford Zornes and Dennis Armatis. There will be an open house and most of the artist will be there on Saturday, May 29<sup>th</sup> from 1:00 to 5 p.m. and everyone is welcome to come. It is another way to honor our veterans.

Mayor Botts said thank you to the young people for coming and thank you for what you are representing. Under public comments is it not appropriate for the Council to respond other than 1) we haven't made any decision at all and our staff brought us the information and we gave them feedback and that feedback did say that this Council could consider reserves usage among a lot of other things. He thanked the public for coming and giving their opinions and the Council will be making decisions in the future but the topic is over and believes this Council will do the right thing.

#### CLOSED SESSION

City Attorney said that the City Council would meet in closed session pursuant to Government Code Section 54957.6. to discuss labor negotiations with our bargaining units: International Brotherhood of Electrical Workers (IBEW) – Utility Unit, International Brotherhood of Electrical Workers (IBEW) – General Unit, Banning Police Officers Association (BPOA), and City of Banning Association of Managers (CBAM).

Meeting went into closed session at 7:04 p.m. and returned to regular session at 7:37 p.m.

City Attorney reported that the City Council met in closed session to discuss labor negotiations with our bargaining units and the negotiator gave a status report and direction was given for further negotiations.

CORRESPONDENCE: There was none at this time.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 5/11/10

Recommendation: That the City Council approve the minutes of the Regular Meeting of May 11, 2010.

2. Report of Investments for March 2010

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

**Motion Hanna/Robinson to approve Consent Items 1 and 2.** Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. Resolution No. 2010-34, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance district No. 1 for Fiscal Year 2010/11.  
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet. He gave a brief power-point presentation in regards to the Landscape Maintenance District (LMD #1) showing some of the areas in the district. He said that the annual assessment charge for the district will range from \$95.54 to \$191.59. When the assessments were originally established they were established by zones and each zone pays a little different based on the amount of acreage they have and what has to be maintained and for example some have huge retention basins and some have a park. He said that the Public Works Department staff will manage the district in-house this year beginning on July 1, 2010. He said the LMD is now running itself and collecting its assessments and managing its revenues in the black and to save jobs as it relates to the Parks Department staff is asking in the budget to have the Parks Department personnel manage the

LMD and he gave some background in regards to that issue. He also went over the estimated costs for maintenance and approximate revenue.

Councilmember Franklin said in regards to maintenance are you talking about also doing some xeriscape landscaping and possibly using smart metering for the watering. Mr. Burk said that this is something that staff will definitely look into further.

Mayor Botts opened the public hearing for comments from the public on this item.

Mathew Clarke, 1036 Charles Street stated that he was a member of Fair Oaks Ranch Community and a member of the Landscape Maintenance District #1. He said on April 13<sup>th</sup> he approached Council and requested permission for the formation of a committee that would participate in the landscape maintenance district and at that time took it upon themselves to go to each member community and solicit volunteers to form an initial committee to assist and help provide guidance for the landscape maintenance district. They now have seven members who have volunteered for at least a one-year period to form that committee and they are awaiting direction from Council and City staff as to what is the next step. He also asked that prior to the Council approving this 1.12% increase that this newly formed committee once organized and supported with some further information could review that increase and report back to Council upon their due diligence. It should also be noticed as Councilmember Franklin had mentioned improvements in water meters, etc. is also part of the agenda of the committee to bring new and more modern ideas to the department and also to provide that additional guidance to Duane Burk and the Public Works Department in terms of overseeing how the landscape maintenance district is being managed.

Krista Baird, 1036 Charles Street addressed the Council to please hold up on increasing these fees. One of the reasons is because of this committee and they would really like to review this issue because even at this point they really don't know how our monies are being spent and they would like the opportunity to look at that information. She heard that even some of these landscape maintenance fees are being used to maintain the median down Ramsey Street and she doesn't know if that is true or not but she doesn't think that it is fair that a select few should maintain that when it is a public street. She said that they would like a better accounting of how these monies are being spent and how they are being used. In regards to the retention basin she wanted it corrected because when she addressed it before she was told it was not included and in today's presentation it showed that it does cover the retention basin and that is part of what they are having a problem with in regards to flooding and the drainage system is not working the way it is supposed to.

Mayor Botts asked Mr. Burk to respond in regards to the median.

Mr. Burk at this time displayed the estimated expenditures for the current year. He said that this is audited annually and no money outside the landscape maintenance district goes to the General Fund. Two years ago this Council was subsidizing this landscape maintenance district to a tune of \$130,000 dollars because at that time the contact we were paying two years ago was almost double this amount. Council asked staff to go back out and re-bid the contract during the economic downturn and that actually worked in the City's favor and we

were able to contact with Artistic Maintenance who took the project over very in expensively. In regards to the medians on Ramsey Street between Highland Springs east to Highland Home Road it is currently under a plan establishment period with the Redevelopment Agency and is maintained by CS Legacy and their contact will come due at the end of this month and they will no longer be maintaining it because we are not allowed to spend those monies from redevelopment for maintenance. The idea behind taking this over and that median would be for our staff to do that and we have to absorb also that additional work. As far as the committee goes it leaves that up to the Council however staff's time is stretched pretty thin right now. He said he has no problem about working with anybody that has an issue with any of the one of the landscaped areas. He said that it was agreed upon with the developer and the Council when they established the development agreement that these homes would fall under the landscape maintenance district and that they would be taxed based under what our current rate is.

Mayor Botts closed the public hearing on this item.

Mayor Pro Tem Hanna suggested that this proposed committee be considered an informal committee and be allowed to meet and request information so that they can become educated and be more knowledgeable about the assessment district and what it does and so forth so that as they go forward in the year they will understand and by the next fiscal year they will be in a better position to understand and hopefully be supportive or asks the right questions because they know more.

**Motion Robinson/Machisic that the City Council adopt Resolution No. 2010-34, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2010/11," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code; and II) Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.**

Mayor Pro Tem Hanna asked the Council if they wanted to recommend that staff provide information for an informal committee.

Mayor Botts said that he doesn't think that it needs to be included in the motion. He said that this is between staff and the City Manager and thinks that they would be very open to share information with the committee but at this point he doesn't know if they ought to formalize an advisory committee for this.

There was some Council and staff discussion in regards to an advisory committee. City Attorney said if the Council appoints or establishes some sort of a committee it becomes subject to the Brown Act. If there is a group of citizens that want to investigate or look into things they can come forward and ask questions of staff. City Manager said he would agree and if those seven individuals want to come in and make an appointment with staff, we will be more than happy to show them how the figures went that way and basically that is how staff should be working on this.

**Motion carried, all in favor.**

2. Resolution No. 2010-35, 2010 Edward Byrne Memorial Justice Assistance Grant  
(Staff Report – Lieutenant Phil Holder)

Lt. Holder gave the staff report as contained in the agenda packet. The allotment of the grant this year is just under \$21,000.00 and the department proposes to use this money as they did last year to fund the overtime for the Banning Police Activities League which provides activities for the youth at throughout the year and on the weekends. It has been a very successful program.

Councilmember Franklin said that she would abstain from any discussion or voting because she is a boardmember.

Mayor Botts opened the public hearing on this item. Seeing no one come forward the public hearing was closed.

**Motion Machisic/Robinson that the City Council adopt Resolution No. 2010-35, Authorizing the Acceptance of the 2010 U. S. Department of Justice Edward Byrne Memorial Justice Assistance Grant in the Amount of \$20,986.00 to be Used for Police Department Overtime for police officers participating in Banning Police Activities League (BPAL) activities. Motion carried, all in favor.**

3. Ordinance No. 1423 – An Interim Ordinance Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422, (Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses).  
(Staff Report – Brian Guillot, Assistant Planner)

Mr. Guillot gave the staff report as contained in the agenda packet. He said that staff is not able to complete the required study and analysis and then present that to the Planning Commission and then take those recommendations and bring it to the City Council by the expiration date of May 28<sup>th</sup> so staff is requesting that that ten month and 15 day extension.

Councilmember Robinson asked if this includes anybody that has a permit now because we see a lot of different push carts running around the city and are they permitted now or would that permit continue or would they have to disappear or what happens.

Mr. Guillot said typically in planning any established uses that become non-conforming would stay legal non-conforming because they existed prior to your adopting this moratorium. With those they are kind of unique so he is not certain of that answer but if someone came before us for a permit at this time of course then the moratorium would apply to them.

Mayor Botts opened the public hearing on this item.

Don Smith resident of Banning addressed the Council stating that he believes Planning doesn't have a lot of projects that we are currently planning. When this was adopted less than 45 days ago he said he has no objection to the 45 days but staff will be back here in 45 days asking for the whole year and well, they are back here asking for the whole year. He doesn't have any problem approving the whole year but he thinks this Council needs to direct staff that you expect a report back no later than three months and if it is not ready for you to vote on, ask for an explanation of why it is not ready because we do have businesses we know that came to the counter to pull permits and they are waiting. We need to move this in a reasonable time fashion and these uses are not so unique that other cities haven't already written these ordinances that we can look at and draft similar ones. And so that is still his request as it was 45 days ago that you direct staff not to take the whole year.

Chris McCallum, 757 W. Westward addressed the Council stating that initially in regards to the push carts he brought that forward because he thought there was a public safety hazard at the Department of Motor Vehicles that he saw coming and was there with the long lines, etc. and that is why he brought this forward and tried to do it the right way. He doesn't know if the push carts you see in the city right now are operating legally. He said that he has a business permit and to his knowledge nobody else does. He was trying to do this because he saw a personal public safety issue and it wasn't about making money. He thinks that there are times when you have to go through certain things to make it right but at the same time there are things that happen where you need to respond quickly. He said when he will ever get a push cart or not he could care less and he thinks in that situation we did need one at that time but they have solved that issue. But when we look at this stuff we should all have the permits and things to do things right.

Seeing no one else come forward the public hearing was closed.

There was some Council and staff discussion in regards to this extension of time and getting a report back and staff is hoping to get it back to the Council as soon as staff can do the research. **There was Council consensus that staff bring this back to them as soon as they can knowing that there is one person in the department to do it and that a status report come back in three months.**

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1423. City Clerk read: An Interim Urgency Ordinance of the City of Banning, Extending for Ten Months and Fifteen Days Interim Urgency Ordinance No. 1422 that Established a Temporary Moratorium on the Permitting of Tattoo & Piercing, Fortune Telling, Push-Cart Vendors, and Hookah (Smoking) Lounge Land Uses Pending the Review and Possible Amendment of Zoning Regulations Applicable to Such Uses.

**Motion Machisic/Robinson to waive further reading of Ordinance No. 1423. Motion carried, all in favor.**

**Motion Hanna/Robinson that Ordinance No. 1423 be adopted. Motion carried, all in favor.**

#### REPORTS OF OFFICERS

1. Resolution No. 2010-22, Approval of the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement.  
(Staff Report – Fred Mason, Electric Utility Director)

Mr. Mason gave the staff report as contained in the agenda packet. He stated that in May 2009 the Council adopted the Three Year Strategies with One Year Goals Supporting the Vision and Mission Statements and this document provides direction to staff to implement the Council's vision for the City over the next three years. One of the goals is to develop and implement a strategy and plan to promote and recruit retail businesses citywide and the proposed ED (Economic Development) Rate is a tool which enables the City to attract larger commercial and industrial customers coming to Banning by offering a discounted startup rate and he gave further explanation about this rate schedule and the rate agreement. Staff recommends approval and if approved the ED Rate would become effective June 1, 2010.

Councilmember Franklin asked how this would impact our other customers and our budget.

Mr. Mason said actually this wouldn't impact the customers at all. With customers that are 200 kilowatts or larger the fixed costs that he was talking about would be incurred regardless and those are metering costs, those are distribution costs and those are costs that if we have 15,000 customers for 10,000 customers, or if we have 200,000 megawatt hours of sales or 150,000 those are the same. So when you bring in a customer that is large like a 200 kilowatt customer if you waive those fees, you are not increasing costs to anyone else because they are just absorbed. So what they are covering with that 75% is the generation costs, the transmission costs and the costs that actually are increased with the amount of sales we have. In regards to the budget this would actually improve our budget because if you have a 200 kilowatt customer that has \$500,000 dollars in sales over two years and we were giving back \$120,000 dollars, we have just improved our retail sales by \$380,000 dollars.

Councilmember Franklin asked if we would be able to do something similar for new customers that would be under the 200 kilowatts.

Mr. Mason said the problem with that is if the lower you go the less impact it has to the other customers as far as offsetting it. The reason for this is that after the two years and when they agreed to the five years because of their size they are actually absorbing more of those fixed costs. If you have a small customer, they are only paying for their costs because the size is small so that cost is actually factored into the actual charges that are assessed against those small commercial customers. With the large customer because the costs are paid for over such a long period of time, those fixed costs, we actually get a benefit from them where we get the real time benefit versus over the same period of time.

Mayor Botts opened the item for public comments.

Don Smith said Fred Mason and whoever helped him work on this are to be congratulated. It is another piece of the puzzle. We have spent time at trying to make the town look better and now we are actually talking about bringing businesses to town that theoretically will generate

jobs and sales tax dollars to help both the citizens and the City coffers. He thinks it is wonderful idea and he is glad that somebody thought of adding it to the picture of the numerous things that we can now help to try to bring business to town. He thinks that Councilmember Franklin has a point but Fred's answer made sense that doing it for all small business probably would be counterproductive but perhaps if you let the Redevelopment Agency Manager know that if there is a special type of use we want, that perhaps this Council could also add this to bring that specific use you are trying to use to do a niche like a bakery.

Mayor Botts closed the item for public comments.

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2010-22, Approving the Economic Development Electric Rate Schedule and the Banning Economic Development Rate Agreement, attached herewith as Exhibit "A" and "B" respectively. Motion carried, all in favor.**

Councilmember Hanna said that she is so excited about this and this City Council has done numerous goal setting and visioning over the last few years and this is the first time that she has seen the one that they adopted on May 12, 2009 mentioned in a staff report and looks forward to the time when they can actually develop their own with the new City Manager. We all know that Economic Development is our way out of this deficit so it is very exciting that you are taking advantage of this great idea. Also please make sure that all of our Economic Development staff and consultant's know about this because sometimes things happen in the Electric Department and it doesn't go through the various consultants and so on and perhaps it is time for a new document of all the incentives that we have for businesses to come to Banning.

**Motion carried, all in favor.**

2. Resolution No. 2010-23, Approval of the Net Metering Surplus Electric Rate Schedule and the Revised Interconnection Agreement for Net Energy Metering.  
(Staff Report – Fred Mason, Electric Utility Director)

Mr. Mason gave the staff report as contained in the agenda packet as it pertains to net metering and gave background in regards to Assembly Bill 920 that was signed into law on October 11, 2009 and amended Section 2827 of the Public Utilities Code which pertains to net metering customers and what the utility must provide.

There was some Council and staff discussion in regards to looking into ways to incorporate this into City facilities.

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

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2010-23, Approving the Net Metering Surplus Electric Rate Schedule, attached herewith as Exhibit "A", and the Revised Interconnection Agreement for Net Energy Metering**

**(Lease), attached herewith as Exhibit "B" and "C" respectively. Motion carried, all in favor.**

Councilmember Franklin said she wanted to clarify that even though renewable energy cost more if the City uses solar energy, it is actually savings for the City and is that true.

Mr. Mason said if we use solar energy we actually have to pay for the actual solar panels to be installed but it reduces the amount of electricity that that facility uses. So for instance with the police department and the community center it would reduce what they would have each month from the electric department and it saves the General Fund money.

