

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

August 24, 2010
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

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

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

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.

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.

IV. 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 11

Items to be pulled _____, _____, _____, _____ for discussion.

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

1.	Approval of Minutes – Joint Meeting – 07/27/10.	1
2.	Approval of Minutes – Regular Meeting – 07/27/10.	3
3.	Resolution No. 2010-48, Amending Resolution No. 2008-94, The Classification and Compensation Policy for Part-Time Employees of the City of Banning (reflects new job classifications and salary ranges due to the reorganization of the Department in the FY 2010-11 adopted budget)	17
4.	Resolution No. 2010-63, Approving the Local and System Resource Adequacy Capacity Purchase Agreement with RRI Energy Services, Inc. for Calendar Year 2011	23
5.	Resolution No. 2010-65, Endorsing Measure U to Bring Jobs and Educations Opportunities to the Pass Area	41
6.	Authorization to Enter into an Enterprise Licensing Agreement with Microsoft and Authorize City Manager to Execute the Related Enrollment Agreement	43
7.	Receive and Place on File Report of Investments for April 2010	81
8.	Receive and Place on File Report of Investments for May 2010	90
9.	Approval of Accounts Payable and Payroll Warrants for the Month of April 2010	100
10.	Approval of Accounts Payable and Payroll Warrants for the Month of May 2010.	103
11.	Approval of Accounts Payable and Payroll Warrants for the Month of June 2010.	106

- Open for Public Comments
- Make Motion

V. PUBLIC HEARINGS

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

1.	Initial Study/Negative Declaration, Ordinance No. 1426 regulating massage related uses, and Resolution No. 2010-59, amending Resolution No. 1993-158 regarding massage related fees to comply with SB 731. Staff Report	109
	Recommendations: Adopt Ordinance No. 1426 and Resolution No. 2010-59.	

A) Mayor asks the City Clerk to read the title of Ordinance No. 1426:

“An Ordinance of the City Council of the City of Banning, California, Adopting Initial Study/Negative Declaration and Amending Section 5.08.080(K) and Table 17.12.020 of Section 17.12.020 and Adding a New Chapter 5.74 to the Municipal Code Regarding State Certified Massage Establishments, Massage Practitioners/Therapists (Zone Text Amending No. 09-97505).”

Motion: I move to waive further reading of Ordinance No. 1426
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1426 pass its first reading.

B) That the City Council adopt Resolution No. 2010-59, Repealing Resolution No. 1993-158 and Amending Fees for State Certified Massage Therapists/Practitioners.

2. Recommendation to adopt Resolution No. 2010-64, Approving the Increase of User Fees and Service Charges of the Community Services Department.

Staff Report 154

Recommendation: **That the City Council approves Resolution No. 2010-64, Recommending the increase of user fees and service charges of the Community Services Department.**

3. Changing the Planning Commission Meeting Date

Staff Report 159

Recommendation: Adopt Ordinance No. 1427, Amending the Banning Municipal Code Section 2.28 to change the Planning Commission regular meeting date.

Mayor asks the City Clerk to read the title of Ordinance No. 1427:

“An Ordinance of the City Council of the City of Banning, California, Amending the Banning Municipal Code to Change the Regular Meeting Date of the Banning Planning Commission.”

Motion: I move to waive further reading of Ordinance No. 1427
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1427 pass its first reading.

VI. REPORTS OF OFFICERS

1. Resolution No. 2010-62, Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration For Project No. 2010-03, Navigational Improvements at the Banning Municipal Airport.

Staff Report 163

Recommendations:

- I. That the City Council adopt Resolution No. 2010-62, Approving The Airport Improvement Program Grant Agreement Offer from the Federal Aviation administration for Project No. 2010-03, Navigational Improvements at the Banning Municipal Airport**
- II. Authorize the City Manager to execute the Grant Agreement Offer and subsequent Grant Agreement with the Federal Aviation Administration for this project.**

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

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

VIII. 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
3. Schedule Meeting with Banning Library Board
4. Update on Economic Development Plan

Future Meetings –

1. September 21, 2010 at 5:00 p.m. – Jt. Meeting with Planning Commission and Parks and Recreation Advisory Committee regarding Parks Master Plan
2. October 28, 2010 at 5:00 p.m. – Jt. Meeting with the Banning School Board

IX. 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

07/27/10
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Chairman Robinson on July 13, 2010 at 4:04 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

**COUNCIL MEMBERS/
BOARDMEMBERS PRESENT:**

Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Councilmember Robinson
Mayor Botts

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager/Executive Director
David J. Aleshire, City Attorney
Kirby Warner, Interim Administrative Services Director
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney stated that he would need to add an item to the agenda regarding the Stephenson Building

There was Council and Agency Board consensus to add this item to the agenda.

City Attorney announced that the City Council will meet in closed session in regards to labor negotiations with the City's bargaining units pursuant to Government Code Section 54956.6 to go over the status of the negotiations. Also will meet pursuant to the provisions of Government Code Section 54956.8 regarding two matters of real property negotiations concerning the Banning Heights Mutual Water Company and 2301 W. Ramsey Street (All Star Dodge property).

Agency Counsel said that the Community Redevelopment Agency will meet in closed session pursuant to the provisions of Government Code Section 54956.8 in regards to real property matters involving: 1) Stagecoach Plaza: 3285 – 3499 W. Ramsey Street (APNs 537-090-057, 537-090-058, 537-090-059, 537-090-067).

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

Meeting went into closed session at 4:06 p.m. Councilmember/Chairman Robinson excused himself from the discussion regarding 2301 W. Ramsey Street and left the room.

ADJOURNMENT

By common consent the meeting adjourned at 4:55 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

07/27/10
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on July 27, 2010 at 5:05 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 Administrative Services Director
Duane Burk, Public Works Director
Zai Abu-Bakar, Community Development Director
Phil Holder, Lt. Banning Police
Jeff Stowells, Battalion Chief
Heidi Merza, Community Services Director
Fred Mason, Electric Utility Director
Chuck Thurman, Electrical Operations Manager
Dirk Voss, Redevelopment Project Coordinator
Marie A. Calderon, City Clerk

Mayor Botts asked for a silent invocation. Mayor Pro Tem Hanna invited the audience to join her in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that the City met to discuss labor negotiations and give a status on the bargaining with the different units and no reportable actions was taken. With regards to real property negotiations we discussed real property negotiations in the Burnt Canyon with Banning Heights Mutual Water Company and a status report was given on those negotiations and no reportable action was taken. Concerning the property of 2301 W. Ramsey Street a status report was given on those negotiations and no reportable action was taken. For the Agency we had real property negotiations concerning Stagecoach Plaza, 3499 W. Ramsey Street and a status report was given and there was no reportable action was taken. The Council voted unanimously to add to the agenda the property across the street concerning the Stephenson

Building and a status report was given on the negotiations concerning the real property and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

Bill Dickson addressed the Council stating that this Thursday our first concert in the park will be held with Jerome Robinson. The following Thursdays there will be an Elvis impersonator, a Michael Jackson impersonator, Michael Costly and then a country group. Also they are making a lot of headway on Stagecoach Days and he would encourage everyone to start thinking about how they might participate. These are two fantastic events that have been around for a long time and he would like to see as many of the Council and the public come out and support these events.

Marion Johnson, San Gorgonio Child Care Consortium stated that they will be holding their benefit barbecue tomorrow night before the concert in the park. This barbecue is to benefit the San Gorgonio Child Care Consortium and she hopes that everyone will come out and support this event. You can purchase tickets there or in advance by calling the San Gorgonio Child Care Consortium and it will be held from 4 to 7 p.m. at the Community Center.

Helen Barnes, West Lincoln Street addressed the Council regarding the water problem (see Exhibit A).

Fred Sakurai, 4985 Bermuda Dunes addressed the Council stating that last night during the contentious hearing on the water issue he had the honor of listening and watching it all at home on TV and in regards to that he would like to make a couple of suggestions: 1) the green and red light in front the Council you should consider programming it some how so that the last ten or fifteen seconds the green light would be blinking and then turn to red rather than just cutting the person off entirely in mid sentence; and 2) often times you have asked the speaker for their name and address and it still turns out that many people just say their name. They should be asked again to give their address and not just “Banning resident” but an address.

Mayor Botts said that the light does go from green, to orange, to red and that orange gives the speaker time to sum up their comments. Also the law states that we cannot require people to give their name and address. We ask that for the record but if someone doesn't want to give it, they don't have to.

CORRESPONDENCE: There was none.

PRESENTATION:

1. “Pass to Class” - Presentation by James Foster, Transportation Manager for Morongo Band of Mission Indians

James Foster addressed the Council stating that we wanted to enlighten the Council on the "Pass to Class" event that is going to be held on Friday, August 6th from 9 a.m. to 4 p.m. This event is to educate our Mt. San Jacinto College students on how to board the transit buses for free. This piggyback's off the "Go Pass Program" that the cities had gone with. They are using this as a recruitment tool also to educate our kids around the community to let them know about the "Go Pass Program". At the event they will have the Google Transit Station, computer station to let the Mt. San Jacinto students know how to get online and how to board their bus frequently. They will also give out brochures there to let them know how to get to and from school and refreshments will also be served. The first ten people that show up at the event will get a free tour of Mt. San Jacinto College. They are working hard on this event and want to have a good turnout and want to continue to have this event next year. This will take place at the Wal-Mart Shopping Center and the K-Mart Shopping Center (Route 32) and these sites are located at the transit stops.

2. Larry Grable, Field Representative for Governor Schwarzenegger

City Manager said that the Council should be proud of our ability to get sustainable energy that we are now at 20% which was required by 2010 and we are the first Southern California City that has reached that.

Mr. Grable said that about a month and a half ago he was talking to the City Manager and he shared some of the accomplishments that the City has done and he went ahead and shared those with the Governor and the Governor responded. Mr. Grable read the letter (see Exhibit "B").

CONSENT ITEMS

The following Consent Items were pulled for discussion and/or comments: Councilmember Robinson pulled Consent Items 5 and 7; and Councilmember Franklin pulled Consent Item 2.

1. Approval of Minutes – Joint Meeting – 07/13/10

Recommendation: That the City Council approve the minutes of the joint meeting of July 13, 2010.

3. Resolution No. 2010-55, Approving the electric Utility's Integrated Resource Plan (IRP) as Required by the Western Area Power Administration (WAPA).

Recommendation: That the City Council approve the Electric Utility's Integrated Resource Plan (IRP), attached herewith as Exhibit "A" as required by the Western Area Power Administration (WAPA).

4. Resolution No. 2010-56, Providing for Certain Nuisance Abatement Charges to be Added to the Tax Rolls of Riverside County, California.

Recommendation: That the City Council adopt Resolution No. 2010-56.

6. Resolution No. 2010-60, Adopting a Statement of Investment Policy.

Recommendation: That the City Council adopt Resolution No. 2010-60.

Motion Machisic/Robinson to approve Consent Items 1, 3, 4 and 6. Mayor Botts opened the items for public comments. There were none. **Motion carried, all in favor.**

2. Approval of Minutes – Regular Meeting – 07/13/10

Councilmember Franklin said in regards to the minutes from the last meeting she just wanted to make sure it was clear because it sounds like maybe she wasn't clear enough in her statement and it was her concern that we do not have a policy that is an accounting requirement for how funds are spent so she wanted to include that anytime we have a contract that we have a policy requirement as to how funds are spent. On page 13, where it states "...having a requirement..." it should be "...having an accounting requirement..."

Motion Franklin/Machisic to approve Consent Item No. 2, approval of the Minutes of the Regular Meeting of July 13, 2010 with the correction as stated. Mayor Botts opened the items for public comments. There were none. **Motion carried, all in favor.**

5. Resolution No. 2010-57, To Enter Into a Contract for Funding of Engine 20 between Banning, Beaumont and Riverside County.

Councilmember Robinson said that he wanted to thank the City of Beaumont, Chief Stowells and Supervisor Ashley on this important issue and their hard work. This is an agreement for the funding of Engine 20 between Banning, Beaumont and Riverside County for the next two years. This is a big shot in the arm for us for our budget and for the safety of everybody in Banning, Beaumont and Riverside County.

Councilmember Machisic said that this item and Item 7 which will be discussed later is a good example that we need to get together from a region to provided certain kinds of services and these are certainly two good illustrations of that ability that we can provided the services but that we can't always do them individually.

City Manager said that he and Alan Kapanicas, City Manager of Beaumont have talked to both Andrew Bennett individually and Jeff Stowells about regionalization of our fire stations so that way it is one region as opposed to separate items.

Motion Robinson/Machisic to approve Consent Item No. 5, adopting Resolution No. 2010-57, approving a contract for continued funding of Fire Engine 20. Mayor Botts opened the items for public comments. There were none. **Motion carried, all in favor.**

7. Approval of the Agreement between the City of Banning and the City of Beaumont to Provide Citywide Animal Control Field Services.

Councilmember Robinson said this is a big thank you to the City Manager and Alan Kapanicas and the City of Beaumont and the Chief of Police in Beaumont for their efforts on putting this agreement together. It has been a real effort and a real struggle and he knows that the next part of this will be the housing of these animals but the main part is that we now have a seven day a week pickup and phone number and the animals are being taken care of properly.

Motion Machisic/Hanna that the Council approve Consent Item No. 7, approving the agreement between the City of Banning and the City of Beaumont to provide citywide Animal Control Field Services for the period of July 1, 2010 through June 30, 2011.

Mayor Botts opened the item for public comments.

Ellen Carr, 471 W. George Street addressed the Council stating that it is nice to see Banning and Beaumont play together nicely after all these years because neither one of the cities can do it alone. We are a community even though we are divided by a street we still belong to the same community so their animals belong to us and our animals belong to them. It is nice to see something happening and the proposals being discussed between Ramona and the cities. She hopes that what they present is the light at the end of the tunnel where we all come out together Banning and Beaumont and Calimesa, if they are involved, and we work together as one community.

Mayor Botts said he wanted to make a point here that all the way along the line the discussion has been the cost and can we get our own local facility opened and he doesn't think that there has ever been a comment privately or publicly that we are going to close that permanently. He thinks the negotiation and the discussion has been how do we do it and how much does it cost.

City Manager said he does have a meeting this week with the Executive Director of the Ramona Animal Human Society because that is what our goal is so it is more convenient for our residents but we still have to look at costs because it does come from the General Fund.

Mayor Botts closed the item for public comments.

Motion carried, all in favor.

REPORTS OF OFFICERS

1. Police Officer Fees for Security During the 2010 Playhouse Bowl Evenings in the Park Concern Series beginning July 29, 2010 at the Repplier Park Bowl.
(Staff Report – Lt. Phil Holder)

Lt. Holder said the request was made by the association responsible for putting on the concerts for two officers and the estimate for those two officers is based on the current fee structure through the City of Banning which is \$65 dollars an hour per officer for \$390 per event or a total of \$1,950.00 for the five events. These fees if waived would come out of the police department's general overtime account and there would be no additional cost to the City. He said that because they do not have the ability to waive those fees he is asking for Council's direction on the request.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Ellen Carr, 471 W. George Street
Dorothy Familetti-McLean
Fred Sakurai, 4985 Bermuda Dunes
William Dickson, 5700 W. Wilson

City Manager said in regards to the Banning police officers volunteering their time there is a thing called Fair Labor Standards Act and there was court case where they do not allow City volunteers or people volunteering for things at the same type of duty. So even if our officers would love to volunteer they can't and we would be violating the law at that point in time. It is a great idea but unfortunately we have to follow those laws.

Mayor Botts closed the item for public comments.

Ellen Carr addressed the Council stating that if Banning police can't work because they work in Banning and they would be performing double duty what about asking our friends in Beaumont; the police department there. She is sure that there may be two wonderful officers over there that would be more than willing to come here and maybe someday we can do the same for them. Let's ask Beaumont; all they can say is no.

Mayor Botts said he shares Councilmember's Machisic concern about the number of people at the concerts. There are a number of wonderful people but all of us have been there many times and there are those that come through that he gets concerned about and we really need to look at that. He would propose to the Council that we approve this subject to asking Beaumont if they have some volunteers.

Motion Botts/Machisic that the City Council approve this request from the Banning Playhouse Bowl Association for two officers to be present between the hours of 6:30 – 9:30 p.m. for each of the five concerts during the Playhouse Bowl Evenings in the Park Concert Series and ask Beaumont if they have some volunteers.

Councilmember Franklin said it would be nice if we were able to follow up on Mr. Sakurai's comment if we could encourage more volunteers because she does go to other cities and volunteers are the ones that are out at pleasure events so it would be nice if we could get some more.

Motion carried, all in favor.

City Manager said he hates to sound like a bureaucrat but one of the things that they did find out going through this system especially on this issue is that some of these events do not come in for Special Event Permits and we can waive fees on special event permits on these types of things but there is no getting around the types of security needed so things don't happen so staff is going to

make sure that loophole is closed in the future so that way we know there are going to be so many people and they need a special events permit because they may have some issues. This is just to protect us from liability issues.

2. Consideration of Consultant Services Agreements for Professional Planning and Environmental Services.
(Staff Report – Zai Abu Bakar, Community Development Director)

Zai addressed the Council stating that the purpose of the contract is to manage the Butterfield Specific Plan and Pardee is currently in the process of amending the former approved and adopted Specific Plan called Deutsch Specific Plan. Also the developer is preparing the environmental impact report (EIR) for the project and as part of the review and the adoption of that EIR it requires an independent judgment of the City.

Councilmember Franklin asked Zai to explain what an EIR is and also where this property is located and she would also like to know who is paying for additional services.

Zai said that in regards to the Pardee Project it is 1500 acres located at the north east corner of Highland Springs Avenue and Wilson Street. Pardee has been working on this project since 2007 and they will also pay for the contract and this amount will not come from the General Fund.

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

Motion Machisic/Robinson that the City Council adopt Resolution No. 2010-58, Approving Contact Services Agreements with 1) Hogle-Ireland, Inc. to provide project management for the Butterfield Specific Plan (Pardee Homes) and review of the environmental impact report (EIR) for the project; and 2) Establish an on-call list of planning and EIR consultants for future project management of large land planning/development and preparation of EIRs.
Motion carried, all in favor.

3. Resolution No. 2010-61, Making Certain Findings With Respect to the Use of Redevelopment Funds to Finance the Cost of the Downtown Water Main Improvements Project Within the Merged Redevelopment Project Area.
(Staff Reports – Duane Burk, Public Works Director)

Mr. Burk said that this is a two prong approach and we are using redevelopment monies to realign the water system in the downtown area but this finding needs to come from the Council and this finding deals with Redevelopment Law Section 33445. The findings are that it will enhance fire flow within the downtown area; the scope of the area is on Ramsey Street from Alessandro to Fourth Street and from Williams Street to Livingston per San Gorgonio, First St. and Second Street.

City Manager said that there will be concerns about the downtown businesses and those businesses that are active so staff will make sure that we work that out so that we have good flow within the downtown area.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Don Smith resident of Banning spoke in favor of this item.

Motion Hanna/Robinson that the City Council adopt Resolution No. 2010-61, Making Certain Findings With Respect to the Use of Redevelopment Funds to Finance the Cost of the Downtown Water Main Improvements Project Within the Merged Redevelopment Project Area. Motion carried, all in favor.

4. Requests for Donation: San Gorgonio Pass Hispanic Chamber of Commerce, Playhouse Bowl, Stagecoach Days, Banning Chamber of Commerce, Carol's Kitchen.
(Staff Report – Andy Takata, City Manager)

City Manager said that two meetings ago the Council asked staff to bring back this item to support some of the organizations which have been supported in the past as well as any that may have requested that. There are two issues that need to be pointed out: 1) a couple of years ago the Council adopted a policy that said that you would not give an organization any more than \$1000 dollars and his first request is that the Council direct him to rewrite that policy because you've have historically given more than \$1000 dollars to different organizations; and 2) there was a recommendation that we would transfer money from the Electrical Fund and in talking with our attorney and everybody else it is not quite that simple so he would recommend that you take it from our General Fund Reserves at this time. But because of our fiscal condition period of the City it is difficult for staff to recommend this but if the Council wants to do it especially for those worthy organizations who did not anticipate not receiving money from the Council then you can do it by taking money from the reserves but there is another policy that he will have to look at which is that you have to have income for any new programs. Most of those are not new programs and are things you have sponsored in the past and they need to have some kind of transition and he perfectly understands that might be the decision of the Council.

Councilmember Robinson asked for the public's interest maybe we can go over what they are requesting and how this \$43,000 is made up. At this time the City Manager went over the requests:

- The San Gorgonio Pass Hispanic Chamber of Commerce - \$2,500.00 for toy drive during Christmas.
- Playhouse Bowl you have given \$5,000 from the Electrical Fund and \$10,000 from the General Fund in years past.
- Stagecoach Days came in at \$15,000 but \$10,000 of that was the repair of Dysart Park. City Manager said from his point of view that is a City park and we need to maintain our City parks so he took that amount from the \$15,000 and left \$5,000 dollars and this is a community event which brings people to the community.
- Banning Chamber of Commerce - \$7,500 for a new program which is the golf scramble which they believe will be successful in the future.
- Carol's Kitchen – which is going to have to pay \$13,000 to continue to operate at the Community Center and if not, they may move it away.

Mayor Botts at this time opened the item up for presentations from the various organizations. Those who gave presentations on their organizations are as follows:

Bill Dickson – San Gorgonio Pass Hispanic Chamber of Commerce and the Playhouse Bowl.

Sue Palmer – Stagecoach Days

Bill Lamb – Stagecoach Days

Bill Dickson – Stagecoach Days

Jim Smith, 5832 Riviera – Banning Chamber of Commerce and Carol's Kitchen

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Marion Johnson

Don Smith

Dorothy Familetti-McLean

Steven Douglas, Elsie Lee Court

Mayor Botts said that these people have had an expectation he believes and we have supported them in the past and they are all wonderful organizations and he would like to see us find the \$43,000 some place other than the General Fund and fund these five organizations on a one year basis. Let's do it this year and everyone here knows that there may be nothing next year or forever. If we were to agree with that, then we say to the City Manager that this is for one year that we are going to help them and then turn to the City Manager to develop a plan, a strategy of how we deal with this in the future.

City Manager said he was just talking to Lt. Holder and he would like to make a full disclosure now rather than to bring it back later and that this does not include the police overtime component for Stagecoach Days so if you are going to fund them, please also waive the fees and they will work real closely to keep that at a minimum, if you choose to do so. He wanted to have full disclosure on this issue.

Motion Hanna/Robinson that the Council fund one time only the amounts proposed for this year and notify all organizations that there maybe no funds next years. Also to waive police fees for Stagecoach Days and keep it at a minimum as stated by the City Manager.

Councilmember Franklin asked if the motion was to approve this full amount. Mayor Pro Tem Hanna said yes.

Motion carried, with Councilmember's Franklin and Machisic voting no.

Clarification on Motion by Mayor Botts made at CRA Meeting session –

Mayor Botts said that during the break someone suggested that we needed to clarify the motion that we approve the \$43,000 dollars for the five entities, the donations to them and he



spoke to it and said that it should not come from the General Fund but someone in the audience felt that was not a part of the motion. If we need to move to reconsider, that was the intent.

Chairman Robinson said that was his intent and if we could make every effort to get it from another pocket besides the General Fund.

City Manager said if the Council gives him the flexibility, he will look to see how some of our current rates are doing and what we can transfer because we have other funds that may not be in that good of a shape either.

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

City Council

Councilmember Robinson –

- In regards to stops being moved by RTA: 1) RTA Route 1 eastbound in the Corona Cruiser Blue Line – no longer use the bus stop at Magnolia Ave. and South Temescal Street. The stop is relocated to the intersection of Magnolia Ave. and Knee St.; 2) Effective Monday, August 9th Route 19 – stop at Webster Ave. and Morgan St. in Perris will be moved to Nevada Road and Morgan St. to better serve Val Verde High School. Maps are available on the RTA website.

Mayor Pro Tem Hanna –

- Reminder this Thursday there is a barbecue starting at 4 p.m. at the Community Center that will benefit the San Gorgonio Child Care Center followed by the Playhouse Bowl Concert at 7:30 p.m.
- Stagecoach Days is coming up quickly and she happens to have tickets for sale for the Spaghetti Dinner, Wednesday, Sept. 8th from 4 to 7 p.m. at the Community Center and tickets are \$7.00 per person and you can get tickets from Habitat for Humanity members and the Banning Rotary Club.
- There is a new store in downtown Banning called “Ellie’s Galleria” by Estelle Lewis and she has items for the home and for women and she also provides personal shopping. The address is 66 W. Ramsey beside the Fox Theater.

Councilmember Machisic –

- He has a flyer from the Riverside Conservation Authority (RCA) and he will leave them with the Clerk.
- There was no WRCOG meeting this month.
- Also he had mentioned to the Council that there was a lawsuit filed in court from Beaumont where a developer had paid a fee of \$1.5 million for RCA funds and they held on to the funds and did not resubmit them to RCA and then the developer filed a suit against the City of Beaumont for the \$1.5 million and they in turn gave the money to the court and RCA and the developer went to court and the contractor prevailed. So he was given the \$1.5 million that Beaumont had held for four years. RCA is in the process of appealing.

Councilmember Franklin –

- Said there was an article in the Press Enterprise in regards to the Los Angeles area company that purchased the old window company and she read part of the article. It talks about the owner, Lawrence saying, “It is securing the necessary permits a process that he said was going smoothly here in Banning. And in fact, that easy road is one of the reasons that made Banning an attractive location. It is unusual to get that level of cooperation from a City, he said.” Councilmember Franklin said that she also wanted to share that she was in a group talking to some business people and our Planner, Brian Guillot, was given a really nice complement about how easy it was to work with him.
- As we are moving forward and talking more about water are there any plans to do more conservation education for the public to make sure that people are aware of what things that they could be doing now to lower their water usage. She knows the issue is not how much water they use but if it is a possibility that rates are going to be going up that we continue to do conservation education for the public. Mr. Burk said that staff will be working with WRCOG (Western Riverside Council of Governments) in doing an outreach program.
- In one of the reports we talked about selling surplus City-owned furniture and is there a process now to sell excess City furniture. Mr. Burk said that the City does have a policy.
- She wanted to ask if we would consider at some point in time as we talk about tourism as a Council the designation of scenic highway. It was in one of our reports that we don't have that now but that is something we want to look at in the future. Mayor Botts said one of the major charges that we gave to the Economic Development Committee is that we told them that we need to have them involved in tourism to analyze it, work with the Chamber and work with others and come back to the Council and say how we should be approaching tourism.

City Committee Reports – There were none.

Report by City Attorney – None at this time.

Report by City Manager

- We are trying to do some Town Hall Meetings in regards to Proposition 218, the water rates, on Tuesday, August 10th here in the Council Chambers, one on Wednesday, August 18th at the Community Center and start roughly between 5 and 5:30 p.m. Also on August 5th there will be a meeting at Sun Lakes. This will give the public an opportunity to ask questions about the study and how it will affect them.
- He did sign the contract for the Hendon Building which is something the Council has been asking about in regards to when we are going to start and we have gotten permission by the owner.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Robinson said that we have had a lot of discussion about golf cart lanes going from Sun Lakes to the Village and can we get some input on where we are in regards to this situation.

City Manager said that during his report he will report back on where we are at on that issue.

