

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

December 14, 2010
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council, Banning Utility Authority and Community Redevelopment Agency.

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 – Pastor Jerry Westholder
- Pledge of Allegiance
- Roll Call – Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

II. PUBLIC COMMENTS

III. CERTIFICATION OF ELECTION RESULTS

1. Resolution No. 2010-88, Reciting the Facts of the General Municipal Election Held in Said City on November 2, 2010 Declaring the Result Thereof and Such Other Matters as Provided by Law 1

Recommended Motion: **That the City Council adopt Resolution No. 2010-88, Reciting the Facts of the General Municipal Election Held in Said City on November 2, 2010 and Declaring the Result Thereof and Such Other Matters as Provided by Law.**

IV. SWEARING IN OF COUNCILMEMBERS

- City Clerk

V. REORGANIZATION OF CITY COUNCIL

- City Clerk/Mayor

VI. REORGANIZATION OF COMMUNITY REDEVELOPMENT AGENCY

- City Clerk/Chairman

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.

VII. REPORT ON CLOSED SESSION

VIII. 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.

PRESENTATION:

1. Introduction of June Overholt, New Administrative Services Director/
Deputy City Manager
2. Project: Scalping Plant (ORAL)
Presented by: Surendra Thakral, P.E., BCEE
Senior Vice President, Technology Director with Parsons

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL, THE BANNING UTILITY AUTHORITY AND THE COMMUNITY REDEVELOPMENT AGENCY

IX. 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 17

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 – 10/28/10 | 7 |
| 2. | Approval of Minutes – Joint Meeting – 11/09/10 | 19 |
| 3. | Approval of Minutes – Regular Meeting – 11/09/10. | 21 |
| 4. | Ordinance No. 1421 – 2 nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8, Article II, Section 8-16 Repealing Sections 8-17 of the Banning Ordinance Code Adopting the 2010 California Fire Code In Its Entirety for 1) Regulating and Governing the Safeguard of Life and Property from Fire and Explosion Hazards | |

	(Arising from the Storage, Handling and Use of Hazardous Substances, materials and Devices) and From Conditions Hazardous to Life or Property in the Occupancy of Buildings and Premises in the City of Banning, and 2) Providing for the Issuance of Permits and the Collection of Fees Therefore . . .	48
5.	Resolution No. 2010-33, Authorizing the Destruction of City Records as Provided by Section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning as listed in Attachment A. .	73
6.	Accept Right-of-Way Dedication from Assessor's Parcel 419-101-009 (5701 W. Ramsey St.) and Direct the City Clerk to Accept and Record Said Dedication.	109
7.	Resolution No. 2010-83, Adoption of Banning Police Office Association (BPOA) Memorandum of Understanding	121
8.	Resolution No. 2010-84, Approving a Resolution for Employer Paid Member Contributions through CalPERS	152
9.	Authorized Budget Positions for FY 2010-2011	155
10.	Resolution No. 2010-89, Authorizing an Appropriation of \$5,300 from the City's General Fund to the Police Department's Clothing and Accoutrements Account to Replace Funds Used to Purchase Bulletproof Vests	159
11.	Resolution No. 2010-90, Authorizing an Adjustment in Banning's Parking Violation Penalty Schedule Due to Increased Surcharges by State of California.	162
12.	Resolution No. 2010-91, Authorizing the Purchase of Five (5) Camera Systems and Accessories from Safety Vision of Houston, Texas to be Installed in the Banning Pass Transit Buses.	168
13.	Approve Amendment to Original Agreement with Normal A. Traub Associates for Investigation Services for the City of Banning Police Department.	172
14.	Notice of Completion for Project No. 2009-04, Street Improvements and Sidewalk Improvements at Various Locations.	173
15.	Resolution No. 2010-11 UA, Supporting Southern California Edison Company's Application for Surrender of License for Federal Energy Regulatory Commission (FERC) Project No. 344 and Urging the FERC To Set Terms and Conditions That Help Assure the Safety and Reliability of the Project Facilities for Continued Long-Term Water Supply.	178
16.	Resolution No. 2010-12 UA, Approving the Second Amendment to the Professional Services Agreement with Raftelis Financial Consultants, Inc. for the Development of Water Rates and Connection Fees.	182
17.	Resolution No. 2010-13 UA, Awarding a Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, CA for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS)	193

- Open for Public Comments
- Make Motion

Adjourn Joint Meeting of the Banning City Council, the Banning Utility Authority and the Community Redevelopment Agency and Reconvene Regular City Council Meeting.

X. 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. Ordinance No. 1433, Adoption of the Latest Editions of California Building, Residential, Green Building Standards, Plumbing, Mechanical and Electrical Codes *(continued from 11/9/10 Council Meeting)*.

Staff Report 225

Recommendation: That the Council introduce the first reading of Ordinance No. 1433 and set the second reading of the Ordinance at the Council Meeting on January 11, 2010.