Mayor Botts said but isn't there a negative on the fixed costs in electricity and the utility.

Mr. Mason said absolutely. There was a law that was just recently passed that increased the amount of interconnections that we have to allow from 2.5% to 5% so before we had to allow up to 2.5% of our peak demand to be interconnected with renewable energy and that equates to a little over one megawatt of energy. Currently with our current installations we are at about 720 kilowatts which is just under three-quarters of a megawatt. Going up to 5% that is a little over 2 megawatts so basically if the full 2 megawatts of solar whirlwind were installed that would reduce our revenues by over \$600,000 dollars a year.

Mayor Botts said then this is the good news/bad news. Mr. Mason said absolutely.

**Motion carried, all in favor.**

3. City Council Adoption of Resolution No. 2010-37, In Accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time and Adoption of Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meetings and Repealing Resolution No.1977.33. (Staff Report – Andrew Takata, City Manager)

City Manager gave the staff report as contained in the agenda packet in regards to meeting times and time limits for the regular meetings and in regards to closed session items. He also mentioned agenda management in regards to the number of items to be discussed on the agenda.

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

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2010-37, Addressing Municipal Code Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time; and adopt Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meetings and Repealing Resolution No. 1997-33. Motion carried, with Councilmember Hanna voting no.**

Mayor Pro Tem Hanna said for those that didn't hear the discussion issue that took place at the Community Redevelopment Agency meeting she thinks that the closed session should

start at 4:30 p.m. instead of 4 p.m. and beginning at 5:30 p.m. for the Redevelopment Agency Meeting particularly in the event that there is no Redevelopment Agency Meeting then the City Council Meeting will start at that time but she thinks at 5 p.m. is too early for most people to get there that might work and she wanted it noted that this was her disagreement.

**Motion carried, with Councilmember Hanna voting no.**

#### ANNOUNCEMENTS/REPORTS

- City Council

Councilmember Franklin –

- She attended the Hospital Volunteer Celebration and they had a number of volunteers that contributed over 182,000 hours of volunteer service.
- She attended a water meeting put on by the Pass Water Agency but unfortunately not a lot of people attended. They did talk about conservation and the direction of the Pass Water Agency. She said that they are doing multiple meetings but maybe they could do one some time here in the Council Chambers where people can watch it on television.

Councilmember Machisic –

- He said that someone mentioned the median strip between Highland Springs and Highland Home Road and he has to admit when that was first planted he was wondering what the finished product would look like but I have to tell you Duane that particular two mile strip looks great and it has filled out nicely and is very complimentary to that part of the city.

Mayor Pro Tem Hanna –

- She said that our Banning High School students won 5<sup>th</sup> place in the state of California for the statewide competition that focuses on environmental studies call the Envirothon. The teacher who is the advisor for the Envirothon is Larry Ellis, one of the fine teachers from Banning High School. He is retiring this year she believes to ensure that another teacher is not laid off. She would like to have the City recognize him through a certificate to present next week. They are having a celebration on Wednesday at the high school so she would like to present it at that time. City Manager said if the Council chooses they can also present it at the Council meeting as well.

Councilmember Robinson –

- He attended the Pass EDA (Economic Development Agency) meeting and California State Assemblyman Paul Cook gave updates on what is going at the State level.
- He said that there will be a Business Recycling Workshop here at the Banning City Hall on June 2<sup>nd</sup> with registration at 8:30 a.m. with a continental breakfast and the workshop will be held from 9 to 11 a.m. This discussion will be geared towards the business owners in town.
- He attending the Board of Directors Meeting for the Banning Chamber and they reported that the Cinco De Mayo Gold Tournament was a success and they have a Pro-Am Tournament coming up in July which will span over three weeks.

- We did sign up for the cool centers and when we get over a three digit number in temperatures there will be cool centers set up this summer and if that involves your pet the Renaissance Pet Resort is one of the cooling centers again for a second year.

Mayor Botts –

- Stated that there will be a ribbon cutting for the Brinton Reservoir on June 4<sup>th</sup> at 11:00 a.m. and the public is invited. If you need directions, please call Duane Burk or the City Clerk's Office.

Report by City Manager

- He said next week there may be a special budget meeting to review some things since last they met in regards to the budget and the date staff is looking at is June 2<sup>nd</sup> at 5:00 p.m.
- In regards to animal control the Ramona Humane Society will be meeting with him tomorrow. He met with the subcommittee for the Animal Control Shelter and they discussed the options of either staying with the County or going with Beaumont. Right now it appears that Beaumont will be a little bit less expensive and will have seven-day-a-week service and are also looking at putting together a two to three day shelter so that way people can come and get their pets if they have lost them. Hopefully as we go down this road we can get a humane society to reopen our own animal shelter and would need someone to operate that at hopefully a very low cost in order for us to accept the animals and that way our residents don't have to drive to San Jacinto or other places. He said that the City will be working with Beaumont, Calimesa, as well as, the Morongo Indians on this and hopefully find a vendor that will be willing to open our animal shelter.

Councilmember Robinson said he wanted to tag on to what the City Manager just said. He said he went to both San Jacinto and the Morongo Valley Humane Society and he forwarded the paperwork to the City Manager. He said he was very impressed with their facilities and they are all sponsored by people in the community along with Petco and United Way. There are some real opportunities there for the City of Banning.

- Report by City Attorney

There was none.

#### ITEMS FOR FUTURE AGENDAS

New Items –

Mayor Pro Tem Hanna said at the last meeting she mentioned that perhaps the Council could meet with the Library Board and it was in the minutes but maybe it wasn't recognized as consensus of the Council that we should do that. **There was Council consensus to have a meeting with the Banning Library Board.**

Councilmember Franklin said she also had another item that she wanted to add to the agenda that she thought there was consensus of the Council and that was to hear an update on our Economic Development Efforts.

City Manager said that he is planning on having an update but would make sure that it is on the list also.

Pending Items -

1. Schedule Meetings with Our State and County Elected Officials
2. Set New Date for Joint Meeting with Banning School Board (6/10)
3. Massage Ordinance (ETA 6/8/10)
4. Consider Sister City Relationship with Township in Haiti

CLOSED SESSION

City Attorney said that the City Council would meet in closed session pursuant to Government Code Section 54956.8 to discuss regards to real property negotiations with Banning Heights Mutual Water Company, concerning property in Ray Wood Flats and Burnt Canyon.

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

Meeting went into closed session at 8:30 p.m. and returned to regular session at 9:07 p.m.

City Attorney reported that the Council met in closed session to discuss real property negotiations with Banning Heights Mutual Water Company concerning property in Burnt Canyon and a status report was given on negotiations and direction was given for further negotiations. No reportable action was taken.

ADJOURNMENT

By common consent the meeting adjourned at 9:14 p.m.

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Marie A. Calderon, City Clerk

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

## CITY COUNCIL AGENDA

**Date:** **June 8, 2010**

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

**FROM:** **Kirby Warner, Interim Finance Director**

**SUBJECT:** **Resolution No 2010-36 Approving an Advance to the San Gorgonio Child Care Consortium in the Amount of \$25,000**

**RECOMMENDATION:**

Council adopt Resolution No. 2010-36 approving a short-term loan to the San Gorgonio Child Care Consortium which would be funded on July 1, 2010 and expire September 30, 2010, in the amount of \$25,000.

**JUSTIFICATION:**

State funding to the Consortium is granted once the Governor signs the State Budget. Actual receipt of the funding has often been delayed until August or later, from the State program which provides funding to the local child care facility. The Consortium provides full day childcare services to approximately one hundred and twenty-six (126) children. Forty-two (42) of these slots are funded from the State program.

**BACKGROUND/ANALYSIS:**

For the past sixteen years, the City has provided a short-term interest free loan to allow the Consortium to continue operations pending its first payment from the State. In the current fiscal year the loan was funded on July 1, 2009 and repaid on July 22, 2009.

A copy of the correspondence submitted by the Consortium is included for reference as *Exhibit A*. Resolution 2010-36 has been prepared for City Council's consideration and is also included with this staff report.

**FISCAL DATA:**

The proposed funding source is the General Fund. The loan would be interest free for three-months. The General Fund is projected to lose approximately \$37 of interest earnings assuming the funds were invested for three months at the LAIF's current yield of .588%.

**RECOMMENDED BY:**

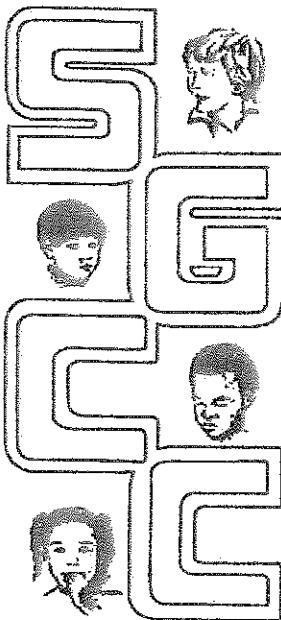


Kirby Warner, Interim Finance Director

**APPROVED BY:**



Andy Takata, City Manager



## SAN GORGONIO CHILD CARE CONSORTIUM

671 N. Florida St. Suite A

Banning, CA 92220

Telephone (951) 849-2930 Fax (951) 849-2262

E-mail [sgccc@verizon.net](mailto:sgccc@verizon.net)

License # 330908137/330909114/330907234

May 17, 2010

Mr. Andy Takata  
City Manager  
City of Banning  
99 East Ramsey Street  
Banning, CA 92220

Program Director  
Linda Phillips

President  
Marion Johnson

Vice President  
Joseph Curtis

Secretary  
Ann Peace

Finance Officer  
Dorothy Familetti-McLean

Dolores A. Michaels

Clara Soward

Dawn Rust

Parent Representative  
Vernon Overby

Emeritus  
E. Brigitte Page  
Deborah Franklin

Dear Mr. Takata:

We would appreciate it very much if you would include in the June Council agenda our yearly request for \$25,000 from the City of Banning to hold us over until the State Department of Education's first allocation check reaches us for Fiscal Year 2010/2011.

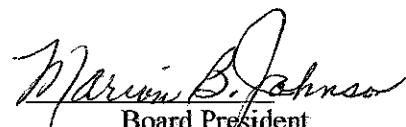
As in former years, we will pay this loan back immediately upon receipt of these funds, which usually are not sent out until the Governor has signed the budget.

Your records will show that this loan has been made to us each year and that it always was paid back when we received our State payment.

Thank you very much.

Sincerely,

  
Program Director

  
Marion Johnson  
Board President

**RESOLUTION NO. 2010-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING A LOAN IN THE AMOUNT OF \$25,000 TO THE SAN GORGONIO  
CHILD CARE CONSORTIUM**

**WHEREAS**, State funding to the San Gorgonio Child Care Consortium does not occur until the Governor signs the State Budget; and

**WHEREAS**, actual receipt of the funds has often been delayed until August or later from the State program which provides funding to the local child care facility; and

**WHEREAS**, the City Council desires uninterrupted services which might otherwise result from cash flow constraints; and

**WHEREAS**, there exists a cash flow shortage for the program,

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

City Council hereby authorizes and directs the Finance Director to advance the sum of \$25,000 to the San Gorgonio Child Care Consortium as an interest free short-term loan, funded on July 1, 2010 and due no later than September 30, 2010.

**PASSED, APPROVED, AND ADOPTED** this 8th day of June 2010.

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Robert E. Botts, Mayor  
City of Banning

APPROVED AS TO FORM AND  
LEGAL CONTENT:

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

ATTEST:

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Marie A. Calderon, City Clerk  
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-36 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 8th day of June, 2010 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**RESOLUTION NO. 2010-39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA CALLING A GENERAL  
MUNICIPAL ELECTION ON NOVEMBER 2, 2010**

**WHEREAS**, a General Municipal Election will be held in the City of Banning on the 2<sup>nd</sup> day of November, 2010, for the full terms of four years for the following officers:

Councilmember - Incumbent Robert E. Botts

Councilmember - Incumbent Deborah L. Franklin

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

1. The City Council hereby authorizes the Registrar of Voters to conduct the General Municipal Election on behalf of the City of Banning.
2. The polls will be open from 7:00 a.m. to 8:00 p.m. on November 2, 2010.
3. The General Municipal Election will be held and conducted in all manners as prescribed by Law.
4. The City Clerk of the City of Banning will give notice of such Election by publication in the local newspaper.
5. The Riverside County Registrar of Voters is requested to canvass said election for the City of Banning.
6. The City Clerk of the City of Banning is authorized and directed to file a certified copy of this Resolution with the Riverside County Registrar of Voters.

**PASSED, APPROVED AND ADOPTED** this 8<sup>th</sup> day of June, 2010.

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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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Burke, Williams & Sorensen, LLP  
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-39 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of June, 2010, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**RESOLUTION NO. 2010-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BANNING, ADOPTING REGULATIONS FOR CANDIDATES  
FOR ELECTIVE OFFICE, PERTAINING TO THE ELECTORATE  
AND THE COSTS THEREOF FOR THE GENERAL MUNICIPAL  
ELECTION TO BE HELD IN THE CITY ON TUESDAY,  
NOVEMBER 2, 2010.**

**WHEREAS**, Section 13307 of the California Elections Code provides that the governing body of any local agency may adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs thereof;

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

**Section 1. General Provisions.** Pursuant to Section 13307 of the California Elections Code, each candidate for elective office to be voted for at the General Municipal Election to be held in the City of Banning on Tuesday, November 2, 2010 may prepare a candidate's statement on an appropriate form provided by the City Clerk. Such statement may include the name, age, and occupation of the candidate, and a brief description of no more than 200 words of the candidate's education and qualifications as expressed by the candidate. Such statement will not include party affiliation of the candidate, nor membership or activity in partisan political organizations. Such statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. Except as provided in Section 13309 of the California Elections Code, such statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

**Section 2. Payment.** The Riverside County Elections Department shall give the City Clerk an estimate of the total cost of printing, handling, translating and mailing the candidate's statements filed pursuant to the Elections Code, and require each candidate filing a statement to pay in advance his or her pro rata share as a condition of having his or her statement included in the voter's pamphlet. As these costs are only estimated, the City Clerk shall bill each candidate for any cost in excess of the deposit and shall refund any unused portion of any deposit.

**Section 3.** The City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time the nominating petitions are issued.

**PASSED, APPROVED AND ADOPTED** this 8<sup>th</sup> day of June, 2010.

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Robert E. Botts, Mayor

**ATTEST:**

---

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, California, do hereby certify that the foregoing Resolution No. 2010-40 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8<sup>th</sup> day of June, 2010, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

## **CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING**

**DATE:** **June 8, 2010**

**TO:** **Banning Utility Authority**

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

**SUBJECT:** **Utility Authority Resolution No. 2010-04 UA, "Approving the Award of a Professional Services Agreement to Albert A. Webb Associates for the Modification of the Recycled Waterline Design"**

**RECOMMENDATION:** The Utility Authority adopt Resolution No. 2010-04 UA:

- I.** Award the Professional Services Agreement to Albert A. Webb Associates of Riverside, California in an amount "Not to Exceed" \$152,900.00 for the Modification of the Recycled Waterline Design.
- II.** Authorize the Director of Finance to make necessary adjustments and appropriations in the amount of \$168,190.00 including a 10% contingency from the Banning Utility Authority Wastewater Project Fund to Account No. 683-8000-454.90-78 (Capital Expenditures/ Planning/Design).

**JUSTIFICATION:** The award of this agreement is necessary in order to redesign the alignment of a future recycled water pipeline to be constructed within the City of Banning existing right-of-way.