Mayor Botts asked about the meetings for August. City Manager said that we do not have any agenda items for the August 10th meeting or are of a pressing matter so the next City Council Meeting will be held on August 24th.

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 8/24/10)
4. Schedule Meeting with Banning Library Board
5. Update on Economic Development Plan

ADJOURNMENT

By common consent the meeting adjourned at 6:54 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT 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.

To the Mayor and City Council Members July 27, 2010

1. The water problem has been growing for years. How long have you Mr. Burke been involved with water? Even when you were not the director were you not a part of staff meetings where water should have been discussed along with other city business?
2. Extravagant spending was done on the police station and on the parking lot next to city hall. Were you not aware of the fact you were spending water bond money for these things? Did you even care? How will the public be assured the same type of spending will not occur with these water projects?
3. Council member Franklin has asked several times for staff to look into grants and stimulus dollars over the last year. How many grants have been identified and applied for? If staffing is an issue, why not contract out for grant writing like everything else? Even if it does not cover operating or maintenance costs, other cities have gotten some money. Why not Banning?
4. Since we cannot seem to run the department properly with an eye focused on the long term benefit of the taxpaying residents, have you considered contracting out to get a professional to run the department? Or even selling the water dept?
5. In business where there is a problem, management is held accountable. How will you, our city council, hold the staff accountable for this problem that did not happen overnight but apparently over many years. The fact that we have had a change in staff should not have affected this issue. It was and is an important one, and it should have been monitored by someone on the staff at all times.
6. Utility costs, both water and electric, are now a burden to all residents and businesses in Banning. It does not matter what part of town you live in. (And when the people of Sun Lakes get up to comment, they should be including the entire town, not just their gated community. When people living other than Sun Lakes get up, they do not intentionally exclude Sun Lakes.) We are one community.
I implore staff to continue to look for ways to reduce our costs and not increase the rates so much so that we, the ratepayers, can continue to live here. People have left, and if things get too bad, more will leave. You will not be able to get money out of a ghost town.



GOVERNOR ARNOLD SCHWARZENEGGER

April 21, 2010

The City of Banning

I am pleased to extend my thanks for your continued support of environmentally sustainable programs.

California has the most breathtaking ecosystem in the world and it is up to every one of us to protect it from harm. My administration has worked hard to provide jobs and incentives for cities like yours to lead the way with the green technologies of tomorrow. It fills me with pride when I hear of all your accomplishments. You are helping us get closer to our shared vision of a renewable state.

I commend you on your achievements in sustainable energy, which serve as a model for responsibility and commitment. On behalf of all Californians, I thank you for your dedication and wish you continued success in all your endeavors.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger".

Arnold Schwarzenegger

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841

Exhibit "B"

CITY COUNCIL AGENDA

DATE: August 24, 2010

TO: City Council

FROM: Rita Chapparosa, Deputy Human Resources Director

SUBJECT: Amend Part-Time Classification Salary Resolution

Recommendation: Adopt Resolution No. 2010-48 amending the City's Part-time Classification Salary Plan to reflect new job classifications and salary ranges due to the reorganization of the Department in the FY 2010-11 adopted budget.

Justification: The Community Services Department has proposed a reorganization of the Department due to budget reductions and to more effectively offer services and provide coverage for the Department's related activities. The Department is proposing the creation of a part-time Community Center Caretaker position to maintain the municipal pool and general maintenance at Salary Range 36 and a Recreation Program Coordinator to assist in the creation of programs at the Center to Salary Range 43. The positions will be filled with existing personnel.

In addition, staff recommends changing certain salary ranges of existing positions in our seasonal staff due to retention of qualified part-time employees. The following changes are recommended:

Cashier from Range 12 to 17
Lifeguard from Range 17 to 22
Lifeguard (WSI certification) Range 19 to 25
Assistant Pool Manager from Range 22 to 27
Pool Manager from Range 27 to 32

Background: On August 24, 2004, the City Council approved the Resolution No. 2004-85, to adopt a salary range and process for part-time employees. Thereafter, Resolution No. 2008-94 amended changes to the pay ranges and changed the period for step advances based on a number of hours worked in a year.

Historically, employees who are hired as "part-time", including seasonal workers, are hired "at-will" at a stationary hourly rate, without benefits (except for PERS under certain circumstances), and are excluded from representation by any bargaining unit.

Fiscal Data: The above classification changes will not increase the Community Services Department FY 2010/2011 budget.

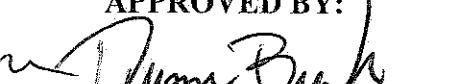
RECOMMENDED BY:


Rita Chapparosa
Deputy Human Resources
Director

REVIEWED BY:


Kifby Warner
Interim Administrative
Services Director

APPROVED BY:


Randy Takata
City Manager

RESOLUTION NO. 2010-48

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AMENDING RESOLUTION NO. 2008-94, THE CLASSIFICATION AND
COMPENSATION POLICY FOR PART-TIME EMPLOYEES OF THE
CITY OF BANNING**

WHEREAS, part-time employees are individuals who customarily work less than 1,000 hours per fiscal year, or an average of 20 hours per week on a regular year-round basis; and

WHEREAS, it is necessary and desirable to employ persons on a part-time basis to provide valuable services to augment the provision of City services by permanent, full-time employees; and

WHEREAS, such part-time employees are unrepresented “at-will” individuals that pay no dues to, nor receive benefits from, negotiations by employee unions; and

WHEREAS, there is currently no formal policy regarding the compensation to be paid to such employees for the rendering of such valuable service;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1: Classification and Pay Structure

Part-time classification titles shall be set forth in the amended Attachment I effective August 24, 2010. The minimum and maximum hourly rates for such part-time classification shall be as shown on the permanent Salary Range Table, attached as Exhibit “A” which includes the addition of the Recreation Program Coordinator, Community Center Caretaker and range changes to current positions.

Section 2: Performance Review System for Part-Time Employees

Part-time employees will receive performance reviews and merit adjustments after completing 1,000 hours of the service and thereafter upon completion of each additional period of 1,000 hours of service. Recommended merit adjustments must be based upon written performance evaluations and included in the City’s annual budget review and adoption.

PASSED, APPROVED, AND ADOPTED this 24th day of August, 2010.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-48 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of August, 2010, by the following vote, to wit:

AYES:

NOES:

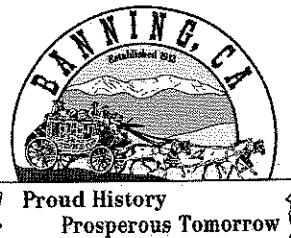
ABSTAIN:

ABSENT:

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

ATTACHMENT I
PART-TIME CLASSIFICATION TITLES (INCLUDING SEASONAL)
EFFECTIVE AUGUST 24, 2010

Airport Attendant	Range 17
Bus Driver	Range 41
Cashier	Range 17
Community Center Caretaker	Range 36
Crossing Guard	Range 12
Development Assistant	Range 42
Dial-A-Ride Driver	Range 31
Financial Services Specialist	Range 44
Lifeguard	Range 22
Recreation Leader	Range 22
Lifeguard w/WSI Certification	Range 25
Assistant Pool Manager	Range 27
Pool Manager	Range 32
Recreation Program Coordinator	Range 43
Senior Center Coordinator	Range 49
Senior Recreation Leader	Range 36
Utility Billing Representative	Range 40
Police Records Assistant	Range 29



CITY OF BANNING, CALIFORNIA

Community Center Caretaker

Proud History
Prosperous Tomorrow

Job Code: 4441

FLSA

Exempt

Non-Exempt

JOB DEFINITION: Under general supervision, performs work related to the cleaning and general maintenance and repair of Community Services buildings.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Performs cleaning, sanitizing and restocking of restrooms. Set up, tears down and cleans prior to and following programs and activities. Receives, assembles and sets up furniture and equipment. Cleans and maintains Community Services rooms and offices. Vacuums, shampoos and maintains carpeted areas and cleans, mops, waxes, buffs and polishes floors. Monitors proper use of equipment and facilities.

Inspects facilities and grounds for necessary minor maintenance and repair. Repairs or replaces damaged or non-working equipment. Submits work orders for equipment and facility repairs. Receives and stocks supplies, equipment and tools.

Responsible for the maintenance of the municipal pool to the standards required by the Riverside County Health Department. Regularly tests water to ensure proper chlorination, pH and alkalinity. Periodically test for calcium hardness and stabilizer. Ensure proper handling of pool chemicals, including the use of personal protective equipment, proper hazard communication labeling and maintenance of MSDS documentation. Back wash filters, skim and vacuum pool regularly. Follows occupational safety and health regulations and guidelines.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of inventory control methods and techniques.
- Knowledge of operation, use and maintenance of cleaning equipment.
- Knowledge of basic building maintenance methods and practices.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in reading and following written instructions regarding the mixing and handling of cleaning and maintenance chemicals.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

MINIMUM QUALIFICATIONS: A high school diploma or GED **AND** one (1) year of custodial or building maintenance experience. Position requires possession of either CPO (Certified Pool Operator) or AFO (Aquatic Facility Operator) certification.

ADDITIONAL REQUIREMENTS: May be required to lift and/or carry heavy, bulky supplies and materials weighing up to 75 pounds.



CITY OF BANNING, CALIFORNIA

Recreation Program Coordinator

Job Code: 3327

FLSA

Exempt

Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with supervising the senior center facility and associated recreational activities.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Supervises the operation of the senior center facility and recreational activities at the community center, as well as plans, implements and purchases supplies for recreational programs and activities. Provides information and referrals to social services, trains and supervises citizen volunteers. Accounts for program registration payments and newsletter subscriptions and provides cash reports. Creates, prints and reproduces flyers and program information for the senior center. Assists senior citizens with completing forms and applications for social services. Attends meetings, conferences and presentations. Conducts presentations and educates the community on senior citizen needs and programs as well as recreational opportunities that are offered. Recruits volunteers to participate in programs and services. Monitors program and center compliance with contract and grant guidelines and procedures. Works directly with Senior Recreation Leader to plan and coordinate youth programs. Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of file management and recordkeeping techniques.
- Knowledge of recreation planning concepts and principles.
- Knowledge of contract compliance and grant guidelines.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

MINIMUM QUALIFICATIONS: Three (3) years of progressively responsible recreation experience and special event planning.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license.

**CITY COUNCIL AGENDA
CONSENT**

Date: August 24, 2010
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution No. 2010-63 Approving the Local and System Resource Adequacy Capacity Purchase Agreement with RRI Energy Services, Inc. for Calendar Year 2011

RECOMMENDATION: The City Council approve the local and system resource adequacy capacity purchase with RRI Energy Services, Inc. ("RRI") for calendar year 2011, attached herewith as Exhibit "A".

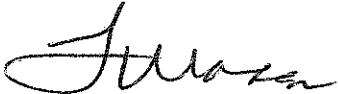
JUSTIFICATION: It is a requirement of all California Independent System Operator ("CAISO") participants to have a minimum of fifteen percent (15%) capacity reserves. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO. Banning is a Participating Transmission Owner ("PTO") with the CAISO.

BACKGROUND: After the California energy crisis the CAISO has been developing market modifications to ensure that all Load Serving Entities ("LSE") have acquired sufficient electricity / capacity to serve their peak demand. The CAISO has determined that each LSE must maintain capacity reserves of at least 15% above its projected peak demand, and has implemented policy changes to that affect. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO. Banning's allocated Local Area Reliability ("LAR") requirement for 2011 is 24 megawatts ("MW").

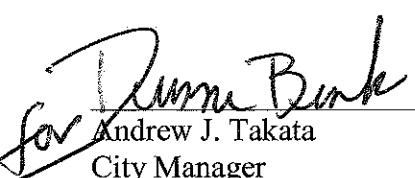
Banning has negotiated a capacity reserve deal with RRI that fulfills both the CAISO RA and LAR requirements for calendar year 2011. Staff recommends the approval of this agreement by the City Council.

FISCAL DATA: The cost of this transaction is \$2.85/kilowatt month, for a total cost of \$820,800 over the twelve month contract period. Funds have been allocated in the FY 2010-11 Budget to cover the cost of this expense.

RECOMMENDED BY:


Fred Mason
Electric Utility Director

APPROVED BY:


for Andrew J. Takata
City Manager

RESOLUTION NO. 2010-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE LOCAL AND SYSTEM RESOURCE ADEQUACY CAPACITY PURCHASE AGREEMENT WITH RRI ENERGY SERVICES, INC. FOR CALENDAR YEAR 2011

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

WHEREAS, the City is a Participating Transmission Owner (“PTO”) with the California Independent System Operator (“CAISO”); and

WHEREAS, the CAISO has implemented Resource Adequacy (“RA”) requirements of 115% requiring a minimum of 15% reserves for all Load Serving Entities (“LSE”); and

WHEREAS, the CAISO requires that a specified amount of each participant’s total capacity be from local generating resources, as defined by the CAISO; and

WHEREAS, the City has negotiated an agreement with RRI Energy Services, Inc. to supply energy capacity to meet the CAISO Local Area Reliability (“LAR”) and RA requirements, attached herewith as Exhibit “A”;

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

1. Adopt Resolution No. 2010-63 approving the energy capacity agreement between the City of Banning and RRI Energy Services, Inc., and authorize the City Manager or his designee to administer said agreement.
2. Authorize the Mayor to execute Resolution No. 2010-63. Said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, APPROVED, AND ADOPTED this 24th day of August 2010.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-63 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 24th day of August 2010 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”

**CONFIRMATION LETTER
BETWEEN
RRI ENERGY SERVICES, INC.
AND
CITY OF BANNING**

This confirmation letter ("Confirmation") confirms the Transaction between RRI Energy Services, Inc. ("Seller") and City of Banning ("Buyer"), each individually a "Party" and together the "Parties", dated as of August 25, 2010 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the resource adequacy capacity product described herein (the "Product"). This Transaction is governed by the Western Systems Power Pool Agreement (Effective Version: March 16, 2007) to which both Seller and Buyer are members along with any amendments and annexes thereto (the "Master Agreement"). Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement and the Tariff.

**ARTICLE 1
DEFINITIONS**

- 1.1** "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2** "Availability Incentive Payments" shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.3** "Availability Standards" shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.4** "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.5** "CAISO" means the California Independent System Operator, or its successor.
- 1.6** "Capacity Replacement Price" means (a) the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.3 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 4.16a of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.7** "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.8** "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.9** "Contingent Firm RA Product" has the meaning specified in Section 3.3 hereof.
- 1.10** "Contract Price" means, for any Monthly Delivery Period, the product of the RA Capacity Flat Price and the Price Shape Factor for such period.
- 1.11** "Contract Quantity" means the total Unit Contract Quantity for all Units.
- 1.12** "CPUC" means the California Public Utilities Commission or any successor thereto.
- 1.13** "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14** "Delivery Point" has the meaning specified in Section 4.2 hereof.

1.15 "Designated RA Capacity" means, for each Unit, the amount of RA Capacity that Seller provides to Buyer pursuant to this Confirmation that is certified for inclusion in RAR Showings and if applicable LAR Showings, in each case as determined pursuant to Section 3.1 hereof. Designated RA Capacity shall include those attributes associated with the capacity identified in Article 2 and Article 3 hereof.

1.16 "Firm RA Product" has the meaning specified in the Section 3.2 hereof.

1.17 "Forced Outage" means an outage that is designated "forced" according to CAISO's outage coordination rules and procedures.

1.18 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

1.19 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSE's by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

1.20 "LAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as may be identified from time to time by the CPUC, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that the LAR Attributes associated with a Unit by virtue of its location or point of electrical interconnection may change as the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas and such change will not result in a change in payments made pursuant to this transaction.

1.21 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

1.22 "LRA" means a Local Regulatory Authority, as defined in the Tariff.

1.23 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

1.24 "Maintenance Outage" has the meaning specified in the NERC/GADS Protocols.

1.25 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

1.26 "Monthly Delivery Period" means each calendar month during the Period of Delivery.

1.27 "Monthly RA Capacity Payment" has the meaning specified in Section 4.4 hereof.

1.28 "NERC/GADS Protocols" means the North American Electric Reliability Council (NERC) Generating Availability Data System (GADS) protocols, as may be updated from time to time.

1.29 "Non-Availability Charges" shall mean Non-Availability Charges as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

1.30 "Non-Excusable Event" means an event which prevents Buyer's ability to use Designated RA Capacity for its RAR Showing or LAR Showing as a result of Seller's (a) negligence, (b) failure to perform its obligations under this Confirmation, including, without limitation, the failure to cause the owner, operator or SC of a Unit to comply with the operations and maintenance standards

specified in Section 8.2(f), or (c) failure to comply, or cause the owner, operator or SC of the Units to comply, with the Tariff with respect to the Units providing RAR Attributes and LAR Attributes, as applicable.

- 1.31 "Period of Delivery" has the meaning specified in Section 4.1 hereof.
- 1.32 "Planned/Scheduled Outage" means any outage, including Maintenance Outages, that are designated "Approved Planned" in the SLIC System.
- 1.33 "Price Shape Factor" means the Price Shape Factor specified in the Monthly Payment Price Shape Table in Section 4.4 hereof.
- 1.34 "Product" has the meaning specified in the introductory paragraph hereof.
- 1.35 "Prorated Percentage of Unit Factor" means the percentage of RA Capacity, as specified in Article 2 hereof, from the Unit that is dedicated to Buyer pursuant to this Confirmation.
- 1.36 "RA Availability" means, for each Unit, expressed as a decimal value rounded to the nearest hundredth, (a) the Unit's Designated RA Capacity for a Monthly Delivery Period, divided by (b) the Unit Contract Quantity for such Monthly Delivery Period, provided that a Unit's RA Availability shall not exceed 1.00.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and LAR purposes for the Period of Delivery, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses both the RAR Attributes and LAR Attributes of the capacity provided by a Unit.
- 1.38 "RA Capacity Flat Price" means the price specified in the RA Capacity Flat Price Table in Section 4.4 hereof.
- 1.39 "RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.
- 1.40 "RAR Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, LRA, or Governmental Body having jurisdiction, that can be counted toward RAR, exclusive of any LAR Attributes.
- 1.41 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA having jurisdiction.
- 1.42 "Replacement Capacity" has the meaning specified in Section 5.3 hereof.
- 1.43 "Replacement Unit" means a generating unit meeting the requirements specified in Section 5.2 hereof.
- 1.44 "Resource Top Down Category" means the resource classification as described in CPUC Decision 05-10-042, and as may be amended from time to time by the CPUC.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "SLIC System" means the scheduling and logging system for the CAISO, which is a web-enabled interface for transmission and generation owners and operators to communicate outage information to the CAISO.
- 1.47 "Standard Capacity Product" shall mean the product as defined in FERC filing ER09-1064 or as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.
- 1.48 "Supply Plan" means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes or LAR Attributes.

1.49 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

1.50 "Transaction" has the meaning specified in the introductory paragraph hereof.

1.51 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.

1.52 "Unit Contract Quantity" means the quantity of RA Capacity for a Unit as of the Confirmation Effective Date, as specified in Section 4.3 hereof.

ARTICLE 2 UNIT INFORMATION¹

Unit: Etiwanda Unit 3

Location: Rancho Cucamonga, CA

CAISO Resource ID: ETIWND_7_UNIT 3

SCID: NES1

CAISO Net Qualifying Capacity (as determined by CAISO for such Unit as of the Confirmation Effective Date): 320 MWs

Prorated Percentage of Unit Factor: .075

Resource Type: Natural Gas Conventional Steam Turbine

Resource Top Down Category (1, 2, 3 or 4): 4

Point of interconnection with the CAISO Controlled Grid ("Substation"): Vista

Current CAISO Zone (NP15, ZP26, or SP15) in which Substation resides: South

LAR Region (if any, as of Confirmation Effective Date): LA Basin

Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment: None known by Seller as of the Confirmation Effective Date.

Run Hour Restrictions: None

ARTICLE 3 RESOURCE ADEQUACY CAPACITY PRODUCT

During the Period of Delivery, Seller shall provide the Product to Buyer pursuant to the terms of this Confirmation. The Product shall (a) include both RAR Attributes and, if any, LAR Attributes, and (b) be either a Firm RA Product or a Contingent Firm RA Product, as selected below. The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity in RAR Showings, LAR Showings if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be

¹ To be repeated for each Unit if more than one.

made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit's Contract Quantity, and any RAR Attributes or LAR Attributes not otherwise sold under this Confirmation.

3.1 RAR and LAR Attributes

Seller shall provide Buyer with the Designated RA Capacity and the RAR Attributes and, if any, LAR Attributes from each Unit associated with such Designated RA Capacity, as expressed in MWs. For each Monthly Delivery Period, a Unit's Designated RA Capacity shall be equal to the product of (x) the Unit's RA Capacity, subject to adjustments for Planned/Scheduled Outages at the time of the RAR Showings and, if applicable, LAR Showings, if any, as determined pursuant to Article 7 below and (y) the Unit's Prorated Percentage of Unit Factor; provided that the total amount of Designated RA Capacity from all Units shall not exceed the Contract Quantity.

3.2 [X] Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period solely as a result of Planned/Scheduled Outages resulting in adjustments to RA Capacity of a Unit at the time of the RAR Showings and, if applicable, LAR Showings pursuant to Article 7 below, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. If Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer's sole and exclusive remedy for such failure, Seller shall be liable for damages pursuant to Section 5.4 hereof, or Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof. For clarity, if, the Units provide less than the full amount of the Contract Quantity as a result of a Forced Outage or a Force Majeure, Seller is not obligated to provide Buyer with replacement Designated RA Capacity or to indemnify Buyer for any penalties or fines pursuant to Section 5.5 hereof.

3.3 [] Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units in the amount of the Contract Quantity. If, for any Monthly Delivery Period, the Designated RA Capacity is insufficient to provide the full amount of the Contract Quantity for such period because of a Non-Excusable Event, Seller shall provide Buyer with Designated RA Capacity from one or more Replacement Units pursuant to Section 5.2 hereof. In such case, if Seller fails to provide Buyer with replacement Designated RA Capacity from Replacement Units pursuant to Section 5.2, as Buyer's sole and exclusive remedy for such failure, Seller shall be liable for damages pursuant to Section 5.4 hereof, or Seller shall indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof. For clarity, if the Units provide less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event, Seller is not obligated to provide Buyer with replacement Designated RA Capacity or to indemnify Buyer for penalties or fines pursuant to Section 5.5 hereof.

ARTICLE 4 DELIVERY AND PAYMENT

4.1 Period of Delivery

The Period of Delivery shall be: January 1, 2011 through December 31, 2011, inclusive.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area and, if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Unit Contract Quantity²

The Contract Quantity of each Unit for each Monthly Delivery Period shall be:

Unit Contract Quantity (MWs)

Month	MWs
January	24
February	24
March	24
April	24
May	24
June	24
July	24
August	24
September	24
October	24
November	24
December	24

If any portion of the Unit Contract Quantity of any Unit providing a Contingent Firm RA Product is not countable in Buyer's RAR Showings or, if applicable, LAR Showings after the Confirmation Effective Date for reasons other than a Non-Excusable Event, the Unit Contract Quantity shall be adjusted to the product of the Unit's (a) RA Capacity following adjustment, and (b) Prorated Percentage of Unit Factor, provided that the resulting Unit Contract Quantity shall not exceed the original Unit Contract Quantity on the Confirmation Effective Date.

² To be repeated for each Unit if more than one.

4.4 Monthly RA Capacity Payment

In accordance with the terms of Section Nine of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, following each Monthly Delivery Period. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places). Each Monthly RA Capacity Payment may be subject to reduction in accordance with Section 4.5 hereof.

RA CAPACITY FLAT PRICE TABLE

Contract Year	RA Capacity Flat Price (\$/kW-month)
2011	\$2.85

The respective monthly Price Shape Factor, set forth in the Monthly Payment Price Shape Factor Table below, shall apply throughout the entire Period of Delivery.

MONTHLY PAYMENT PRICE SHAPE FACTOR TABLE

Contract Month	Price Shape Factor
January	100%
February	100%
March	100%
April	100%
May	100%
June	100%
July	100%
August	100%
September	100%
October	100%
November	100%
December	100%

4.5 Reduction of Monthly RA Capacity Payment (Contingent Firm RA Product only)

For any Contingent Firm RA Product, the Monthly RA Capacity Payment for each Unit shall be reduced by its RA Availability Adjustment, which is calculated for any Monthly Delivery Period as follows:

- (a) When the Unit's RA Availability is greater than or equal to 0.80, the Unit's RA Availability Adjustment shall be zero.
- (b) When the Unit's RA Availability is greater than or equal to 0.50, but less than 0.80, the Unit's RA Availability Adjustment shall be equal to:

(0.80 - RA Availability) * 0.50 * the applicable Contract Price * Unit Contract Quantity * 1,000.

(c) When the Unit's RA Availability is less than 0.50, the Unit's RA Availability Adjustment shall be equal to:

$$(((0.80 - 0.50) * 0.50) + ((0.50 - RA Availability) * 1.00)) * the applicable Contract Price * Unit Contract Quantity * 1,000.$$

The final product of this RA Availability Adjustment calculation shall be rounded to the nearest penny (i.e., two decimal places). The RA Availability Adjustment for each Unit shall be subtracted from the Monthly RA Capacity Payment determined in Section 4.4 to determine the amount due to the Seller for Designated RA Capacity provided hereunder from each Unit. In no case shall a Unit's Monthly RA Capacity Payment be less than zero.

4.6 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, and (d) any revenues for black start or reactive power services. However, Buyer shall be entitled to receive and retain all revenues associated with and arising from the Designated RA Capacity of any Unit during the Period of Delivery (including any capacity or availability revenues from RMR Agreements for any Unit, and Interim Capacity Procurement Mechanism capacity payments, but excluding payments described in clauses (a) through (d) above). In accordance with Section 4.4 of this Confirmation and Section Nine of the Master Agreement, all such Buyer revenues described in this Section received by Seller, a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's SC, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

In the event the Tariff is modified to include the Standard Capacity Product, Seller agrees that the Unit is subject to the terms of the Availability Standards. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account.

ARTICLE 5 SELLER'S FAILURE TO DELIVER CONTRACT QUANTITY

5.1 Notices and Filings

If the Units will not be available to provide Designated RA Capacity in the full amount of the Contract Quantity for any RAR and/or LAR Showings for the Period of Delivery, Seller shall, no later than the earlier of (a) twenty (20) Business Days after the loss of any Designated RA Capacity, or (b) fifteen (15) Business Days before the relevant deadline for such RAR or LAR Showing, notify Buyer of the Designated RA Capacity of each Unit which can be included in such Showings. Seller shall, on a timely basis, submit, or cause each Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Designated RA Capacity of each Unit sold to Buyer. Seller shall cause the Unit's Scheduling Coordinator to certify to Buyer, no later than the earlier of (a) twenty (20) Business Days after the Confirmation Effective Date, or (b) fifteen (15) Business Days before the relevant deadline for any applicable RAR or LAR Showing, that Buyer will be credited with the Designated RA Capacity for the Period of Delivery in the Unit's Scheduling Coordinator's Supply Plan. Seller shall indemnify and hold harmless Buyer from any costs, monetary penalties or fines Buyer may incur in the event any Unit's Scheduling Coordinator fails to timely submit Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder. If Seller fails to pay those costs, monetary penalties or fines, or fails

to reimburse Buyer for those costs, monetary penalties or fines, then Buyer may offset any amounts owing to it under this Section 5.1 against any future amounts it may owe to Seller under this Confirmation.