Mayor asks the City Clerk to read the title of Ordinance No. 1433:

“An Ordinance of the City Council of the City of Banning, California, Amending Chapter 15.08 of the Banning Municipal Code By Adopting by Reference the Entirety of the Latest California Building Code, Residential code, Green Building Standards Code, Plumbing Code, Mechanical Code, Electrical Code, and International Property Maintenance Code, All Relative to Construction Codes.”

Motion: I move to waive further reading of Ordinance No. 1433.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1433 pass its first reading.

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

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

XII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Schedule Meeting with Banning Library Board
3. Update on Economic Development Plan
4. Update on Golf Carts
5. Review of Fees and Rates
6. Approach in regards to Code Enforcement
7. Yard Sale Signs

XIII. 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].

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CITY OF BANNING
BANNING, CALIFORNIA**

December 14, 2010
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ADDENDUM

IX. CONSENT ITEMS

18. Resolution No. 2010-93, Accepting the 2011 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to use the fund towards the purchase of law enforcement related equipment and training **224A**

(This item was posted on December 14, 2010 after the posting of the regular agenda)

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.

RESOLUTION NO. 2010-88

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA, RECITING THE FACTS OF THE
GENERAL MUNICIPAL ELECTION HELD IN SAID CITY ON
NOVEMBER 2, 2010 DECLARING THE RESULT THEREOF
AND SUCH OTHER MATTERS AS PROVIDED BY LAW.**

WHEREAS, a general municipal election was held and conducted in the City of Banning, California, on Tuesday, November 2, 2010, as required by law; and

WHEREAS, the City Clerk has been informed by the Election Department of the County of Riverside that notice of said election was duly and regularly given in time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects said election was held and conducted and the votes cast thereat, received and canvassed and the returns made and declared in time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in cities; and

WHEREAS, pursuant to Resolution No. 2010-29 adopted June 8, 2010, the County Election Department of the County of Riverside canvassed the returns of said election and certified the results to this City Council, said results are received, and attached and incorporated herein as "Exhibit A."

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

SECTION 1. That the whole number of votes cast in said City (except absent voter ballots) was 3,243.

That the whole number of vote by mail ballots cast in said City was 5,251, making a total of 8,494 votes cast in said City.

SECTION 2. That the names of persons voted for at said election for Member of the City Council of said City are as follows:

Lyndon E. Taylor
Perry "Rocky" Bray
Bob Botts
Victor G. Edinburgh
Deborah "Debbie" Franklin
Chris McCallum
Edward Miller

SECTION 3. That the number of votes given at each precinct and the number of votes given in the City to each of such persons above named for the respective offices for which said persons were candidates were as listed in Exhibit "A" attached.

SECTION 4. The City Council does declare and determine that:

Bob Botts was elected as Member of the City Council for the full term of four years; and Deborah "Debbie" Franklin was elected as Member of the City Council for the full term of four years.

SECTION 5. The City Clerk shall enter on the records of the City Council of the City of Banning a statement of the result of said election, showing: (1) The whole number of votes cast in the City; (2) The names of the persons voted for; (3) For what office each person was voted for; (4) The number of votes given at each precinct to each person; (5) The number of votes given in the city to each person.

SECTION 6. That the City Clerk shall immediately sign and deliver to each of the persons elected a Certificate of Election signed by the City Clerk and authenticated; that the City Clerk shall also administer to each person elected the Oath of Office prescribed in the Constitution of the State of California and shall have them subscribe to it and file it in the office of the City Clerk. Each and all of the persons so elected shall then be inducted into the respective office to which they have been elected.

SECTION 7. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 7th day of December, 2010.

Robert E. Botts, Mayor

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution No. 2010-88 as duly adopted by the City Council of the City of Banning at a special meeting thereof, held on the 7th day of December, 2010, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

REBECCA SPENCER
Acting Registrar of Voters



2724 Gateway Drive
Riverside, CA 92507-0918
(951) 486-7200 • FAX (951) 486-7272
www.voteinfo.net

**REGISTRAR OF VOTERS
COUNTY OF RIVERSIDE**

November 26, 2010

Marie Calderon, City Clerk
City of Banning
P.O. Box 998
Banning, CA 92220

Dear Ms. Calderon:

Enclosed is our certificate to the results of the canvass of election returns for your Consolidated General Election held on November 2, 2010.

The Certificate of Election forms were given to you at the seminar in June. An invoice for services rendered will be mailed to you under a separate cover. Please let me know if I can be of any further assistance.

Sincerely,


REBECCA SPENCER
Acting Registrar of Voters

Enclosures

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REBECCA SPENCER
Acting Registrar of Voters



2724 Gateway Drive
Riverside, CA 92507-0918
(951) 486-7200 • FAX (951) 486-7272
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**REGISTRAR OF VOTERS
COUNTY OF RIVERSIDE**

**CERTIFICATE OF REGISTRAR OF VOTERS
TO THE RESULTS OF THE CANVASS OF ELECTION RETURNS**

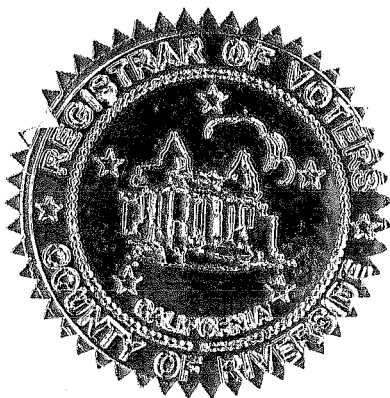
State of California)
) ss.
County of Riverside)