**BACKGROUND:** In the 1990's, due to high growth rates and irrigation demands, the City recognized the increasing need to provide irrigation water to its customers. As a result, CM Engineering Associates, Inc. was obtained to conduct an Irrigation Water Feasibility Study that would evaluate the feasibility of the construction of an irrigation water system to deliver recycled water.

In July of 1991, CM Engineering Associates, Inc. completed the Irrigation Water Feasibility Study that evaluated the feasibility of constructing an irrigation water system that would deliver recycled water by utilizing the City's existing Well R-1 and treated wastewater from the City's Wastewater Treatment Plant. The study concluded that an irrigation water pipeline along Lincoln Street could deliver water to the Sun Lake golf courses, Interstate 10 Freeway landscaping, municipal parks and other industrial/commercial areas. As a primary benefit, it was determined that the construction of an irrigation recycled waterline would free up 1,500,000 gallons (4.6 acft) of potable water per day that is currently being utilized to irrigate Sun Lakes Golf Courses. As a result of these findings, plans for Phase I of the Irrigation Water Supply System were prepared by CM Engineering Associates, Inc. in 1993.

In 2006, the City obtained Carollo Engineers, Inc. to develop a Recycled Water Master Plan. In accordance with this plan, staff requested modifying the original 1991 CM Engineering Associates, Inc. plans to represent a design recommended by Carollo Engineers, Inc. Initially, the pipeline was to be constructed within the right-of-way of a proposed street that was to be constructed as part of a private development plan known as the Five Bridges. Due to the current economic climate and unknown timeline and fate of the Five Bridges project, modifications were necessary.

Based on these findings and in an effort to move forward with the irrigation water system, staff recommended the redesign of a portion of the pipeline that was once proposed to be within the Five Bridges project limits, as shown in Exhibit "A".

The new alignment will place the pipeline on Sunset Avenue (south of Lincoln Street) and Westward Avenue (west of Sunset Avenue) and tie into an existing irrigation line at Sun Lakes Boulevard and Highland Home Road. The original irrigation pipeline alignment design by CM Engineering Associates, Inc. from Sunset Avenue to the Wastewater Treatment Plant will remain the preferred alignment thereby utilizing the existing design drawings. In addition to these modifications, staff requests the design approval for Phase II and Phase III for future construction since it would be more efficient and cost effective to perform utility research, field survey and plan modifications all at once.

Consequently, staff respectfully recommends that the Banning Utility Authority approve the award of the Professional Services Agreement to Albert A. Webb Associates (Webb) of Riverside, California for the Modification of the Recycled Waterline Design. Webb is a firm that has consistently provided civil engineering and planning services to public and private sector clients throughout Southern California since 1945 and offers a broad range of services including development planning and design entitlement, funding, permitting, construction management, and ongoing maintenance and operation.

On March 9, 2010 the City Council adopted Resolution No. 2010-16, "Awarding a Professional Services Agreement to Albert A. Webb Associates for the Modification of the Recycled Waterline Design" with a total design budget approved in the amount of \$168,190.00 which included a 10% contingency.

**FISCAL DATA:** An appropriation in the amount of \$168,190.00 from the Banning Utility Authority Wastewater Project Fund to Account No. 683-8000-454.90-78 (Capital Expenditures/Planning/Design) is necessary in order to fund the proposed Professional Services Agreement for the Modification of the Recycled Waterline Design. The estimated total project cost including design, construction, construction management and so forth, is projected to be approximately \$10 million. The following sources of funding will be utilized to cover future project costs: \$3 million Water Irrigation Facilities Fund; \$2.5 million BUA bond proceeds.

**RECOMMENDED BY:**



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Duane Burk  
Director of Public Works

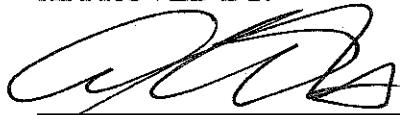
**REVIEWED BY:**



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Kirby Warner  
Interim Finance Director

**APPROVED BY:**



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Andy Takata  
City Manager

**RESOLUTION NO. 2010-04 UA**

**RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AWARD A PROFESSIONAL SERVICES AGREEMENT TO ALBERT A. WEBB ASSOCIATES FOR THE MODIFICATION OF THE RECYCLED WATERLINE DESIGN**

**WHEREAS**, in July of 1991, CM Engineering Associates, Inc. completed the Irrigation Water Feasibility Study that evaluated the feasibility of constructing an irrigation water system that would utilize the City's existing Well R-1 and treated wastewater from the City's Wastewater Treatment Plant; and

**WHEREAS**, the study concluded that an irrigation water pipeline along Lincoln Street could deliver recycled water to the Sun Lake golf courses, Interstate 10 Freeway landscaping, municipal parks and other industrial/commercial area; and

**WHEREAS**, it was also determined that the construction of a recycled waterline would free up 1,500,000 gallons (4.6 acft) of potable water per day that is currently being utilized to irrigate Sun Lakes Golf Courses; and

**WHEREAS**, plans for Phase I of the Irrigation Water Supply System were prepared by CM Engineering Associates, Inc. in 1993; and

**WHEREAS**, in 2006, the City obtained Carollo Engineers, Inc. to develop a Recycled Water Master Plan and based on that plan staff recommends modifying the original 1991 CM Engineering Associates, Inc. plans to represent a design recommended by Carollo Engineers, Inc.; and

**WHEREAS**, initially the pipeline was to be constructed within the right-of-way of a proposed street that was to be constructed as part of a private development plan known as the Five Bridges; and

**WHEREAS**, due to the current economic climate and unknown timeline and fate of the Five Bridges, project modifications were necessary and in order to move forward with the irrigation water system staff recommends the redesign of the portion of the pipeline that was once proposed to be within the Five Bridges project limits, as shown in Exhibit "A"; and

**WHEREAS**, the new alignment will place the pipeline on Sunset Avenue (south of Lincoln Street) and Westward Avenue (west of Sunset Avenue), the original design of constructing a portion of the pipeline on Lincoln Street east of Sunset Avenue to the Wastewater Treatment Plant will remain the same, thereby utilizing the existing design drawings; and

**WHEREAS**, in addition to these modifications, staff requests the design of Phase II and Phase III for future construction since it would be more efficient and cost effective to perform utility research, field survey and plan modifications all at once;

**WHEREAS**, staff respectfully recommends that the Banning Utility Authority approve the award of the Professional Services Agreement to Albert A. Webb Associates (Webb) of Riverside, California for the Modification of the Recycled Waterline Design;

**WHEREAS**, Webb is a firm that has consistently provided civil engineering and planning services to public and private sector clients throughout Southern California since 1945 and offers a broad range of services including development planning and design entitlement, funding, permitting, construction management, and ongoing maintenance and operation; and

**WHEREAS**, on March 9, 2010 the City Council adopted Resolution No. 2010-16, "Awarding a Professional Services Agreement to Albert A. Webb Associates for the Modification of the Recycled Waterline Design" with a total design budget approved in the amount of \$168,190.00 which included a 10% contingency; and

**WHEREAS**, modification of the existing plans is a significant costs savings in comparison to a complete set of new plans; and

**WHEREAS**, an appropriation in the amount of \$168,190.00 from the Banning Utility Authority Wastewater Fund to Account No. 683-8000-454.90-78 (Capital Expenditures/Planning/Design) is necessary in order to fund the proposed Professional Services Agreement for the Modification of the Recycled Waterline Design.

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

**Section I.** The Banning Utility Authority approves the award of the Professional Services Agreement to Albert A. Webb Associates (Webb) of Riverside, California for the Modification of the Recycled Waterline Design in an amount "Not to Exceed" \$152,900.00.

**Section II.** The Director of Finance is authorized to make necessary adjustments and appropriations in the amount of \$168,190.00 including a 10% contingency from the Banning Utility Authority Wastewater Project Fund to Account No. 683-8000-454.90-78 (Capital Expenditures/ Planning/Design).

**Section III.** The City Manger is authorized to execute the contract agreement with Albert A. Webb Associates of Riverside, California. This authorization will be rescinded if the contract agreement is not executed by the parties within sixty (60) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 8th day of June, 2010.

---

Robert E. Botts, Chairman  
Banning Utility Authority

**ATTEST:**

---

Marie A. Calderon, Secretary

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

---

David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-04 UA was adopted by the Banning Utility Authority of the City of Banning at its joint meeting thereof held on the 8th day of June, 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, Secretary  
Banning Utility Authority

## **Exhibit “A”**

Revised Irrigation Water Supply Pipeline Alignment

# City of Banning – Irrigation Water Supply Pipeline Project, Section A of Phase 1

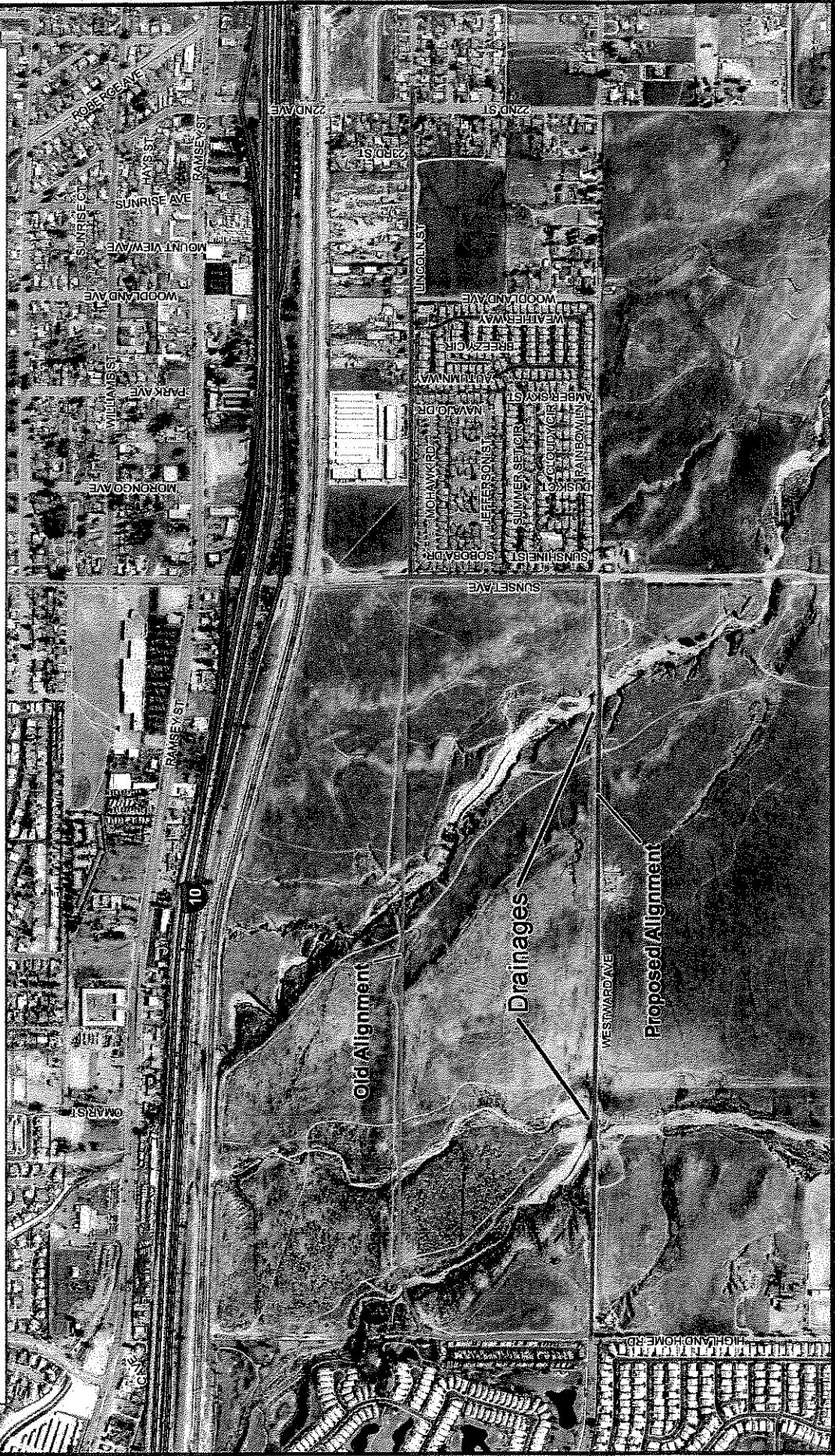
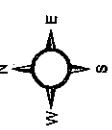


Figure 1  
Project Location  
City of Banning



## CITY COUNCIL AGENDA

Date: June 8, 2010

TO: Honorable Mayor and City Council

FROM: Fred Mason, Electric Utility Director

**SUBJECT: Resolution 2010-41 Authorizing Amendments to the Indenture and the Installment Sale Agreement, Each Dated as of June 1, 2007, Executed in Connection With the Issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and Authorizing and Directing Certain Actions With Respect Thereto**

**RECOMMENDATION:** The City Council approve Resolution 2010-41 Authorizing Amendments to the Indenture and the Installment Sale Agreement, each dated as of June 1, 2007, executed in connection with the issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and authorizing and directing certain actions with respect thereto, attached herewith as Exhibit "A."

**BACKGROUND:** A significant slowdown in the economy, since the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 ("Bonds") were issued in June 2007, impacted the required Electric Utility capital improvements needed to support future development and maintain the reliability of the Banning Electric Utility's ("Utility") distribution system. The Bonds were issued pursuant to the Indenture of Trust, dated as of June 1, 2007 (the "Indenture"), by and among the City of Banning Financing Authority (the "Authority"), the City of Banning (the "City") and U.S. Bank National Association, as trustee (the "Trustee"); and in connection with the issuance of the Bonds, the City and the Authority entered into the Installment Sale Agreement, dated as of June 1, 2007 (the "Agreement")

Resolution 2010-27 was adopted by the City Council on April 27, 2010 to amend the list of capital projects to be completed with proceeds from the Bonds (the "Project List"). The amendment to the Project List has resulted in excess monies in the Acquisition and Construction Fund established under the Indenture. The Indenture requires that excess amounts in the Acquisition and Construction Fund be deposited in the Bond Service Fund. However, the Bonds are not subject to optional redemption until June 1, 2017. In connection with the adoption and execution of Resolution 2010-27, the City Council was informed that further action would be needed to use the excess amounts in the Acquisition and Construction Fund to purchase Outstanding Bonds.

Attached hereto as Exhibit "B" and Exhibit "C" are forms of Amendments to the Indenture and the Agreement, respectively, governing the disposition of amounts in the Acquisition and Construction Fund. The amendments will allow the Authority to use excess monies in the Acquisition and Construction Fund to purchase Outstanding Bonds for the account of the City or the Authority (the "Open Market Purchased Bonds"). The Open Market Purchased Bonds will be presented to the Trustee for cancellation.

Staff is recommending that the City Council approve Resolution 2010-41.