5.2 RA Capacity from Replacement Units

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, Seller shall, at no cost to Buyer, provide Buyer with replacement RA Capacity from one or more Replacement Units, such that the total amount of Designated RA Capacity provided to Buyer from all Units and Replacement Units equals the Contract Quantity. The designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld; provided that so long as the Replacement Unit provides to Buyer RAR Attributes and LAR Attributes equivalent to those that were provided by the original Unit then Buyer's prior approval shall not be required. For clarity, in the aggregate all Units and Replacement Units must provide to Buyer RAR Attributes and LAR Attributes equivalent to those that were provided by the original Units and that were sold under this Confirmation. Seller shall identify Replacement Units meeting the above requirements no later than the earlier of twenty (20) Business Days after the loss of any Designated RA Capacity, or fifteen (15) Business Days before the relevant deadline for Buyer's RAR Showing and/or LAR Showing. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.2, any such Replacement Unit shall be automatically deemed to be a Unit for purposes of this Confirmation until Seller notifies Buyer, in writing, of the availability of the original Units.

For purposes of this Confirmation, Seller shall be deemed to have failed to provide Buyer with Designated RA Capacity in the full amount of the Contract Quantity if the Units and Replacement Units providing such Designated RA Capacity do not in the aggregate provide to Buyer the RAR Attributes and LAR Attributes contracted for pursuant to this Confirmation.

5.3 Purchase of Replacement Capacity

If Seller fails to provide any portion of Designated RA Capacity from Replacement Units as required by Section 5.2 hereof, Buyer may, but shall not be required to, replace any Designated RA Capacity not provided by Seller with capacity (such replacement capacity being referred to as "Replacement Capacity") having equivalent RAR and LAR Attributes compared to the Designated RA Capacity not provided by Seller. Buyer may enter into purchase transactions with one or more other parties to replace Designated RA Capacity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the Product to another party, and such arrangements shall be considered to be the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.

5.4 Damages for Failure to Deliver

If Seller is required to provide Designated RA Capacity from one or more Replacement Units pursuant to Sections 3.2 or 3.3, and fails to do so pursuant to Section 5.2 hereof, then, for purposes of determining the damages due to Buyer under Section 21 of the Master Agreement, Seller shall pay to Buyer an amount equal to the positive difference, if any, between (a) the sum of (i) the Capacity Replacement Price for each Replacement Capacity transaction entered into by Buyer times its applicable RA Capacity quantity, plus (ii) absent a purchase of Replacement Capacity, each Capacity Replacement Price times the Designated RA Capacity not provided by Seller (adjusted for any quantity purchased by Buyer in (i) above), and (b) the Designated RA Capacity not provided for each Monthly Delivery Period multiplied by the Contract Price for that month. If Seller fails to pay those damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation.

5.5 Indemnities for Failure to Deliver Designated RA Capacity

Seller agrees to indemnify Buyer for any monetary penalties or fines assessed against Buyer by the CPUC or the CAISO, or an LRA having jurisdiction, resulting from: (a) the Designated RA Capacity provided to Buyer hereunder being less than the Contract Quantity due to a Non-Excusable Event, and Seller's failure to replace the shortfall in Designated RA Capacity from Replacement Units in accordance with Section 5.2 hereof; (b) Seller's failure to provide notice of the non-availability of any portion of the

Designated RA Capacity as required under Section 5.1 hereof; or (c) any other failure by Seller to perform its obligations under this Confirmation. With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties and fines, provided that in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. Seller will have no obligation to Buyer under this Section 5.5 in respect of the portion of Contract Quantity for which Seller has paid damages pursuant to Section 5.4 hereof. If Seller fails to pay those penalties or fines, or fails to reimburse Buyer for those penalties and fines, then Buyer may offset the cost of those penalties and fines against any future amounts it may owe to Seller under this Confirmation.

ARTICLE 6 CAISO OFFER REQUIREMENTS

During the Period of Delivery, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 7 PLANNED/SCHEDULED OUTAGES

In the event of a Planned/Scheduled Outage, the Unit's Designated RA Capacity will be deemed to be adjusted under the following circumstances:

Time Period	Adjustment to the Unit's Designated RA Capacity at the Time of Showing
Summer May through September	Any month where days of Planned/Scheduled Outages exceed 25% of days in the month, the Unit's Designated RA Capacity will be equal to zero (0) for the month. If Planned/Scheduled Outages are less than or equal to 25%, the Unit's Designated RA Capacity will be deemed to equal the Contract Quantity.
Non-Summer Months October through April	(i) For Planned/Scheduled Outages less than 1 week, the Unit's Designated RA Capacity will be deemed to equal the Contract Quantity (ii) For Planned/Scheduled Outages 1 week to 2 weeks, the Unit's Designated RA Capacity will be calculated using the following formula: [1 - (days of Planned/Scheduled Outage/days in month) - 0.25] * Unit's Designated RA Capacity (iii) For Planned/Scheduled Outages over 2 weeks, the Designated RA Capacity will be deemed to equal zero for that month.

ARTICLE 8 OTHER BUYER AND SELLER COVENANTS

8.1 Buyer and Seller shall, throughout the Period of Delivery, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure

Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and LAR if applicable. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner or operator to cooperate with and provide, requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR and/or LAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Period of Delivery the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR or LAR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR and/or LAR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR or LAR, so as to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

8.2 Seller represents, warrants and covenants to Buyer that, throughout the Period of Delivery:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or LAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR or LAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (e) In the event Seller has rights to the energy output of any Unit, and Seller or the Unit's Scheduling Coordinator schedules energy from the Unit for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Unit for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO;
- (f) The owner or operator of each Unit is obligated to maintain and operate each Unit using "Good Utility Practice," as defined in the Tariff, and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit, provided that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (g) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;

- (h) If Seller is the owner of any Unit, the aggregation of all amounts of LAR Attributes and RAR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (i) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR and LAR;
- (j) Seller has notified the SC of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the SC is obligated to deliver the Supply Plans in accordance with the Tariff; and
- (k) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.6 of this Confirmation, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 9 CONFIDENTIALITY

Notwithstanding Section 30.1 of the Master Agreement, the Parties agree that either Party may disclose the sale of the Designated RA Capacity under this Confirmation to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR or RAR Showings or Supply Plans, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans; provided, that each disclosing Party shall, to the extent reasonable, use reasonable efforts to limit the ability of any such applicable Governmental Body, CAISO, LRA or SC to further disclose such information.

ARTICLE 10 BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product delivered to Buyer hereunder.

ARTICLE 11 COLLATERAL REQUIREMENTS

INTENTIONALLY LEFT BLANK.

Article 12 WSPP Agreement Amendments

12. WSPP Agreement Amendments: For purposes of this Transaction only, the Master Agreement shall be amended as follows:

- (a) Sections 22.1(d) and 27 of the Master Agreement shall not apply to either Party with respect to this Transaction.
- (b) The following phrase is inserted at the beginning of Section 37: "On the date of entering into this Confirmation,".
- (c) Section 24 of the Master Agreement is deleted and replaced with the following:

"This Master Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without

regard to principles of conflicts of law or contrary provisions of the Master Agreement, if any.

(d) Subsections 34.1 and 34.2 of the Master Agreement are hereby deleted and replaced with the following:

34.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT, PROVIDED, HOWEVER, THE PARTIES DO NOT WAIVE JURY TRIAL IF ANY PROCEEDING RELATED TO THIS AGREEMENT IS BROUGHT IN THE STATE OF TEXAS."

The rest of Section 34 of the Master Agreement shall be re-numbered accordingly.

(e) LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT AND THE AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.

(f) Section 41 "Witness" of the Master Agreement shall become Section 42 and the following "Standard of Review" Section substituted in its place:

"The Parties agree as follows:

From the date of entering into a Transaction under this Master Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

(ii) The Parties, for themselves and their successors and assigns, (i) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection

with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

ACKNOWLEDGED AND AGREED TO AS OF AUGUST 25, 2010:

RRI ENERGY SERVICES, INC.

By: Robert Ott

Name: Robert Ott

Title: Vice President

Date: 08/11/10

CITY OF BANNING

By: me

Name: _____

Title: _____

Date: _____

RESOLUTION NO. 2010-65

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA, ENDORSING MEASURE U TO BRING
JOBS AND EDUCATIONAL OPPORTUNITIES TO THE PASS
AREA.**

WHEREAS, for many residents of the San Gorgonio Pass area, affordable higher education and job training are out of reach because rising four-year college tuition is too expensive and state budget cuts are forcing state universities to turn away qualified students; and

WHEREAS, community colleges provide students with affordable access to the core academic courses needed to transfer to universities and the job training needed to find good jobs and stable careers; and

WHEREAS, local Pass area residents do not have a nearby community college campus and students in Banning, Beaumont and the surrounding areas must travel outside the area to take community college courses; and

WHEREAS, local Pass area adults have limited access to job training programs, and especially during these tough economic times, many adults need to re-train or develop new job skills for new careers, and

WHEREAS, many local businesses, including San Gorgonio Memorial Hospital and the new courthouse in Banning, need skilled workers with specialized training; and

WHEREAS, Measure U will build a community college campus in the Banning and Beaumont area to provide new classrooms, science labs, computer labs and facilities for job training to ensure local students and adults have access to the courses they need to transfer to universities and the skills they need to be successful in their careers; and

WHEREAS, building a local community college campus in the Pass area will create hundreds of good local jobs for Pass residents; and

WHEREAS, providing local access to education and job training will expand the number of skilled workers in the area and attract new employers to the Pass, creating local jobs and providing a boost to the local economy; and

WHEREAS, all funds from Measure U will remain in our community and cannot be taken away by the state; and

WHEREAS, Measure U requires support from 55% of voters to pass and our community must rally to support this measure to provide jobs and educational opportunities for Pass area residents.

**NOW, THEREFORE, THE CITY OF BANNING HEREBY RESOLVES TO
ENDORSE MEASURE U ON THE NOVEMBER 2, 2010 BALLOT.**

PASSED, ADOPTED AND APPROVED this 24th day of August, 2010.

Robert E. Botts, Mayor
City of Banning, California

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

David J. Aleshire, City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California do hereby certify that the foregoing Resolution No. 2010-65 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 24th day of August, 2010.

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

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: August 24, 2010

TO: City Council

FROM: Kirby Warner, Interim Administrative Services Director

SUBJECT: Authorization to enter into an Enterprise Licensing Agreement with Microsoft

RECOMMENDATION: "That the City Council authorizes entering into an Enterprise Licensing Agreement with Microsoft and authorizes the City Manager to execute the related enrollment agreement".

JUSTIFICATION: The City executed a five year licensing agreement with Microsoft for fiscal years 2006 through 2010. That agreement has expired and it is time to execute a new agreement if the City wishes to continue using Microsoft software products. Among other benefits, the agreement will keep the City in compliance with all current licensing requirements.

BACKGROUND & ANALYSIS: The City uses and intends to continue using Microsoft software products as its standard configuration on its personal computers. Microsoft offers an enterprise (or citywide) software licensing agreement. Entering into to this type of an agreement has several benefits. Some of those benefits include:

- Lower cost of software in the future
- Free upgrades on all software covered by agreement
- Ensures compliance with all licensing requirements
- Will facilitate standardization of software throughout the City
- Allows City to implement new Microsoft applications at a reduced rate
- Licensing costs spread over five years versus a lump sum payment
- Employee Purchase Program Discount on packaged software, including Office, games and reference software
- Training vouchers for Training at Certified Technical Training Centers
- Problem Resolution Support

Microsoft has entered into a master agreement with the County of Riverside. All cities and counties in the State are allowed to piggyback on this agreement by executing a Microsoft Enterprise Enrollment form. The City participated in the previous five-year agreement in fiscal years 06 through 10. Staff is recommending that the City piggyback on this agreement for another five-year agreement.

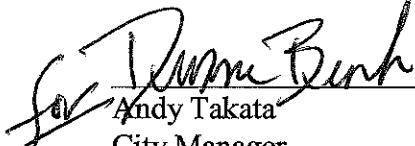
FISCAL DATA: This is a five-year agreement totaling \$192,983.20. The contract calls for five annual payments of \$38,596.64 each. The prior contract cost was \$182,714.10, or \$36,542.82 per year. Funds are currently available in the Information Services budget to pay the first annual installment. No additional appropriation is necessary.

RECOMMENDED BY:



Kirby Warner
Interim Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

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CONTRACT

County of Riverside

Vendor ID 0000000033
 Compucom Systems Inc
 7171 Forest Lane
 Dallas TX 75230
 USA

Dispatch via Print

Contract ID	Page		
RIVCO-20800-001-12/10	1 of 1		
Contract Dates	Currency	Rate Type	Rate Date
01/01/2010 to 12/31/2010 USD	CRRNT	PO Date	
Description: Microsoft Enterprise Agreement			Contract Maximum 1,000,000.00

Tax Exempt? N Tax Exempt ID:

Line #	Vendor Item ID	Item Desc	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1		Computer software: Microsoft Enterprise Agreement software licenses for Riverside County and surrounding Government Agencies within the state of California.	1.00	0.00	0.00	0.00

Pricing Agreement: Pricing Date:
 Pricing Quantity:
 Quantity Type:

Reference Microsoft Master Agreement Number 01E69633.

All terms, conditions, and specification of RFQ#ITARC-054 are hereby included with full force and like effect as if set forth herein.

PAYMENT TERMS - For calculating due dates for payment terms, the County will use either the date that the invoice is received by the County or the date the goods/services are received, which ever is later.

In the event of contradiction, between the County's and the Seller's conditions, the County's conditions shall prevail.

The County reserves the right to cancel the unexpended balance of this order at any time.

Period of Performance: From January 1, 2010 through December 31, 2010.
 Year: 2 of 3, final year end date of December 31, 2011.

Not to Exceed: Maximum contract amount \$ 1,000,000.00

Richard R. Hai
 Procurement Contract Specialist
 Voice: (951) 955-4929
 Fax: (951) 955-4946
 E-mail: rhai@co.riverside.ca.us

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

45

Microsoft | Volume Licensing

Enterprise Signature Form

State and Local

Master Agreement number or
Enrollment number*

01E691633

Agreement Public Customer
Number*

SGN-	001-fsilver-CORIVEA02
------	-----------------------

*Microsoft to complete if
applicable*

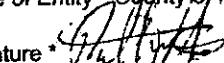
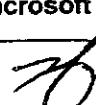
*Note: Enter the applicable active numbers associated with the below documents Microsoft requires the associated active number be indicated here, or listed below as new.

This signature form sets out the documents entered into under this signature form and together along with the terms and conditions contained therein are part of the contract(s) identified above. This program signature form and all attachments identified are entered into between the Customer and Microsoft Affiliate signing, as of the effective date identified below.

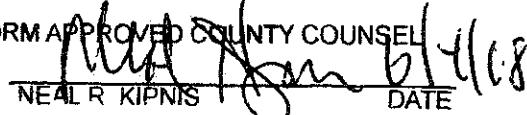
Document Description	Document Number or Code
Enterprise Agreement	X20-00033
Enterprise Agreement Amendment	CTM-001-fsilver-CORIVEA02
EA Attachment A	001-fsilver-CORIVEA02

CK
9/10/2008

Representations and warranties. By signing below, Customer attests they have received copies of the contract document(s) listed above, and the parties agree to be bound by the terms of the contract(s) and document(s) identified above, and Customer represents and warrants that (1) Customer has read and understands the terms therein, including all documents it incorporates by reference and any amendments to those document(s) and (2) agrees to be bound by those terms.

Customer	Contracting Microsoft Affiliate
Name of Entity * County of Riverside	Microsoft Licensing, GP
Signature * 	
Printed Name * Rithy Hai	Printed Name Mesfin Felleke
Printed Title * Procurement Contract Specialist	Printed Title Program Manager, Compliance
Signature Date * 05/14/08	Signature Date SEP 08 2008 (date Microsoft Affiliate countersigned)
Tax ID	Effective Date (may be different than Microsoft's signature date) 9/10/2008

* indicates required field

FORM APPROVED COUNTY COUNSEL
BY 
NEAL R. KIPNIS DATE 6/4/08

Optional 2nd Customer signature or Outsourcer Signature (if applicable)

<i>Customer</i>	<i>Outsourcer</i>
Name of Entity *	Name of Entity *
Signature *	Signature *
Printed Name *	Printed Name *
Printed Title *	Printed Title *
Signature Date *	Signature Date *

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form. If no media form is included, no physical media will be sent.

After this signature form is signed by the Customer, send it, along with completed documents, to Customer's channel partner or Microsoft account manager who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada USA 89511-1137

Prepared By: Forrest Silverman

Enterprise Agreement

State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

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This Microsoft Enterprise Agreement is entered into between the entities identified on the program signature form.

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier.

This agreement consists of (1) these agreement terms and conditions and the signature form and all attachments identified therein, (2) the Product List, (3) the Product use rights applicable to Products licensed under this agreement, (4) any Affiliate Enrollment entered into under this agreement, and (5) any order submitted under this agreement.

Terms and Conditions

A Note on Section Summaries: Some sections of this agreement have a summary at the beginning. These summaries are intended for ease of reference and are not part of the agreement. If any summary conflicts with the section it is summarizing, the section of the agreement, and not the summary, controls.

1. Definitions.

"Affiliate" means (1) with regard to Customer, (a) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common

supervision with Customer; (b) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and (c) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates, and (2) with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft.

"Additional Product" means any Product other than an Enterprise Product that an Enrolled Affiliate chooses to license under its Enrollment;

"available" means Microsoft has made licenses for that Product available on the Product List for ordering under a particular licensing program;

"CAL" means a Client Access License;

"Commercial Product" means any Product Microsoft makes available for license for a fee;

"Customer" means the entity that has entered into this agreement and its Affiliates;

"Device-based Licenses" means Licenses that are calculated based on the number of Qualified Desktops that allow a single device to run a Product.

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates, that has entered into an Enrollment under this agreement;

"Enrollment" means the document that an Enrolled Affiliate submits under this agreement to place its initial order;

"Enterprise" means the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise;

"Enterprise Product" means any Product that Microsoft designates as an Enterprise Product and that an Enrolled Affiliate chooses to license under its Enrollment (Enterprise Products may only be licensed on an Enterprise-wide basis under this program),

"Fixes" means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Commercial Product service packs);

"Free Product" means any Product Microsoft makes available for license without charge;

"License" means, for any one of the Products identified in the Product List (including standard Licenses and upgrades for desktop operating systems), the right to run the version of the Product ordered;

"L&SA" means a License and Software Assurance for any Product ordered;

"Microsoft" means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates;

"Online Service" means any software we license Enrolled Affiliate to run on Microsoft servers on a subscription basis;

"Pre-release" or "Beta" Products are Products provided prior to commercial release;

"Product" means all Commercial Products, Free Products, Pre-release Products and Beta Products, including any online services and other web-based services identified on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under the program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of licenses for those Products;

"Qualified Desktop" means any personal desktop computer, portable computer, workstation, or similar device that is used by or for the benefit of an Enrolled Affiliate or any Affiliate included in its Enterprise and that meets the minimum requirements for running any of the Enterprise Products. Qualified Desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any device dedicated to run ONLY line-of-business software (e.g. an accounting or bookkeeping program used by an accountant or a computer-aided design program used by an engineer or architect), or (iii) any device running an embedded operating system (e.g., Windows Vista for embedded, Windows XP embedded),

"Qualified User" means a person who receives Online Services or who accesses any CAL server software licensed within an Enrolled Affiliate's Enterprise. It does not include a person who accesses the software under an External Connector License. It also does not include a person who accesses the software in some other way that does not require a CAL;

"Qualifying Enrollment" means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement, (2) any Enterprise Subscription Enrollment under a separate Microsoft Enterprise Subscription Agreement, or (3) any other Enrollment submitted under the Microsoft Enterprise Agreement identified on the program signature form,

"Reseller" means a large account Reseller authorized by Microsoft to resell Licenses in an Enrolled Affiliate's territory under this program;

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with;

"Software Assurance" means an annuity offering that provides new version rights and other benefits for Microsoft software Products as set forth in the Product List, and

"User-based Licenses" means Licenses calculated based on the number of Qualified Users that allow named users to run a Product from any device

2. How the Enterprise program works.

Enrolled Affiliate can order two general types of Products under this agreement. For "Enterprise Products," Enrolled Affiliate must pay for a License for all Qualified Desktops and/or Qualified Users. For "Additional Products," Enrolled Affiliate must pay for Licenses based on the actual number of copies used. To participate in this agreement, Enrolled Affiliate must order at least one Enterprise Product.

Where to submit orders. Enrolled Affiliate's orders will be submitted directly to a Reseller. Online Services may have additional terms.

The Enterprise program gives Customers that wish to license one or more of Microsoft platform Products the means to ensure that their entire Enterprise will be licensed. Customer and Customer Affiliates can participate in this program by submitting one or more Enrollments under this agreement. On the Enrollment, the Enrolled Affiliate will designate the scope of its Enterprise and make the initial selection of Enterprise Products and any Additional Products it wishes to license. Each Enrollment must include at least one Enterprise Product. Microsoft may refuse to accept an Enrollment if it has a business reason for doing so. Notwithstanding any other provision of this agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this agreement incorporated by reference in that Enrollment.

- a. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment. Throughout this agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms

- b. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate's territory.
- c. **Online Services.** The terms and conditions of the agreement apply to Online Services subscriptions throughout the entire term of the subscription except as provided here and in the Product List at <http://microsoft.com/licensing/contracts>. Online Services are provided as subscription services and may carry additional terms that are independent of the agreement terms as specified in the Product use rights. Billing terms for Online Services subscriptions may also differ from the terms of this agreement.

3. How to establish price level.

Generally, price levels for each category of Product are based on the number of Qualified Desktops or Qualified Users in the Enrolled Affiliate's Enterprise. Prices are locked for a particular Product based on the price at the time Enrolled Affiliate first orders that Product.

- a. **Establishing Price Levels.** Each Product is assigned to a Product pool (applications, systems, or servers). There are four price levels (A, B, C, and D). An Enrolled Affiliate's price level for Enterprise Products is based on the initial number of Qualified Desktops or Qualified Users in its Enterprise and applies to Products ordered in each pool. The ability to order Device-based Licenses or User-based Licenses is determined by how the License is offered in the price list (e.g. Windows Vista is not offered as User-based License). If Enrolled Affiliate orders a platform Enterprise Product that contains both Device-based and User-based Licenses, prices will be based on the Qualified Desktop price level. Price levels are established separately for each Enrollment.

The price level for Additional Products in that pool will be level "D" throughout the term of the Enrollment.

- b. **Deriving prices from price levels.** The Enrolled Affiliate's prices, including true-up prices, are determined as follows

For Products covered by the initial order. The Enrolled Affiliate's price for Licenses for Products on its order will not change throughout the initial Enrollment term.

For Additional Products added after the initial order. The Enrolled Affiliate's prices for Licenses for Additional Products ordered after acceptance of the Enrollment will be those prices in effect for its price level for that Product as of the date that it places its first order for that Product.

4. License grant — what Enrolled Affiliates are licensed to run.

Enrolled Affiliate can use the Enterprise Products on all Qualified Desktops (or, in the case of CALs and certain services), all Qualified Desktops or Qualified Users, as applicable, may access the specified server software. For Additional Products, Enrolled Affiliate can run as many copies as desired, provided Enrolled Affiliate submits orders for them. Enrolled Affiliate can use the latest version of the Products or choose to use any earlier version.

Generally, use rights become permanent once the Enrollment term ends and Enrolled Affiliate has completed all payments. At that time, Enrolled Affiliate will have perpetual Licenses for the number of desktops, users, or copies for which Enrolled Affiliate submitted orders during the term. In cases where the Enrollment is terminated prior to the end of the term, subsections entitled "Termination for breach" and "Early termination" describe Enrolled Affiliate's rights.

Upon Microsoft's acceptance of the Enrollment, the Enrolled Affiliate has the following rights during the term of its Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a

Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other software).

- a. **General.** The Enrolled Affiliate may use the latest version (or any prior version) of any Product as permitted in the Product use rights, so long as it timely orders and pays for all required Licenses
- b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment.
- c. **Special rule for Enterprise Products.** So long as the Enrolled Affiliate places true-up orders as required, the Enrolled Affiliate may use the latest version (or any prior version) of each Enterprise Product on each of its Qualified Desktops as permitted in the Product use rights. In addition, for CALs, each Qualified Desktop (or, for CALs that are User-based Licenses, each Qualified User) covered by the Enrollment may access and use the associated server software
- d. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary until:
 - (i) the Enrolled Affiliate has paid all installments of the price for that Product License and the applicable initial Enrollment or renewal term during which that Product License was ordered has expired or been renewed, or
 - (ii) the Enrolled Affiliate is otherwise eligible for perpetual Licenses upon early termination as provided in this agreementThereafter, the Enrolled Affiliate will have perpetual Licenses to run the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal. The number of perpetual Licenses will be equal to:
 - For Enterprise Products other than CALs that are User-based Licenses, the total number of Qualified Desktops covered by the Enrollment;
 - For CALs that are User-based Licenses, the total number of Qualified Users covered by the Enrollment; and
 - For each Additional Product, the total number of Licenses ordered during the applicable initial Enrollment term or renewal term.
 - **Subscription (Online Services) Licenses** are not perpetual under any circumstances.In the case of early termination of an Enrollment as provided in the subsection entitled "Early termination," if an Enrolled Affiliate chooses only to pay amounts due and payable as of the termination date then the Enrolled Affiliate will instead have perpetual Licenses for the number of Licenses specified in the subsection entitled "Early termination"
- e. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product use rights.
- f. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.

5. How to know what Product use rights apply.

Microsoft's Products and Fixes are licensed to Customer, not sold. The specific use rights for Products are contained in Microsoft's published Product use rights. Generally, the use rights in effect at the time Enrolled Affiliate signs the Enrollment will apply. Any changes Microsoft makes to the use rights for existing versions after Enrolled Affiliate signs the Enrollment will not apply to Enrolled Affiliate's use of those versions. For versions that were not yet released at the time of signing, the use rights in effect when that version is first released will apply. Even if Enrolled Affiliate chooses to run an earlier version of a Product than the one Enrolled Affiliate is licensing, the use rights for the latest version Enrolled Affiliate is licensed to use will still apply.