I, REBECCA SPENCER, Acting Registrar of Voters of said County, do hereby certify that, in pursuance of the provisions of Sections 15301, 15372, and 15374 of the California Elections Code, and the resolution adopted by the City Council, I did canvass the returns of the votes cast on November 2, 2010, as part of the Consolidated General Election in the

CITY OF BANNING

and I further certify that the statement of votes cast, to which this certificate is attached, shows the whole number of votes for each candidate for elective office at said election, in said City, and in each precinct therein, and that the totals as shown for each candidate are full, true, and correct.

Dated this 26th day of November 2010




REBECCA SPENCER
Acting Registrar of Voters

RIVERSIDE COUNTY Statement of Vote
CONSOLIDATED GENERAL ELECTION

100058		CITY OF BANNING - MEMBER, CITY COUNCIL													
	Registration	Ballots Cast	Turnout (%)		LYNDON E. TAYLOR	PERRY "ROCKY" BRAY	BOB BOTTS	VICTOR G. EDINBURGH	DEBORAH "DEBBIE" FRANKLIN	CHRIS MC CALLUM	EDWARD MILLER				
51000 BANNING	0	0	0.00		0	0	0	0	0	0	0				
51000 - Vote by Mail Reporting	0	0	0.00		0	0	0	0	0	0	0				
51002 BANNING	0	0	0.00		0	0	0	0	0	0	0				
51002 - Vote by Mail Reporting	0	0	0.00		0	0	0	0	0	0	0				
51003 BANNING	0	0	0.00		0	0	0	0	0	0	0				
51003 - Vote by Mail Reporting	0	0	0.00		0	0	0	0	0	0	0				
51004 BANNING	709	225	31.73		38	47	54	28	97	40	37				
51004 - Vote by Mail Reporting	709	243	34.27		67	34	58	30	98	33	79				
51005 BANNING	28	7	25.00		0	1	1	2	1	3	2				
51005 - Vote by Mail Reporting	28	0	0.00		0	0	0	0	0	0	0				
51008 BANNING	1980	411	20.76		122	35	169	30	145	47	122				
51008 - Vote by Mail Reporting	1980	1204	60.81		356	55	550	94	463	176	376				
51011 BANNING	2513	544	21.65		162	37	223	41	203	69	179				
51011 - Vote by Mail Reporting	2513	1669	66.41		654	85	643	99	571	201	666				
51014 BANNING	1685	460	27.30		95	72	104	44	212	82	108				
51014 - Vote by Mail Reporting	1685	649	38.52		149	96	154	72	251	139	193				
51018 BANNING	1442	412	28.57		83	62	79	50	186	88	84				
51018 - Vote by Mail Reporting	1442	378	26.21		85	60	73	26	180	100	92				
51020 BANNING	774	202	26.10		26	40	48	24	88	43	29				
51020 - Vote by Mail Reporting	774	135	17.44		26	24	33	10	62	32	36				
51023 BANNING	1391	398	28.61		59	82	68	23	218	76	62				
51023 - Vote by Mail Reporting	1391	324	23.29		68	63	67	30	165	63	83				
51025 BANNING	986	210	21.30		30	21	34	34	102	23	34				
51025 - Vote by Mail Reporting	986	169	17.14		39	15	31	13	90	28	47				
51026 BANNING	1476	374	25.34		75	64	66	37	160	84	83				
51026 - Vote by Mail Reporting	1476	480	32.52		114	72	114	53	214	96	136				
Precinct Totals	12984	3243	24.98		690	461	846	313	1412	555	740				
Vote by Mail Reporting Totals	12984	5251	40.44		1558	504	1723	427	2094	868	1708				
Grand Totals	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
CALIFORNIA	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
41st Congressional District	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
37th Senatorial District	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
65th Assembly District	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
80th Assembly District	0	0	0.00		0	0	0	0	0	0	0				
5th SUPERVISORIAL DISTRICT	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
Riverside	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				
City of Banning	12984	8494	65.42		2248	965	2569	740	3506	1423	2448				

6

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

10/28/10
SPECIAL JOINT MEETING

A special joint meeting of the Banning City Council and the Banning Unified School District was called to order by Mayor Botts on October 28, 2010 at 5:04 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

OTHERS PRESENT: Andrew Takata, City Manager
Duane Burk, Public Works Director
Zai Abu-Bakar, Community Development Director
Fred Mason, Electric Utility Director
Heidi Meraz, Community Services Director
Marie A. Calderon, City Clerk

BANNING SCHOOL BOARD
MEMBERS PRESENT: Deborah Dukes, President
Larry Silverman, Clerk
Wendell Bainter, Member
Amy Herr, Member
Melodie Reese, Member

OTHERS PRESENT: Lynne B. Kennedy, Ph.D., Superintendent
Gordon Fisher, Interim Assistant Superintendent, Curriculum,
Instruction & Assessment
Christine Wallace, Ed.D., Interim Assistant Superintendent,
Business Services
Ken Miller, Director of Facilities

PUBLIC COMMENTS – On Items Not on the Agenda

There were none.