**RECOMMENDED BY:**

  
Fred Mason

Electric Utility Director

**APPROVED BY:**

  
Andrew J. Takata

City Manager

**REVIEWED BY:**

  
Kirby Warner

Interim Finance Director

**RESOLUTION NO. 2010-41**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING AMENDMENTS TO THE INDENTURE AND THE INSTALLMENT  
SALE AGREEMENT, EACH DATED AS OF JUNE 1, 2007, EXECUTED IN  
CONNECTION WITH THE ISSUANCE OF THE CITY OF BANNING FINANCING  
AUTHORITY REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2007 AND  
AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

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

**WHEREAS**, the Banning City Council (the "Council") adopted Resolution 2007-57 on May 29, 2007, authorizing the City of Banning Financing Authority (the "Authority") to issue the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 (the "Bonds") to finance capital improvements needed to support future development and maintain the reliability of the Utility's distribution system; and

**WHEREAS**, the Bonds were issued pursuant to the Indenture of Trust, dated as of June 1, 2007 (the "Indenture"), by and among the Authority, the City and U.S. Bank National Association, as trustee (the "Trustee"); and in connection with the issuance of the Bonds, the City and the Authority entered into the Installment Sale Agreement, dated as of June 1, 2007 (the "Agreement"); and

**WHEREAS**, the Council adopted Resolution 2010-27 on April 27, 2010, amending the list of capital improvements to be completed with proceeds from the Bonds (the "Project List"); and

**WHEREAS**, the amendment to the Project List has resulted in excess monies in the Acquisition and Construction Fund established under the Indenture;

**WHEREAS**, attached hereto as Exhibit "A" and Exhibit "B," are forms of Amendments to the Indenture and the Agreement, respectively, governing the disposition of amounts in the Acquisition and Construction Fund, which will allow the Authority to use excess monies in the Acquisition and Construction Fund to purchase Outstanding Bonds for the account of the City or the Authority (the "Open Market Purchase");

**WHEREAS**, attached hereto as Exhibit "C" is the form of Notice to Owners Regarding Open Market Purchase;

**WHEREAS**, the Council hereby approves the appointment of Kinsell, Newcomb & De Dios, Inc., as special advisor to the City to find and solicit bids in connection with the Open Market Purchase; and approves the appointment of Fulbright & Jaworski L.L.P., Bond Counsel for the Bonds, to serve as special counsel and prepare all required legal documents in connection with the Open Market Purchase.

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

Section 1. The foregoing recitals are true and correct and the Council hereby so finds and determines.

Section 2. The form, terms and provisions of Amendment No. 1 to Indenture of Trust are hereby approved and the Mayor, the City Manager, the Interim Finance Director or any member of the City (each, a "Responsible Officer") is hereby authorized and directed on behalf of the City and in its name to execute and deliver to the Trustee and the Authority the Amendment No. 1 to Indenture of Trust in substantially the form presented to and considered at this meeting, with such changes therein, however, as may be approved by a Responsible Officer, such approval to be conclusively evidenced by his or her execution thereof.

Section 3. The form, terms and provisions of Amendment No. 1 to Installment Sale Agreement are hereby approved and a Responsible Officer is hereby authorized and directed on behalf of the City and in its name to execute and deliver to the Authority the Amendment No. 1 to Installment Sale Agreement in substantially the form presented to and considered at this meeting, with such changes therein, however, as may be approved by a Responsible Officer, such approval to be conclusively evidenced by his or her execution thereof.

Section 4. The form, terms and provisions of the Notice to Owners Regarding Open Market Purchase are hereby approved and the Interim Finance Director is hereby authorized and directed on behalf of the City and in its name to execute and deliver to the Owners the Notice to Owners Regarding Open Market Purchase in substantially the form presented to and considered at this meeting, with such changes therein, however, as may be approved by a Responsible Officer, such approval to be conclusively evidenced by his or her execution thereof.

Section 5. The Board hereby approves Kinsell, Newcomb & De Dios, Inc., Carlsbad, California, as purchase advisor to find and solicit bids in connection with the Open Market Purchase; and the law firm of Fulbright & Jaworski L.L.P., Los Angeles, California as special counsel, to prepare documents and assist the City in connection with the Open Market Purchase; each in accordance with separate letter agreements on file with the City.

Section 6. The Responsible Officers are, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the notices, agreements and documents referenced in this Resolution.

Section 7. All actions heretofore taken by the officers and employees of the City with respect to any of the agreements or documents referenced in this Resolution, are hereby approved, confirmed and ratified.

**PASSED, APPROVED, AND ADOPTED** this 8th day of June 2010.

---

Robert E. Botts, Mayor  
City of Banning

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-41 was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 8th day of June 2010 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

## **CITY OF BANNING FINANCING AUTHORITY AGENDA**

Date: June 8, 2010

TO: Commission of the City of Banning Financing Authority

FROM: Fred Mason, Electric Utility Director

**SUBJECT: Resolution 2010-01FA Authorizing Amendments to the Indenture and the Installment Sale Agreement, Each Dated as of June 1, 2007, Executed in Connection With the Issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and Authorizing and Directing Certain Actions With Respect Thereto**

**RECOMMENDATION:** The Commission of the City of Banning Financing Authority (the “Commission”) approve Resolution 2010-01FA Authorizing Amendments to the Indenture and the Installment Sale Agreement, each dated as of June 1, 2007, executed in connection with the issuance of the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 and authorizing and directing certain actions with respect thereto, attached herewith as Exhibit “A.”

**BACKGROUND:** A significant slowdown in the economy, since the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 (“Bonds”) were issued in June 2007, impacted the required Electric Utility capital improvements needed to support future development and maintain the reliability of the Banning Electric Utility’s (“Utility”) distribution system. The Bonds were issued pursuant to the Indenture of Trust, dated as of June 1, 2007 (the “Indenture”), by and among the City of Banning Financing Authority (the “Authority”), the City of Banning (the “City”) and U.S. Bank National Association, as trustee (the “Trustee”); and in connection with the issuance of the Bonds, the City and the Authority entered into the Installment Sale Agreement, dated as of June 1, 2007 (the “Agreement”).

Resolution 2010-27 was adopted by the City of Banning (the “City”) City Council on April 27, 2010 to amend the list of capital projects to be completed with proceeds from the Bonds (the “Project List”). The amendment to the Project List has resulted in excess monies in the Acquisition and Construction Fund established under the Indenture. The Indenture requires that excess amounts in the Acquisition and Construction Fund be deposited in the Bond Service Fund. However, the Bonds are not subject to optional redemption until June 1, 2017.

Attached hereto as Exhibit “B” and Exhibit “C” are forms of Amendments to the Indenture and the Agreement, respectively, governing the disposition of amounts in the Acquisition and Construction Fund. The amendments will allow the Authority to use excess monies in the Acquisition and Construction Fund to purchase Outstanding Bonds for the account of the City or the Authority (the “Open Market Purchased Bonds”). The Open Market Purchased Bonds will be presented to the Trustee for cancellation.

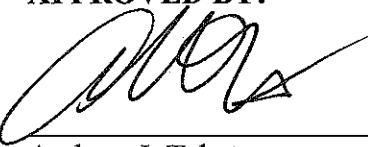
Staff is recommending that the Commission approve Resolution 2010-01FA.

**RECOMMENDED BY:**

  
Fred Mason

Electric Utility Director

**APPROVED BY:**

  
Andrew J. Takata

Executive Director

**REVIEWED BY:**

  
Kirby Warner

Interim Finance Director

## **RESOLUTION NO. 2010-01FA**

### **A RESOLUTION OF THE COMMISSION OF THE CITY OF BANNING FINANCING AUTHORITY AUTHORIZING AMENDMENTS TO THE INDENTURE AND THE INSTALLMENT SALE AGREEMENT, EACH DATED AS OF JUNE 1, 2007, EXECUTED IN CONNECTION WITH THE ISSUANCE OF THE CITY OF BANNING FINANCING AUTHORITY REVENUE BONDS (ELECTRIC SYSTEM PROJECT) SERIES 2007 AND AUTHORIZING AND DIRECTING CERTAIN ACTIONS WITH RESPECT THERETO**

**WHEREAS**, the City of Banning Financing Authority (the "Authority") is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) and the powers of the Authority include the power to issue bonds for any of its corporate purposes; and

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

**WHEREAS**, the Banning City Council (the "Council") adopted Resolution 2007-57 on May 29, 2007, authorizing the Authority to issue the City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007 (the "Bonds") to finance capital improvements needed to support future development and maintain the reliability of the Utility's distribution system; and

**WHEREAS**, the Bonds were issued pursuant to the Indenture of Trust, dated as of June 1, 2007 (the "Indenture"), by and among the Authority, the City and U.S. Bank National Association, as trustee (the "Trustee"); and in connection with the issuance of the Bonds, the City and the Authority entered into the Installment Sale Agreement, dated as of June 1, 2007 (the "Agreement"); and

**WHEREAS**, the Council adopted Resolution 2010-27 on April 27, 2010, amending the list of capital improvements to be completed with proceeds from the Bonds (the "Project List"); and

**WHEREAS**, the amendment to the Project List has resulted in excess monies in the Acquisition and Construction Fund established under the Indenture;

**WHEREAS**, attached hereto as Exhibit "A" and Exhibit "B," are forms of Amendments to the Indenture and the Agreement, respectively, governing the disposition of amounts in the Acquisition and Construction Fund, which will allow the Authority to use excess monies in the Acquisition and Construction Fund to purchase Outstanding Bonds for the account of the City or the Authority (the "Open Market Purchase");

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

Section 1. The foregoing recitals are true and correct and the Commission hereby so finds and determines.

Section 2. The form, terms and provisions of Amendment No. 1 to Indenture of Trust are hereby approved and the President, the Executive Director, the Treasurer or any member of the Commission (each, a "Responsible Officer") is hereby authorized and directed on behalf of the Authority and in its name to execute and deliver to the Trustee and the City the Amendment No. 1 to Indenture of Trust in substantially the form presented to and considered at this meeting, with such changes therein, however, as may be approved by a Responsible Officer, such approval to be conclusively evidenced by his or her execution thereof.

Section 3. The form, terms and provisions of Amendment No. 1 to Installment Sale Agreement are hereby approved and a Responsible Officer is hereby authorized and directed on behalf of the Authority and in its name to execute and deliver to the City the Amendment No. 1 to Installment Sale Agreement in substantially the form presented to and considered at this meeting, with such changes therein, however, as may be approved by a Responsible Officer, such approval to be conclusively evidenced by his or her execution thereof.

Section 4. The Responsible Officers are, and each of them hereby is, authorized and directed to execute and deliver any and all documents and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the transactions contemplated by the notices, agreements and documents referenced in this Resolution.

Section 5. All actions heretofore taken by the officers, members of the Commission and employees of the Authority with respect to any of the agreements or documents referenced in this Resolution, are hereby approved, confirmed and ratified.

**PASSED, APPROVED, AND ADOPTED** this 8th day of June 2010.

---

Robert E. Botts, President  
City of Banning Financing Authority

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, Secretary of the City of Banning Financing Authority, do hereby certify that the foregoing Resolution No. 2010-01FA was duly adopted by the Commission of the City of Banning Financing Authority at a Regular Meeting thereof held on the 8th day of June 2010 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, Secretary  
City of Banning Financing Authority

41

**City of Banning Financing Authority**  
**Revenue Bonds (Electric System Project) Series 2007**

<u>Maturity</u> <u>(June 1)</u>	<u>Principal Amount</u>	<u>CUSIP</u>
2009	\$ 725,000.00	AA6
2010	755,000.00	AB4
2011	785,000.00	AC2
2012	815,000.00	AD0
2013	850,000.00	AE8
2014	880,000.00	AF5
2015	935,000.00	AG3
2016	970,000.00	AH1
2017	1,020,000.00	AJ7
2018	1,070,000.00	AK4
2019	1,125,000.00	AL2
2020	1,180,000.00	AM0
2021	1,240,000.00	AN8
2022	1,305,000.00	AP3
2025	4,315,000.00	AT5
2027	3,240,000.00	AQ1
2028	1,730,000.00	AU2
2029	1,815,000.00	AV0
2032	6,010,000.00	AR9
2038	15,025,000.00	AS7

The City of Banning (the "City") is considering whether to purchase from cash on hand, by direct negotiation with one or more of the current owners, as determined by the City, a portion of the Bonds captioned above. If the Bonds cannot be purchased at a price that is acceptable to the City, the City reserves the right, but based on current market conditions does not currently intend, to legally defease all or a portion of such Bonds in accordance with the terms of the Indenture of Trust, dated as of June 1, 2007, among the City of Banning Financing Authority, the City, and U.S. Bank National Association as Trustee.

Date: June 8, 2010

By: Jef Wain  
 Interim Finance Director

**INSTALLMENT SALE AGREEMENT**

by and between

**CITY OF BANNING FINANCING AUTHORITY,  
as Seller**

and the

**CITY OF BANNING,  
as Purchaser**

Dated as of June 1, 2007

Relating to:

\$45,790,000  
City of Banning Financing Authority  
Revenue Bonds (Electric System Project) Series 2007

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EXHIBIT A – Schedule of Installment Payments

EXHIBIT B – Description of the Improvements

## INSTALLMENT SALE AGREEMENT

**THIS INSTALLMENT SALE AGREEMENT**, dated as of June 1, 2007, by and between the **CITY OF BANNING FINANCING AUTHORITY**, a joint powers authority duly organized and existing under the laws of the State of California (the "Authority"), and the **CITY OF BANNING**, a general law city duly organized and existing under the laws of the State of California (the "City"),

### **WITNESSETH:**

**WHEREAS**, the City owns and operates that certain electric system referred to herein as the "Electric System"; and

**WHEREAS**, the Authority is a Joint Powers Authority (a public body, corporate and politic) duly created, established and authorized to transact business and exercise its powers, all under and pursuant to the Joint Exercise of Powers Act (Articles 1 through 4 of Chapter 5, Division 7, Title 1 of the California Government Code) (the "Act") and the powers of such Authority include the power to issue bonds for any of its corporate purposes; and

**WHEREAS**, the City desires to finance certain improvements (the "Improvements") to the Electric System; and

**WHEREAS**, the Authority has approved the issuance of its Revenue Bonds (Electric System Project) Series 2007 (the "Bonds") to assist the City in providing funds to finance the Improvements; and

**WHEREAS**, the City has determined that it is necessary and desirable to enter into this Installment Sale Agreement pursuant to which the City is to purchase the Improvements and to make Installment Payments equal in time and amount to the debt service on the Bonds allocable to the Installment Sale Agreement; and

**WHEREAS**, the City has approved the purchase of the Improvements from the Authority as provided in this Agreement; and

**WHEREAS**, the Authority and the City have duly authorized the execution and delivery of this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby covenant, agree and bind themselves as follows:

### **ARTICLE I**

#### **DEFINITIONS**

**SECTION 1.1 Definitions.** Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Agreement shall have the respective meanings specified in the Indenture. In addition, the following terms defined in this Section 1.1 shall, for all purposes of this Agreement, have the respective meanings herein specified.

**"Acquisition and Construction"** means, with respect to any of the Improvements, the acquisition, construction, improvement, equipping, renovation, remodeling or reconstruction thereof.

"Acquisition and Construction Costs" means, with respect to any of the Improvements, all costs of the Acquisition and Construction thereof which are paid from moneys on deposit in the Acquisition and Construction Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the Acquisition and Construction of the Improvements;
- (b) obligations incurred for labor and materials in connection with the Acquisition and Construction of the Improvements;
- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the Acquisition and Construction of the Improvements;
- (d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper Acquisition and Construction of the Improvements;
- (e) any sums required to reimburse the Authority or the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Acquisition and Construction of the Improvements;
- (f) all financing costs incurred in connection with the Acquisition and Construction of the Improvements, including but not limited to Costs of Issuance and other costs incurred in connection with this Agreement and the financing of the Improvements; and
- (g) the interest components of the Installment Payments during the period of Acquisition and Construction of the Improvements, to the extent not paid from the proceeds of the Bonds deposited in the Interest Account pursuant to the Indenture.

"Additional Payments" means the amounts payable by the City pursuant to Section 4.10.