- a. **Product use rights.** Microsoft publishes Product use rights for each Product and each new version of a Product. Unless otherwise specified in a license agreement, use of any Product that Customer licenses from Microsoft is governed by Product use rights specific to each Product and version and by the terms of the license agreement under which Customer licensed the Product. The latest version of the Product use rights is available at <http://www.microsoft.com/licensing/contracts> or at a successor site. The use rights in effect for a Product and version on the effective date of an Enrollment or renewal term will apply to Enrolled Affiliate's use of the Product and version, except:
 - (i) **earlier versions**
If Enrolled Affiliate runs an earlier version of a Product that pre-dates both the Enrollment or renewal effective date and the current version of the Product as of that date, then the Product use rights for the version licensed apply. If the earlier version includes different components, any use rights for those components in the Product use rights that otherwise apply to the earlier version apply to Enrolled Affiliate's use of them.
 - (ii) **versions of Products for which Microsoft revises Product use rights**
If Microsoft revises the Product use rights for a particular version after an Enrollment or renewal effective date, the Product use rights applicable to that version without those revisions apply
 - (iii) **later versions of Products Microsoft makes available after the Enrollment or renewal effective date**
If a new version of a Product is made available during the Enrollment or renewal term and Enrolled Affiliate elects to run the newer version, the use rights in effect on the date that new version is first released will apply, subject to the subsection entitled "No detrimental use rights for Enterprise Products" below.
- Upon renewal of an Enrollment, use rights for all Products for which Software Assurance is renewed are reset (e.g. the use rights in effect as of the renewal date will apply, not the use rights that were applicable during the preceding term)
- b. **No detrimental use rights for Enterprise Products.** If a new version of an Enterprise Product has more restrictive use rights than the version that is current at the start of the applicable term, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during that term
- c. **Reservation of rights.** All rights not expressly granted are reserved

6. How to order Product Licenses.

Enterprise Products must be ordered at the time the Enrollment is signed. In general, Software Assurance cannot be ordered without also ordering simultaneously underlying Licenses unless the Enrolled Affiliate is renewing unexpired Software Assurance coverage. Enrolled Affiliate can "step-up" to a higher Product edition of an existing Product by following the process described in this section.

Enrolled Affiliate must submit true-up orders annually to reflect Qualified Desktops, Qualified Users, and Additional Products added during the year.

- a. **Placing the initial order.** Each Enrolled Affiliate must submit an initial order for the Enterprise Products and Additional Products it selects with its Enrollment. Except as provided in the following paragraph, the order must be for L&SA for all Products. When placing orders, an Enrolled Affiliate must specify the country or countries where the Enrolled Affiliate and its Affiliates will use the Licenses

When is the Enrolled Affiliate eligible to order only Software Assurance for an Enterprise and Additional Product? An Enrolled Affiliate may order Software Assurance for the Enterprise Products and Additional Products it selects without the need to simultaneously order a License if the Enrolled Affiliate or any of the Affiliates in its Enterprise has obtained perpetual Licenses for that Product.

- (i) **For Enterprise Products** on an Enterprise-wide basis under a previous Qualifying Enrollment; and
- (ii) **For Additional Products** through Software Assurance or any similar upgrade protection. The new Enrollment becomes effective no later than the day following the date of expiration of that previous Enrollment or Software Assurance. These Software Assurance orders cannot exceed the number of perpetual Licenses acquired for that Product. For all other Products the Enrolled Affiliate must order L&SA.

- b. **Adding new Products not previously ordered.** An Enrolled Affiliate may only add new Enterprise Products by entering into a new Enrollment. New Additional Products may be run provided an order for L&SA is placed in the month the Product is first run. For additional copies run after the first order, the Enrolled Affiliate must place true-up orders.
- c. **Stepping up to higher Product editions.** If an already-ordered Product has multiple Product editions, an Enrolled Affiliate may migrate to the higher Product edition by ordering the applicable step-up License where available through Software Assurance. If step-up details are included in an initial Enrollment order, then the Enrolled Affiliate may step-up in accordance with the section entitled "True-ups and update statements." If the step-up details are not included in the initial Enrollment order, the Enrolled Affiliate may step-up by placing an order in the month the step-up is first run in accordance with the process set out in the section entitled "Adding new Products not previously ordered."
- d. **Reorganizations, Consolidations, and Privatizations.** If the number of Qualified Desktops or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing Qualifying Enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement
- e. **True-ups and update statements.** Within 15 days following the anniversary of the effective date of the Enrollment (including the third-year anniversary before any renewal), or on expiration or termination, the Enrolled Affiliate must submit either:
 - (i) a true-up order to account for any increase in Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary. To do this, the Enrolled Affiliate must determine the current number of Qualified Desktops, Qualified Users (if ordering User-based Licenses), and/or Additional Products run and submit a true-up order to account for any increase, or
 - (ii) an update statement using a form we provide to show there is no change to the number of Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary.

In order to meet the annual true-up requirement, Enrolled Affiliate must report an annual true-up or update statement must be submitted within 60 days prior to or 15 days following the anniversary to meet the annual true-up requirement. However, an Enrolled Affiliate may also true-up multiple occasions and at any time during the term of the Enrollment. Except where Online Services are included as part of other Licenses, true-ups do not apply to Online Services.

f. **How to confirm orders.** Microsoft will publish information about orders placed by each Enrolled Affiliate, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this agreement and Enrollments entered into under this agreement, the contact identified for this purpose will be provided access to this site.

7. Making copies of Products and re-imaging rights.

Enrolled Affiliate can make as many copies as it needs. The copies must be complete and from master copies obtained from an authorized source. If Enrolled Affiliate uses third parties to make copies, Enrolled Affiliate is responsible for them. Enrolled Affiliate can make a specified number of complimentary copies for training, evaluation, and back-up. In certain circumstances, Enrolled Affiliate can use the media that it obtains under this program to make copies of Products that it is licensing through some other channel. Generally, this is only allowed where the Product, version, language, type, and components that are being copied are identical to those licensed through that other channel.

- a. **General.** The Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Enrolled Affiliate may use a third party to make these copies, but the Enrolled Affiliate agrees that it will be responsible for that third party's actions. The Enrolled Affiliate agrees to use reasonable efforts to make its employees, agents, and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and subject to the terms of this agreement
- b. **Copies for training/evaluation and back-up.** The Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations
- c. **Right to re-image.** Re-imaging is permitted using the Product media on the following conditions if the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may be used to create images for other licensed machines in place of copies provided through that separate source. This right is conditional upon the following
 - (i) A separate License must be owned from the separate source for each re-image.
 - (ii) The Product, language, version, and components licensed under its Enrollment must be identical to the Product, language, version and all components licensed from the separate source
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g. upgrade or full License) must be identical to the Product type from the separate source

Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

8. Transferring and reassigning Licenses.

Enrolled Affiliate can transfer perpetual Licenses to an Affiliate and to third parties in connection with a privatization, reorganization, or consolidation — Enrolled Affiliate only needs to provide notice to Microsoft. Enrolled Affiliate cannot transfer Licenses to third parties under other circumstances without Microsoft's prior consent. Transferees must agree to be bound by applicable terms. License transfers must be permanent; Software Assurance cannot be transferred, but under certain conditions can be reassigned to another machine within the same Enterprise; all new version rights must be transferred together with their underlying licenses; desktop operating system upgrade Licenses must stay with the computer system on which they were first installed. Generally, Enrolled Affiliate can reassign Licenses internally from one user to another or from one device to another.

a. Transferring Licenses to third parties.

(i) **Right to transfer.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to (1) an Affiliate or (2) an unaffiliated third party in connection with a privatization of an Affiliate or of an operating division of the Enrolled Affiliate or one of its Affiliates, a reorganization, or a consolidation. To do so, the Enrolled Affiliate must complete and send to Microsoft a transfer notice in a form which can be obtained from <http://microsoft.com/licensing/contracts> before the transfer. All other transfers require Microsoft's prior written consent. Guidance on what types of transfers are permissible can be found at <http://microsoft.com/licensing/contracts>. No License transfer will be valid unless the Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product use rights, use restrictions, limitations of liability, and the transfer restrictions described in this section. Any transfer not made in compliance with this section will be void. The resale of Licenses is expressly prohibited.

(ii) **Certain transfers not permitted.** The Enrolled Affiliate may not transfer any of the following

- Licenses on a short-term basis (90 days or less),
- temporary rights to use Products,
- Software Assurance coverage,
- perpetual Licenses for any version of any Product acquired through Software Assurance separately from the underlying perpetual Licenses for which that Software Assurance coverage was obtained, or
- an upgrade License for a desktop operating system Product separately from the underlying desktop operating system License or from the computer system on which the Product is first installed

b. Internal reassignment of Licenses and Software Assurance.

(i) **For Products other than the desktop operating system upgrade.** For Products other than the desktop operating system upgrade, the Enrolled Affiliate may reassign Licenses within its Enterprise. However, Enrolled Affiliate may not reassign Licenses on a short-term basis (90 days or less) or reassign Software Assurance or other upgrade coverage separately from the underlying License, except as otherwise provided in this agreement. The Enrolled Affiliate may not reassign desktop operating system upgrade Licenses from one computer to another.

(ii) **For desktop operating systems.** The Enrolled Affiliate may reassign Software Assurance coverage on desktop operating systems from the original computer to a replacement computer within its Enterprise, as long as (1) the replacement computer is licensed to run the latest version of that operating system and (2) the Enrolled Affiliate removes any desktop operating system upgrades from the original computer.

9. Term and termination.

This agreement stays in place until terminated. The term of each Enrollment is stated in the Enrollment. "Renewal" means the renewal of an Enrollment. Either party can terminate the agreement on notice — that will not affect any existing Enrollments. Generally, existing Enrollments may be terminated: (1) if either party breaches the agreement and does not cure the breach in the time allotted; or (2) for non-appropriation of funds. Generally, upon termination or expiration, Enrolled Affiliate must order Licenses for copies of Products it has been using but has not yet placed orders for, and pay for all Licenses in full.

- a. **Term.** This agreement will remain in effect unless it is terminated by either party as described below. Each Enrollment or order will have the term provided in that Enrollment or order
- b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days written notice. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.
- c. **Termination for breach.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.

- d. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an enrollment for non-appropriation of funds, or (4) Microsoft terminate an enrollment for non-payment due to non-appropriation of funds then the Enrolled Affiliate will have the following options:
 - (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for

- all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
- the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment

e. Effect of termination or expiration. When this agreement expires or is terminated,

- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
- (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.

10. How to renew an Enrollment.

Generally, an Enrolled Affiliate can renew Enrollments for an additional one-year or three-year term, at its option. The renewal must include an order for Software Assurance for all Enterprise Products previously ordered, for all Qualified Desktops, and/or Qualified Users previously covered. Price levels and prices are reset at the beginning of the renewal term.

Microsoft will provide each Enrolled Affiliate with 60 days prior written notice of expiration of its Enrollment or renewal term advising it of its renewal options. An Enrolled Affiliate may have the option to renew its Enrollment for one term of 12 or 36 full calendar months. Microsoft and its Affiliates will not unreasonably reject any renewal. However, Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

- a. **Renewal option.** The renewal term will start on the day following expiration of the prior term. An Enrolled Affiliate may not add new Enterprise Products not previously ordered as part of its renewal; to license new Enterprise Products, it must submit a new Enrollment.
- (i) **Consequences of non-renewal.** If the Enrolled Affiliate elects not to renew its Enrollment or Software Assurance for any Product under its Enrollment, and it otherwise allows Software Assurance for any Licenses acquired under its Enrollment to lapse, then the Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA
- (ii) **Renewal price levels.** Prices and price levels for pools from which an Enterprise Product has been ordered will be reset for each renewal term based upon the Enrolled Affiliate's total number of Qualified Desktops as of the date of the renewal order.
- (iii) **Renewing User-based Licenses.** If user-based Enterprise Products are renewed as part of the platform, then price levels are reset based on the current Qualified Desktop count. However if the user-based Enterprise Product is renewed outside of a platform, then the price level for the applicable pool will be based on the Enrolled Affiliate's total number of Qualified Users as of the date of the renewal order
- (iv) **For Products renewed in a renewal order.** For each Enterprise Product and each Additional Product being renewed, the Enrolled Affiliate's renewal prices for all Licenses will be those prices in effect for its renewal price level for that Product as of the date of the renewal order.
- (v) **For Additional Products added during a renewal term.** For each new Additional Product first added during a renewal term, the Enrolled Affiliate's prices for all Licenses

will be those prices in effect for its renewal price level for that Product as of the date that it places its first order for that Product.

(vi) **Placing renewal orders.** To renew, the Enrolled Affiliate must submit a renewal order within 30 days after the previous term expired. The renewal order must be for Software Assurance for:

- all platform Products or device-based Enterprise Products previously ordered equal to the number of Qualified Desktops in the Enrolled Affiliate's Enterprise as of the date of that renewal order;
- all user-based Enterprise Products equal to the number of Qualified Users covered by the Enrolled Affiliate's Enrollment as of the date of that renewal order.

At renewal, where applicable, an Enrolled Affiliate can elect to exchange its Device-based Licenses for User-based Licenses or vice-versa. In that event, the Enrolled Affiliate's renewal order must include L&SA for any number of Qualified Desktops or Qualified Users in excess of its current count. See the Product List for more information, and

- all Additional Product Licenses for which the Enrolled Affiliate elects to renew Software Assurance.

11. Restrictions on use.

This section describes several restrictions that apply generally to Customer's use of any software Microsoft provides to Customer (e.g., prohibitions on renting or hosting the software, or reverse engineering it).

a. Enrolled Affiliate must not:

- (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product use rights;
- (ii) reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- (iii) rent, lease, lend or commercially host to third parties any Product or Fix, except where Microsoft agrees by separate agreement

b. U.S. export jurisdiction. Products and Fixes are subject to U.S. export jurisdiction. For additional information see <http://www.microsoft.com/exporting>.

12. Confidentiality.

To the extent permitted by applicable law this agreement is confidential and should not be disclosed to third parties except to third parties that need to know about the agreement. Such parties should be instructed to keep the agreement in strict confidence. The agreement and its terms and conditions may be shared with affiliates and agents.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither party nor any of its Affiliates will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than such party's Affiliates or agents, or to the Enrolled Affiliate's designated or prospective resellers who (1) have a need to know such information to assist in carrying out this agreement; and (2) have been instructed by one of the parties that all such information is to be handled in strict confidence.

13. *Warranties.*

Microsoft warrants that its Commercial Products will work substantially as described in the accompanying documentation, subject to certain limitations. If not, Microsoft will provide replacement Commercial Product or a refund. Microsoft disclaims all other warranties.

- a. **Limited Product warranty.** Microsoft warrants that each version of a Commercial Product licensed by Enrolled Affiliate will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations:
 - (i) the warranty applies for one year from the date Enrolled Affiliate first runs a copy of the Product;
 - (ii) any implied warranties, guarantees or conditions last only during the term of the limited warranty, except where applicable law does not permit such a limitation;
 - (iii) the warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Product use rights, or resulting from events beyond Microsoft's reasonable control;
 - (iv) the warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute; and
 - (v) the warranty does not apply to problems caused by the failure to meet minimum system requirements.
- b. **Remedies for breach of limited Product warranty.** If Customer notifies Microsoft within the warranty period that a Commercial Product does not meet the limited warranty, then Microsoft will, at its option, either (1) return the price paid for the Product, or (2) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- c. **No warranty on Free and Beta Products.** To the maximum extent permitted by law, Free Products and Beta Products are provided "as-is," without any warranties. Customer acknowledges that the provisions of this paragraph with regard to pre-release and Beta Products are reasonable, among other things as these Products are being provided to Customer prior to commercial release and before Microsoft has fully tested them.
- d. **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

14. *Defense of infringement and misappropriation claims.*

Microsoft agrees to defend Customer against claims that Microsoft software infringes someone else's intellectual property rights, and pay any damages awarded by a court or in a settlement. There are several exceptions, which limit Microsoft's obligations in cases where Customer has contributed in some way to the claim. If something Customer has done caused the claim and Microsoft is damaged, Customer must reimburse Microsoft.

If Microsoft believes that it is necessary to avoid an infringement claim, Microsoft may replace or modify the Products Customer is using. If someone enjoins Customer use of a Product, Microsoft will, at its option, replace the Product, modify it to make it non-infringing, obtain the rights Customer needs to keep using it, or refund Customer's money.

- a. **Agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Commercial Product or Fix infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's and its Affiliate's exclusive remedy for these claims. The terms "intentional unlawful use" and "undisclosed information" are used as defined in Article 39.2 of the TRIPs agreement.
- b. **What the Customer must do.** Customer must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. Customer must also provide Microsoft with reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.
- c. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on
 - (i) Customer's or its Affiliate's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
 - (ii) Customer's or its Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process,
 - (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process,
 - (iv) modifications that Customer or its Affiliates make to the Product or Fix;
 - (v) Customer's or its Affiliate's redistribution of the Product or Fix to, or Customer's or its Affiliate's use for the benefit of, any third party;
 - (vi) Customer's or its Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
 - (vii) any trade secret or undisclosed information claim, where Customer or its Affiliates acquires the trade secret or undisclosed information (1) through improper means, or (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or Microsoft's Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information

Customer will reimburse Microsoft for any costs or damages that result from any of these actions

- d. **Specific rights and remedies in case of infringement.**
 - (i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either
 - procure for Customer the right to continue to run the allegedly infringing Product or Fix, or
 - modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Customer will immediately stop using the allegedly infringing Product or Fix after receiving notice from Microsoft.
 - (ii) **Customer's specific remedy in case of injunction.** If, as a result of an infringement claim, Customer's use of a Commercial Product or Fix is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either:
 - procure the right to continue its use, or
 - replace it with a functional equivalent, or

- modify it to make it non-infringing, or
- refund the amount paid and terminate the License for the infringing Commercial Product or Fix

15. Limitation of liability.

Microsoft limits its liability to Customer to the amount of money Customer has paid Microsoft for the Product giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section entitled "Defense of infringement and misappropriation claims," or to damages Customer incurs because of Microsoft's breach of its confidentiality obligations or because of Microsoft's gross negligence or willful misconduct.

Each party agrees that it will not be liable to the other for consequential, indirect, punitive or special damages, except those that result from a breach of confidentiality or from one party violating the other's intellectual property rights.

- Limitation on liability.** Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft's contractors to Customer and its Affiliates arising under this agreement is limited to direct damages up to the amount Customer paid for the Product giving rise to that liability. In the case of Free Product or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
 - Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims"; or
 - liability for damages for gross negligence or willful misconduct caused by Microsoft or its agents and awarded by a court of final adjudication; or
 - liabilities arising out of any breach by Microsoft of its obligations under the section entitled "Confidentiality"; or
 - liability for personal injury or death caused by Microsoft's negligence or that of its employees or agents or for fraudulent misrepresentation.
- EXCLUSION OF CERTAIN DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

16. Verifying compliance.

Microsoft has the right to review Customer's records or conduct an onsite audit through an independent auditor. Microsoft will pay for the costs of the audit unless it reveals a material noncompliance.

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use under any license agreement. Microsoft has the right to verify compliance with the agreement, at Microsoft's expense, during the term of the applicable enrollment and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use under this agreement, but reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at single retail license cost within 30 days.

17. Miscellaneous.

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, fax, or email to the addresses and numbers listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier, fax, or email confirmation of delivery.

<i>Copies should be sent to:</i>	
Microsoft Corporation	
Legal and Corporate Affairs	
Volume Licensing Group	
One Microsoft Way	
Redmond, WA 98052	USA
Via Facsimile (425) 936-7329	

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

- e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product use rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product use rights; (4) all Enrollments under this agreement; and (5) all orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer or Customer Affiliates maintain do not apply.
- h. **Survival.** Provisions regarding ownership and license rights, fees, Product use rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product use rights be in compliance with all applicable federal law and regulations. Any Free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- k. **Amending the agreement.** This agreement (except the Product List and the Product use rights) can be changed only by an amendment signed by both parties.
- l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- m. **Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer will not give any data to Microsoft containing personal information unless the owner of the data has specifically authorized Customer to do so for use as contemplated in the last sentence of this subsection. Customer agrees to allow Microsoft to use the contact information Customer gave to Microsoft to allow Microsoft, its Affiliates, and other parties to help Customer comply with this agreement. Any personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>
- n. **Natural disasters.** In the event of a "natural disaster", Customer may have special rights, please go to <http://www.microsoft.com>
- o. **Copyright Violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this agreement and the Product use rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of our copyright in the Products, including payment of license fees specified in this agreement for unlicensed use.

Supplemental Contact Information Form State and Local

This form can be used in combination with Agreement and Enrollment/Registration. However, a separate form must be submitted for each Enrollment/Registration, when more than one is submitted on a signature form. For the purposes of this form, "Entity" can mean the signing Entity, Customer, Enrolled Affiliate, Integrator, Institution, or other party entering into a Volume Licensing program agreement. Primary and Notices contacts in this form will not apply to Enrollments or Registrations.

This form applies to

Agreement
 Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. If the Entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <http://licensing.microsoft.com>.

1. Additional electronic contractual notices contact information:

This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if Entity does not want a duplicate set of notices issued

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

2. Software Assurance benefits contact:

This contact will receive communications concerning Software Assurance benefits, and any additional TechNet subscriptions that have been ordered separately from Software Assurance under its Enrollment or Registration.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

3. *MSDN contact:*

This contact will receive communications concerning registration for MSDN products ordered under its Enrollment or Registration

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

4. *Online Services administrator:*

This person will receive communications concerning registration for Online Services ordered under its Enrollment or Registration

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

5. *Customer Support Manager (CSM) contact information:*

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

6. *Primary contact information:*

The Entity must identify an individual from inside its organization to serve as the primary contact. This contact is the default administrator for the agreement and receives all notices unless Microsoft is provided written notice of a change. The administrator may appoint other administrators and grant others access to online information.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

7. Notices and online access contact information:

This will designate a notices and online access contact different than the primary contact. This contact will replace the default administrator (primary contact) for the Agreement and receive all notices. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

Name of Entity*

Contact name* First Last

Contact email*

Street address*

City* State/Province* Postal code*

Country*

Phone* Fax

Enterprise Signature Form

State and Local

Master Agreement number or
Enrollment number*

01E69633

SGN-

Proposal ID

*Microsoft to complete if
applicable*

***Note:** Enter the applicable active numbers associated with the below documents. Microsoft requires the associated active number be indicated here, or listed below as new.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Document Number or Code
Enterprise Enrollment	Custom
<Choose One>	Document Number or Code
<Choose One>	Document Number or Code
<Choose One>	Document Number or Code
Supplemental EA Terms & Conditions	None
Enterprise Enrollment Amendment	W16 (new)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	Microsoft Affiliate
Name of Entity * City of Banning	Microsoft Licensing, GP
Signature *	Signature
Printed Name * Kirby Warner	Printed Name
Printed Title * Interim Administrative Services Director	Printed Title
Signature Date *	Signature Date (date Microsoft Affiliate countersigns)
Tax ID	Effective Date (may be different than Microsoft's signature date)

* indicates required field

Optional 2nd Customer signature or Outsourcer Signature (if applicable)

Customer	Outsourcer
Name of Entity *	Name of Entity *
Signature *	Signature *
Printed Name *	Printed Name *
Printed Title *	Printed Title *
Signature Date *	Signature Date *

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form. If no media form is included, no physical media will be sent.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP

Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

Prepared By: Name of Preparer
Email of Preparer

Enterprise Enrollment

(For Use solely under the Riverside county Enterprise Agreement)

Enterprise Enrollment number (Microsoft to complete)	
Previous Enrollment number (Reseller to complete)	4913998
Earliest expiring previous Enrollment end date ¹	7/31/2010

¹ If consolidating from multiple previous Enrollments with Software Assurance, complete the multiple previous Enrollment form and attach it to this Enrollment. Enterprise Products can only be renewed from a Qualifying Enrollment. Additional Products can be renewed from any previous Enrollment with Software Assurance.

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as of the effective date identified in the signature form.

This Enrollment consists of (1) this document, (2) the terms of the Enterprise Agreement identified on the signature form, and (3) any supplemental contact information form or multiple previous enrollment form that may be required. If Customer's Enterprise Agreement is a version 6.4 or earlier, the Desktop Terms and Conditions are incorporated by reference.

All terms used but not defined are located at <http://microsoft.com/licensing/contracts>. In the event of any conflict the terms of this agreement control.

As a condition of entering into this Enrollment with 25 - 249 Qualified Desktops, Customer has elected not to receive media as part of the Enrollment, and therefore no media will automatically be shipped. If Customer is enrolling with 25 - 249 Qualified Desktops and would like to receive media kits and updates, these may be ordered through Customer's Reseller for a fee.

Effective date. If Customer is renewing Software Assurance from one or more previous Qualifying Enrollments, then the effective date will be the day after the first enrollment expires. Otherwise the effective date will be the date this Enrollment is accepted by Microsoft.

If renewing Software Assurance, the Reseller will need to insert the previous Enrollment number and end date in the respective boxes above.

Term. This Enrollment will expire 60 full calendar months from the effective date. It could be terminated earlier or renewed as provided in the Microsoft Enterprise Agreement. Microsoft will advise Customer of the renewal options before it expires. *The 60-month initial term is required by The County of Riverside as indicated in the original request for proposal and final award. Customer may terminate this Enrollment for its convenience without penalty on the third anniversary of this Enrollment (or at any other time as permitted by California law) subject to proportional licensing as set forth in Section 11(d) of the agreement.*

Product order. The Reseller will provide Customer with Customer's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Customer and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

Qualifying systems licenses. All desktop operating system Licenses provided under this program are upgrade Licenses. *No full operating system Licenses are available under this program.* If Customer selects the Desktop Platform or the Windows Desktop Operating System Upgrade & Software Assurance, all Qualified Desktops on which the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at <http://microsoft.com/licensing/contract>. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of the order. That list is more extensive at the time of the initial order than it is for some subsequent true-ups and system refreshes during the term of this Enrollment.

For example, Windows XP Home Edition or successor Products are not qualifying operating systems.

1. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Customer consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <http://licensing.microsoft.com>.

a. Primary contact information: The Customer of this Enrollment must identify an individual from inside its organization to serve as the primary contact. This contact is the default administrator for this Enrollment and receives all notices unless Microsoft is provided written notice of a change. The administrator may appoint other administrators and grant others access to online information.

Name of entity (must be legal entity name)* City of Banning
Contact name* First Eric Last Brown
Contact email* eric.brown@ci.banning.ca.us
Street address* 99 East Ramsey Street
City* Banning State/Province* CA Postal code* 92220
Country* USA
Phone* 951-922-3133 Fax 951-922-3165
Tax ID (if applicable)

b. Notices and online access contact information: This will designate a notices and online access contact different than the primary contact. This contact will replace the default administrator (primary contact) for this Enrollment and receive all notices. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

Name of entity (must be legal entity name)*
Contact name* First Last
Contact email*
Street address*
City* State/Province* Postal code*

Country*

Phone* Fax

This contact is a third party (not the Customer). Warning: This contact receives personally identifiable information of the Customer.

c. Language preference: Select the language for notices. English

d. Microsoft account manager: Provide the Microsoft account manager contact for this Customer.

Microsoft account manager name: Dennis Armstrong
Microsoft account manager email address: dennisar@microsoft.com

e. If Customer requires a separate contact for any of the following, attach the Supplemental Contact Information form. Otherwise, the notices contact remains the default.

- Duplicate electronic contractual notices contact
- Software Assurance benefits contact
- MSDN contact
- Online Services administrator

f. This Enrollment is financed through MS financing Yes, No.

g. Reseller information

Reseller company name* CompuCom Systems, Inc.
Street address (PO boxes will not be accepted)* 7171 Forest Lane
City and State / Province and postal code* Dallas, TX 75230

Country* USA

Contact name * Stacy Price

Phone* 972-856-5520

Fax

Email address* stacy.price@compucom.com

The undersigned confirms that the information is correct.

Name of Reseller* CompuCom Systems, inc.