DISCUSSION ITEMS

1. Energy Grant
(Staff Report – Fred Mason, Electric Utility Director)

Mr. Mason said that Ken Miller came and approached the Electric Utility because they were going to be doing expansions at the high school and he wanted to know what we could do as

far as helping them with incentives and rebates and those types of things. One of the things that they were proposing was to put a solar photovoltaic system on the new facility as well as some other buildings. Staff did work with them and originally it was going to be a 105 kilowatt system and he just received word that it has been dropped just slightly to an 89 kilowatt system. The law requires us to drop the incentives by 7% each year and what we agreed to do for the School District since you had approached us was to go ahead and maintain the \$4 for that system so that would actually provided you a rebate of \$343,520 for the photovoltaic system. Typically when the system is installed is what sets the rebate but we worked together to give you obviously the largest rebate that we could and went forward based on the day that you first approached us with the plan.

There was some discussion on how much savings there might be and impacts to the City's revenues and supply.

Boardmember Herr said she thinks as they were going through their bonding process and all of that and as they were designing the classroom addition, as well as, the sports complex that is one of the things they considered was the green aspects of that and how we could be more environmentally friendly in what they were doing instead of just installing traditional electrical items and looking at the waterless grass.

Mr. Mason said absolutely and in fact, if you recall, the utility has provided about \$70,000 dollars in rebates for all of those improvements so the school district has gone above and beyond as far as improving the efficiency of their facilities.

2. Federal Move On Program/League of California Cities/Healthy Cities Campaign
(Staff Report – Andy Takata, City Manager)

City Manager provided some information on the Healthy Eating, Active Living Cities Living Campaign and felt this was something that possibly we could have the school district and the City work together. The first program is basically the Healthy Eating, Active Living Cities Campaign and the second one is "Let's Move" which is a Federal Program. He gave a power-point presentation on both these items and showed a short video on these topics (see Exhibit A). He said today everybody lives a fast lifestyle with both parents working and you go home and pick up fast food because it is cheaper and nobody is cooking a meal now days and it is affecting our kids right now. So we need to educate them as to what it is actually going to be doing to their kids who are going to be our leaders in the future and take care of us as we are unable to take care of ourselves.

There were Council and Board suggestions as follows:

- Partnering with Beaver Medical or Loma Linda to do some healthy lifestyle classes and help with possibly a nutrition program.
- Coming together as teams and also a community partnerships
- Health fair
- Community garden, partner with Sun Lakes Garden Club
- Walk Clubs

Dr. Kennedy went over what the school district has done in regards to healthy foods in the schools. They no longer sell soda, chips and they are also required to meet certain nutrition guidelines in the food that they serve to the students.

Boardmember Herr said that she thinks that it was in 2006 that the actual Wellness Policy came into place but is caused them to have to eliminate food rewards because kids need to not look at food as a reward but as just something you need to survive. In their vending machines they just have water and sports drinks and they have to be the low sugar sports drinks. A lot of our schools have implemented walking clubs and each one of the schools have different healthy programs. She said the school district has definitely focused on getting a healthy lifestyle environment.

Councilmember Machisic said he thinks that all of these ideas are fine but they are also fragmented. If you are going to attack the program he thinks that you need to cover all aspects of it. He thinks the important thing is this is a community and you might have the little people but we've got the big people and so you are not successful if you do it with children and you don't do it with adults. He thinks it needs to be carefully organized so that you hit all areas that the City Manager mentioned. Also, you have some great ideas and those ideas could be incorporated not only for one school but all the schools in the city and so his position would be that we have a joint committee of the City and the school district with a couple of representatives to meet together and go down through the program and then at that time you could infuse the ideas that you have shared. He would rather see a much more organized approach than fragmented.

City Manager said that there are two ways to do that committee. You currently have a subcommittee with the Council and the Board which is the 2X2 Committee or you could have a separate committee on that depending on what the Council and the Board wishes.

Mayor Pro Tem Hanna said that one of the problems that each organization has is limited funds and therefore limited staffing and one thought is to at least explore with the County Health Department with their public health programs that they might have an individual that could support our joined efforts; at least we could explore that. The other thing that might be really interesting is to develop baseline data and we could get more about our community and then go from there and invite any partners that could help us with this whole program. The walking and biking activities between neighborhoods and schools are so important and we have worked on that for years and we just approved some funding for next year's new sidewalks.

Duane Burk, Public Works Director stated that every year the City of Banning applies for the SB 821 Grant and what it does is connectivity between sidewalks and schools and the ability for walking paths. We haven't done the bike lane but are looking forward to doing that and some kind of connectivity as it relates to handicap access. We did receive another grant for \$79,000 and improvements will be around Hemmerling School and we just completed some handicap ramps and sidewalks around Hoffer School. We have applied three years now for Safe Route to School Grant for San Geronio and staff will continue to move forward with that grant until either Highway 243 puts in the sidewalk, curb and gutter or somebody calls the Governor. It is a very competitive grant and that is one reason we don't qualify for the Safe Route to School Grant on San Geronio because we are competing with Los Angeles

and bigger schools but if we continue to be persistent with it, some day we will receive those funds and get that improvement done.