"Additional Revenues" means, with respect to the issuance of any Parity Obligations, any or all of the following amounts:

- (i) An allowance for Net Revenues from any additions or improvements to or extensions of the Electric System to be financed from the proceeds of such Parity Obligations or from any other source, all in an amount equal to seventy-five percent (75%) of the estimated additional Net Revenues to be derived from such additions, improvements and extensions for the first twelve (12) month period in which each addition, improvement or extension is respectively to be in operation, all as shown by the certificate or opinion of a qualified independent engineer employed by the City.
- (ii) An allowance for Net Revenues arising from any increase in the charges made for service from the Electric System which has become effective prior to the incurring of such Parity Obligations, in an amount equal to the total amount by which the Net Revenues would have been increased if such increase in charges had been in effect during the whole of the most recent completed Fiscal Year or during any more

recent twelve (12) month period selected by the City, all as shown by the certificate or opinion of an Independent Accountant.

“Agreement” means this Installment Sale Agreement, together with any duly authorized and executed amendments hereto.

“Electric System” means the entire electric system of the City, including all facilities, properties and improvements at any time owned, controlled or operated by the City for the provision of electricity, and any necessary lands, rights, entitlements and other property useful in connection therewith, together with all extensions thereof and improvements thereto at any time acquired, constructed or installed by the City, including the Improvements.

“Electric Utility Fund” means the fund by that name established and held by the City hereunder.

“Event of Default” means any of the events described in Section 8.1.

“Gross Revenues” means all income, rents, rates, fees, charges and other moneys derived from the ownership or operation of the Electric System, including, without limiting the generality of the foregoing, (1) all income, rents, rates, fees, charges, business interruption insurance proceeds or other moneys derived by the City from the sale, furnishing and supplying of electric or other services, facilities, and commodities sold, furnished or supplied through the facilities of or in the conduct or operation of the business of the Electric System (other than the non-by-passable usage based charge supporting the City’s public benefit program), plus (2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges, or other moneys, including City reserves and the Reserve Fund established under Section 5.4 of the Indenture, but excluding in all cases customer deposits or any other deposits or advances subject to refund until such deposits or advances have become the property of the City and excluding any proceeds of taxes required by law to be used by the City to pay bonds hereafter issued.

“Improvements” means the capital improvements to the Electric System financed with proceeds of the Bonds as described in Exhibit B attached hereto, as such description may be amended by the City from time to time pursuant to and in accordance with Section 3.2 hereof.

“Indenture” means the Indenture of Trust relating to the Bonds.

“Installment Payment Date” means the fifteenth (15th) day of each May and November during the Term of this Agreement, commencing November 15, 2007.

“Installment Payments” means the amounts payable by the City pursuant to Section 4.4, including any prepayments thereof pursuant to Article IX hereof.

“Maximum Annual Debt Service” means, as of the date of any calculation and with respect to the Installment Payments or any Parity Obligations, as the case may be, the maximum sum obtained for the current or any future Bond Year during the Term of this Agreement by totaling the following amounts for such Bond Year:

(a) the aggregate amount of the Installment Payments coming due and payable in such Bond Year pursuant hereto, except to the extent payable from any security deposit pursuant to Section 9.1;

(b) the principal amount of all outstanding Parity Obligations, if any, coming due and payable by their terms in such Bond Year; and

(c) the amount of interest which would be due during such Bond Year on the aggregate principal amount of all outstanding Parity Obligations, if any, which would be outstanding in such Bond Year if such Parity Obligations are retired as scheduled; provided, however, that with respect to any Parity Obligations which bear interest at a variable rate, such interest shall be calculated at an assumed rate equal to the average rate of interest per annum for each of the five previous whole calendar years as shown by the J.J. Kinney Index (or, in the event and to the extent such index is not maintained for all or any portion of such period, any similar index of variable rate interest for tax-exempt obligations as may be selected by the City in its sole discretion).

“Net Revenues” means, for any period, an amount equal to all of the Gross Revenues received during such period minus the amount required to pay all Operation and Maintenance Costs becoming payable during such period.

“Operation and Maintenance Costs” means the reasonable and necessary costs and expenses paid by the City for maintaining and operating the Electric System, including but not limited to (a) the cost of utilities, including electricity and other forms of energy supplied to the Electric System, (b) the reasonable expenses of management and repair and other costs and expenses necessary to maintain and preserve the Electric System in good repair and working order and (c) the reasonable administrative costs of the City attributable to the operation and maintenance of the Electric System, including insurance and other costs described in Article V hereof, but in all cases excluding (i) debt service payable on obligations incurred by the City with respect to the Electric System, including but not limited to the Installment Payments and debt service payments on any Parity Obligations, (ii) depreciation, replacement and obsolescence charges or reserves therefor, (iii) amortization of intangibles or other bookkeeping entries of a similar nature, (iv) City’s public benefit program expenditures, and (v) periodic administrative transfers to the City’s general fund.

“Parity Obligations” means any leases, loan agreements, installment sale agreements, bonds, notes or other obligations of the City payable from and secured by a pledge of and lien upon any of the Net Revenues on a parity with the Installment Payments, entered into or issued pursuant to and in accordance with Section 4.9 hereof.

“Purchase Price” means the amount to be paid by the City hereunder as the purchase price of the Improvements, being equal to the aggregate principal amount of the Bonds.

“Term of this Agreement” means the time during which this Agreement is in effect, as provided in Section 4.2 hereof.

## ARTICLE II

### COVENANTS AND REPRESENTATIONS

**SECTION 2.1 Covenants and Representations of the City.** The City makes the following covenants and representations to the Authority that as of the Closing Date:

(a) The City is a general law city duly organized and validly existing under the laws of the State, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions on its part contemplated hereby, by proper action has duly authorized the execution and delivery of this Agreement.

(b) The representatives of the City executing this Agreement are fully authorized to execute the same.

(c) This Agreement has been duly authorized, executed and delivered by the City, and constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms.

(d) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its facilities are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement or the financial condition, assets, facilities or operations of the Electric System.

(e) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement or the consummation of any transaction herein and therein contemplated, except as have been obtained or made and as are in full force and effect.

(f) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or threatened against or affecting the City or the Electric System which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Agreement or upon the financial condition or operation of the Electric System, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, or the financial condition or operations of the Electric System.

(g) The City has heretofore established the Electric Utility Fund into which the City deposits and will continue to deposit all Gross Revenues, and which the City will maintain throughout the Term of this Agreement.

(h) There are no outstanding bonds, notes, loans, leases, installment sale agreements or other obligations which have any security interest in the Net Revenues, which security interest or claim is superior to or on a parity with the Installment Payments.

(i) The City has determined that it is necessary and proper for City uses and purposes that the City acquire the Electric System in the manner provided for in this Agreement, in order to provide essential services and facilities to persons residing in the City.

**SECTION 2.2 Covenants and Representations of the Authority.** The Authority makes the following covenants and representations as the basis for its undertakings herein contained:

(a) The Authority is a joint powers authority, duly organized and existing under the laws of the State. The Authority has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. By proper action of its governing body, the Authority has been duly authorized to execute, deliver and duly perform this Agreement and the Indenture.

(b) To finance the Authority's purchase of the Electric System, the Reserve Fund deposit required by Section 3.2(b) of the Indenture and the Costs of Issuance, the Authority will issue its Bonds, which will mature, bear interest and be subject to redemption as set forth in the Indenture.

(c) The Bonds will be issued under and secured by the Indenture, and pursuant thereto, certain of the Authority's interests in this Agreement have been assigned to the Trustee as security for payment of the principal of, premium, if any, and interest on the Bonds.

(d) The Authority is not in default under any of the provisions of the laws of the State, which default would affect its existence or its powers referred to in subsection (a) of this Section 2.2.

### **ARTICLE III**

#### **ISSUANCE OF BONDS; ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS**

**SECTION 3.1 The Bonds.** The Authority has authorized the issuance of the Bonds pursuant to the Indenture in the aggregate principal amount of Forty Five Million Seven Hundred Ninety Thousand Dollars (\$45,790,000). The Authority and the City agree that the proceeds of sale of the Bonds shall be paid to the Trustee on the Closing Date for deposit pursuant to the terms and conditions of the Indenture. The City hereby approves the Indenture, the assignment to the Trustee of the rights of the Authority assigned under and pursuant to the Indenture, and the issuance of the Bonds by the Authority under and pursuant to the Indenture.

**SECTION 3.2 Documentation Required for the Improvements.** Before any payment is made for the Improvements or any component thereof to be constructed by the City from amounts on deposit in the Acquisition and Construction Fund, the City shall have made available to the Authority detailed plans and specifications relating thereto. The City may from time to time make amendments to such plans and specifications, and may thereby change or modify the description of such Improvements or component thereof.

**SECTION 3.3 Acquisition and Construction of the Improvements.** The Authority hereby agrees with due diligence to supervise and provide for, or cause to be supervised and provided, for the Acquisition and Construction of the Improvements in accordance with plans and specifications, construction contracts and other documents relating thereto and approved by the City pursuant to all applicable requirements of law. Direct payment of the Acquisition and Construction Costs shall be made from amounts on deposit in the Acquisition and Construction Fund, pursuant to Section 3.5 of the Indenture. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition and construction of public works by the City. The Authority expects that the Acquisition and Construction of the Improvements will be completed on or before three years from the date of issuance of the Bonds; provided, however, that the failure to complete the Acquisition and Construction of the Improvements by the estimated completion date thereof shall not constitute an Event of Default hereunder or a grounds for

termination hereof, nor shall such failure result in the diminution, abatement or extinguishment of the obligations of the City hereunder to pay the Installment Payments.

The City shall have the right from time to time in its sole discretion to amend the description of the Improvements to be financed and improved hereunder. In order to exercise such right, the City shall file with the Authority an amended Exhibit B hereto.

Upon the completion of the Acquisition and Construction of the Improvements, but in any event not later than thirty (30) days following such completion, the City Representative shall execute and deliver to the Authority and the Trustee a Written Certificate which (a) states that the Acquisition and Construction of such Improvements have been substantially completed, (b) identifies the total Acquisition and Construction Costs thereof, and (c) identifies (i) the amounts, if any, to remain on deposit in the Acquisition and Construction Fund for payment of Acquisition and Construction Costs thereafter intended to be requisitioned by the Authority and (ii) the amounts to be transferred to the Bond Service Fund.

**SECTION 3.4 Grant of Easements.** The City hereby grants to the Authority all necessary easements, rights of way and rights of access in and to all real property or interests therein now or hereafter acquired and owned by the City, as may be necessary or convenient to enable the Authority to acquire, construct and install the Improvements thereon or thereabouts. The City covenants that it will execute, deliver and record any and all additional documents as may be required to be executed, delivered and recorded to establish such easements, rights of way and rights of access.

**SECTION 3.5 Appointment of City as Agent of Authority.** The Authority hereby appoints the City as its agent to carry out all phases of the Acquisition and Construction of the Improvements pursuant to and in accordance with the provisions hereof. The City hereby accepts such appointment and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the Acquisition and Construction of the Improvements. The Authority, or the City as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the Acquisition and Construction of the Improvements. All contracts for, and all work relating to, the Acquisition and Construction of the Improvements shall be subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the City.

## ARTICLE IV

### SALE OF IMPROVEMENTS; INSTALLMENT PAYMENTS

**SECTION 4.1 Sale.** In consideration for the Installment Payments and other consideration set forth in this Agreement, the Authority hereby agrees to sell, transfer and convey to the City all of the Authority's right title and interest in and to the Improvements, and the City hereby agrees to purchase the Improvements from the Authority, upon the terms and conditions set forth in this Agreement.

**SECTION 4.2 Term.** The Term of this Agreement shall commence on the Closing Date, and shall end on the date on which the City shall have paid all of the Installment Payments and all other amounts due and payable hereunder. The provisions of this Section 4.2 are subject in all respects to any other provisions of this Agreement relating to the termination hereof with respect to the Electric System or any portion thereof.

**SECTION 4.3 Title.** On the Closing Date, title to the Improvements shall be deemed conveyed to and vested in the City. The Authority and the City shall execute, deliver and cause to be recorded any and all documents necessary to convey such title to the City.

#### **SECTION 4.4 Installment Payments.**

(a) Obligation to Pay. The City agrees to pay to the Authority, its successors and assigns, but solely from the Net Revenues and other funds pledged hereunder, the Purchase Price, together with interest on the unpaid principal balance, payable in Installment Payments coming due and payable in the respective amounts and on the respective Installment Payment Dates specified in Exhibit A hereto. The Installment Payments shall be paid by the City to the Trustee, as assignee of the Authority pursuant to the Indenture, in the amounts and at the times as set forth in Section 4.5(b). The City shall receive a credit against any Installment Payment due hereunder to the extent of any monies on deposit in the Bond Service Fund on the applicable Installment Payment Date.

(b) Effect of Prepayment. In the event that the City prepays all remaining Installment Payments in full pursuant to Article IX, the City's obligations under this Agreement shall thereupon cease and terminate, including but not limited to the City's obligation to pay Installment Payments therefor under this Section 4.4; provided, however, that the City's obligations to compensate and indemnify the Trustee pursuant to Sections 4.10 and 6.3 shall survive such prepayment. In the event that the City prepays the Installment Payments in part but not in whole pursuant to Section 9.1, the principal component of each succeeding Installment Payment shall be reduced in inverse order of Installment Payment Date or pro rata among such dates, as determined by the City, and the interest component of each remaining Installment Payment shall be reduced by the aggregate corresponding amount of interest which would otherwise be payable on the Bonds thereby redeemed pursuant to Section 4.1 of the Indenture. In any event, the remaining Installment Payments shall equal in time and amount the remaining debt service on the Bonds.

(c) Rate on Overdue Payments. In the event the City should fail to make any of the payments required in this Section 4.4 and Section 4.10, the payment in default shall continue as an obligation of the City until the amount in default shall have been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment, at a rate of interest per annum equal to the rate borne by the Outstanding Bonds.

(d) Assignment. The City understands and agrees that all Installment Payments have been assigned by the Authority to the Trustee in trust, pursuant to the Indenture, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees, to pay to the Trustee at its Office, all amounts payable by the City pursuant to this Section 4.4 and all amounts payable by the City pursuant to Article IX.

#### **SECTION 4.5 Pledge and Application of Net Revenues.**

(a) Pledge of Net Revenues. All of the Net Revenues are hereby irrevocably pledged, charged and assigned to the punctual payment of the Installment Payments and any Parity Obligations, and except as otherwise provided herein the Net Revenues shall not be used for any other purpose so long as any of the Installment Payments remain unpaid. Such pledge, charge and assignment shall constitute a first lien on the Net Revenues and such other moneys for the payment of the Installment Payments and any Parity Obligations in accordance with the terms hereof.

(b) Deposits Into Funds; Transfers to Make Installment Payments. All of the Gross Revenues shall be deposited by the City immediately upon receipt in the Electric Utility Fund,

which fund is hereby established and held by the City. The City shall use funds in the Electric Utility Fund to pay Operation and Maintenance Costs as such payments become due and payable. The City covenants and agrees that all Net Revenues will be held by the City in the Electric Utility Fund in trust for the benefit of the Trustee (as assignee of the rights of the Authority hereunder) and the Bond Owners, and for the benefit of the owners of any Parity Obligations. On or before each Installment Payment Date, the City shall withdraw from the Electric Utility Fund, and transfer to the Trustee for deposit in the Revenue Fund, and to the trustee for any Parity Obligations, as applicable, an amount of Net Revenues which, together with the balance then on deposit in the Bond Service Fund (other than amounts resulting from the prepayment of the Installment Payments pursuant to Article IX and other than amounts required for payment of principal of or interest on any Bonds and Parity Obligations which have matured or been called for redemption but which have not been presented for payment), is equal to the aggregate amount of the Installment Payments coming due and payable on the next succeeding Interest Payment Date, together with any amounts required to restore the balance in the Reserve Fund to the Reserve Requirement. In support of the foregoing, the City shall set aside each month equal amounts necessary to make such transfers on or before each Installment Payment Date.