Signature* _____

Printed name* Stacy Price

Printed title* Microsoft BDM

Date*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with one another, Customer must choose a replacement. If Customer intends to change the Reseller, it must notify Microsoft and the former Reseller, in writing on a form provided at least 30 days prior to the date on which the change is to take effect. The change will take effect 30 days from the date of Customer's signature.

2. Defining your Enterprise.

Use this section to identify which Affiliates are included in the Enterprise. Customer's Enterprise must consist of entire government agencies, departments or legal jurisdictions, not partial government agencies, departments, or legal jurisdictions. (Check only one box in this section.)

- Customer and all Affiliates are included (including new Affiliates acquired in the future)
- Customer and all Affiliates are included (excluding new Affiliates acquired in the future)
- Customer and the following Affiliates only are included

- The following Affiliates are excluded

3. Selecting the language option.

Select the option for the languages in which Customer will run the Products licensed under this Enrollment. The options are identified below and their corresponding languages are identified at <http://microsoft.com/licensing/contracts>.

Check one box



Listed Languages



All Languages

4. Establishing Customer price level.

The price level indicated in this section will be the price level for the initial Enrollment term for all Enterprise Products ordered and for any Additional Products in the same pool(s). The price level for any other Additional Products will be level "D".

Qualified Desktops: Customer represents that the total number of Qualified Desktops in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment.	176
Qualified Users: Customer represents that the total number of Qualified Users in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment.	

The unit reference prices of the following payments (collectively, the "adjustable payments") are subject to change ("adjustment"), provided that the agreement annual price level has increased or decreased, relative to the initial price level, as of the first anniversary of an Enrollment:

- (i) the second and third annual installment payments for the Qualified Desktops ordered pursuant to the initial order;
- (ii) additional Qualified Desktops (if any) ordered pursuant to the first and second anniversary true up order;
- (iii) additional quantities of Additional Products (if any) ordered pursuant to the first and second anniversary true up order; and
- (iv) all subsequent payments.

Please refer to Section 19 of the Microsoft Enterprise Agreement for complete details.

Determination of pricing for additional products.

During the term of this Enrollment, and provided that Customer is party to a Microsoft Select Agreement (or its successor) during such term, the volume discount level for each additional product ordered shall be the volume discount level that corresponds to the applicable volume discount level for the product pool in which such product is available pursuant to such Microsoft Select Agreement. For example, if Microsoft Project, which is a member of the Applications pool, is ordered as an additional product, and if, as of the date of such order, the Select volume discount level for the Applications pool is "Level D," then the additional product reference price for such copy of Microsoft Project shall be determined according to the then-current Level D additional product price list.

Should Customer cease to be party to a Microsoft Select Agreement (or its successor) during the term of this Enterprise Agreement, then the volume discount level for each Additional Product in each annual pricing period shall be determined based upon such annual pricing period's aggregate family desktop count for the Product family in which such Additional Product is contained, pursuant to the following table:

Number of desktops/ users	Price level
250 to 2,399	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D
40,000 – 59,999	Level D – 2%
60,000 – 79,999	Level D – 4%

Price level (for pools in which you order an Enterprise Product):	Qualified desktop	Qualified user
	D	
Price level (for pools in which you do not order an Enterprise Product):	Price level "D"	

80,000 – 119,000	Level D – 6%
120,000 +	Level D – 7.5%

5. Enterprise Product orders.

Customer must select a desktop platform or any individual Enterprise Product before it can order Additional Products. The Office Product selection may be split between "professional plus" and "enterprise" editions within the Enterprise. The CAL selection must be the same across the Enterprise. The components of the current versions of any Enterprise Product are identified in the Product List.

Platform Product Selection (Select one)		
Professional Desktop	Enterprise Desktop	Custom Desktop
<input type="checkbox"/> Windows Desktop Operating System Upgrade <input type="checkbox"/> Office Professional Plus Core CAL <Select>	<input type="checkbox"/> Windows Desktop Operating System Upgrade Office Enterprise Enterprise CAL <Select>	<input checked="" type="checkbox"/> Windows Desktop Operating System Upgrade Office Professional Plus Enterprise CAL Desktop

Individual Enterprise Product Component Selection		
<input type="checkbox"/>	Windows Desktop Operating System Upgrade	
<input type="checkbox"/>	<Select One or Both>	
<input type="checkbox"/>	<Select One>	<Select>

Prices and payment terms for all Products ordered will be determined by agreement between Customer and its Reseller.

Enterprise Enrollment Supplemental Enterprise Agreement Terms and Conditions

State and Local

The following terms are required to update and supplement your license agreement to make it consistent with the current version of the Enterprise Agreement program and to allow for additional features and benefits which may or not have been available on the effective date of your license agreement.

For example, these terms address the following:

- your option to license some Client Access Licenses ("CALs") on a per user basis ("user-based CALs"), rather than on a per device basis, and some rights and obligations associated with user-based CALs;
- terms relating to ordering and use of online services;
- your right to order "step-up" licenses; and
- your ability, in some jurisdictions, to arrange for customized payment terms.

These terms and conditions amend your license agreement as it applies to this enrollment and any subsequent enrollments you or an enrolled affiliate enters into under it. It does not affect any prior enrollment already in existence. In the case of any conflict between these terms and conditions and the terms and conditions of your license agreement, these terms control.

1. Definitions.

If your license agreement does not already include a definition for "qualified users," the following definition of "qualified users" is added. In addition, if any references appear in your license agreement to the "Core User CAL" or "Core CAL," those references will be deemed to refer to any user-based CALs.

"qualified user" means a person who (1) is a user of a qualified desktop or (2) accesses any server software or online services licensed within an enrolled affiliate's enterprise. It does not include a person who accesses the server software or online services solely under a license identified in the qualified user exemptions in the product list.

2. Terms relating to user-based CALs.

- a. **Price levels where user-based CALs are ordered.** When user-based CALs are ordered as an enterprise product, other than as part of the "platform," the price level for any enterprise products or additional products ordered from the server pool will be set based on the enrolled affiliate's initial number of qualified users, rather than its initial number of qualified desktops.

Similarly, upon any renewal, if user-based CALs are renewed, other than as part of the "platform," the renewal price level for the systems pool will be reset based on the number of the enrolled affiliate's qualified users at the time of renewal, rather than its number of qualified desktops.

- b. **True-ups and update statements where user-based CALs are ordered.** The section of your license agreement that addresses the obligation to place true-up orders and submit update statements is hereby modified to require that, where user-based CALs are ordered as an enterprise product, the enrolled affiliate must determine the number of qualified users in its enterprise and, where that number has increased, submit a true-up order for L&SA for its user-based CALs covering those additional qualified users. If the number of qualified users has not increased, the enrolled affiliate must confirm this fact on its update statement.

Although annual true-up or update statements must be submitted within 60 days prior to or 15 days following the anniversary to meet the true-up requirement, an enrolled affiliate may also

true-up more frequently at any time during the term of the enrollment. The third-year anniversary true-up or update statement is due prior to or at the expiration date of the enrollment term.

Our commitment to work with the enrolled affiliate in good faith to accommodate changes in the number of its *qualified desktops* by more than ten percent as a result of mergers, acquisitions or divestitures will also apply, if user-based CALs are ordered as an enterprise product, in cases where the number of its *qualified users* changes by more than ten percent.

- c. **License grant for user-based CALs.** The following clarifications are made to the section of your license agreement titled "License grant — what your enrolled affiliates are licensed to run," to account for user-based CALs:

For CALs, your license grant is as follows: during the term, each qualified desktop (if device-based CALs have been ordered) or qualified user (if user-based CALs have been ordered) covered by the enrollment may access and use the associated server software.

Regarding the number of perpetual licenses received for user-based CALs: When user-based CALs have been ordered as an enterprise product, and once the enrolled affiliate qualifies for perpetual licenses, the number of the enrolled affiliate's perpetual licenses for such CALs will be equal to the number of qualified users covered by the enrollment, rather than the number of qualified desktops.

- d. **Placing renewal orders for user-based CALs.** Upon renewal of an enrollment, if user-based CALs were ordered as an enterprise product, the renewal order must include Software Assurance for such user-based CALs for the number of qualified users covered by the enrollment as of the date of renewal.

At renewal, where applicable, the enrolled affiliate can elect to exchange user-based CALs for device-based CALs or vice versa. In that event, the enrolled affiliate's renewal order must include L&SA for the number of qualified users or qualified desktops in excess of its current count. See the Product List for more information.

3. Online services.

The terms and conditions of your license agreement apply to online services subscriptions throughout the entire term of the subscription except as provided in your license agreement and in the Product List or Product Use Rights at <http://microsoft.com/licensing/contracts>. Online services are provided as subscription services and may carry terms that are independent of the agreement terms. Billing terms for online services subscriptions may also differ from the terms of this agreement. Online services are not perpetual under any circumstances. Except where online services are provided as part of other Licenses, true-ups do not apply to online services.

4. Right to order "step-up" Licenses.

If an already ordered product has multiple editions, an enrolled affiliate may migrate to the higher edition by ordering the applicable step-up. If step up details are included in an initial enrollment order, then the enrolled affiliate may step-up in accordance with the true-up process. If the step-up details are not included in the initial enrollment order, the enrolled affiliate may step-up by placing an order in the month the step-up is first run in accordance with the process set out for adding new additional products not previously ordered.

Enterprise Enrollment – State and Local

Amendment ID W16

Proposal ID

- On the first page of the Enrollment, the following is added after the second paragraph:

By entering into this Enrollment, the Enrolled Affiliate agrees that (1) it also has 250 or more Qualified Desktops; or (2) as a condition of entering into this Enrollment with 25-249 Qualified Desktops, Enrolled Affiliate has elected not to receive CD ROMs as part of the Enrollment and therefore no CD ROMs will automatically be shipped. If Enrolled Affiliate is enrolling with 25-249 Qualified Desktops and it would like to receive CD ROM Kits and updates, Enrolled Affiliate may order these through its Reseller for a fee.

- The section entitled "Establishing Customer price level," is hereby amended and restated in its entirety with the following:

Establishing Customer price level.

The price level indicated in this section will be Customer's price level for the initial Enrollment term for all Enterprise Products Enrolled Affiliate orders and for any Additional Products in the same pool(s). Customer's price level for any other Additional Products will be level "D".

Qualified Desktops: Enrolled Affiliate represents that the total number of Qualified Desktops in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number <i>may be less than 250 desktops, but must be at least 25 desktops</i>).	176
Qualified Users: Enrolled Affiliate represents that the total number of Qualified Users in its Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number <i>may be less than 250 users, but must be at least 25 users</i>).	

Number of desktops/users	Price level
250 to 2,399	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D

Price level (for pools in which Customer orders an Enterprise Product):	Qualified Desktop	Qualified User
	D	
Price level (for pools in which Customer does not order an Enterprise Product):		Price level "D"

3. Software Assurance addition and migration.

Renewing Software Assurance: If customer will be renewing Enterprise Products Software Assurance coverage from a separate agreement, check this box.	<input checked="" type="checkbox"/>
---	-------------------------------------

By checking the above box, a new section is added to the Enrollment entitled "Software Assurance addition and migration".

Customer is permitted to and will include in its initial order under this Enrollment the Software Assurance quantities identified in the table below (the "New Software Assurance"), even though Customer is not otherwise eligible to order such Software Assurance without simultaneously ordering a License.

On behalf of Customer and its Affiliates, Customer agrees that any perpetual Licenses received through the New Software Assurance shall supersede and replace the underlying Licenses, and the underlying Licenses are not to be transferred separately from any Licenses received through the New Software Assurance. Any remaining payment obligations with respect to the underlying Licenses shall continue in effect.

Program	Enrollment Number	Expiration Date
Enterprise Agreement	4913998	7/31/2010

New Software Assurance replacing underlying Licenses

Only the Products listed above shall be orderable as Software Assurance. Any copies in excess of those quantities listed in the table above must be ordered as L&SA.

This amendment must be attached to a signature form to be valid.

CompuCom - software quote

Quoted by Sam Andrews, CompuCom 3320 Data Drive, Suite 100 Rancho Cordova, CA 95670

Phone 818-988-2195 sam.andrews@compucom.com

Please fax your POs to Client Assistance Center at 800-366-9994. You may call 800-400-9852, option 2, to check status on orders.

Quoted to: **City of Banning**

Eric Brown

eric.brown@ci.banning.ca.us

Date 7/28/2010 To renew expiring EA# 4913998 (expires 7/31/2010)

Important: Please provide the email address of the recipient designated to receive a CompuCom "order confirmation".

Quantity	Part #	Description	Unit Price	Ext. Price
<i>enterprise products</i>				
176	A07-00042	Professional Desktop (SA) - <i>The Pro Desktop bundle includes Office Pro Plus 2010, the Windows 7 Enterprise upgrade, and the Core CAL suite.</i>	\$ 133.50	\$ 23,496.00
176	76A-00001	Enterprise CAL (StepUp) from Core Device CAL w/ Svcs - Platform	\$ 51.70	\$ 9,099.20
<i>additional products</i>				
1	312-02257	Exchange Server Standard (SA)	\$ 105.67	\$ 105.67
1	H30-00238	Project Professional w/1 ProjectSvr CAL (SA)	\$ 154.96	\$ 154.96
5	H21-00591	Project Server CAL (SA) User CAL	\$ 23.98	\$ 119.90
1	H22-00475	Project Server (SA)	\$ 735.82	\$ 735.82
35	359-00792	SQL CAL (SA) Device CAL	\$ 24.42	\$ 854.70
7	228-04433	SQL Server Standard Server (SA)	\$ 133.98	\$ 937.86
9	P73-00226	Windows Server Standard (SA)	\$ 108.34	\$ 975.06
<i>Optional renewals: products you are entitled to via having SA coverage on your Project licenses above.</i>				
1	H04-00268	Sharepoint Server (SA)	\$ 735.82	\$ 735.82
5	76N-02550	Sharepoint Enterprise CAL (SA) User CAL	\$ 12.43	\$ 62.15
<i>New Licenses added to start of next EA (annual costs)</i>				
2	P71-01031	Windows Server Datacenter 1-Processor (Lic/SA)	\$ 659.75	\$ 1,319.50
				\$ -
				\$ -
Product-total				\$ 38,596.64
Sub-Total				\$ 38,596.64
0	Tax	Non-taxable EA enrollment for next term? (Download only)	\$	-

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	Shipping			No Charge
	Total			\$ 38,596.64
Prices good for 30 days				
Pass-Through Warranty and Other Rights. As a reseller, end-user warranties and liabilities (with respect to any third party hardware and software products provided by CompuCom) shall be provided as a pass-through from the manufacturer of such products. All software products are subject to the license agreement of the applicable software supplier, as provided with the software packaging or in the software at time of shipment.				

CITY COUNCIL AGENDA

Date: August 24, 2010

TO: City Council

FROM: Kirby Warner, Interim Administrative Services Director

SUBJECT: Report of Investments for April 2010

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

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

BACKGROUND: This report includes investments on hand at the end of April 2010. As of April 30, 2010, the City's operating funds totaled \$68,217,309. Included in operating funds is \$3,266,231 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of April 30, 2010 approximately 43% of the City's unrestricted cash balances were invested in investments other than LAIF.

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

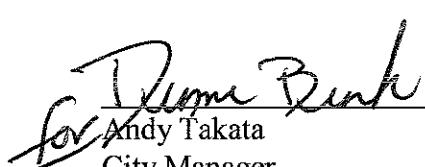
FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.588 % in April. The average rate for all investments in April was 0.649%.

RECOMMENDED BY:



Kirby Warner
Interim Administrative Services Director

APPROVED BY:



for Diane Bent
Andy Takata
City Manager

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
123,346	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	123,346	n/a	123,346
2,007,364	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,007,364	n/a	2,007,364
5,842	Bank of America-Airport	n/a	0.30%	daily	varies	5,842	n/a	5,842
3,464	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,464	n/a	3,464
3,706	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,706	n/a	3,706
	Sub-total							2,143,722
<u>Government Pools</u>								
31,287,069	L.A.I.F. account #1	n/a	0.588%	daily	varies	31,287,069	n/a	31,287,069
8,472,227	L.A.I.F. account #2	n/a	0.588%	daily	varies	8,472,227	n/a	8,472,227
								39,759,296
<u>Investments-US Bank/Piper Jaffray</u>								
3,000,000	Federal Home Loan Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,005,640
2,000,000	FNMA MTN	n/a	1.250%	4/5/2012	4/5/2010	2,000,000		1,997,500
3,000,000	FNMA MTN	n/a	1.550%	10/5/2012	4/5/2010	3,000,000		3,000,000
3,000,000	FNMA MTN	n/a	1.858%	4/8/2013	4/8/2010	3,000,000		3,002,820
2,000,000	Federal Home Loan Banks	n/a	1.625%	1/7/2013	4/7/2010	2,000,000		1,999,380
12,239,475	Money Market	n/a	0.000%	daily	varies	12,239,475	0	12,239,475

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 168 days and does not include Bond Reserve Fund Investments.

Investments
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City of Banning Investment Report

April 30, 2010

Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Apr-10	Market Value	4/30/2010
BNY WESTERN TRUST COMPANY									
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	1/1/2020 daily	522,375	*	522,562	
US BANK									115,035
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market		0.200% 0.000%	daily daily	265,580	4.65	265,894	
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.270% 0.150%	daily 7/29/2010	190,323 971,763	49.08 0.00	216,885	0
2003 CRA Tax Allocation Bonds	2028	US Treasury Bill		0.270% 0.270% 0.025%	daily daily daily		4.79 0.01	991,613	21,076
Surplus Fund		US Bank Mmkt 4-Ct							55
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007				0.270% 0.270% 0.270% 0.320%	daily daily daily daily	1,859.69	8,677,940		8
Redevelop Fund	2037	US Bank Mmkt 4-Ct							
		Cedars Federated Treasury Oblig Fd.-9AMMF98F1							
		Reliance TR Co Cdars CD #0140029695-7AMCD1FD1		0.270% 0.270% 0.270% 0.320%	5/20/2010 daily daily daily				
Reserve Fund		US Bank Mmkt 4-Ct							
Special Fund		US Bank Mmkt 4-Ct							
Surplus Fund		US Bank Mmkt 4-Ct							
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct		0.270% 0.270% 0.270%	daily daily daily		0.01 0.01	266,213	
Principal Account		US Bank Mmkt 4-Ct							33
Reserve Fund		US Bank Mmkt 4-Ct							
Project Fund									
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct		0.270% 0.260% 0.270% 0.270%	daily daily daily daily		0.66 0.02 526.10 2,281.77	1,153,482 88 2,314,134 10,036,648	
Principal Account		US Bank Mmkt 4-Ct							
Reserve Fund		US Bank Mmkt 4-Ct							
Project Fund		US Bank Mmkt 4-Ct							
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund		US Bank Mmkt 4-Ct		0.270% 3.650% 0.270% 0.270% 0.400%	daily 11/17/2011 daily daily 11/26/2010		0.04 2,961,500 21.04 372.28	163 3,016,509 123,888 2,085,869 8,036,457	
Acquisition & Construction		Reliance Trust Company # 9AMGGGBEZ7							
		US Bank Mmkt 4-Ct							
		US Bank Mmkt 4-Ct							
		Reliance Trust Co C D #7AMCD5063							
		Reliance TR CO Cdars #0140029703- 7AMCD1FE9							
		Reliance Trust Co C D #7AMCD49F7							
Total									58,151,036
*Paid Semi-Annually-Deposited into Money Mkt Account									

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Summary Schedule of Cash and Investments**Operating Funds**Petty CashAmount

2,305

Bank Accounts

Wells Fargo Bank

Interest

Rate

Amount

0.000% 175,334

Wells Fargo Bank-Investment Account

0.100% 1,252,460

Bank of America-Airport

0.300% 5,839

Bank of America-Parking Citations

0.300% 4,113

Bank of America-CNG Station

0.300% 3,831*Money Market and Bank Account Sub-Total*

1,441,577

Government Pools

Local Agency Investment Fund: Account #1

0.547% 31,244,147

Account #2 Operating Amount

6,664,470

Account #2 CRA Bond Cash Bal

3,296,423

Local Agency Investment Fund: Account #2

0.547% 9,960,893*Government Pool Sub-Total*41,205,040**Operating Cash Balance****42,648,922**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.050%

1,069,247

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 1.050%

25,144,250

Operating Funds Total**68,862,419****Fiscal Agent**

BNY Western Trust Company

Amount

539,035

US Bank

56,089,370**Fiscal Agent Total****56,628,406**

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<i>Bank Accounts</i>								
175,334	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	175,334	n/a	175,334
1,252,460	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,252,460	n/a	1,252,460
5,839	Bank of America-Airport	n/a	0.30%	daily	varies	5,839	n/a	5,839
4,113	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,113	n/a	4,113
3,831	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,831	n/a	3,831
	Sub-total							1,441,577
<i>Government Pools</i>								
31,244,147	L.A.I.F. account #1	n/a	0.547%	daily	varies	31,244,147	n/a	31,244,147
9,960,893	L.A.I.F. account #2	n/a	0.547%	daily	varies	9,960,893	n/a	9,960,893
								41,205,040
<i>Investments-US Bank/Piper Jaffray</i>								
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,180,835
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,005,640
10,957,775	Money Market	n/a	0.000%	daily	varies	10,957,775	0	10,957,775
	US Bank/Piper Jaffray Average Rate=		1.050%					25,144,250
								Average Rate All= 0.724%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 138 days and does not include Bond Reserve Fund Investments.

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Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Bond Reserve Requirement	Minimum Reserve	Interest Mar-10	Market Value
3/31/2010									
BNY WESTERN TRUST COMPANY									
1997 Admin Building COPS Refunding	2020		Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270%	11/1/2020	522,375	*	522,562	16,473
				0.010%	daily				
US BANK									
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market		0.200%	daily	265,580	4.20	265,589	
		US Bank Mmkt 4-Ct		0.000%	daily				
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.200%	daily	190,323	43.63	216,836	0
		US Treasury Bill		0.160%	7/29/2010	971,763	0.00	991,494	
2003 CRA Tax Allocation Bonds	2028	US Bank Mmkt 4-Ct		0.200%	daily			21,071	
		US Bank Mmkt 4-Ct		0.200%	daily			55	
		US Bank Mmkt 4-Ct		0.025%	daily			8	
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.200%	daily	1,203.88	8,676,080		
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1			daily				
Reserve Fund		Reliance TR Co Cdars CD #0140029695-7AMCD1FD1		0.750%	5/20/2010			3,500,000	
Special Fund		US Bank Mmkt 4-Ct		0.200%	daily	1,880,751	431.75	1,876,057	
Surplus Fund		US Bank Mmkt 4-Ct		0.200%	daily		0.03	131	
		US Bank Mmkt 4-Ct		0.210%	daily			9	
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct		0.210%	daily			0.01	28
Principal Account		US Bank Mmkt 4-Ct		0.210%	daily			0.01	33
		US Bank Mmkt 4-Ct		0.200%	daily			846.38	3,678,594
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct		0.200%	daily			0.67	2,920
Principal Account		US Bank Mmkt 4-Ct		0.210%	daily			0.02	88
Reserve Fund		US Bank Mmkt 4-Ct		0.200%	daily			532.32	2,313,607
Project Fund		US Bank Mmkt 4-Ct		0.200%	daily			2,308.73	10,034,366
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund		US Bank Mmkt 4-Ct		0.200%	daily			0.04	163
Acquisition & Construction		Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011	2,961,500		3,016,509	
		US Bank Mmkt 4-Ct		0.200%	daily			123,865	
		US Bank Mmkt 4-Ct		0.200%	daily			2,085,410	
		Reliance Trust Co C D #7AMCD5063		0.400%	11/26/2010			8,036,457	
		Reliance TR CO Cdars #0140029703-7AMCD1FE9		0.750%	5/20/2010			3,250,000	
		Reliance Trust Co C D #7AMCD49F7		0.500%	11/18/2010			8,000,000	
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1		0.000%					

*Paid Semi-Annually Deposited into Money Mkt Account

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Summary Schedule of Cash and Investments**Operating Funds**Petty Cash

	Amount
Petty Cash	2,305

Bank Accounts

	Interest	
	Rate	Amount
Wells Fargo Bank	0.000%	145,421
Wells Fargo Bank-Investment Account	0.100%	869,347
Bank of America-Airport	0.300%	5,989
Bank of America-Parking Citations	0.300%	4,673
Bank of America-CNG Station	0.300%	<u>3,936</u>

<i>Money Market and Bank Account Sub-Total</i>	<i>1,029,367</i>
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Government Pools

Local Agency Investment Fund: Account #1	0.557% 31,244,147
Account #2 Operating Amount	6,370,698
Account #2 CRA Bond Cash Bal	3,290,195
Local Agency Investment Fund: Account #2	0.557% <u>9,660,893</u>

<i>Government Pool Sub-Total</i>	<i><u>40,905,040</u></i>
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Operating Cash Balance	41,936,711
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Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund	0.050%	1,275,722
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Other Investments

Investments-US Bank/Piper Jaffray - See Page 2	1.808%	25,092,159
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<i>Operating Funds Total</i>	<u>68,304,593</u>
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Fiscal Agent

	Amount
BNY Western Trust Company	539,035
US Bank	<u>56,054,278</u>

<i>Fiscal Agent Total</i>	<u>56,593,313</u>
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Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or Premium	Amortization	Market Value
<u><i>Bank Accounts</i></u>									
145,421	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	145,421	n/a		145,421
869,347	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	869,347	n/a		869,347
5,989	Bank of America-Airport	n/a	0.30%	daily	varies	5,989	n/a		5,989
4,673	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,673	n/a		4,673
3,936	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,936	n/a		3,936
							Sub-total		1,029,367

Government Pools

31,244,147 L.A.I.F. account #1
9,660,893 L.A.I.F. account #2

Investments, US Banks/Pinjar Taffey

6,000,000	Federal Farm Credit Banks	n/a	2.125%	9/23/2011	3/24/2008	6,000,000	0	6,005,460
3,000,000	Fedl Natl Mtg Assn	n/a	2.050%	12/30/2011	12/23/2008	3,000,000	0	3,002,820
1,179,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,194,909
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,010,320
1,878,650	Money Market	n/a	0.000%	daily	varies	1,878,650	0	1,878,650

US Bank/Paper Jaffray Average Rate= 1.808% 25.092 1.50

Average Rate All = 1.018%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 228 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

February 28, 2010

Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Feb-10	Market Value
Bond Issue Description							*	2/28/2010
BNY WESTERN TRUST COMPANY								522,562
1997 Admin Building COPs Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	*	16,473
US BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market	0.200%	daily	265,580	4.65	265,622
			US Bank Mmkt 4-Ct	0.280%	daily			
2005 Fair Oaks Ranch Estates		2035	US Bank Mmkt 4-Ct	0.300%	1/28/2010	190,323	48.29	14
2003 CRA Tax Allocation Bonds		2028	US Treasury Bill	4.560%		971,763	0.00	139,588
			US Bank Mmkt 4-Ct	0.300%	daily			
			US Bank Mmkt 4-Ct	0.290%	daily			
			US Bank Mmkt 4-Ct	0.025%	daily			
Surplus Fund								
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	US Bank Mmkt 4-Ct	0.300%	daily		1,381.15	5,231,198
			Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%	daily			3,441,207
			Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	0.750%	5/20/2010			3,500,000
Reserve Fund			US Bank Mmkt 4-Ct	0.300%	daily			
Special Fund			US Bank Mmkt 4-Ct	0.300%	daily			
Surplus Fund			US Bank Mmkt 4-Ct	0.320%	daily			
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.320%	daily			
Principal Account			US Bank Mmkt 4-Ct	0.300%	daily			
			US Bank Mmkt 4-Ct	0.300%	daily			
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.300%	daily			
Principal Account			US Bank Mmkt 4-Ct	0.300%	daily			
Reserve Fund			US Bank Mmkt 4-Ct	0.300%	daily			
Project Fund			US Bank Mmkt 4-Ct	0.300%	daily			
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Bond Fund			US Bank Mmkt 4-Ct	0.300%	daily			
Principal Account			Reliance Trust Company #9AMGGBEZ7	3.650%	11/17/2011	2,961,500	0.04	163
Reserve Fund			Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%	daily			3,016,509
Project Fund			US Bank Mmkt 4-Ct	0.300%	daily			123,865
			Reliance Trust Co CD #7AMCD5063	0.400%	11/26/2010			1,617,677
			Reliance TR CO Cdars #0140029703- 7AMCD1FE9	0.750%	5/20/2010			8,036,457
			Reliance Trust Co CD #7AMCD49F7	0.500%	11/18/2010			3,250,000
			Cdars Federated Treasury Oblig Fd.-9AMMF98F1	0.000%				8,000,000
								467,348
Total								56,593,313
<i>*Paid Semi-Annually Deposited into Money Mkt Account</i>								

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CITY COUNCIL AGENDA

Date: August 24, 2010

TO: City Council

FROM: Kirby Warner, Interim Administrative Services Director

SUBJECT: Report of Investments for May 2010

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

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

BACKGROUND: This report includes investments on hand at the end of May 2010. As of May 31, 2010, the City's operating funds totaled \$71,723,944. Included in operating funds is \$3,263,151 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of May 31, 2010 approximately 40% of the City's unrestricted cash balances were invested in investments other than LAIF.