Councilmember Franklin as we move forward on this that is something that we could even apply for grants because she knows that there is the California Wellness Foundation and others that focus on physical health and in working together with the school board would show how there is a partnership moving in this area and that is often where they will fund programs because they see that people are working together.

There was consensus of the Council and the School Board to use the 2 by 2 Committee as the committee to work together on this issue.

Councilmember Robinson said that we also have to include the stores and the markets in this also. We need to encourage our stores to start looking at healthier foods and possibly one of the stores could do a walk through with the kids and grownups and whoever to learn about some of these vegetables and fruits and possibly a fruit and vegetable tasting but they need to be included and right now they are not geared up to meet the demand.

Mayor Pro Tem Hanna said that the Family Services Association is just going to be starting a weekly cooking class at the Cabazon Community Center and it is for healthy eating for people with problems with obesity and diabetes and it will be on Thursday evenings and it will be translated into Spanish as well.

Mayor Botts asked if we had gardeners at Dysart Park besides the Sun Lakers and if the school district and the kids wanted to come and have a garden could the City volunteer property.

Heidi Meraz, Community Services Director said that currently it is just the Sun Lakes Garden Club that utilizes an area that is sectioned off and they have an agreement with the City so anything that was worked with them we would need to work through them as opposed to just putting the kids on site. There is also a group looking to use part of Dysart Park and it has gone to the Parks and Recreation Advisory Committee one time and will be coming back. They are looking at utilizing it for growing drought tolerant plants that are native to our area and teaching skills by doing that but that maybe something that could be incorporated with fruits and vegetable as well. The group that is looking to do that is working with the County Office of Education to do that.

3. Grand Opening for Athletic Facility
4. City Council Tour of BHS Complex
(Staff Report – Ken Miller, Director of Facilities – Banning Unified School District)

Mr. Miller displayed a picture of the sports stadium with the artificial turf or what they call “carpet” and he did bring in a piece of that turf. He said they intend to have the first official function of the sports stadium to be the graduation of the Class of 2011. However, they do want to have a grand opening before probably the first football game of the Fall in 2011 and right now they are trying to get some ideas for the opening of the sports complex so if you have any ideas you can contact Dr. Kennedy.

President Dukes said that she had some concerns about traffic jams in the area and have we talked to the City about traffic flows.

Mr. Miller said that as part of the environmental impact documents and to comply with CEQA (California Environmental Quality Act) they did a traffic study and it was part of our document for the mitigated negative declaration and part of that study showed the impacts and they ran some numbers and simulations and things like that but quite frankly he doesn't think we will really know until we start having people at the games and things like that. He said that there will probably be a little congestion at first but after that it will smooth out and we will be able to get folks in and especially out of the stadium on Westward.

City Manager said that they would be happy to work with the school district and staff with our police, traffic and Duane Burk and his staff to look at some things that could be done.

Mayor Botts asked if everything would open at once.

Mr. Miller said because it is one large containment area that is what they are looking at right now. They are looking at a completion date of March, plus or minus, after they get the contracts done and start doing punch items and things like that. He knows that there is a lot of anticipation right now from the students. The aquatic center is also figured in this opening time and right now they are looking at filling the pool in March, possibly February, if they can keep going at the rate they are going right now and they are about three weeks ahead of schedule.

President Dukes said that there was a problem with the bleachers. Mr. Miller said that they are having a little bit of hiccup with the bleachers right now. He said that their bleacher contractor/manufacturer went bankrupt and as you know public works projects are bonded which is good news because right now they are able to work with the bonding company to replace that contractor and the bonding company will pay the difference between the original contract and whatever the new contractor selected would choose. We have been working with the bonding company for about two months and a half months now and are were very, very close in trying to get it done.

Boardmember Herr said that we need to thank Ken Miller for all of his diligence in this whole process because the building of the facilities and the classroom additions and with the help of Tilden Coil it really has gone incredible well and it is really a great collaboration between the two even with all the State budget cuts and the cutbacks at DSA so that the timeline in getting things approved is extended but we are really doing very, very well and she thinks the community should be very, very proud of what the outcome is going to be of the bond they supported to build all of this and she thinks it is going to be a huge feather in the cap for Banning for all of our kids to finally have an athletic facility where they can play football and baseball and swim on their own campus and not have to go to their old school or middle school to play.

There was some discussion about a tour of the sports facility and the classrooms for the Council and Board and there was consensus for a tour to be held on November 10, 2010 at 3:30 p.m.

Mr. Miller also displayed a graphic of the area that is under construction and they do have security out there. He said that in regards to the classrooms it is completely green and it is a collaborative for high performance school qualified building and they meet and exceed the standards. It is energy efficient and an earth friendly environment.