The City shall manage, conserve and apply the Gross Revenues on deposit in the Electric Utility Fund in such a manner that all deposits required to be made pursuant to this subsection (b) will be made at the times and in the amounts so required. Subject to the foregoing sentence, so long as no Event of Default shall have occurred and be continuing hereunder, the City may use and apply Net Revenues in the Electric Utility Fund for (i) the payment of Additional Payments, (ii) the payment of any subordinate obligations or any unsecured obligations, (iii) the acquisition and construction of extensions and betterments to the Electric System, (iv) the prepayment of any obligations of the City relating to the Electric System, (v) transfers from the Electric Utility Fund to the General Fund of the City for in-lieu fees and administrative costs, or (vi) any other lawful purposes of the Electric Utility Fund. All monies in the Electric Utility Fund may be invested by the City from time to time in any Authorized Investment.

**SECTION 4.6 Special Obligation of the City; Obligations Absolute.** The City's obligation to pay the Installment Payments, the Additional Payments and any other amounts coming due and payable hereunder shall be a special obligation of the City limited solely to the Net Revenues. Under no circumstances shall the City be required to advance moneys derived from any source of income other than the Net Revenues and other sources specifically identified herein for the payment of the Installment Payments and the Additional Payments, nor shall any other funds or property of the City be liable for the payment of the Installment Payments and the Additional Payments and any other amounts coming due and payable hereunder.

The obligations of the City to make the Installment Payments and the Additional Payments from the Net Revenues and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of setoff, counterclaim or recoupment arising out of any breach of the City, the Authority or the Trustee of any obligation to the City or otherwise with respect to the Electric System, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to the City by the Authority or the Trustee. Until such time as all of the Installment Payments, all of the Additional Payments and all other amounts coming due and payable hereunder shall have been fully paid or prepaid, the City (a) will not suspend or discontinue payment of any Installment Payments, Additional Payments or such other amounts, (b) will perform and observe all other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Electric System, failure to complete the Acquisition and Construction of any Improvements by the estimated Completion Date thereof, the taking by eminent domain of title to or temporary use of any

component of the Electric System, commercial frustration of purpose, any change in the tax or law other laws of the United States of America or the State or any political subdivision of either thereof or any failure of the Authority or the Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Indenture or this Agreement.

Nothing contained in this Section 4.6 shall be construed to release the Authority or the Trustee from the performance of any of the agreements on its part contained herein or in the Indenture, and in the event the Authority or the Trustee shall fail to perform any such agreements, the City may institute such action against the Authority or the Trustee as the City may deem necessary to compel performance so long as such action does not abrogate the obligations of the City contained in the preceding paragraph. The City may, however, at the City's own cost and expense and in the City's own name or in the name of the Authority prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect the City's rights hereunder, and in such event the Authority hereby agrees to cooperate fully with the City and to take such action necessary to effect the substitution of the City for the Authority in such action or proceeding if the City shall so request.

**SECTION 4.7 Rates and Charges.** The City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year, which are at least sufficient, after making allowances for contingencies and error in the estimates, to yield Gross Revenues sufficient to pay the following amounts in the following order of priority:

- (a) All Operation and Maintenance Costs estimated by the City to become due and payable in such Fiscal Year;
- (b) All Installment Payments and payments of principal of and interest on any Parity Obligations as they become due and payable during such Fiscal Year, without preference or priority, except to the extent Installment Payments or interest on any Parity Obligations are payable from proceeds of the Bonds or Parity Obligations deposited for such purpose;
- (c) All amounts, if any, required to restore the balance in the Reserve Fund and any reserve fund securing any Parity Obligations to the full amount of the Reserve Requirement and the reserve requirement with respect to any Parity Obligations; and
- (d) All payments required to meet any other obligations of the City which are charges, liens, encumbrances upon, or which are otherwise payable from, the Gross Revenues or the Net Revenues during such Fiscal Year.

In addition, the City shall fix, prescribe, revise and collect rates, fees and charges for the services and facilities furnished by the Electric System during each Fiscal Year which are sufficient to yield Net Revenues which are at least equal to one hundred twenty percent (120%) of the amount described in the preceding clause (b) for such Fiscal Year.

**SECTION 4.8 Superior and Subordinate Obligations.** The City shall not issue or incur any additional bonds or other obligations during the Term of this Agreement having any priority in payment of principal or interest out of the Net Revenues over the Installment Payments. Nothing herein is intended or shall be construed to limit or affect the ability of the City to issue or incur (a) Parity Obligations pursuant to Section 4.9, or (b) obligations which are either unsecured or which are secured by an interest in the Net Revenues which is junior and subordinate to the pledge of and lien upon the Net Revenues established hereunder.

**SECTION 4.9 Issuance of Parity Obligations.** In addition to the Installment Payments, the City may issue or incur other bonds, notes, loans, advances or indebtedness payable from Net Revenues on a parity with the Installment Payments to provide financing for the Electric System in such principal amount as shall be determined by the City. The City may issue or incur any such Parity Obligations subject to the following specific conditions which are hereby made conditions precedent to the issuance and delivery of such Parity Obligations:

- (a) No Event of Default shall have occurred and be continuing, and the City shall deliver a certificate to that effect to the Trustee;
- (b) The Net Revenues, calculated in accordance with accounting principles consistently applied, as shown by the books of the City for the latest Fiscal Year or as shown by the books of the City for any more recent twelve (12) month period selected by the City, in either case verified by a certificate or opinion of an Independent Accountant employed by the City, plus (at the option of the City) the Additional Revenues, shall be at least equal to one hundred twenty percent (120%) of the amount of Maximum Annual Debt Service;
- (c) There shall be established upon the issuance of such Parity Obligations a reserve fund for such Parity Obligations in an amount equal to the lesser of (i) the maximum amount of debt service required to be paid by the City with respect to such Parity Obligations during any Fiscal Year, or (ii) the maximum amount then permitted under the Tax Code; and
- (d) The trustee or fiscal agent for such Parity Obligations shall be the same entity performing the functions of Trustee under the Indenture.

The provisions of subsection (b) of this Section shall not apply to any Parity Obligations if all of the proceeds of which (other than proceeds applied to pay costs of issuing such Parity Obligations and to make a reserve fund deposit required pursuant to subsection (c) of this Section) shall be deposited in an irrevocable escrow for the purpose of paying the principal of and interest and premium (if any) on any Installment Payments or on any outstanding Parity Obligations.

**SECTION 4.10 Additional Payments.** In addition to the Installment Payments, the City shall pay when due all costs and expenses incurred by the Authority to comply with the provisions of the Indenture, including without limitation all Costs of Issuance (to the extent not paid from amounts on deposit in the Costs of Issuance Fund or the Acquisition and Construction Fund), and shall pay to the Trustee upon request therefor all compensation for fees due to the Trustee and all of its costs and expenses payable as a result of the performance of and compliance with its duties hereunder or under the Indenture or any related documents, together with all amounts required to indemnify the Trustee pursuant to Section 6.3 hereof or Section 6.13 of the Indenture, and all costs and expenses of attorneys, auditors, engineers and accountants. The rights of the Trustee and the obligations of the City under this Section 4.10 shall survive the termination of this Agreement.

## ARTICLE V

### MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

**SECTION 5.1 Maintenance, Utilities, Taxes and Assessments.** Throughout the Term of this Agreement, all improvement, repair and maintenance of the Electric System shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Electric System, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the

payment of the cost of the repair and replacement of the Electric System resulting from ordinary wear and tear.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting any Electric System or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the Term of this Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its opinion, by nonpayment of any such items, the interest of the Authority hereunder or under the Indenture will be materially adversely affected, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

**SECTION 5.2 Operation of Electric System.** The City covenants and agrees to operate the Electric System in an efficient and economical manner and to operate, maintain and preserve the Electric System in good repair and working order. The City covenants that, in order to fully preserve and protect the priority and security of the Bonds, the City shall pay from the Gross Revenues and discharge all lawful claims for labor, materials and supplies furnished for or in connection with the Electric System which, if unpaid, may become a lien or charge upon the Gross Revenues or the Net Revenues prior or superior to the lien granted hereunder, or which may otherwise impair the ability of the City to pay the Installment Payments in accordance herewith.

**SECTION 5.3 Public Liability and Property Damage Insurance.** The City shall maintain or cause to be maintained, throughout the Term of this Agreement, but only if and to the extent available at reasonable cost from reputable insurers, a standard comprehensive general insurance policy or policies in protection of the Authority, the City and their respective members, officers, agents and employees. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Electric System. Said policy or policies shall provide coverage in such liability limits and shall be subject to such deductibles as shall be customary with respect to works and property of a like character. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance shall be applied toward extinguishment or satisfaction of the liability with respect to which such proceeds shall have been paid.

**SECTION 5.4 Casualty Insurance.** The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Agreement, but only in the event and to the extent available from reputable insurers at reasonable cost, casualty insurance against loss or damage to any improvements constituting any part of the Electric System, covering such hazards as are customarily covered with respect to works and property of like character. Such insurance may be subject to deductible clauses which are customary for works and property of a like character. Such insurance may be maintained as part of or in conjunction with any other casualty insurance carried by the City and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of

Section 5.5, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. All amounts collected from insurance against accident to or destruction of any portion of the Electric System shall be used to repair, rebuild or replace such damaged or destroyed portion of the Electric System, and to the extent not so applied, shall be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

**SECTION 5.5 Insurance Net Proceeds: Form of Policies.** The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Agreement. The Trustee shall not be responsible for the sufficiency of any insurance herein required and shall be fully protected in accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss. In the event that any insurance required pursuant to Sections 5.3 or 5.4 shall be provided in the form of self-insurance, the City shall file with the Trustee annually, within ninety (90) days following the close of each fiscal year, a statement of an independent actuarial consultant identifying the extent of such self-insurance and stating that such consultant has determined that the City maintains sufficient reserves with respect thereto. On or before July 1 of each year, the City shall certify to the Trustee that all policies of insurance are in conformance with the requirements of this Installment Sale Agreement and the Trustee shall be entitled to rely on such certification without independent investigation.

**SECTION 5.6 Eminent Domain.** Any amounts received as awards as a result of the taking of all or any part of the Electric System by the lawful exercise of eminent domain, at the election of the City (evidenced by a Written Certificate of the City filed with the Trustee and the Authority) shall either (a) be used for the acquisition or construction of improvements and extension of the Electric System, or (b) be paid to the Trustee to be applied to pay or prepay the Installment Payments (and the Bonds, under Section 2.3(a) of the Indenture) or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

**SECTION 5.7 Records and Accounts.** The City shall keep proper books of record and accounts of the Electric System, separate from all other records and accounts, in which complete and correct entries shall be made of all transactions relating to the Electric System. Said books shall, upon prior request, be subject to the reasonable inspection by the Owners of not less than ten percent (10%) in aggregate principal amount of the Outstanding Bonds, or their representatives authorized in writing. The City shall cause the books and accounts of the Electric System to be audited annually by an Independent Accountant, not more than [two hundred ten (210) days] after the close of each Fiscal Year, and shall make a copy of such report available for inspection by the Bond Owners at the office of the City.

#### **SECTION 5.8 Tax Covenants.**

(a) Special Definitions. When used in this Section, the following terms have the following meanings:

“*Computation Date*” has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

“*Gross Proceeds*” means any proceeds as defined in section 1.148-1(b) of the Tax Regulations (referring to sales, investment and transferred proceeds), and any replacement proceeds as defined in section 1.148-1(c) of the Tax Regulations, of the Bonds.

“*Investment*” has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

*"Nonpurpose Investment"* means any investment property, as defined in section 148(b) of the Code, in which Gross Proceeds of the Bonds are invested and that is not acquired to carry out the governmental purposes of the Bonds.

*"Rebate Amount"* has the meaning set forth in section 1.148-1(b) of the Tax Regulations.

*"Tax Regulations"* means the United States Treasury Regulations promulgated pursuant to sections 103 and 141 through 150 of the Code.

*"Yield"* of

- (i) any Investment has the meaning set forth in section 1.148-5 of the Tax Regulations; and
- (ii) the Bonds has the meaning set forth in section 1.148-4 of the Tax Regulations.

(b) Not to Cause Interest to Become Taxable. The Authority and the City shall not use, permit the use of, or omit to use Gross Proceeds or any other amounts (or any property the acquisition, construction or improvement of which is to be financed directly or indirectly with Gross Proceeds) in a manner that if made or omitted, respectively, would cause the interest on any of the Bonds to become includable in the gross income, as defined in section 61 of the Code, of the owner thereof for federal income tax purposes. Without limiting the generality of the foregoing, unless and until the Authority or the City receives a written opinion of Bond Counsel to the effect that failure to comply with such covenant will not adversely affect the exemption from federal income tax of the interest on any Bond, the Authority or the City, as the case may be, shall comply with each of the specific covenants in this Section.

(c) No Private Use or Private Payments. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority and the City shall at all times prior to the payment and cancellation of the last Bond to be paid and canceled:

(i) use their best efforts to ensure that the City exclusively own, operate and possess all property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with Gross Proceeds of the Bonds, and not use or permit the use of such Gross Proceeds (including all contractual arrangements with terms different than those applicable to the general public) or any property acquired, constructed or improved with such Gross Proceeds in any activity carried on by any person or entity (including the United States or any agency, department and instrumentality thereof) other than a state or local government, unless such use is solely as a member of the general public; and

(ii) not directly or indirectly impose or accept any charge or other payment by any person or entity who is treated as using Gross Proceeds of the Bonds or any property the acquisition, construction or improvement of which is to be financed or refinanced directly or indirectly with such Gross Proceeds, other than taxes of general application within the jurisdiction of the City or interest earned on investments acquired with such Gross Proceeds pending application for their intended purposes.

(d) No Private Loan. Except as would not cause any Bond to become a "private activity bond" within the meaning of section 141 of the Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not use Gross Proceeds of any Bond to make or finance loans to any person or entity other than a state or local government. For purposes of the foregoing covenant, such Gross Proceeds are considered to be "loaned" to a person or entity if: (a) property acquired, constructed or improved with such Gross Proceeds is sold or leased to such person or entity in a transaction that creates a debt for federal income tax purposes; (b) capacity in or service from such property is committed to such person or entity under a take-or-pay, output or similar contract or arrangement; or (c) indirect benefits of such Gross Proceeds, or burdens and benefits of ownership of any property acquired, constructed or improved with such Gross Proceeds, are otherwise transferred in a transaction that is the economic equivalent of a loan.

(e) Not to Invest at Higher Yield. Except as would not cause any Bond to become an "arbitrage bond" within the meaning of section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not at any time prior to the final maturity of the Bonds directly or indirectly invest Gross Proceeds in any Investment, if as a result of such investment the Yield of any Investment acquired with Gross Proceeds, whether then held or previously disposed of, would materially exceed the Yield of such Bond within the meaning of said section 148.

(f) Not Federally Guaranteed. Except to the extent permitted by section 149(b) of the Code and the Tax Regulations and rulings thereunder, the Authority and the City shall not take or omit to take any action that would cause any Bond to be "federally guaranteed" within the meaning of section 149(b) of the Code and the Tax Regulations and rulings thereunder.