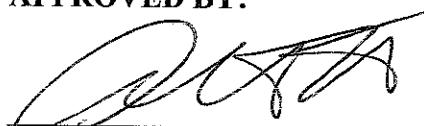
Presented are three months of Investment Reports. May is a first issue, while March and April are included to provide multiple months of statements for comparison.

FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.560 % in May. The average rate for all investments in May was 0.907%.

RECOMMENDED BY:


Kirby Warner
Interim Administrative Services Director

APPROVED BY:


Andy Takata
City Manager

Summary Schedule of Cash and Investments**Operating Funds**Petty CashAmount

2,305

Bank Accounts

Wells Fargo Bank

InterestRate

0.000%

83,277

Wells Fargo Bank-Investment Account

0.100%

1,688,982

Bank of America-Airport

0.300%

3,188

Bank of America-Parking Citations

0.300%

3,069

Bank of America-CNG Station

0.300%

3,007

Money Market and Bank Account Sub-Total

1,781,524

Government Pools

Local Agency Investment Fund: Account #1

0.560% 31,287,069

Account #2 Operating Amount

9,309,076

Account #2 CRA Bond Cash Bal

3,263,151

Local Agency Investment Fund: Account #2

0.560% 12,572,227*Government Pool Sub-Total*43,859,296**Operating Cash Balance****45,643,125**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.050%

773,921

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

1.566%

25,306,898

*Operating Funds Total*71,723,944**Fiscal Agent**

BNY Western Trust Company

Amount

539,035

US Bank

51,486,724*Fiscal Agent Total*52,025,759

City of Banning Investment Report

Operational Portfolio Individual Investments

May 31, 2010

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
83,277	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	83,277	n/a	83,277
1,688,982	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,688,982	n/a	1,688,982
3,188	Bank of America-Airport	n/a	0.30%	daily	varies	3,188	n/a	3,188
3,069	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,069	n/a	3,069
3,007	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,007	n/a	3,007
	Sub-total							1,781,524
<u>Government Pools</u>								
31,287,069	L.A.I.F. account #1	n/a	0.560%	daily	varies	31,287,069	n/a	31,287,069
12,572,227	L.A.I.F. account #2	n/a	0.560%	daily	varies	12,572,227	n/a	12,572,227
								43,859,296
<u>Investments-US Bank/Piper Jaffray</u>								
3,000,000	Federal Home Loan Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,003,750
2,000,000	FNMA MTN	n/a	1.250%	4/5/2012	4/5/2010	2,000,000		2,002,500
3,000,000	FNMA MTN	n/a	1.550%	10/5/2012	4/5/2010	3,000,000		3,008,430
3,000,000	FNMA MTN	n/a	1.858%	4/8/2013	4/8/2010	3,000,000		3,011,250
2,000,000	Federal Home Loan Banks	n/a	1.625%	1/7/2013	4/7/2010	2,000,000		2,007,500
3,000,000	FHLMC MTN	n/a	1.875%	5/10/2013	5/10/2010	3,000,000		3,017,820
4,000,000	Federal Farm Credits Bks	n/a	1.470%	10/26/2012	5/4/2010	4,000,000		4,006,240
4,000,000	Federal Home Loan Banks	n/a	2.000%	5/17/2013	5/17/2010	4,000,000		4,011,240
1,238,168	Money Market	n/a	0.000%	daily	varies	1,238,168	0	1,238,168
	US Bank/Piper Jaffray Average Rate=		1.566%					25,306,898
	Average Rate All=							0.907%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 310 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

May 31, 2010

Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest May-10	Market Value	5/31/2010
BNY WESTERN TRUST COMPANY	1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	*	522,562 16,473	
US BANK									
1991 Wilson St. Assessment District	2012	AM U.S. Treasury Money Market	0.2000% 0.0000%	daily daily	265,580	4.50	265,598		
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.2000% 0.1600%	daily daily	188,943	35.65	216,921		0
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	0.2000% 0.2000% 0.0250%	daily daily daily	971,763	0.00 3.46 0.01	991,762 21,079 55		8
Surplus Fund		US Bank Mmkt 4-Ct							
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.270% Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	daily 5/20/2010	1,426.47 26,438.18	11,905,607			
Reserve Fund		US Bank Mmkt 4-Ct							
Special Fund		US Bank Mmkt 4-Ct							
Surplus Fund		US Bank Mmkt 4-Ct							
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct	0.180% 0.2000% 0.2000%	daily daily daily	21.88 0.01 604.82	22 132,500 3,680,036			
Principal Account		US Bank Mmkt 4-Ct							
Surplus Fund		US Bank Mmkt 4-Ct							
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Bond Fund		US Bank Mmkt 4-Ct	0.2000% 0.2000% 0.2000%	daily daily daily	95.05 0.01 1,649.81	95 88 4,187,663			
Principal Account		US Bank Mmkt 4-Ct							
Reserve Fund		US Bank Mmkt 4-Ct							
Project Fund		US Bank Mmkt 4-Ct							
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund		US Bank Mmkt 4-Ct	0.2000% 3.650% 0.2000%	daily 11/17/2011 daily	2,961,500	0.03	1,733,406 3,016,509		
Acquisition & Construction		US Bank Mmkt 4-Ct	0.2000% 0.4000% 0.750%	daily 11/26/2010 5/20/2010	20.36 342.87 24,399.56		123,909 4,983,133 8,036,457		
		Reliance Trust Co C D #7AMCD5063							
		Reliance Trust Co Cdars #0140029703- 7AMCD1FE9							
		Reliance Trust Co C D #7AMCD49F7							
		Total					55,423.08	52,025,759	
		<i>*Paid Semi-Annually-Deposited into Money Mkt Account</i>							

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Summary Schedule of Cash and Investments**Operating Funds**Petty CashBank Accounts

Wells Fargo Bank

Wells Fargo Bank-Investment Account

Bank of America-Airport

Bank of America-Parking Citations

Bank of America-CNG Station

		<u>Amount</u>
		2,305
	Interest	
	Rate	Amount
	0.000%	123,346
	0.100%	2,007,364
	0.300%	5,842
	0.300%	3,464
	0.300%	<u>3,706</u>

Money Market and Bank Account Sub-Total 2,143,722Government PoolsLocal Agency Investment Fund: Account #1 0.588% 31,287,069Account #2 Operating Amount 5,205,996Account #2 CRA Bond Cash Bal 3,266,231Local Agency Investment Fund: Account #2 0.588% 8,472,227*Government Pool Sub-Total* 39,759,296**Operating Cash Balance** **41,905,323**Restricted Operating Funds at Riverside Public UtilitiesHighmark U.S. Government Money Market Fund 0.050% 1,067,171Other InvestmentsInvestments-US Bank/Piper Jaffray - See Page 2 0.793% 25,244,815***Operating Funds Total*** **68,217,309****Fiscal Agent**

BNY Western Trust Company

US Bank

	<u>Amount</u>
	637,597
	<u>57,513,439</u>

Fiscal Agent Total **58,151,036**

94

City of Banning Investment Report

April 30, 2010

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
123,346	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	123,346	n/a	123,346
2,007,364	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,007,364	n/a	2,007,364
5,842	Bank of America-Airport	n/a	0.30%	daily	varies	5,842	n/a	5,842
3,464	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,464	n/a	3,464
3,706	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,706	n/a	3,706
	Sub-total							2,143,722
<u>Government Pools</u>								
31,287,069	L.A.I.F. account #1	n/a	0.588%	daily	varies	31,287,069	n/a	31,287,069
8,472,227	L.A.I.F. account #2	n/a	0.588%	daily	varies	8,472,227	n/a	8,472,227
								39,759,296
<u>Investments-US Bank/Piper Jaffray</u>								
3,000,000	Federal Home Loan Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,005,640
2,000,000	FNMA MTN	n/a	1.250%	4/5/2012	4/5/2010	2,000,000		1,997,500
3,000,000	FNMA MTN	n/a	1.550%	10/5/2012	4/5/2010	3,000,000		3,000,000
3,000,000	FNMA MTN	n/a	1.858%	4/8/2013	4/8/2010	3,000,000		3,002,820
2,000,000	Federal Home Loan Banks	n/a	1.625%	1/7/2013	4/7/2010	2,000,000		1,999,380
	12,239,475 Money Market	n/a	0.000%	daily	varies	12,239,475	0	12,239,475
	US Bank/Piper Jaffray Average Rate=							25,244,815
								Average Rate All= 0.649%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 168 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

April 30, 2010

Individual Investments with Fiscal Agent

Summary Schedule of Cash and Investments**Operating Funds**Petty CashBank Accounts

Wells Fargo Bank

Wells Fargo Bank-Investment Account

Bank of America-Airport

Bank of America-Parking Citations

Bank of America-CNG Station

		<u>Amount</u>
	Interest	
	Rate	<u>Amount</u>
	0.000%	175,334
	0.100%	1,252,460
	0.300%	5,839
	0.300%	4,113
	0.300%	<u>3,831</u>

Money Market and Bank Account Sub-Total 1,441,577Government PoolsLocal Agency Investment Fund: Account #1 0.547% 31,244,147Account #2 Operating Amount 6,664,470Account #2 CRA Bond Cash Bal 3,296,423Local Agency Investment Fund: Account #2 0.547% 9,960,893*Government Pool Sub-Total* 41,205,040**Operating Cash Balance** **42,648,922**Restricted Operating Funds at Riverside Public UtilitiesHighmark U.S. Government Money Market Fund 0.050% **1,069,247**Other InvestmentsInvestments-US Bank/Piper Jaffray - See Page 2 1.050%**25,144,250*****Operating Funds Total*** **68,862,419****Fiscal Agent**

BNY Western Trust Company

US Bank

	<u>Amount</u>
	<u>539,035</u>
	<u>56,089,370</u>

Fiscal Agent Total **56,628,406**

City of Banning Investment Report

March 31, 2010

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Discount or (Premium) Amortization	Market Value
<i><u>Bank Accounts</u></i>								
175,334	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	175,334	n/a	175,334
1,252,460	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	1,252,460	n/a	1,252,460
5,839	Bank of America-Airport	n/a	0.30%	daily	varies	5,839	n/a	5,839
4,113	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,113	n/a	4,113
3,831	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,831	n/a	3,831
	Sub-total							1,441,577
<i><u>Government Pools</u></i>								
31,244,147	L.A.I.F. account #1	n/a	0.547%	daily	varies	31,244,147	n/a	31,244,147
9,960,893	L.A.I.F. account #2	n/a	0.547%	daily	varies	9,960,893	n/a	9,960,893
								41,205,040
<i><u>Investments-US Bank/Piper Jaffray</u></i>								
11,170,000	Federal Farm Credit Banks	n/a	2.000%	1/30/2012	6/12/2009	11,170,000	0	11,180,835
3,000,000	Federal Farm Credit Banks	n/a	1.350%	1/20/2012	1/7/2010	3,000,000	0	3,005,640
10,957,775	Money Market	n/a	0.000%	daily	varies	10,957,775	0	10,957,775
	US Bank/Piper Jaffray Average Rate=		1.050%					25,144,250
								Average Rate All= 0.724%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 14, 2009. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 138 days and does not include Bond Reserve Fund Investments.

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City of Banning Investment Report

March 31, 2010

Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve	Interest Mar-10	Market Value
BNY WESTERN TRUST COMPANY	1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.010%	11/1/2020 daily	522,375	*	522,562 16,473
US BANK								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market	0.2000% 0.0000%	daily	265,580	4.20		265,589
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.2000% 0.0000%	daily	188,943	43.63		216,836
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	0.1600% 0.2000% 0.2000% 0.0250%	7/29/2010 daily daily daily	971,763	0.00 4.85 0.01 0.01	991,494 21,071 55	
Surplus Fund		US Bank Mmkt 4-Ct						
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.2000% Cdars Federated Treasury Oblig Fd.-9AMMF98F1 Reliance TR Co Cdars CD #0140029695-7AMCD1FD1	daily daily 5/20/2010	1,203,88	8,676,080		
Reserve Fund		US Bank Mmkt 4-Ct						
Special Fund		US Bank Mmkt 4-Ct						
Surplus Fund		US Bank Mmkt 4-Ct						
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		US Bank Mmkt 4-Ct	0.2100% 0.2100% 0.2100%	daily daily daily	0.01 0.01 0.03	3,500,000 1,876,057 131		
Principal Account		US Bank Mmkt 4-Ct						
Surplus Fund		US Bank Mmkt 4-Ct						
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		US Bank Mmkt 4-Ct	0.2000% 0.2100% 0.2000%	daily daily daily	0.67 0.02 532.32	2,920 88 2,313,607		
Principal Account		US Bank Mmkt 4-Ct						
Reserve Fund		US Bank Mmkt 4-Ct						
Project Fund		US Bank Mmkt 4-Ct						
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct	0.2000% 3.6500% 0.2000% 0.2000%	daily 11/17/2011 daily daily	0.04 2,961,500 0.02 2,308.73	163 3,016,509 123,865 372.28 11/26/2010 5/20/2010 11/18/2010		
Acquisition & Construction		Reliance Trust Company # 9AMGGBEZ7						
		US Bank Mmkt 4-Ct						
		US Bank Mmkt 4-Ct						
		Reliance Trust Co C D #7AMCD5063						
		Reliance TR CO Cdars #0140029703- 7AMCD1FE9						
		Reliance Trust Co C D #7AMCD49F7						
		Cdars Federated Treasury Oblig Fd.-9AMMF98F1						

CITY COUNCIL AGENDA

Date: August 24, 2010

TO: City Council

FROM: Kirby J. Warner, Interim Administrative Services Director

SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of April 2010

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of April 2010.

The reports are:

Expenditure approval lists

April 1, 2010	179,319.47
April 8, 2010	465,233.57
April 15, 2010	513,625.08
April 22, 2010	322,274.17
April 29, 2010	93,772.20

August 10, 2010	4,437,171.76 (April Month End)
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Payroll check registers

April 9, 2010	6,945.89
April 23, 2010	8,128.43

Payroll direct deposits*

April 9, 2010	305,989.62
April 23, 2010	299,201.48

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

* Included on the April month end expenditure approval list of 5/10/2010.

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

Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:



Kirby J. Warner
Interim Administrative Services Director

APPROVED BY:


for 

Andy Takata
City Manager

101

Fund/Department Legend:

General Fund – 001

Departments

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

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

All Other Funds

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

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

102

CITY COUNCIL AGENDA

Date: August 24, 2010
TO: City Council
FROM: Kirby J. Warner, Interim Administrative Services Director
SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of May 2010

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of May 2010.

The reports are:

Expenditure approval lists

May 6, 2010	653,288.88
May 13, 2010	429,212.53
May 20, 2010	904,693.31
May 27, 2010	297,184.97

August 11, 2010	6,283,034.73 (May Month End)
-----------------	------------------------------

Payroll check registers

May 7, 2010	8,913.09
May 21, 2010	7,423.55

Payroll direct deposits*

May 7, 2010	308,039.33
May 21, 2010	284,900.55

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

* Included on the April month end expenditure approval list of 5/10/2010.

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

Report Prepared by: Jenna Harrell, Accounts Payable

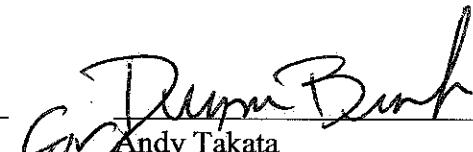
RECOMMENDED BY:



Kirby J. Warner

Interim Administrative Services Director

APPROVED BY:



Andy Takata

City Manager

104

Fund/Department Legend:

General Fund – 001

Departments

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

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

All Other Funds

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

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

CITY COUNCIL AGENDA

Date: **August 24, 2010**

TO: **City Council**

FROM: **Kirby J. Warner, Interim Administrative Services Director**

SUBJECT: **Approval of Accounts Payable and Payroll Warrants for Month of June 2010**

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

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of June 2010.

The reports are:

Expenditure approval lists	
June 3, 2010	216,829.53
June 7, 2010	2,955.65 ¹
June 10, 2010	398,398.83
June 17, 2010	466,441.84
June 24, 2010	460,676.59
June 28, 2010	2,221.05 ¹

August 19, 2010 2,590,386.65 (June Month End)

Payroll check registers	
June 4, 2010	5,485.21
June 18, 2010	7,153.14
6/30/2010 - Manual Check	13.14
6/30/2010 - Manual Check	9,607.63
6/30/2010 - Manual Check	50,195.48

Payroll direct deposits*	
June 4, 2010	299,005.38
June 18, 2010	314,728.91

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

* Included on the April month end expenditure approval list of 8/19/2010.

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

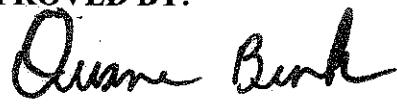
Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:



Kirby J. Warner
Interim Administrative Services Director

APPROVED BY:



for Diane Burk
Andy Takata
City Manager

Fund/Department Legend:

General Fund – 001

Departments

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

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

All Other Funds

003 - Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
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148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 - State Park Bond Fund
200 – Special Donation Fund
201 – Sr. Center Activities Fund
202 – Animal Control Reserve Fund
203 – Police Volunteer Fund
204 – D.A.R.E. Donation Fund
300 – City Administration COP Debt Service
360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/HIGHLAND Home Road Signal
430 – General Facilities Fund
441 - Sunset Grade Separation Fund
444 - Wilson Median Fund
451 – Park Development Fund

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

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**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: August 24, 2010

TO: Honorable Mayor and City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Initial Study/Negative Declaration, Ordinance No. 1426 regulating Massage related uses, and Resolution No. 2010-59 amending Resolution No. 1993-158 regarding massage related fees to comply with SB 731

RECOMMENDATION:

1. Adopt Ordinance No. 1426 amending Section 5.08.080 of the Banning Municipal Code, Table 17.12.020 of Section 17.12.020 of the Banning Zoning Ordinance and Title 5 of the Banning Municipal Code to add Chapter 5.74 regarding Massage Establishments, State Certified Massage Practitioners, and State Certified Massage Therapists; and
2. Adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for State certified massage therapists/practitioners as follows: delete references to Business License Tax (annual fee) of \$125, delete Massage therapist Trainee Permit (annual fee) of \$30 and delete police background check (one-time fee charged at time of initial application) of \$25.00.

JUSTIFICATION:

In September 2008, the State approved Senate Bill No. 731 (SB 731), which amended California Business and Professions Code sections 4600 et seq., and provided for the certification of massage practitioners and massage therapists through the State's Massage Therapy Organization or MTO. The MTO is responsible for reviewing applications to ensure that the applicants for massage therapist and massage practitioner certification meet the minimum criteria for their profession and processing the background check through the Department of Justice (DOJ). The DOJ is responsible for conducting the background check and providing the MTO the fitness determination and other information related to massage practitioner and massage therapist applications for certification through the MTO. In addition to issuing certificates to the massage therapists and massage practitioners, the MTO is also responsible for revoking the certification of the massage therapists and practitioners if they have been arrested or charged for specific crimes as referenced in SB 731 including, prostitution, impersonating a certified massage practitioner or therapist, committing any fraudulent, dishonest or corrupt act that is substantially related to the qualifications or duties of an MTO certificate holder, or procuring an MTO certificate by fraud.

ANALYSIS:

Pursuant to SB 731, the City is permitted to regulate massage establishments by adopting and enforcing local zoning, business licensing and reasonable health and safety requirements. However, with the implementation of massage certification at the state level, the City is now prohibited from enacting any ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to SB 731. As such, the City's role is as follows:

1. Cities must uniformly apply land use and zoning requirements to massage establishments, and professional and personal service businesses (i.e., doctor, dentist, barber shop, health facility, etc.).
2. Cities are prohibited from requiring additional permits, licenses or other authorization of individuals who are certified massage practitioners or certified massage therapists through the State. Cities are permitted to adopt and enforce zoning and business licensing requirements for massage establishments.
3. Cities must not mandate any local building code or physical facility requirements (i.e. showers, restrooms, windows on doors, etc.) that are different from that required of professional or personal service businesses.
4. Cities are allowed to require reasonable health and safety standards for massage establishments which include cleanliness of massage rooms, towels, and linens, attire and personal hygiene for purposes of providing a massage.

The Municipal Code currently allows massage establishments to operate in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), and Professional Office (PO) zoning districts with approval of a Conditional Use Permit from the Planning Commission. However, in order to comply with SB 731, the City must uniformly apply land use and zoning requirements to massage establishments, and professional and personal service businesses. The City considers the following uses to be professional or personal service businesses: Health/fitness facilities, Barber shops and beauty shops, Business support/secretarial services, Professional offices and Real Estate Offices. However, the City's land use and zoning requirements are not uniform with reference to the above-referenced uses. For example, the uses are not all permitted in the same zones. Also, the City does not uniformly require Conditional Use Permits for all of the uses. As such, in order to best comply with SB 731, the City is permitting massage establishments by right in the same zones where professional and personal service businesses are permitted. The City will no longer regulate a State certified massage therapy establishment via a Conditional Use Permit.

To comply with SB 731, the following are the proposed amendments to the Municipal Code:

- Add a new chapter 5.74 "Massage Establishments and Massage Therapists/Practitioners" to require all individuals performing massage in the City to obtain a massage certification from the MTO and to establish standards of operations for the Massage Establishments and Massage Therapists/Practitioners. Chapter 5.74 provides for the following:
 - **Section 5.74.010 Intent and Purpose.** The intent and purpose of Chapter 5.74 is to regulate Massage Practitioners and Massage Therapists in accordance with state law to protect the health, safety, and welfare of the residents of Banning.
 - **Section 5.74.020 Definitions.** The definition section provides the meaning of Massage Practitioner and Massage Therapists, among other definitions.

- **Section 5.74.030 Licensing Requirement.** This section clarifies that a certificate from the Massage Therapy Organization is required in order to perform Massage services in the City of Banning.
- **Section 5.74.040 License Exemptions.** This Section clarifies that certain professions that perform massages as a component of their profession as approved by the State are exempt from the requirement of this ordinance.
- **Sections 5.74.050 through 5.74.070 Display of certification, Notice of Massage Therapist/Practitioner employed by Massage Establishment, Business License Required.** These Sections require that Massage Therapists and Practitioners display their MTO certifications prominently, require Massage Establishment Owners and Operators to inform the Community Development Director of the hiring and termination of Massage Therapist/Practitioners and require that Massage Establishments obtain a business license from the City.
- **Sections 5.74.080 Standards for Operations of Massage Establishments.** This section provides operating standards for the facilities, including signage, cleanliness of massage rooms, towels, and linens, attire and personal hygiene for purposes of providing a massage and hours of operations of the Massage Establishment.
- **Sections 5.74.090 through 5.74.110 relates to prohibited conduct, penalties, enforcement, and abatement.** These sections specify prohibited conduct, penalties for non-compliance with this ordinance and the Municipal Code, penalties for compliance, enforcement of the massage establishments, and abatement should the establishments become a public nuisance.
- Amend Section 5.08.080.K to read as follows:
 - “Massage Establishment Annual Business Tax, Per Year \$220.00
 - “Massage Establishment, Annual Investigative Fee, Per Year: \$150.00.”

The existing subsection K reads, “Massage Parlor-Baths. (City Council permit required) Per Year \$220.00. The proposed amendment is to replace the word “parlor-baths” with the word “establishment” and delete “City Council permit required” so that it is consistent with the Ordinance. The Annual Investigative Fee is a new fee that is proposed with the Ordinance. This fee is for an annual inspection of the establishment prior to the renewal of the business license to ensure that the establishment is in compliance with the Ordinance.
- Amend Section 17.12.020, Table 17.12.020 to allow Massage Establishments to operate by right in the same zoning districts as other professional and personal service businesses in the City.

The City’s professional and personal service businesses, which include, Health/fitness facilities, Barber shops and beauty shops, Business support/secretarial services, Professional offices and Real Estate Offices, are permitted in Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional

Office (PO), Airport Industrial (AI) and Business Park (BP) zones. Some businesses are permitted by right and some are subject to a Conditional Use Permit.

To comply with SB 731, certified massage establishments are proposed to be permitted by right in Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional office (PO), Airport Industrial (AI), and Business Park (BP) zones.

- Adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for state certified massage therapists/practitioners as follows: delete references to Business License Tax (annual fee) of \$125, delete Massage therapist Trainee Permit (annual fee) of \$30 and delete police background check (one-time fee charged at time of initial application) of \$25.00.

ENVIRONMENTAL DETERMINATION

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Planning Commission as provided in the Staff Report dated August 24, 2010 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. California Environmental Quality Act (CEQA):

CEQA: The City Council has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act ("CEQA") under Section 15070(a) regarding negative declarations, Section 15268 regarding ministerial projects, and Section 15376 regarding the definition of "person" of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study. However, the Project (the adoption of an ordinance amending the City of Banning Municipal Code) does not have negative impacts on the environment. A Negative Declaration is proposed for adoption.