5. Discussion *(open for discussion of topics of mutual interest to City and District. No action will be taken on these items.)*

Councilmember Machisic said recently the Council received a proposed Master Park Plan and he was wondering if the school district has seen this plan and he would be interested in their reactions or suggestions to the plan. He thinks that it is extremely important because of the size of our community is very small and neither one of us can afford all the facilities that we would like to have and he thinks that whatever we can do jointly or sharing is extremely important.

Heidi Meraz stated that they do have a Parks and Recreation Master Plan Update that has just been completed and they are waiting for the final copy to come back and go to the Council for approval and when we do get that back she will make certain that the school district receives a copy.

Councilmember Machisic said before we get a final draft of it he would very much like the school district to take a look at it and take their time and reflect on it and offer suggestions before the Council adopts anything and thinks it is vitally important for both of them.

City Manager said that they can also do a presentation for the Board.

Councilmember Robinson gave an update on where the college is at this time and showed some slides of the area. He said the sidewalks were being completed today and two of the buildings are done and the turnabout in the center is all done.

Mr. Burk said that this is on the south east corner of Sunset and Westward Avenue. The goal for the campus is that the administrative office would be open in November and also the restroom facility but subsequent to that there will be additional buildings added for the Spring Semester. The said the concept started years ago and this is not the final campus. Currently there are classes being held in Banning at the high school and maybe even in Beaumont and the idea is to build an overall master plan campus that hasn't been disclosed yet. This facility can be expanded up to eight classrooms but you will only see four and as the demand goes up it would expand this footprint. He said that the Redevelopment Agency committed \$750,000 for off-site improvements which included the off-site curb and gutter, sidewalk, some drainage issues and some street lights, engineering and some other things.

Boardmember Bainter asked about the traffic patterns coming off the freeway right there at Sunset because there is no signal there. He knows that there will be eventually a grade separation there and there will be signals then but is there any chance that something can be done before that time.

Mr. Burk said the idea behind the traffic signals or stop signs is that there is a certain amount of traffic that has to be in place before you put the instrument in to control the traffic signalization in this case. As you know, if you visit this remote area of sorts it is on the fringe of the

unincorporated area of the county and the city, some vacant land to the west and vacant land to the south east. The overall master plan for the development to the west would be to connect Sun Lakes Blvd. to Westward or extend Westward to Sun Lakes Blvd. and we are currently working on some plans to do that however, that was going to be with a developer and all of you understand Lennar Development came to a halt. However, it is the goal of this Council that they want to continue that project and of course that takes funding and we have to work towards getting that. The Sunset Grade Separation is actually moving along well and the environmental work for that project will be completed by December 2010 and then it will be a year of putting in our design and hopefully be breaking ground in 2012. The caveat to that is that it will cause a lot of congestion issues but there is a remedy in the end and the good news is that the funding is pretty much in place for the grade separation and the circulation from east to west hopefully will be improved prior to the grade separation being closed.

Boardmember Herr asked if there has been any consideration of maybe a traffic light at 8th Street and Westward because there is going to be so much traffic going in either direction to the high school and then to the college.

Mr. Burk said that is a good idea but they have not studied 8th and Westward. He said that the application of the Safe Route to School and the Redevelopment Agency has designed and put forth opportunities to put traffic signals at 8th and Lincoln, I-10 and 8th Street, Lincoln and San Geronio and Westward and San Geronio. However, you have to understand that Caltrans is in control of those. Whether or not the City wants to put those in it is in their right-of-way and we have to enter into some type of joint use agreement with them as it relates to maintenance and things like that. We can request and send letters but that is about it at this point in time.

City Manager said that on Martin and Williams the wall for the courthouse is there and will stay there until the actual courthouse is up.

Mr. Burk said as you know the City has been in a competitive process with 28 other cities to land the courthouse in the city of Banning and the Council was successful in getting the 4.68 acres on Martin and Ramsey and Martin and Williams respectfully directly east of the post office. Currently the State of California goes through what is called a demonstration process of what they are going to build and that was held today and about a couple of dozen people attended. The idea is to show what it is going to look like and the walls are made out of reinforced, poured and placed concrete and about 16 inches thick and freestanding. It is actually one of the walls of what it will look like on the building itself. The color and texture will come later. For the most part you will see it there for about another year and just for that wall alone it cost about \$30,000 to stand it up.

City Manager said they plan on 2011 for the groundbreaking and that money is placed aside so that it is going to happen.

Mayor Pro Tem Hanna said that they are willing to keep it actually and move it for us. So she would like to suggest that if there is any interest on the part of the Council that Duane and Heidi look at it and see where in the city we would want something and her thought would be a Vietnam memorial in some sense or another.

Mayor Botts said that several of the contractors are very, very interested in meeting with us and talking about the impact of the construction, people living here, motels and hotels, food, hiring workers here and the City Manager is going to be putting a meeting together with several of them and the private sector and City Council people and it is very exciting.

Mr. Burk said tentatively they are talking about breaking ground in July 2011.