(g) Information Report. The Authority shall timely file any information required by section 149(e) of the Code with respect to the Bonds with the Secretary of the Treasury on Form 8038-G or such other form and in such place as the Secretary may prescribe.

(h) Rebate of Arbitrage Profits. Except to the extent otherwise provided in section 148(f) of the Code and the Tax Regulations and rulings thereunder:

(i) The Authority and the City shall account for all Gross Proceeds (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and shall retain all records of accounting for at least six years after the day on which the last Bond is discharged. However, to the extent permitted by law, the Authority or the City may commingle Gross Proceeds of the Bonds with its other money, provided that the Authority or the City, as the case may be, separately accounts for each receipt and expenditure of Gross Proceeds and the obligations acquired therewith.

(ii) Not less frequently than each Computation Date, the Authority and the City shall calculate the Rebate Amount in accordance with rules set forth in section 148(f) of the Code and the Tax Regulations and rulings thereunder. The Authority and the City shall maintain a copy of the calculation with its official transcript of proceedings relating to the issuance of the Bonds until six years after the final Computation Date.

(iii) In order to assure the excludability of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes, the Authority and the City, jointly and severally but without duplication, shall pay to the

United States the amount that when added to the future value of previous rebate payments made for the Bonds equals (A) in the case of a Final Computation Date as defined in section 1.148-3(e)(2) of the Tax Regulations, one hundred percent (100%) of the Rebate Amount on such date; and (B) in the case of any other Computation Date, ninety percent (90%) of the Rebate Amount on such date. In all cases, such rebate payments shall be made by the Authority or the City at the times and in the amounts as are or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder, and shall be accompanied by Form 8038-T or such other forms and information as is or may be required by section 148(f) of the Code and the Tax Regulations and rulings thereunder for execution and filing by the Authority or the City.

(iv) The Authority and the City shall exercise reasonable diligence to assure that no errors are made in the calculations and payments required by paragraphs (i) and (ii) above, and if an error is made, to discover and promptly correct such error within a reasonable amount of time thereafter (and in all events within one hundred eighty (180) days after discovery of the error), including payment to the United States of any additional Rebate Amount owed to it, interest thereon, and any penalty imposed under section 1.148-3(h) or other provision of the Tax Regulations.

(i) Not to Divert Arbitrage Profits. Except to the extent permitted by section 148 of the Code and the Tax Regulations and rulings thereunder, the Authority shall not, at any time prior to the final maturity of the Bonds, enter into any transaction that reduces the amount required to be paid to the United States pursuant to paragraph (h) of this Section because such transaction results in a smaller profit or a larger loss than would have resulted if the transaction had been at arm's length and had the Yield on the Bonds not been relevant to either party.

(j) Bonds Not Hedge Bonds.

(i) Authority and the City represent that none of the Bonds will become a "hedge bond" within the meaning of section 149(g) of the Code.

(ii) Without limitation of paragraph (i) above, the Authority will issue the Bonds only if on the date of issuance of the Bonds, (A) it reasonably expects that at least 85% of the spendable proceeds of the Bonds will be expended within the three-year period commencing on such date of issuance; and (B) no more than 50% of the proceeds of the Bonds will be invested in Nonpurpose Investments having a substantially guaranteed yield for a period of four years or more.

(k) Elections. The Authority hereby directs and authorizes any Authorized Authority Representative and the City hereby directs and authorizes any Authorized City Representative to make elections permitted or required pursuant to the provisions of the Code or the Tax Regulations, as such Authorized Authority Representative or Authorized City Representative (after consultation with Bond Counsel) deems necessary or appropriate in connection with the Bonds, in the Tax Certificate relating to the Bonds or similar or other appropriate certificate, form or document.

**SECTION 5.9 Further Assurances.** The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Agreement and the Indenture, and for the better assuring and confirming unto the Trustee and Owners of the Bonds the rights and benefits provided herein and in the Indenture.

**SECTION 5.10 Continuing Disclosure.** The City will comply with the continuing disclosure requirements promulgated under Securities and Exchange Commission Rule 15c2-12(b)(5).

## ARTICLE VI

### DISCLAIMER OF WARRANTIES; ACCESS

**SECTION 6.1 Disclaimer of Warranties.** The Authority and the Trustee make no warranty or representation, either express or implied, as to the value, design, condition, merchantability or fitness for any particular purpose or fitness for the use contemplated by the City of the Electric System, or any other representation or warranty with respect to the Electric System. In no event shall the Authority or the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising out of this Agreement or the Indenture for the existence, furnishing, functioning or City's use of the Electric System.

**SECTION 6.2 Access to the Electric System.** The City agrees that the Authority, the Trustee and the Bond Insurer, and any duly authorized representative thereof, shall have the right at all reasonable times to enter upon and to examine and inspect the Electric System. The City further agrees that the Authority and the Trustee, and any duly authorized representative thereof, shall have such rights of access to the Electric System as may be reasonably necessary to cause the proper maintenance of the Electric System in the event of failure by the City to perform its obligations hereunder.

**SECTION 6.3 Release and Indemnification Covenants.** The City to the extent permitted by law shall and hereby agrees to indemnify and save the Authority and the Trustee and their respective officers, agents, successors and assigns harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Electric System by the City, (b) any breach or default on the part of the City in the performance of any of its obligations under this Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Electric System, (d) any act or negligence of any sublessee of the City with respect to the Electric System, (e) the Acquisition and Construction of the Electric System or the authorization of payment of the Acquisition and Construction Costs, (f) the performance by the Trustee of its duties and obligations under the Indenture, including any duties referred to in Section 8.4 of the Indenture, or (g) the offer, sale and issuance of the Bonds. No indemnification is made under this Section or elsewhere in this Agreement for willful misconduct or negligence by the Authority or the Trustee, or their respective officers, employees, successors or assigns. The rights of the Trustee and the obligations of the City under this Section 6.3 shall survive the termination of this Agreement and the resignation or removal of the Trustee.

**SECTION 6.4 Non-Liability of Authority for Electric System Obligations.** The Authority and its successor and assigns shall have no obligation and shall incur no liabilities or debts whatsoever for the obligations, liabilities and debts of the City incurred in connection with the Electric System.

## ARTICLE VII

### ASSIGNMENT, SALE AND AMENDMENT

**SECTION 7.1 Assignment by the Authority.** The Authority's rights under this Agreement, including the right to receive and enforce payment of the Installment Payments to be made by the City under this Agreement have been pledged and assigned to the Trustee pursuant to the Indenture, to which pledge and assignment the City hereby consents.

**SECTION 7.2 Assignment by the City.** This Agreement may not be assigned by the City.

**SECTION 7.3 Sale of Electric System Property.** Except as provided herein, the City covenants that the Electric System shall not be encumbered, sold, leased, pledged, any charge placed thereon, or otherwise disposed of, as a whole or substantially as a whole unless such sale is to a public entity. Neither the Net Revenues nor any other funds pledged or otherwise made available to secure payment of the Installment Payments shall be mortgaged, encumbered, sold, leased, pledged, any charge placed thereon, or disposed or used except as authorized by the terms of this Agreement. The City shall not enter into any agreement which impairs the operation of the Electric System or any part of it necessary to secure adequate Net Revenues to pay the Installment Payments, or which otherwise would impair the rights of the Bond Owners and the owners of any Parity Obligations with respect to the Net Revenues. If any substantial part of the Electric System shall be sold, the payment therefor shall either (a) be used for the acquisition or construction of improvements, extensions or replacements of facilities constituting part of the Electric System, or (b) to the extent not so used, be paid to the Trustee to be applied to pay or prepay the Installment Payments or any Parity Obligations, in accordance with written instructions of the City filed with the Trustee.

**SECTION 7.4 Amendment Hereof.** The City and the Authority shall have the right to modify or amend this Agreement, without the consent of the Trustee or any of the Bond Owners or any of the owners of Parity Obligations, but only if such amendment or modification (a) does not cause interest represented by the Bonds to be includable in gross income for federal income tax purposes in the opinion of Bond Counsel, (b) does not materially adversely affect the interests of the Owners of the Bonds or the owners of any Parity Obligations in the opinion of Bond Counsel, (c) does not modify any of the rights or obligations of the Trustee without the Trustee's written consent, and (d) only is for any one or more of the following purposes:

- (i) to provide for the issuance of Parity Obligations pursuant to Section 4.9;
- (ii) to add to the covenants and agreements of the City contained in this Agreement, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- (iii) to cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable; or
- (iv) to amend any provision thereof for the purpose of complying with the applicable requirements of the Tax Code; provided, however, that provisions hereof expressly recognizing or granting rights in the Bond Insurer shall not be amended in any manner which affects the rights of the Bond Insurer hereunder without the prior written consent of the Bond Insurer.

## **ARTICLE VIII**

### **EVENTS OF DEFAULT**

**SECTION 8.1 Events of Default Defined.** The following events shall be Events of Default hereunder:

(a) Failure by the City to pay any Installment Payment when and as the same become due and payable hereunder.

(b) Failure by the City to pay any Additional Payment when due and payable hereunder, and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding causes (a) or (b), for a period of ninety (90) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee; provided, however, that if the City shall notify the Authority and the Trustee that in its reasonable opinion the failure stated in the notice can be corrected, but not within such 90-day period, such failure shall not constitute an event of default hereunder if the City shall commence to cure such failure within such ninety (90) day period and thereafter diligently and in good faith cure such failure in a reasonable period of time.

(d) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

(e) The occurrence and continuation of any event of default under and as defined in the instruments authorizing the issuance of any Parity Obligations.

**SECTION 8.2 Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the Trustee as assignee of the Authority shall have the right, at its option and without any further demand or notice, but subject in all respects to the provisions of Article VIII of the Indenture, to:

(a) declare all principal components of the unpaid Installment Payments, together with accrued interest thereon at the net effective rate of interest per annum then borne by the Outstanding Bonds from the immediately preceding Interest Payment Date on which payment was made, to be immediately due and payable, whereupon the same shall immediately become due and payable;

(b) take whatever action at law or in equity may appear necessary or desirable to collect the Installment Payments then due or thereafter to become due during the Term of this Agreement, or enforce performance and observance of any obligation, agreement or covenant of the City under this Agreement; and

(c) as a matter of right, in connection with the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and the Bond Owners hereunder, cause the appointment of a receiver or receivers of the Gross Revenues and other amounts pledged hereunder, with such powers as the court making such appointment shall confer.

The provisions of the preceding clause (a), however, are subject to the condition that if, at any time after the principal components of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (a), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Trustee a sum sufficient to pay all principal components of the Installment Payments coming due prior to such

declaration and all matured interest components (if any) of the Installment Payments, with interest on such overdue principal and interest components calculated at the net effective rate of interest per annum then borne by the Outstanding Bonds, and the reasonable fees and expenses of the Trustee (including any fees and expenses of its attorneys), and any and all other defaults known to the Trustee (other than in the payment of the principal and interest components of the Installment Payments due and payable solely by reason of such declaration) shall have been made good, then, and in every such case, with the written consent of the Trustee, shall rescind and annul such declaration and its consequences. However, no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon. As provided in Section 8.6, the Trustee shall be required to exercise the remedies provided herein in accordance with the Indenture.

**SECTION 8.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

**SECTION 8.4 Agreement to Pay Attorneys' Fees and Expenses.** In the event either party to this Agreement should default under any of the provisions hereof and the nondefaulting party, the Trustee or the Owner of any Bonds should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party, the Trustee or such Owner, as the case may be, the reasonable fees of such attorneys and such other expenses so incurred.

**SECTION 8.5 No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**SECTION 8.6 Trustee and Bond Owners to Exercise Rights.** Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Indenture, to which assignment the City hereby consents. Such rights and remedies shall be exercised by the Trustee and the Owners of the Bonds as provided in the Indenture.

**SECTION 8.7 Rights of the Owners of Parity Obligations.** Notwithstanding anything in this Article VIII to the contrary, it is hereby acknowledged and agreed that the rights of the Trustee and the Bond Owners hereunder in and to the Net Revenues and the Electric System shall be exercised on a parity and proportionate basis with the rights of the owners of any Parity Obligations and any fiduciary acting for the benefit of such owners. The provisions of this Article VIII, and the provisions of any instruments authorizing the issuance of any Parity Obligations, shall be construed in accordance with the foregoing sentence.

## ARTICLE IX

### PREPAYMENT OF INSTALLMENT PAYMENTS

**SECTION 9.1 Special Mandatory Prepayment.** The principal component of the Installment Payments shall be prepaid in whole or in part on any date, in inverse order of Installment Payment Dates or pro rata among Installment Payment Dates as determined by the City, in integral multiples of \$5,000, by paying a prepayment price equal to the aggregate principal components of the Installment Payments to be prepaid, together with the interest component of the Installment Payment required to be prepaid on or accrued to such date, as required by Sections 5.4 and 5.6 hereof, and pursuant to Section 2.3(a) of the Indenture. Any such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds pursuant to Section 2.3(a) of the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under the second preceding sentence not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

**SECTION 9.2 Credit for Amounts on Deposit.** In the event of prepayment of the principal components of the Installment Payments in full under this Article IX, such that the Indenture shall be discharged by its terms as a result of such prepayment, and upon payment in full of all Additional Payments and other amounts then due and payable hereunder, all available amounts then on deposit in the funds and accounts established under the Indenture shall be credited towards the amounts then required to be so prepaid.

**SECTION 9.3 Optional Prepayment.** The City may exercise its option to prepay the principal components of the Installment Payments in whole or in part (in integral multiples of \$5,000) to the extent the Authority has the ability to effect an optional redemption of the Bonds under the Indenture. The City shall give the Trustee and the Authority written notice of its intention to exercise its option under this Section not less than sixty (60) days in advance of the date of exercise (or such lesser period of time as shall be consented to by the Trustee and the Authority).

## ARTICLE X

### MISCELLANEOUS

**SECTION 10.1 Further Assurances.** The City agrees that it will execute and deliver any and all such further agreements, instruments, financing statements or other assurances as may be reasonably necessary or requested by the Authority or the Trustee to carry out the intention or to facilitate the performance of this Agreement, including, without limitation, to perfect and continue the security interests herein intended to be created.

**SECTION 10.2 Amendment of Indenture.** The Authority covenants that it shall take no action to amend or supplement the Indenture in any manner without obtaining the prior written consent of the City to such amendment or supplement.

**SECTION 10.3 Notices.** Any notice, request, demand or other communication under this Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) upon receipt after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may,

by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:	City of Banning 99 E. Ramsey Street Banning, California 92220 Attention: City Manager Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Authority:	City of Banning Financing Authority 99 E. Ramsey Street Banning, California 92220 Attention: Executive Director Telephone: (951) 922-3101 Facsimile: (951) 922-3112
If to the Trustee:	U.S. Bank National Association 633 W. Fifth Street, 24 <sup>th</sup> Floor Los Angeles, California 90071 Attention: Corporate Trust Services Telephone: (213) 615-6002 Facsimile: (213) 615-6119

**SECTION 10.4 Third Party Beneficiary.** The Trustee shall be and is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary. To the extent that this Agreement confers upon or gives or grants to the Bond Insurer any right, remedy or claim under or by reason of this Agreement the Bond Insurer shall be and is hereby made a third-party beneficiary hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.

**SECTION 10.5 Payment on Non-Business Day.** Whenever in this Agreement any payment is required to be made on a day which is not a Business Day, such payment shall be made on the first Business Day following such day.