2. Multiple Species Habitat Conservation Plan (MSHCP).

The amendment to the Zoning Code does not relate to any one physical project and is not subject to the MSHCP. Further, projects subject to this resolution will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT NO. 09-97505:

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the City Council. The following findings are provided for Commission consideration:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as to provide regulations for the orderly conduct of certain businesses to protect the health, safety, and general welfare of the community. The primary General Plan Land Use Goal states "*A balanced, well-planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". The amendment to the Municipal Code to provide regulations pertaining to State certified massage establishments, massage practitioners, and massage therapists provides a functional pattern of land uses and enhances the quality of life for all Banning residents to ensure that these businesses are operating within a reasonable standard set by the community to ensure that they do not become a public nuisance.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendment will modify and update the zoning districts in which the massage establishments are allowed to locate within the City of Banning and to establish development standards pertaining to State regulations regarding State certified massage practitioners and massage therapists

3. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

The City Council has analyzed this proposed project and has determined that a Negative Declaration is required per the California Environmental Quality Act ("CEQA") under Section 15070(a), Section 15268, and Section 15376(a)(1) of the CEQA Guidelines, which provide that the adoption of an ordinance by a city is considered a project which requires the preparation of an Initial Study, which leads to a conclusion that the adoption of an ordinance amendment the City of Banning Municipal Code does not have a negative impact on the environment; therefore, a Negative Declaration is proposed for adoption.

PLANNING COMMISSION REVIEW:

The Planning Commission reviewed this matter at its meeting on August 3, 2010. The Planning Commission asked if there was additional language that could be included in the proposed ordinance to ensure that the establishment owners were regulated since the State law does not mandate that the owners have to receive State certification similar to the therapists and practitioners. The regulations as proposed in Ordinance No. 1426 are the extent of the regulations that can be placed on the owners of the establishment to ensure that the Ordinance is in compliance with State law. The Planning Commission voted 4-0 recommending to the City Council the adoption of Ordinance No. 1426 and adoption of the resolution amending the fees that was previously adopted in 1993 regarding massage related uses to comply with State law.

FISCAL DATA:

There is no fiscal impact related to the preparation and discussion of this report.

PUBLIC HEARING NOTICE AND COMMUNICATION:

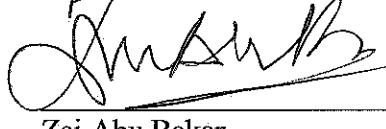
The proposed Zone Text Amendment No. 09-97505 was advertised in the Record Gazette newspaper on August 13, 2010. As of the date of this report, staff has not received any verbal or written comments for or against the proposed Zone Text Amendment.

CONCLUSION:

1. That the City Council adopt Ordinance No. 1426, adopt Initial Study/Negative Declaration and amend Section 5.08.080 of the Banning Municipal Code, Table 17.12.020 of Section 17.12.020 of the Banning Zoning Ordinance and Title 5 of the Banning Municipal Code to add Chapter 5.74 regarding Massage Establishments, State Certified Massage Practitioners, and State Certified Massage Therapists; and
2. That the City Council adopt Resolution No. 2010-59 repealing Resolution No. 1993-158 and amending fees for State certified massage therapists/practitioners as follows: delete references to Business License Tax (annual fee) of \$125, delete Massage therapist Trainee Permit (annual fee) of \$30 and delete police background check (one-time fee charged at time of initial application) of \$25.00.

APPROVED BY:

Andy Takata
City Manager

PREPARED BY:

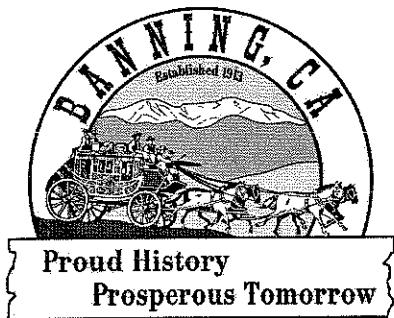
Zai Abu Bakar
Community Development Director

Attachments:

1. Initial Study/Negative Declaration
2. Ordinance No. 1426
3. Resolution No. 2010-59
4. Resolution No. 1993-158

ATTACHMENT 1

Initial Study / Negative Declaration



CITY OF BANNING
Initial Study/Negative Declaration
for
Zone Text Amendment # 09-97505
Massage Ordinance

July 6, 2010

City of Banning
Community Development Department
99 E. Ramsey Street
Banning, California 92220

Zai Abu Bakar
Community Development Director
(951) 922-3131

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**City of Banning Initial Study/Negative Declaration
For
Zone Text Amendment # 09-97505**

EXECUTIVE SUMMARY

This Initial Study assesses the potential environmental impacts of the Zone Text Amendment # 09-97505 - an amendment to the Banning Zoning Code to establish the zoning districts in which Massage Establishments, State certified massage therapists, and State certified massage practitioners ("Project") may practice by right in the City. The purpose of the project is to comply with Senate Bill 731.

The project amends Section 17.12.020 of the Banning Zoning Code to allow Massage Establishments, massage therapists, and massage practitioners that are certified by the State Massage Therapy Organization to operate by right in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP) zoning districts. Previously, massage establishments require approval of a Conditional Use Permit to operate in DC, GC, HSC, and PO. The Municipal Code is also being amended to add a new Chapter 5.74 "Massage Establishments and Massage Therapists/Practitioners" providing regulations related to the State certified massage establishments, State certified massage therapists, and State certified massage practitioners.

The results of the Initial Study show that there is no substantial evidence that the Project would have a significant effect on the environment. A Negative Declaration is being recommended for adoption.

1. INTRODUCTION

Purpose and Scope

This Initial Study serves as the environmental review of the proposed Project, as required by the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., the State CEQA Guidelines, and the City of Banning Local Guidelines for Implementing CEQA.

In accordance with Section 15063 of the State CEQA Guidelines, the City is required to prepare an Initial Study to determine if the Project may have a significant effect on the environment. This Initial Study is intended to be an informational document providing the Planning Commission, City Council, other public agencies, and the general public with an objective assessment of the potential environmental impacts that could result from the implementation of the Project.

Incorporation by Reference

This Initial Study is based in part on the information and analysis contained in other environmental and planning documents. These documents are hereby incorporated by reference in their entirety into this Initial Study, as authorized by Section 15150 of the State CEQA Guidelines. All of the documents incorporated by reference are listed in Section 8 of this Initial Study.

2. EVALUATION OF ENVIRONMENTAL IMPACTS

An Environmental Checklist Form (Form) has been used to evaluate the potential environmental impacts associated with the proposed Project. The Form has been prepared by the Resources Agency of California to assist local governmental agencies, such as the City of Banning, in complying with the requirements of the Statutes and Guidelines for implementing the California Environmental Quality Act.

The Form has been used by the City of Banning to review the effects of the proposed Project with respect to the following environmental factors. The environmental factors checked below would be potentially affected by this project, involving at least one impact that is "Potentially Significant Impact". Based on the analysis contained in this Initial Study, the following environmental factors are affected by the proposed project.

<input type="checkbox"/> Aesthetics	<input type="checkbox"/> Hydrology/Water Quality	<input type="checkbox"/> Population/Housing
<input type="checkbox"/> Agriculture Resources	<input type="checkbox"/> Hazards & Hazards Materials	<input type="checkbox"/> Public Services
<input type="checkbox"/> Air Quality	<input type="checkbox"/> Land Use and Planning	<input type="checkbox"/> Recreation
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Mineral Resources	<input type="checkbox"/> Transportation/Traffic
<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Noise	<input type="checkbox"/> Utilities/Service Systems
<input type="checkbox"/> Geology/Soils		

In the Form, a series of questions is asked about the Project for each of the above-listed environmental factors. A brief explanation is then provided for each question on the Form.

There are four possible responses to each question:

A. Potentially Significant Impact.

This response is used when the Project has the potential to have an effect on the environment that is considered to be significant and adverse.

B. Potentially Significant Unless Mitigation Incorporated.

This response is used when the Project has the potential to have a significant impact, which is not expected to occur because:

- a. Mitigation measures have been incorporated into the Project design in order to reduce the impact to a less than significant level; or,
- b. Adherence to existing policies, regulations, and/or design standards would reduce the impact of the Project to a less than significant level.

C. Less Than Significant Impact.

This response is used when the potential environmental impact of the Project is determined to be below known or measurable thresholds of significance and thus would not require mitigation.

D. No Impact.

This response is used when the proposed Project does not have any measurable impact.

3. ENVIRONMENTAL DETERMINATION

On the basis of this initial evaluation, I find that:

- The proposed Project could not have a significant effect on the environment, and a Negative Declaration will be prepared.
- Although the proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures, described in Exhibit C (attached), have been added to the Project. A Mitigated Negative Declaration will be prepared.
- The proposed Project may have a significant effect on the environment, and an Environmental Impact Report is required.
- The proposed Project may have a potentially significant impact unless mitigation is incorporated, but at least one of the impacts has been: 1) adequately analyzed in an earlier document pursuant to applicable legal standards and 2) addressed by mitigation measures based on the earlier analysis as described on the attached sheets. An Environmental Impact Report is required, but it is to analyze only those impacts that have not already been addressed.
- Although the proposed Project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier Environmental Impact Report (EIR) or in a Negative Declaration pursuant to applicable legal standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, including revisions or mitigation measures that are imposed upon the proposed Project, nothing further is required.

Approved for distribution by:

Signature: _____
Zai Abu Bakar, Community Development Director

Prepared by: _____
Zai Abu Bakar, Community Development Director

Date: _____
July 6, 2010

Public Review: _____
July 9, 2010 through July 29, 2010

4. PROJECT DESCRIPTION

Project Title: Zone Text Amendment #09-97505 - An amendment to the Banning Zoning Code regarding State certified massage establishments, State certified massage practitioners, and State certified massage therapists.

Applicant: City of Banning
99 E. Ramsey Street
Banning, California 92220

Project Description: Zone Text Amendment #09-97505 is an amendment to the Banning Zoning Code to allow State certified massage establishments, State certified massage therapists, and State certified massage practitioners to operate by right in the Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP) zoning districts.

Approvals Required:

In order to complete and approve the Project, the City of Banning would need to take the following actions:

- Approval of a Negative Declaration;
- Approval of Zone Text Amendment #09-97505
- Issuance of Business Licenses for State Certified Massage Establishments, State certified massage therapists, and State certified massage practitioners when these businesses are proposed within existing buildings that are approved for occupancy by the City.

5. ENVIRONMENTAL ANALYSIS CHECKLIST

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
I. AESTHETICS. Would the Project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially damage scenic resources, including but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
II. AGRICULTURAL RESOURCES. Would the Project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
III. AIR QUALITY. Would the Project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the region is in non-attainment under an applicable federal or state	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
ambient air quality standard (including releasing emissions with exceeded quantitative thresholds for ozone precursors)?				
d) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create objectionable odors affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IV. BIOLOGICAL RESOURCES: Would the Project:				
a) Have a substantial adverse effect, either directly or through habitat modification, on any species identified as candidate, sensitive or special status species in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including but not limited to marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Conflict with the provisions of an adopted Habitat Conservation Plan,	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
Natural Conservancy Conservation Plan, or other approved local, regional, or state habitat conservation plan?				
V. CULTURAL RESOURCES. Would the Project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Disturb any human remains including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VI. GEOLOGY AND SOILS. Would the Project:				
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the Project, and potentially result in on- or off-site landslide, lateral	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
spreading, subsidence, liquefaction or collapse?				
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code, creating substantial risks to life or property?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems if sewers are not available?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VII. HAZARDS AND HAZARDOUS MATERIALS. Would the Project:				
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Be located on a site included on the list of hazardous materials sites compiled per Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would it result in a safety hazard for people residing or working in the project area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a Project within the vicinity of a private airstrip, would the Project result in a safety hazard for people residing or working in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Impair implementation of, or physically interfere with, an adopted emergency response plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
or emergency evacuation plan?				
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
VIII. HYDROLOGY AND WATER QUALITY. Would the Project:				
a) Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing or planned land uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Substantially alter the existing drainage pattern of the site or area, including alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in such a way as to result in flooding either on-site or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Create or contribute runoff water exceeding the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Otherwise substantially degrade water quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Place housing within a 100-year	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?				
h) Place, within a 100-year flood hazard area, structures that would impede or redirect flood flows?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
j) Inundation by seiche, tsunami, or mudflow?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
IX. LAND USE AND PLANNING. Would the Project:				
a) Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
X. MINERAL RESOURCES. Would the Project:				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XI. NOISE. Would the Project:				
a) Expose persons to a generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Expose persons to a generation of excessive groundborne vibration or	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
groundborne noise levels?				
c) Create a substantial permanent increase in ambient noise levels in the Project vicinity above levels existing without the Project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create a substantial temporary or periodic increase in ambient noise levels in the Project vicinity above levels existing without the Project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) For a Project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) For a Project within the vicinity of a private airstrip, would the Project expose people residing or working in the Project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XII. POPULATION AND HOUSING. Would the Project:				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Displace a substantial number of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XIII. PUBLIC SERVICES Would the Project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities or the need for new or physically altered governmental facilities, the construction of which could cause significant Environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
a) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
b) Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XIV. RECREATION:				
a) Would the Project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the Project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
XV. TRANSPORTATION/TRAFFIC. Would the Project				
a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Conflict with adopted policies, plans, or programs supporting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
alternative transportation (e.g., bus turnouts, bicycle racks)?				
XVI. UTILITIES AND SERVICE SYSTEMS. Would the Project				
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Have sufficient water supplies available to serve the Project from existing entitlements and resources, or new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Result in a determination by the wastewater treatment provider, which serves or may serve the Project, that it has adequate capacity to serve the Project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Be served by a landfill with sufficient permitted capacity to accommodate the Project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Comply with federal, state and local statutes and regulations related to solid waste?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
XVII. MANDATORY FINDINGS OF SIGNIFICANCE				
a) Does the Project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or an endangered threatened species, or eliminate important examples of the major periods of California history or prehistory?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the Project have impacts that are individually limited, but cumulatively considerable? (Are the incremental effects of the Project considerable when viewed in connection with those of past Projects, those of other current Projects, and those of probable future Projects?)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the Project have environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6. EXPLANATION OF THE ITEMS MARKED ON THE ENVIRONMENTAL CHECKLIST FORM

Checklist Item I. Aesthetics

a-d **No Impact (Scenic Vista, Scenic Resources-State Scenic Highway, Visual Character, Light/Glare).** The project is an amendment to the Banning Zoning Code for a use that will not have an impact on aesthetic resources, visual character or light/glare. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item II. Agricultural Resources

a-c **No Impact (Farmland Conversion, Zoning, Land Use)** The project is an amendment to the Banning Zoning Code for a use that will not have an impact on agricultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item III. Air Quality

a-e No Impact (Air Quality Plan, Air Quality Standards, Cumulative Considerable Net Increase/Criteria, Sensitive Receptors, Pollutant Concentrations, Odors, Global Climate Change). The project is an amendment to the Banning Zoning Code for a use that will not have an impact on air quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item IV. Biological Resources

a-f No Impact (Listed Species, Riparian Habitat, Natural Communities, Wetlands, Wildlife Movement, Local Policies – Tree Preservation, Conservation Plans).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on biological resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item V. Cultural Resources

a - d. No Impact (Historic Resource, Archeological Resources, Paleontological Resources, Disturbance of Human Remains).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on cultural resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VI. Geology and Soils

a – e. No Impact (Alquist-Priolo Zone, Seismic Ground Shaking, Seismic Ground Failure, Liquefaction, Landslide, Soil Erosion, Loss of Topsoil, Unstable Geologic Unit, Expansive Soil, Septic Tank Suitability)

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on geology and soils. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VII. Hazards and Hazardous Materials.

a-h. No Impact (Transport, Use, Disposal of Hazardous Materials, Upset and Accident Conditions Involving Hazardous Materials, Emit if Handle Hazardous Materials within 1/4 mile from a School, Identified Hazardous Site, Within Airport Plan Area, Safety Hazard from Private Airstrip, Impair Emergency Evacuation Plan, Wildland Fire Hazard).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on hazard and hazardous materials. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item VIII. Hydrology and Water Quality.

a – j. No Impact (Water Quality, Waste Discharge, Groundwater, Drainage Patterns Flooding, Storm Drains, Water Quality, Housing in 100-Year Flood Hazard Area, Flood Levee or Dam, Seiche, Tsunami, or Mudflow).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on hydrology and water quality. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item IX. Land Use and Planning

a – c. No Impact (Physical Division, Land Use Plans, Conservation Plans)

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on land use and planning. Guidelines and regulations which provide standards for use is proposed in the Municipal Code as part of this Zone Text Amendment to ensure that there is no land use impacts. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item X. Mineral Resources.

a – b. No Impact (Loss of Mineral Resources, Site Delineated as Mineral Resource Site).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on mineral resources. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XI. Noise.

a – f. No Impact (Exceed Noise Standard, Groundborne Vibration, Ambient Noise Levels, Temporary Noise Levels, Airport Noise, Private Airstrip).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on noise. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XII. Population and Housing.

a – c No Impact (Population Growth, Displace Housing).

The project is an amendment to the Banning Zoning Code for a use that will not have an impact on population and housing. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIII. Public Services.

a. No Impact (Fire Services, Police Services, Schools, Parks, Other Public Facilities)

The project is an amendment to the Banning Zoning Code for a use and will not create a direct demand for public services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XIV. Recreation

a - b. No Impact (Existing Facilities, New or Altered Facilities).

The project is an amendment to the Banning Zoning Code for a use and will not create a direct demand for recreation services. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XV. Transportation/Traffic.

a – g No Impact (Roadway Capacity and Level of Service, Congestion Management Program (CMP), Air Traffic Patterns, Roadway Design Hazards, Emergency Access, Parking, Alternative Transportation)

The project is an amendment to the Banning Zoning Code for a use and will not create an increase in traffic. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVI. Utilities and Service Systems

a – g No Impact (RWQCB Wastewater Treatment, New Water and Wastewater Facilities, New Storm-water Drainage Facilities, Water Supplies, Wastewater, Landfill, Solid Waste).

The project is an amendment to the Banning Zoning Code for a use and will not create a demand for new utility service or the construction of new facilities. Any use involving new construction or expansion of an existing building will be evaluated at the appropriate time when more information is known.

Checklist Item XVII. Mandatory Findings of Significance

a. No Impact (Environment and Habitat).

Based on the analysis contain in this Initial Study, the proposed project will not impact Aesthetics, Agriculture Resources, Air Quality, Biological Resources, Cultural Resources, Geology/Soils, Hydrology/Water Quality, Land Use and Planning, Mineral Resources, Noise, Population/Housing, Public Services, Recreation, Transportation/Traffic, and Utility/Services Systems. Thus the project would have no impact on the environment.

It will not degrade the quality of the environment and no habitat, wildlife populations, and plant and animal communities would be impacted. The purpose of the project is to provide zoning districts in which the State certified massage establishments, State certified massage practitioners, and State certified massage therapists to operate by right. The purpose of the Zone Text Amendment is to provide consistency between the City's Zoning Code, City's Municipal Code, and Senate Bill SB 731. Specifically Section 5.74.020 of the Municipal Code provides definition of Massage Establishment, Massage Therapist, Massage Practitioners among other things related to these uses. Additionally, Section 17.12.020 allows State certified massage establishments, State certified massage practitioners, and State certified massage the Downtown Commercial (DC); General Commercial (GC), Highway Serving Commercial (HSC), Professional Office (PO), Airport Industrial (AI) and Business Park (BP). The amendment will be included in the City of Banning Municipal Code and will not create environmental impacts.

b. No Impact (Cumulatively Considerable).

Based on the analysis contain in this Initial Study, the projects provide consistency between the Zoning Code, Municipal Code, and Senate Bill SB 731 for Massage establishment and certified massage therapists in the City. The amendment addresses definition, requirements, and locations where massage establishments and certified massage therapists can locate and operate in the City. The project does not create environmental impacts. They are intended to provide consistency between the City's Zoning Code and Senate Bill SB 731. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

c. No Impact (Human Beings). The implementation of the project provides consistency between the City's Zoning Code, Municipal Code, and Senate Bill SB 731 as identified in this Initial Study and compliance with mandatory City requirements would not result in significant impacts to human beings, either directly or indirectly. Any use involving construction or expansion of a building will be evaluated at the appropriate time when more information is known.

7. INCORPORATION BY REFERENCE

This Initial Study is based in part on the information and analysis contained in the documents listed below. These documents are hereby incorporated by reference in their entirety into this Initial Study.

Copies of all documents incorporated herein are available for review in the Community Development Department at the Banning Civic Center, 99 E. Ramsey Street, Banning, and California, 92220.

A. City of Banning General Plan

This document provides a vision for the future development of the community. It is the official policy statement of the City Council intended to guide the private and public development of the City. The General Plan was adopted March 2006.

B. City of Banning Municipal Code

The Municipal Code contains various regulations and development standards that govern use and development of properties within the City. The Zoning Ordinance was adopted in March 2006.

C. City of Banning Local Procedures for Complying with CEQA

These procedures identify how the City implements CEQA and the State CEQA Guidelines. These local procedures were put into effect in order to comply with Section 15022 of the State CEQA Guidelines.

8. LIST OF PREPARERS

Listed below are the persons who prepared or participated in the preparation of the Initial Study:

Project Manager:

Zai Abu Bakar, Community Development Director

Reviewed by:

Dave Aleshire, City Attorney

ATTACHMENT 2

Ordinance No. 1426

ORDINANCE NO. 1426

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ADOPTING INITIAL STUDY/NEGATIVE DECLARATION AND AMENDING SECTIONS 5.08.080(K) AND TABLE 17.12.020 OF SECTION 17.12.020 AND ADDING A NEW CHAPTER 5.74 TO THE MUNICIPAL CODE REGARDING STATE CERTIFIED MASSAGE ESTABLISHMENTS, MASSAGE PRACTITIONERS / THERAPISTS (ZONE TEXT AMENDMENT NO. 09-97505).

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, SB 731 was adopted by the State in September 2008 which commenced the certification of massage practitioners and massage therapists through the State's Massage Therapy Organization or MTO.

WHEREAS, the City of Banning desires to comply with SB 731 (which is codified in Sections 4600-4620 of the Business and Professions Code), and this ordinance provides a process to allow massage practitioners and massage therapists to operate in the City and establishes a standard for the operations of the massage establishment to protect health, safety and welfare of the residents of Banning.

WHEREAS, on July 9, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the Planning Commission at which the amendment to the Municipal Code would be considered; and

WHEREAS, on August 3, 2010, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment; and

WHEREAS, on August 13, 2010, the City gave public notice as required under Zoning Code Section 17.68 by advertising in the Record Gazette newspaper of the holding of a public hearing by the City Council at which the amendment to the Municipal Code would be considered; and

WHEREAS, on August 24, 2010, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment and at which time the Planning Commission considered the Zone Text Amendment; and

WHEREAS, at this public hearing, the City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act

(“CEQA”) Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of “person” of the CEQA Guidelines and a Negative Declaration is recommended for adoption by the City Council.

NOW THEREFORE BE IT HEREBY ORDAINED, that the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Department as provided in the Staff Report dated August 24, 2010, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act (“CEQA”) under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of “person.” Accordingly, the Negative Declaration is hereby adopted.

SECTION 2. FINDINGS.

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states “*A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*”. The amendment to the Municipal Code to provide a process and standards for operations of massage establishments, massage practitioners and massage therapists to ensure a functional pattern of land uses and ensure that the quality of life, health, safety, and welfare of the community is not compromised.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is internally consistent with the existing provisions of the Zoning Ordinance. City staff has checked all sections of the Zoning Ordinance to ensure that there are no references to massage establishments or massage parlors and confirmed

that with the amendment the Zoning Ordinance is internally consistent. The only reference to Massage is in Section 17.12.020, Table 17.12.020, which is hereby amended to indicate Massage Establishment.

3. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

CEQA: The City Council has analyzed this proposed project and has determined that it is not exempt from the California Environmental Quality Act ("CEQA") under Sections 15070(a) regarding negative declarations, 15268 regarding ministerial projects, and 15376 regarding the definition of "person" and a Negative Declaration is hereby adopted.

SECTION 3. Section 5.08.080(K) of the Banning Municipal Code is hereby is amended to read, in its entirety, as follows:

"K. Massage Establishment, Annual Business Tax

Per Year	\$220.00
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Massage Establishments, Annual Investigative Fee prior to business license renewal

Per Year	\$150.00
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SECTION 4: Chapter 5.74 of the Banning Municipal Code is hereby added and titled "Massage Establishments and Massage Therapists/Practitioners," to read as follows:

"Chapter 5.74 Massage Establishments and Massage Therapists/Practitioners

5.74.010 Purpose and intent.

The purpose of this chapter is:

To regulate Massage Establishments, Massage Therapists, and Massage Practitioners, to protect the public health, safety, and welfare of the citizens of the City and to comply with Sections 4600 – 4620 of the California Business and Professions Code.

To discourage the use of Massage therapy as an unlawful activity or an activity that violates subdivision (a) and (b) of Section 647 of the California Penal Code.

To ensure that compliance with the provisions of this chapter is not to be exclusive and compliance therewith shall not excuse noncompliance with any state and local laws or regulations that are uniformly applied to other professional or personal services businesses, including but not limited to, all zoning regulations, business license provisions, building codes,

fire codes, electrical codes, plumbing codes, and regulations applicable to professional and personal services.

5.74.020 Definitions.

Massage. The term "Massage" shall mean any method of applying pressure on, or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus or appliance, or with or without supplementary aids such as rubbing alcohol, liniment, antiseptic, oil, powder, cream, ointment, or other similar preparations commonly used in this practice.

Massage Establishment. The term "Massage Establishment" shall mean any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, or combination of individuals, engages in, conducts, carries on or permits to be engaged in, conducted or carried on, Massages, baths or health treatments involving Massage or baths.

Massage Practitioner. The term "Massage Practitioner" means a person who is certified by the Massage Therapy Organization under subdivision (b) of Business and Professions Code Section 4601 and who administers Massage for compensation.

Massage Therapist. The term "Massage Therapist" means a person who is certified by the Massage Therapy Organization under subdivision (c) of Business and Professions Code Section 4601 and who administers Massage for compensation.

Massage Therapy Organization (MTO). The term "Massage Therapy Organization" or "MTO" shall mean the organization created pursuant to Chapter 10.5 of Division 2 of the Business and Professions Code.

Operator. The term "Operator" shall mean the individual who manages the Massage Establishment. Evidence of management includes but is not limited to evidence that the individual has power to direct or hire and dismiss employees, control hours of operation, create policy or rules or purchase supplies. An Operator may also be an Owner.

Owner. The term "Owner" shall mean the individual(s) whose name(s) appears on the City of Banning business license.

5.74.030 Licensing requirements for a massage establishment, massage therapist, and massage practitioner.

It is unlawful for any person, association, partnership, corporation or other entity to engage in, conduct or carry on, permit to engage in, in or upon any premises within the City of Banning, the business of providing Massage in exchange for compensation without being currently certified as a Massage Practitioner or Massage Therapist by the MTO in accordance with Sections 4600 through 4620 of the California Business and Professions Code. For all persons currently performing Massage in the City, certification by the MTO must be obtained

within 120 days from passage of the ordinance. It is unlawful for any Owner or Operator to employ or permit a person to act as a Massage Practitioner or Massage Therapist, as defined in this chapter, within the city, who is not in possession of a valid, unrevoked massage therapist or massage practitioner license issued by the MTO.

5.74.040 License exemptions.

This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- A. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the state of California;
- B. Nurses who are registered as such under the laws of the state of California;
- C. Barbers, beauticians and cosmetologists, with respect to above-the-shoulder massage, including scalp, neck and shoulder massage, who are duly licensed under the laws of the state of California, in accordance with the limitations of their licenses;
- D. Acupuncturists who are duly certified to practice their profession in the state of California.