Dr. Kennedy said that they are continuing to work with Mt. San Jacinto College and offering concurrent enrollment courses and they are starting with mathematics and that will begin second semester and the idea is that students will receive credit for their high school, as well as, college credit and eventually we are going to introduce more classes in science, English, and social studies. They are looking for staff and as they hire new teachers they need to have a Master's Degree in their content area which will allow them to teach for Mt. San Jacinto, as well as, being one of our teachers. The idea is students can help earn up to two years toward a four-year degree or get their Associate of Arts Degree concurrently when they get their high school diploma or they can save their parents hundreds of thousand of dollars in tuition, room and board for a four-year degree so Roger Schultz has been very, very supportive in the process and as they are building the campus we will allow them to access classrooms in our new building so that we can expedite the course offering on that campus so it is really a good joint partnership.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 6:25 p.m.

Date Approved

Robert E. Botts, Mayor

Marie A. Calderon, City Clerk

Date Approved

Deborah Dukes, President

Larry Silverman, 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.



HEALTHY EATING ACTIVE LIVING CITIES CAMPAIGN

www.HealCities.org

1

Did you know?

Due to the rapid rise in obesity, today's youth may – for the first time in modern history – live shorter lives than their parents.

Obesity and Overweight Cost Cities in Health Care, Preventable Diseases, and Lost Productivity

2

The Healthy Eating Active Living Cities Campaign

Provides training and technical assistance to help city officials adopt policies that improve their communities' physical activity and retail food environments.

3

Cities' Role in Reversing the Obesity Epidemic

Community leaders across California are stepping up to help stem the obesity epidemic in their communities.

- ⊙ Local access to healthy foods
- ⊙ Safe places to play and be active
- ⊙ Opportunities for people to walk and bike within their neighborhoods

4

Exhibit "A"

9

jt.mtg.-10/28/10

15

Get Moving!

Take these three steps and you're on your way to supporting healthy eating and active living:

1. Recognize the Problem
2. Clarify Your City's Role
3. Consider Healthy Eating Active Living Policy Options

Create initiatives to increase the availability of healthy food in all your city neighborhoods!

5

Municipalities can help reduce obesity and overweight through policies that advance healthy eating and active living:

◎ Land Use

Cities' planning, zoning, and infrastructure investment can have a positive effect on health.

◎ Healthy Foods

Cities have powerful planning, economic development, and public relations tools for attracting and supporting healthy food retailers.

◎ Employee Wellness

Cities can reduce the burden of worker healthcare costs by helping workers overcome obesity and overweight.

6

Be a City with Healthy Food Choices

City Policies can Encourage Healthy Eating:

1. Create a vision and challenge for health with a HEAL City Resolution or Mayor's Challenge
2. Attract healthy food retail options
3. Let residents know which local businesses promote healthy choices

7

Be a City and School District with a Healthy Workforce

- ◎ Pass an employee wellness resolution
- ◎ Create policies to include health breaks during the work day
- ◎ Institute healthy snack choices
 - Healthier Vending Machines
 - Healthier Food at Meetings, Events and Programs

8

Benefits to Your City and District

- ⊙ Cost saving through employee wellness policies and health incentives.
- ⊙ Improved quality of life for residents through active lifestyles.
- ⊙ Better-performing kids: healthy kids do better in school, giving them a greater chance to contribute eventually to the region's economic vitality.

9

Join the Healthy Eating Active Living Cities Campaign

Go to www.HealCitiesCampaign.org and let us know what you are doing, or contact the campaign:

Charlotte Dickson, Campaign Director
Healthy Eating Active Living Cities Campaign
cd@PublicHealthAdvocacy.org
(510) 302-3387

10

**LET'S
MOVE**

*America's Move to Raise a
Healthier Generation of Kids*

"The physical and emotional health of an entire generation and the economic health and security of our nation is at stake."

- First Lady Michelle Obama at the Let's Move! Launch on February 9, 2010.

11

Take Action Schools

5 simple steps TO SUCCESS:

1. Create a School Health Advisory Council
2. Join the Healthier US Schools Challenge
3. Make Your School a Healthy Worksite
4. Incorporate Nutrition Education and Physical Education into the Curriculum
5. Plant a School Garden

WWW.LETSMOVE.GOV

12

Active Communities

Mayors, City Council, School Boards and community leaders can promote physical fitness by working to increase safe routes for kids to walk and ride to school, parks, playgrounds and community centers, and sports and fitness programs.

13

Working Together

1. Help parents make healthy choices
2. Advocate for healthier schools
3. Help children get more physical activity
4. Promote affordable, accessible food
5. Start a community garden
6. Expand community access to indoor and outdoor public facilities
7. Address walking and biking connectivity between neighborhoods and schools

14

Resources

HEAL Cities Campaign website
www.HealCitiesCampaign.org

Let's Move
www.LetsMove.gov

15

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

11/09/10
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Botts on November 26, 2010 at 4:00 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/Agency Counsel
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Steve Dukett, Consultant, Urban Futures
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney stated that the Labor Negotiation item as listed will not be discussed. The City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.95(a) to confer with the joint powers authority with regards to the claim of Carol Lummus v. City of Banning; and pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator in regards to the following properties: 1) 280 E. Ramsey Street (APN 541-183-004), 2) 2301 W. Ramsey Street (All Star Dodge property), and 3) Joshua Palmer Way – APN: 419-120-025. On each of these matters a status report will be given.