**SECTION 10.6 Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State.

**SECTION 10.7 Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the Authority and the City, and their respective successors and assigns, subject, however, to the limitations contained herein.

**SECTION 10.8 Severability of Invalid Provisions.** If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Agreement and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Agreement may be held illegal, invalid or unenforceable.

**SECTION 10.9 Article and Section Headings and References.** The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction or effect of this Agreement. All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

**SECTION 10.10 Execution of Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

**SECTION 10.11 Waiver of Personal Liability.** No member of the City Council, officer, agent or employee of the City shall be individually or personally liable for the payment of Installment Payments or Additional Payments or be subject to any personal liability or accountability by reason of this Agreement; but nothing herein contained shall relieve any such member of the City Council, officer, agent or employee from the performance of any official duty provided by law or by this Agreement.

**IN WITNESS WHEREOF**, the Authority and the City have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

**CITY OF BANNING,**  
as purchaser

By: \_\_\_\_\_  
Title: City Manager

**CITY OF BANNING FINANCING AUTHORITY,**  
as seller

By: \_\_\_\_\_  
Title: Executive Director

EXHIBIT A  
SCHEDULE OF INSTALLMENT PAYMENTS

<u>Installment Payment Date*</u>	<u>Principal Component</u>	<u>Interest Component</u>	<u>Total</u>
11/15/2007	-	\$918,252.64	\$918,252.64
05/15/2008	-	1,116,793.75	1,116,793.75
11/15/2008	-	1,116,793.75	1,116,793.75
05/15/2009	\$725,000.00	1,116,793.75	1,841,793.75
11/15/2009	-	1,102,293.75	1,102,293.75
05/15/2010	755,000.00	1,102,293.75	1,857,293.75
11/15/2010	-	1,087,193.75	1,087,193.75
05/15/2011	785,000.00	1,087,193.75	1,872,193.75
11/15/2011	-	1,071,493.75	1,071,493.75
05/15/2012	815,000.00	1,071,493.75	1,886,493.75
11/15/2012	-	1,055,193.75	1,055,193.75
05/15/2013	850,000.00	1,055,193.75	1,905,193.75
11/15/2013	-	1,038,193.75	1,038,193.75
05/15/2014	880,000.00	1,038,193.75	1,918,193.75
11/15/2014	-	1,012,893.75	1,012,893.75
05/15/2015	935,000.00	1,012,893.75	1,947,893.75
11/15/2015	-	993,025.00	993,025.00
05/15/2016	970,000.00	993,025.00	1,963,025.00
11/15/2016	-	968,775.00	968,775.00
05/15/2017	1,020,000.00	968,775.00	1,988,775.00
11/15/2017	-	943,275.00	943,275.00
05/15/2018	1,070,000.00	943,275.00	2,013,275.00
11/15/2018	-	916,525.00	916,525.00
05/15/2019	1,125,000.00	916,525.00	2,041,525.00
11/15/2019	-	888,400.00	888,400.00
05/15/2020	1,180,000.00	888,400.00	2,068,400.00
11/15/2020	-	858,900.00	858,900.00
05/15/2021	1,240,000.00	858,900.00	2,098,900.00
11/15/2021	-	827,900.00	827,900.00
05/15/2022	1,305,000.00	827,900.00	2,132,900.00
11/15/2022	-	795,275.00	795,275.00
05/15/2023	1,370,000.00	795,275.00	2,165,275.00
11/15/2023	-	761,025.00	761,025.00
05/15/2024	1,435,000.00	761,025.00	2,196,025.00
11/15/2024	-	725,150.00	725,150.00
05/15/2025	1,510,000.00	725,150.00	2,235,150.00
11/15/2025	-	687,400.00	687,400.00
05/15/2026	1,585,000.00	687,400.00	2,272,400.00
11/15/2026	-	651,737.50	651,737.50
05/15/2027	1,655,000.00	651,737.50	2,306,737.50
11/15/2027	-	614,500.00	614,500.00
05/15/2028	1,730,000.00	614,500.00	2,344,500.00
11/15/2028	-	571,250.00	571,250.00
05/15/2029	1,815,000.00	571,250.00	2,386,250.00

## EXHIBIT B

## DESCRIPTION OF IMPROVEMENTS

<u>Project Description</u>	<u>Purpose</u>
Install new 34.5 kV circuit breaker in an existing spare position at the Southern California Edison Company ("SCE") Substation	To provide a source for a third 34.5 kV circuit from the Edison Substation
Construct a new North Substation which will include a 115 kV Edison switchyard and a 68 kV switchyard	To provide a substation in the northwest part of the City to supply the expected 15.7 MVA of regional load
Construct the first of three 15 MVA 69/12.47 kV transformers, and 12.47 kV switchgear at North Substation	To provide a substation in the northwest part of the City to supply the expected 15.7 MVA of regional load
Install 12.4 kV underground feeders 1, 2, 3 and 4 at North Substation and pick up load formerly served from San Gorgonio and Midway Substations	To provide feeders in the northwestern part of the City to supply the expected 15.7 MVA of regional load
Construct a new 34.5 kV breaker and a half switchyard in the southwest corner of San Gorgonio Substation and connect to existing 34.5/12.47 kV Bank 1 and Bank 2	To provide a termination point for the three Edison 34.5 kV circuits, the initial two 34.5 kV circuits to North Substation, and two of the three 34.5/12.47 kV power banks
Construct a new 69 kV overhead circuit (30,000 ft.) on wood poles with underbuild from San Gorgonio Substation to the new North Substation	To provide temporary 34.5 kV supply to the new North Substation
Construct a new 69 kV switchyard and install two new 56 MVA, 34.5/69 kV transformers in the northwest corner of San Gorgonio Substation	To allow connection of the existing 34.5 kV switchyard at San Gorgonio Substation to the new 69 kV subtransmission system
Install a 12.47 kV underground feeder number 5 at San Gorgonio Substation	To provide an additional feeder to supply the expected 19.7 MVA of regional load
Install Bank 2 at North Substation	To supply the expected 17.7 MVA of load in the region
Construct a new 69 kV switchyard and install the first of two 10 MVA, 69/12.47 kV transformers in Midway Substation	To allow connection of Midway Substation to the 69 kV subtransmission system and to supply the expected 8.2 MVA of regional load
Install Bank 2 at Midway Substation	To provide additional capacity to supply the expected 8.2 MVA of regional load
Purchase one-half acre of land for East End Substation	To provide a location for East End Substation
Construct a new 69 kV underground circuit (12,000 ft.) from Midway Substation to the new North Substation	To provide a reliable two feed subtransmission supply for North Substation
Construct a new 69 kV overhead circuit (22,500 ft.) on wood poles with underbuild from San Gorgonio Substation to the Midway Substation	To provide a reliable two feed subtransmission supply for Midway Substation

## Exhibit "B"

### AMENDMENT NO. 1 TO INDENTURE OF TRUST

THIS AMENDMENT NO. 1 TO INDENTURE OF TRUST, dated as of \_\_\_\_\_, 2010, and effective on \_\_\_\_\_, 2010 (this "Amendment No. 1"), to INDENTURE OF TRUST, dated as of June 1, 2007 (the "Original Indenture" and, together with Amendment No. 1, the "Indenture"), by and among the CITY OF BANNING FINANCING AUTHORITY (the "Authority"), the CITY OF BANNING (the "City") and U.S. BANK NATIONAL ASSOCIATION, as trustee (the "Trustee"), is made by and among the Authority, the City and the Trustee. Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Original Indenture.

WHEREAS, pursuant to the Original Indenture, the Authority issued its City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007, in the aggregate principal amount of \$45,790,000 (the "Bonds"); and

WHEREAS, the Authority and the City have determined to amend certain terms of the Original Indenture as provided herein and requested the Trustee to join in the execution of this Amendment No. 1;

NOW, THEREFORE, for and in consideration of the mutual premises and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, agree and bind themselves as follows:

#### ARTICLE I

#### AUTHORITY

SECTION 1. Amendment No. 1. This Amendment No. 1 amends the Original Indenture.

SECTION 2. Authority for Amendment No. 1. This Amendment No. 1 is entered into in accordance with Section 7.1 of the Original Indenture; Amendment by Consent of Bond Owners. Section 9.2 (c) of the Original Indenture provides that the Insurer shall be deemed to be the sole Owner of the Bonds for the purpose of exercising any voting right or privilege or giving any consent or direction or taking any other action that the Owners of the Bonds are entitled to take pursuant to Article VII and VIII of the Original Indenture.

## ARTICLE II

### AMENDMENT

SECTION 1. Amendment to Section 3.5. The second paragraph of Section 3.5 is hereby restated and amended in its entirety as follows:

Within five (5) Business Days following receipt of each such Requisition, the Trustee shall pay the amount set forth in such Requisition as directed by the terms thereof out of the Acquisition and Construction Fund. Upon the Written Request of the City accompanied by a Written Certificate of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment, any unexpended moneys in the Acquisition and Construction Fund may be used to pay the costs associated with any other improvements to the Electric System, provided that in the opinion of Bond Counsel such use of the proceeds of the Bonds shall not adversely affect the exclusion of interest on the Bonds from gross income of the owners thereof. Any unexpended moneys in the Acquisition and Construction Fund subsequent to the payment of all Acquisition and Construction Cost which are not used to pay the cost of other improvements to the Electric System shall be transferred to the Bond Service Fund or applied to the purchase of Outstanding Bonds for the account of the Authority or the City (the "Open Market Purchased Bonds"), upon receipt by the Trustee of a Written Request of the City accompanied by a Written Certificate of the City stating that all Acquisition and Construction Costs have been paid or provision made for their payment. Open Market Purchased Bonds shall be presented to the Trustee for cancellation thereof and the Trustee shall take all necessary actions to cancel the Bonds presented to it.

## ARTICLE III

### MISCELLANEOUS

SECTION 1. Terms and Conditions. All other terms and conditions of the Original Indenture remain unchanged and in effect. This Amendment No. 1 is to be considered a part of the Original Indenture and must be attached thereto. This Amendment No. 1 is effective as of the date indicated above.

SECTION 2. Partial Invalidity. If any one or more of the covenants or agreements, or provisions in this Amendment No. 1 on the part of the City, the Authority (or of the Trustee) to be performed should be contrary to law, then such covenant or covenants, such agreement or agreements, or such portions hereof, shall be null and void and shall be deemed separable from the remaining covenants and agreements or portions hereof and shall in no way affect the

validity of this Amendment No. 1 or of the Bonds; but the Bond Owners shall retain all rights and benefits accorded to them under the Bond Law or any other applicable provisions of law.

SECTION 3. Governing Law. This Amendment No. 1 shall be governed by and construed in accordance with the laws of the State.

SECTION 4. Headings. Section headings in this Amendment No. 1 are included herein for convenience of reference only and shall not constitute a part of this Amendment No. 1 for any other purpose.

SECTION 5. Execution in Several Counterparts. This Amendment No. 1. may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the City, the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 6. Request to the Trustee. The City and the Authority hereby request the Trustee to execute this Amendment No. 1 and consent to the execution of Amendment No. 1 to Installment Sale Agreement, dated as of \_\_\_\_\_, 2010, by and between the City and the Authority.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

**CITY OF BANNING FINANCING AUTHORITY**

By: \_\_\_\_\_  
Title: Executive Director

**CITY OF BANNING**

By: \_\_\_\_\_  
Title: City Manager

**U.S. BANK NATIONAL ASSOCIATION,  
as Trustee**

By: \_\_\_\_\_  
Authorized Officer

[Signature Page to Amendment No. 1 to Indenture of Trust]

# Exhibit "C"

## AMENDMENT NO. 1 TO INSTALLMENT SALE AGREEMENT

THIS AMENDMENT NO. 1 TO INSTALLMENT SALE AGREEMENT, dated as of \_\_\_\_\_, 2010, and effective on \_\_\_\_\_, 2010 (this "Amendment No. 1"), to INSTALLMENT SALE AGREEMENT, dated as of June 1, 2007 (the "Original Agreement" and, together with Amendment No. 1, the "Agreement"), by and between the CITY OF BANNING FINANCING AUTHORITY (the "Authority") and the CITY OF BANNING (the "City"), is made by and between the Authority and the City. Capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Original Agreement.

WHEREAS, pursuant to the Indenture of Trust dated as of June 1, 2007 (the "Indenture"), by and among the Authority, the City and U.S. Bank National Association, as trustee, the Authority issued its City of Banning Financing Authority Revenue Bonds (Electric System Project) Series 2007, in the aggregate principal amount of \$45,790,000 (the "Bonds"); and

WHEREAS, in connection with the issuance of the Bonds, the City entered into the Original Agreement pursuant to which the City purchased the Improvements to make Installment Payments equal in time and amount to the debt service on the Bonds allocable to the Original Agreement; and

WHEREAS, the Authority and the City have determined to amend certain terms of the Original Agreement as provided herein;

NOW, THEREFORE, for and in consideration of the mutual premises and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby covenant, agree and bind themselves as follows:

### ARTICLE I

#### AUTHORITY

SECTION 1. Amendment No. 1. This Amendment No. 1 amends the Original Agreement.

SECTION 2. Authority for Amendment No. 1. This Amendment No. 1 is entered into in accordance with Section 7.4(iii) of the Original Agreement with the approval of the City and the Authority to cure, correct or supplement the provisions governing the disposition of amounts in the Acquisition and Construction Fund following completion of the Improvements. Section 9.2(a) of the Indenture requires the Insurer's consent for all amendments to the Indenture and the Agreement.

## ARTICLE II

### AMENDMENT

SECTION 1. Amendment to Section 3.4. The last paragraph of Section 3.4 is hereby amended and restated in its entirety as follows:

Upon the completion of the Acquisition and Construction of the Improvements, but in any event not later than thirty (30) days following such completion, the City Representative shall execute and deliver to the Authority and the Trustee a Written Certificate which (a) states that the Acquisition and Construction of such Improvements have been substantially completed, (b) identifies the total Acquisition and Construction Costs thereof, and (c) identifies (i) the amounts, if any, to remain on deposit in the Acquisition and Construction Fund for payment of Acquisition and Construction Costs thereafter intended to be requisitioned by the Authority (ii) the amounts, if any, used to purchase Outstanding Bonds for the account of the Authority or the City, and (iii) the amounts to be transferred to the Bond Service Fund.

## ARTICLE III

### MISCELLANEOUS

SECTION 1. Terms and Conditions. All other terms and conditions of the Original Agreement remain unchanged and in effect. This Amendment No. 1 is to be considered a part of the Original Agreement and must be attached thereto. This Amendment No. 1 is effective as of the date indicated above.

SECTION 2. Severability of Invalid Provisions. If any one or more of the provisions contained in this Amendment No. 1 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Amendment No. 1 and such invalidity, illegality or unenforceability shall not affect any other provision of this Amendment No. 1, and this Amendment No. 1 shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority and the City each hereby declares that it would have entered into this Amendment No. 1 and each and every other Section, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Amendment No. 1 may be held illegal, invalid or unenforceable.

SECTION 3. Governing Law. This Amendment No. 1 shall be construed in accordance with and governed by the laws of the State.

SECTION 4. Headings. Section headings in this Amendment No. 1 are included herein for convenience of reference only and shall not constitute a part of this Amendment No. 1 for any other purpose.

SECTION 5. Execution of Counterparts. This Amendment No. 1 may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

**CITY OF BANNING FINANCING AUTHORITY**

By: \_\_\_\_\_  
Title: Executive Director

**CITY OF BANNING**

By: \_\_\_\_\_  
Title: City Manager

[Signature Page to Amendment No. 1 to Installment Sale Agreement]