5.74.050 Display of certification.

Any person to whom an MTO certification is granted shall display such certification prominently in a conspicuous place, capable of being viewed by customers, at every location where the licensed activities are performed or conducted.

5.74.060 Notice of massage therapist/practitioner employed by Massage Establishment.

A. No Unlicensed Massage Practitioner or Massage Therapists. Massage Establishments, Owners, and Operators shall only permit persons certified by the MTO to perform Massage in a Massage Establishment.

B. Notices to the City. The Owner or Operator of each Massage Establishment shall provide the Community Development Director, or his or her designee, in writing, of the following for each Massage Practitioner or Massage Therapist whose services are utilized by the Massage Establishment (1) within five days of the hiring and/or commencement of services, whichever is first, and (2) within five days of the termination of employment or discontinuation of services:

1. The name
2. MTO certification number
3. Date of hiring or termination date
4. Location of each Massage Establishment where employed
5. True and correct copy of the MTO certification

6. Color photograph of the certificate holder

5.74.070 Business License Required

A. Any person, association, corporation, partnership or other entity desiring to operate a Massage Establishment or provide Massage services shall apply for and obtain a business license from the City and provide the following relevant information:

1. Full name of license holder
2. Date of Birth
3. State issued identification number
4. Social Security Number
5. Home address and phone number
6. Work address and phone number
7. Color photograph of the certificate holder
8. True and correct copy of MTO certification for those who will provide massage services.

B. Any person, association, corporation, partnership or other entity applying for or renewing a business license for the operation of a Massage Establishment, must schedule and complete an inspection of the Massage Establishment premises with the Community Development Director or his/her designee. No business license shall be granted or renewed until such inspection has been completed and the Massage Establishment is found to be in compliance with the City's code.

5.74.080 Minimum standards for facilities and operations.

A. Operating Requirements. No license to operate a Massage Establishment shall be issued nor may any Massage Establishment operate unless the Massage Establishment premises and operation comply with each of the following minimum requirements:

1. Signage. A legible sign shall be posted at the main entrance identifying the establishment as a Massage Establishment and all such signs shall otherwise comply with the sign requirements of the City's Zoning Ordinance.
2. Disinfection of Instruments. Instruments used for Massage shall be disinfected prior to each use. Where such instruments for Massage are employed, adequate quantities of supplies for disinfection shall be available during all hours of operation.
3. Linen Storage. Cabinets shall be utilized for the storage of clean towels and linen. After use, towels and linen shall be removed from the room or booth and stored in a clean container until laundered.

4. Dressing and Toilet Facilities. Dressing and toilet facilities shall be provided for patrons.
5. Sanitary Conditions. All walls, ceilings, floors, steam and vapor rooms, and all other physical facilities for the Massage Establishment shall be kept in good repair, and maintained in a clean and sanitary condition.
6. Clean Linen. Clean and sanitary towels and linens shall be provided for patrons receiving Massage services. Towels and linens shall not be used on more than one (1) patron unless they have first been laundered and disinfected. Disposable towels and coverings shall not be used on more than one (1) patron.
7. Massage Practitioner and Massage Therapist Dress Code. All persons employed to work on the Massage Establishment premises, and including all Massage Practitioners and Massage Therapists conducting licensed activities on the Massage Establishment premises, shall be dressed in clothing made of an opaque material, and at a minimum, shall not expose any Specified anatomical areas, as defined in Section 5.84.020, and shall comply with the following requirements, as applicable:
 - a. Upper Garments. All garments covering the upper torso (e.g., shirts or dresses) shall have sleeves not less than two inches in length, measuring from the top of the shoulder, and necklines not lower than two inches below the clavicle.
 - b. Skirts. Hems of dresses, skirts, smocks, or other similar garments shall not be more than two inches above the top of the knee.
 - c. Shorts. Cuffs or hems of shorts, culottes, pants or other similar garments shall not be more than six inches above the top of the knee.
8. Compliance with Laws. The premises to be used shall at all times comply with City, state, and federal laws.

5.74.090 Prohibited conduct.

- A. Prohibited Conduct. No Massage Practitioners or Massage Therapists and/or any other employee working in a Massage Establishment, or the Massage Establishment's customers, patrons, or guests shall engage in any Specified sexual activities, as defined in Section 5.84.020, upon the premises of the Massage Establishment. No Massage Practitioner or Massage Therapist and/or other employee of a Massage Establishment may expose Specified anatomical areas, as defined in Section 5.84.020, in the presence of any patron, customer, or guests. In the course of administering Massage, no Massage Practitioner or Massage Therapist and/or other Massage Establishment employee may make intentional physical contact with the Specified anatomical areas of any customer, patron, or guests.
- B. Draping. No Massage Establishment shall allow Massage Practitioners or Massage Therapists and/or any other employees working in a Massage Establishment to administer any form of Massage or come into any form of physical contact with a customer who is either fully or partially undressed, without first draping the customer's Specified anatomical areas, as defined in Section 5.84.020, if such areas would otherwise be exposed, in accordance with the accepted

standards of the American Massage Therapy Association and/or Associated Professional Massage Therapists and Allied Health Practitioners.

5.74.100 Inspection and Enforcement.

Officers of the Police Department, or employees of the Planning Division, Building and Safety Division, Code Enforcement Division and the Fire Department shall have the right to enter any Massage Establishment during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being met, provided reasonable and normal business operations shall not be interfered with.

5.74.110 Abatement.

Any Massage Establishment operated, conducted or maintained contrary to the provisions of this chapter shall be, and is declared to be unlawful and a public nuisance. Any violation of this chapter is subject to any and all remedies available to the City, including but not limited to, a civil action brought by the city attorney for injunctive relief, administrative or judicial nuisance abatement proceedings, criminal code enforcement proceedings, and/or civil and criminal penalties as provided by law."

SECTION 5. Table 17.12.020 of Section 17.12.020 of the Banning Municipal Code is hereby amended to read, in its entirety, as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Massage Parlor	C	C	C	C	X	X	X	X
Massage Establishment	P	P	P	P	X	P	P	X

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute order of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall take effect thirty (30) days after its 2nd reading in accordance with California law, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2010.

Robert E. Botts, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1426 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, and was duly adopted at a regular meeting of said City Council on the _____ day of _____ 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 3

Resolution No. 2010-59

RESOLUTION NO. 2010-59

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA REPEALING RESOLUTION NO. 1993-158 AND AMENDING FEES FOR STATE CERTIFIED MASSAGE THERAPISTS/PRACTITIONERS

WHEREAS, Resolution No. 1993-158 was adopted by the City Council on January 11, 1994 establishing fees for massage establishment business license tax and massage therapist/massage therapist trainee permits; and

WHEREAS, SB 731 was adopted by the State in September 2008 which commenced the certification of massage practitioners and massage therapists through the State's Massage Therapy Organization or MTO and the City has amended its Municipal Code to set forth a process for the licensing and regulation of massage establishments and State Certified massage therapists and massage practitioners in compliance with SB 731; and

WHEREAS, Resolution No. 1993-158 establishes certain fees relating to massage related businesses which are no longer in compliance with SB 731;

WHEREAS, Resolution No. 1993-158 establishes certain fees relating to massage related businesses which are no longer collected by the City; and

WHEREAS, the City of Banning desires to comply with SB 731 (which is codified in Sections 4600-4620 of the Business and Professions Code) and ensure that its fees are consistent with SB 731, the City's massage regulations, and the City's practices in collecting fees.

NOW THEREFORE, the City Council of the City of Banning does hereby approve and resolve as follows:

SECTION 1. That Resolution No. 1993-158, which established fees for a massage establishment business license tax and massage therapist/massage therapist trainee permits, be repealed in its entirety.

SECTION 2.

<u>Item:</u>	<u>Fee:</u>
State Certified Massage Therapist/ State Certified Massage Practitioner (annual fee)	\$125.00

SECTION 3. That this Resolution is to be given effect immediately upon adoption.

PASSED, APPROVED AND ADOPTED this _____ day of _____ 2010.

Robert E. Botts, Mayor
City of Banning

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

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

ATTEST:

Marie 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. 2010-59, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the _____ day of _____ 2010.

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning

ATTACHMENT 4

Resolution No. 1993-158

RESOLUTION NO. 1993-158

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
ADOPTING AN AMENDMENT TO RESOLUTION NO. 1993-30,
ESTABLISHING FEES FOR A MASSAGE ESTABLISHMENT BUSINESS
LICENSE TAX AND MASSAGE THERAPIST/MASSAGE THERAPIST
TRAINEE PERMITS.

The City Council of the City of Banning does hereby approve
and resolves as follows:

Section 1.

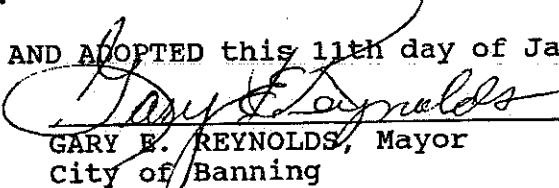
<u>Item</u>	<u>Proposed Fee</u>
Business License Tax (annual fee)	\$125.00
Massage Therapist Permit (annual fee)*	\$125.00
Massage Therapist Trainee Permit (annual fee)	\$30.00
Police Background Check (one time fee charged at time of initial application)	\$25.00

*The Massage Therapist Permit annual fee shall be waived when the individual paying the Business License Tax is the Massage Therapist.

Section 2.

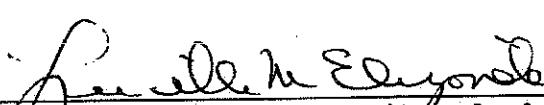
The Mayor shall sign this Resolution and the City Clerk shall attest thereto and shall within fifteen (15) days cause it or a summary of it to be published in the Record Gazette, and thereupon and thereafter this Resolution shall become effective on the 30th day after its adoption.

PASSED, APPROVED, AND ADOPTED this 11th day of January, 1994.


GARY E. REYNOLDS, Mayor

City of Banning

ATTEST:


LUCILLE M. ELIZONDO, City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:



JOHN F. WILSON, ESQ.
City Attorney

CERTIFICATION

I, Lucille M. Elizondo, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 1993-158, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 11th day of January, 1994, by the following vote, to wit:

AYES: Councilmembers Anderson, Lewis, Smith

NOES: None

ABSENT: Councilmember Williams, Mayor Reynolds

ABSTAIN: None



LUCILLE M. ELIZONDO, City Clerk

This Resolution is
superseded by Res.
No. 1993-158 dated
1/11/94.

RESOLUTION NO. 1993-158

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
ADOPTING AN AMENDMENT TO RESOLUTION NO. 1993-30,
ESTABLISHING FEES FOR A MASSAGE ESTABLISHMENT BUSINESS
LICENSE TAX AND MASSAGE THERAPIST/MASSAGE THERAPIST
TRAINEE PERMITS.

The City Council of the City of Banning does hereby approve
and resolves as follows:

Section 1.

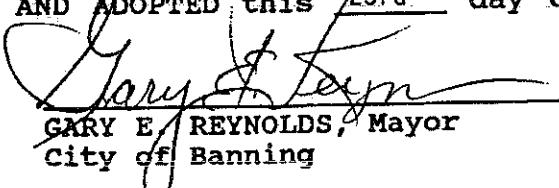
<u>Item</u>	<u>Proposed Fee</u>
Business License Tax (annual fee) plus Police Background Check	\$125.00 \$25.00
Massage Therapist Permit (annual fee)* plus Police Background Check	\$125.00 \$25.00
Massage Therapist Trainee Permit (annual fee) plus Police Background Check	\$30.00 \$25.00

*The Massage Therapist Permit annual fee shall be waived when the individual acquiring the Business License for the operation of a massage establishment is the Massage Therapist.

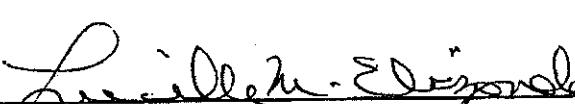
Section 2.

The Mayor shall sign this Resolution and the City Clerk shall attest thereto and shall within fifteen (15) days cause it or a summary of it to be published in the Record Gazette, and thereupon and thereafter this Resolution shall become effective on the 30th day after its adoption.

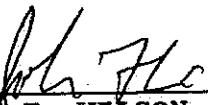
PASSED, APPROVED, AND ADOPTED this 23rd day of November,
1993.


GARY E. REYNOLDS, Mayor
City of Banning

ATTEST:


LUCILLE M. ELIZONDO, City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:



JOHN F. WILSON, ESQ.

City Attorney

CERTIFICATION

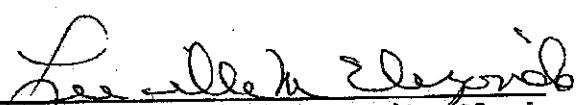
I, Lucille M. Elizondo, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 1993-158 was introduced at a regular meeting of the City Council duly called and held on 23rd day of November, 1993, and was approved and adopted by the following vote, to wit:

AYES: Councilmembers Anderson, Lewis, Smith, Williams, Mayor Reynolds

NOES: None

ABSENT: None

ABSTAIN: None



LUCILLE M. ELIZONDO, City Clerk

City of Banning, California

CITY COUNCIL AGENDA

DATE: August 24, 2010

TO: City Council

FROM: Heidi Meraz, Community Services Director

SUBJECT: Recommendation to adopt Resolution 2010-64 A Resolution of the City Council of the City of Banning, approving the increase of user fees and service charges of the Community Services Department

RECOMMENDATION: "That the Council approves Resolution 2010-64 recommending the increase of user fees and service charges of the Community Services Department."

JUSTIFICATION: Section 29 of the Banning Ordinance Code requires that user fees and services charges are to be reviewed and adopted by the City Council. The code section also sets the percentage of costs that are to be recovered by fees for recreation programs. The set percentages are 25% for youth programs, 50% for adult programs, and 10% for senior citizens programs. With escalating operational expenses, it is necessary to adjust current fees to levels that fall within the parameters dictated.

BACKGROUND: Staff has evaluated all current user fees and service charges and identified necessary increases. A special meeting of the Parks and Recreation Advisory Committee was held on May 19, 2010 to discuss strategies to maintain the operation of the Community Services Department while minimizing the impact to the general fund. The recommendation of the attached fee schedule was made at the time. On June 21, 2010 the City Council adopted a Fiscal Year 2010-2011 budget which included an increase in fees that are charged within the recreation division.

FISCAL DATA: The proposed increases will generate additional revenue of approximately \$30,000 annually based on current facility used program participation.

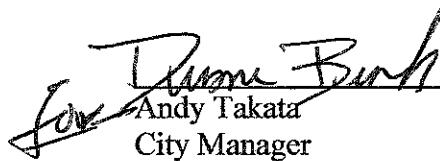
RECOMMENDED BY:


Heidi Meraz
Community Services Director

REVIEWED BY:


Kirby Warner
Interim Administrative Services Director

APPROVED BY:


Andy Takata
City Manager

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RESOLUTION NO. 2010-64

**A RESOLUTON OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING THE INCREASE OF USER FEES AND SERVICE CHARGES
OF THE COMMUNITY SERVICES DEPARTMENT**

WHEREAS, on May 19, 2010 the Park and Recreation Advisory Committee held a special meeting to discuss strategies to maintain the operation of the Community Services Department while minimizing the impact to the general fund.

WHEREAS, at the special meeting of the Park and Recreation Advisory Committee it was recommended that user fees and services charges within the recreation division should be reasonably increased to offset operation costs

WHEREAS, on June 21, 2010 the City Council adopted the Fiscal Year 2010-2011 budget as recommended by city staff and said budget included an increase in user fees and service charges with the recreation division

WHEREAS, the estimated revenue to be generated by proposed increases will be \$30,000 annually based on current facility use and program participation.

WHEREAS, Section 29 of the Banning Ordinance Code requires that the user fees and service charges are to be reviewed and adopted by the City Council

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California that the Council hereby approves the proposed increases in user fees and service charges for the Community Services Department

PASSED, ADOPTED AND APPROVED this 24th day of August, 2010.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONSENT:

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

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ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-51, was duly adopted by the City Council of Banning, California, at a regular meeting thereof held on the 13th day of July, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk

COMMUNITY SERVICES DEPARTMENT FEES

	<u>Previous Fees</u>	<u>New Fees</u>
<u>Municipal Pool</u>		
Admissions	Adult \$1.00, Youth & Seniors \$2.00	Adult \$1.50, Youth & Seniors \$2.50
Lessons	\$30.00/resident, \$35.00/non-residents	\$35.00/resident \$40.00/non-resident
Season Passes	res/non-resident Adults \$45.00/\$50.00	None - discontinued
	Youth & Seniors \$40.00/\$50.00	None - discontinued
	Family \$90.00/\$100.00	None - discontinued
Water Exercise	\$20.00 for 10 punch pass	\$25.00 for 10 punch pass
Private Rentals	\$ 1.00 per person 1 st hour, \$20.00 each additional hour	\$110.00 per hour
<u>Youth Sports Leagues</u>		
Youth Flag Football, Basketball & Soccer	\$30.00 per player	\$30.00 Early registration \$35.00 Late registration
<u>Open Gym</u>		
Basketball	No charge	\$ 1.00 per session or \$10.00 per month unlimited
<u>Adult Sport Leagues</u>		
Adult Softball Leagues	\$250.00 per team	\$300.00 per team

Community Services Department Fees – page two

Community Center Rentals

	Private/Non-profit	Private/Non-profit
Gymnasium	100.00/ 50.00	120.00/60.00
Gymnasium & Kitchen	260.00/135.00	300.00/175.00
Mtg Rooms	50.00/25.00	60.00/ 30.00
Mtg Room & Kitchen	80.00/50.00	100.00/ 60.00
Nutrition Site	70.00/35.00	85.00/45.00
Multi-Purpose Room	70.00/35.00	85.00/45.00
Laura May Stewart	70.00/35.00	85.00/45.00
Playhouse Bowl	25.00/25.00	35.00/30.00
Picnic Shelter	15.00/15.00	25.00/25/00
Ball Field	15.00/15.00	25.00/25.00
Ball Field Lights (per hr, 2 hr min)	8.00/ 8.00	15.00/15.00
Ball Field Preparation	16.00	35.00
Hourly Staffing Fees	9.50 per hour Mon-Fri, 8AM-7PM 19.00 per hour Mon-Fri, 9PM – 1AM Saturdays, Sundays and City Holidays	12.00 per hour Mon-Fri, 8AM-7PM 21.00 per hour Mon-Fri, 9PM – 1AM Saturdays, Sundays and Holidays

**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: August 24, 2010

TO: Honorable Mayor and City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Changing the Planning Commission Meeting Date

RECOMMENDATION:

Adopt Ordinance No. 1427 amending the Banning Municipal Code Section 2.28 to change the Planning Commission regular meeting date.

JUSTIFICATION:

The Planning Commission and City staff have determined that the Commission and public would be better served by the Commission conducting its regular meetings on a night other than the first Tuesday of each month. The Municipal Code sets the Planning Commission meeting date, time, and place. The Municipal Code must be amended to change the meeting date.

PLANNING COMMISSION REVIEW:

At its meeting on August 3, 2010, the Planning Commission voted 4-0 (Commissioner Barsh has an excused absence) recommending the adoption of the Ordinance to the City Council to change the Planning Commission date to the first Wednesday each month.

FISCAL DATA:

There is no fiscal impact related to the preparation and discussion of this report.

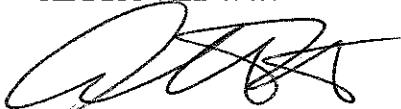
PUBLIC HEARING NOTICE AND COMMUNICATION:

The proposed change in the Planning Commission meeting date was advertised in the Record Gazette newspaper on August 13, 2010. As of the date of this report, staff has not received any verbal or written comments for or against the matter.

CONCLUSION:

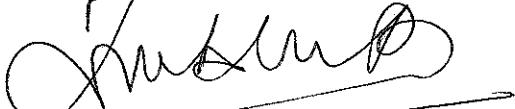
That the City Council adopt Ordinance No. 1427 changing the Planning Commission meeting to the first Wednesday of each month at 6:30 p.m.

APPROVED BY:



Andy Takata
City Manager

PREPARED BY:



Zai Abu Bakar
Community Development Director

Attachment:

1. Ordinance No. 1427

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ATTACHMENT 1

Ordinance No. 1427

ORDINANCE NO. 1427

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE BANNING MUNICIPAL CODE TO CHANGE THE REGULAR MEETING DATE OF THE BANNING PLANNING COMMISSION

WHEREAS, Banning Municipal Code Section 2.28 directs that the bylaws and ordinances governing the Planning Commission are adopted and amended by the City Council of the City of Banning; and

WHEREAS, the Planning Commission and City staff have determined that the Commission and public would be better served by the Commission conducting its regular meetings on a night other than the first Tuesday of each month; and

WHEREAS, the Planning Commission and City staff have further determined that moving the regular Commission meeting to the first Wednesday of each month (while maintaining the current meeting start time of 6:30 p.m.) will not result in any public inconvenience; and

WHEREAS, at its regular meeting on August 3, 2010, the Planning Commission voted to recommend that the City Council change the regular Planning Commission meeting date to the first Wednesday each month.

WHEREAS, the City Council now desires to codify into the Banning Municipal Code a change to the regular meeting day for the Planning Commission, moving the Planning Commission's regular meeting to the first Wednesday of each month.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 2.28.080 of the Banning Municipal Code is hereby amended to read in its entirety as follows:

“Meeting times and places.

- A. The planning commission shall meet on the first Wednesday of each month at 6:30 P.M. at the City Council chambers located at 99 E. Ramsey Street.
- B. Commissioners will attend special meetings as they arise.”

SECTION 2. The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon this ordinance shall take effect 30 days after adoption and be in force and effect according to law.

SECTION 3. The City Clerk shall certify to the adoption of this ordinance and shall cause a copy of the same to be published in a manner prescribed by law.

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2010.

Robert E. Botts, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1427 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, 2010, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CITY COUNCIL AGENDA

Date: August 24, 2010

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2010-62, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for Project No. 2010-03, 'Navigational Improvements at the Banning Municipal Airport'"

RECOMMENDATION:

- I. Adopt Resolution No. 2010-62, "Approving the Airport Improvement Program Grant Agreement Offer from the Federal Aviation Administration for Project No. 2010-03, 'Navigational Improvements at the Banning Municipal Airport'".
- II. Authorize the City Manager to execute the Grant Agreement Offer and subsequent Grant Agreement with the Federal Aviation Administration for this project.

JUSTIFICATION: City Council authorization is essential in order to obtain and utilize federal funds for Project No. 2010-03, "Navigational Improvements at the Banning Municipal Airport." Due to the competitive nature of this grant funding and in response to the Federal Aviation Administration staff's urgency to program grant funds in this fiscal year, City staff was required to sign and approve this grant agreement offer prior to Council authorization.

BACKGROUND: In April of 2007, the Airport Master Plan Update was completed by C&S Engineers, Inc. and submitted to the Federal Aviation Administration (FAA) for review. FAA approval was obtained in May of 2007. Consequently, the Airport Master Plan Update was submitted to the County of Riverside Airport Land Use Commission (ALUC) in June of 2007. ALUC found this update to be consistent with the 2004 Banning Airport Land Use Compatibility Plan and therefore approved the new Airport Master Plan in August of 2007.

The main objective of the Airport Master Plan update was to determine the extent, type, and schedule of development needed to accommodate existing needs and future aviation demand at the airport. The Airport Master Plan took inventory of current conditions of the airport's infrastructure and recommended alternatives for airside and landside facility improvements at the airport which consequently developed the Airport Improvement Program (AIP).

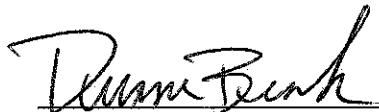
On March 9, 2010, City Council approved Resolution No. 2010-14, "Awarding a Professional Services Agreement to C & S Engineers, Inc. for Design Services at the Banning Municipal Airport". The scope of work under this contract was to design the Airport Rotating Beacon, Wind Cone, Segmented Circle and Automated Weather Observing System (AWOS). These items are currently listed in the Airport's AIP with the exception of the Rotating Beacon, which will be added prior to construction.

In early 2010, the Public Works Department, Engineering Division, submitted a grant request to the FAA to construct navigational improvements at the Banning Municipal Airport. The scope of work for this project includes the complete removal and replacement of the airport rotating beacon and tower and associated foundation and cabling; the complete removal and replacement of airport segmented circle and tetrahedron; the complete removal and replacement of airport lighted wind cone and associated foundation and cabling; the installation of Automated Weather Observing System and associated foundations and cabling. These improvements are necessary in order to improve the navigational operations of the Banning Municipal Airport.

FAA staff evaluated the proposed project and awarded the City of Banning an amount of \$536,750.00. As mentioned, due to the competitive nature of this grant funding and urgency of FAA staff to program funds in this fiscal year, the agreement needed to be signed and approved by the City Manager prior to City Council authorization. Project No. 2010-03, "Navigational Improvements at the Banning Municipal Airport" was advertised July of 2010 and sealed bids are due on August 18, 2010 at 4:00 at which times bids will be publicly opened.

FISCAL DATA: As part of the Grant Agreement, the Federal Aviation Administration will reimburse the City up to \$536,750.00 for construction costs and the City is required to fund the remaining construction costs and other miscellaneous expenses.

RECOMMENDED BY:



Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2010-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AIRPORT IMPROVEMENT PROGRAM GRANT AGREEMENT OFFER WITH THE FEDERAL AVIATION ADMINISTRATION FOR PROJECT NO. 2010-03, "NAVIGATIONAL IMPROVEMENTS AT THE BANNING MUNICIPAL AIRPORT"

WHEREAS, navigational improvements at the Banning Municipal Airport including construction of Airport Rotating Beacon, Wind Cone, Segmented Circle and Automated Weather Observing System (AWOS) are necessary in order to improve the navigational operations of the Banning Municipal Airport; and

WHEREAS, on March 9, 2010, City Council approved Resolution No. 2010-14, "Awarding a Professional Services Agreement to C & S Engineers, Inc. for Design Services at the Banning Municipal Airport"; and

WHEREAS, in early 2010, the Public Works Department, Engineering Division, submitted a grant request to the Federal Aviation Administration (FAA) to construct navigational improvements at the Banning Municipal Airport; and

WHEREAS, the FAA has allocated \$536,750.00 of Airport Improvement Program (AIP) funds for Project No. 2010-03, "Navigational Improvements at the Banning Municipal Airport"; and

WHEREAS, due to the competitive nature of this grant funding and the urgency of the FAA staff to program this grant funding in the current fiscal year the City of Banning was required to approve and execute the Grant Offer prior to City Council authorization; and

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

Section I. Adopt Resolution No. 2010-62, "Approving the Airport Improvement Program (AIP) Grant Agreement Offer from the Federal Aviation Administration (FAA) for Project No. 2010-03 "Navigational Improvements at the Banning Municipal Airport."

Section II. Authorize the City Manager to execute the Grant Agreement Offer and upcoming Grant Agreement with the Federal Aviation Administration (FAA).

PASSED, APPROVED, AND ADOPTED this 24th day of August, 2010.

Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, City Clerk
City of Banning