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

City Attorney stated that they needed to add to the agenda concerning a Litigation Matter regarding James C. Smith, et al. v. Hanna/City of Banning.

Motion Hanna/Machisic to add this item to the closed session agenda. Motion carried, all in favor.

Meeting went into closed session at 4:02 p.m. and returned to regular session at 5:04 p.m. Boardmember Robinson left the room when there was discussion regarding 2301 W. Ramsey Street (All Star Dodge property).

The closed session reconvened at 8:33 p.m. and reconvened at 8:48 p.m.

City Attorney stated that the City Council met in closed session to discuss the James C. Smith, et al. v. Hanna/City of Banning matter a status report was given concerning the litigation matter and direction was received for further actions and no reportable action was taken.

ADJOURNMENT

By common consent the meeting adjourned at 8:49 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

11/09/10
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Botts on November 9, 2010 at 5:12 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
Fred Mason, Electric Utility Director
Zai Abu Bakar, Community Development Director
Leonard Purvis, Police Chief
John McQuown, City Treasurer
Marie A. Calderon, City Clerk

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

REPORT ON CLOSED SESSION

City Attorney stated that in terms of the closed session agenda for the City Council and the Community Redevelopment Agency the labor negotiations were not discussed. The item involving litigation Lummus v. City of Banning a status report was given. In regards to real property negotiations for the Agency concerning 280 E. Ramsey, 2301 W. Ramsey and Joshua Palmer Way a status report was given on each of those items and direction was given for further negotiations. One closed session item was added to the agenda involving the Smith Litigation Matter and that item was not completed and the City Council will resume the closed session at the end of the meeting to discuss that item.

PUBLIC COMMENTS/CORRESPONDENCE

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler addressed the Council stating that it has been a tradition to vote in as Mayor for the highest vote getter in the election for City Council. In last Tuesday's election Debbie Franklin was by far the candidate that got the most votes therefore, she urges the Council to vote for her as mayor for the City of Banning. Also, in regards to the Animal Shelter what progress is being made in the repair of the Banning shelter. Ellen Carr's efforts to take care of the unwanted small animals are overwhelming her. She doesn't have the facilities or the financial resources to care for the unwanted animals and she keeps doing the work in spite of being forced to euthanize cats and dogs, etc. She would urge the Council to pass an ordinance requiring the spaying and neutering of small animals within the city limits and see whether that can be enforced. Ms. Schuler said that with the winter season approaching what provisions are being made to provide shelter for the increasing number of homeless people in town. As in Redlands there is a noticeable absence of seeing the usual contingent of homeless people. There are none at the freeway on or off ramps, there are none pushing shopping carts loaded with stuff through the cities that she has been in and it is sort of bothering her that there is this invisibility of these poor people. Do we have a count of the people affected? She understands that Los Angeles keeps tabs on how many there are and the number fluctuates between 46,000 to 80,000 to 125,000 so it is a difficult thing to do. Do we have a count of the people here in town? Do we know them by name? Is there a system to do follow-ups where there is a foreclosure or an eviction? Who keep tabs? Are the churches doing this? Is the City involved? She would like to know and she is sure there are others that would like to know this information.

Betty McMillian, 5549 W. Pinehurst Drive addressed the Council regarding her concern over the recent election and the negative campaigning that took place. She believes that everyone thinks the current Council has done their work with the very best interest of the community at heart and we really thank you for that. Strides forward have been made however, not everyone agrees with the course of action that has been taken. The negative campaign that took place during the election and unfortunate need to raise the water rates has created a city that is full of mistrust and anger. Many of our residents are very unhappy and right now it has to be a time of healing for this City. It is obvious with the results of the recent election that one City Council Member has retained the trust and the respect of the citizens of our community and that is Council Member Debbie Franklin. She was the number one vote getter in the election outpacing the rest of the field by over 800 votes and garnering over 25% of the votes of the citizens of Banning. When she was initially elected in 2006 she was also the number one vote getter in that election. Despite all of this and despite the trust that the community has shown by their voting record Council Member Franklin has never been mayor. Obviously we need someone who can lead us forward in a sound and fiscally responsible manner while helping to heal the wounds that this election has created. For those reasons and for the common sense approach she has always used in helping to guide this City she would respectfully request that this Council make Council Member Franklin our next mayor.

Marion Johnson, 541 E. Repplier Rd. congratulated Bob Botts and Debbie Franklin on their successful re-election to the Banning City Council. She thinks that they are doing a wonderful job and she is hoping that they will continue to do that so that we can bring Banning up where we want it and now it is time to get back to work and make our city proud

of us. She said that many ideas were presented by candidates and others during the campaign and our city has a wealth of citizens who can contribute their expertise toward sensible healthy growth. If the City Council, the staff and the community work together as a unit Banning could make great strides toward being a city that we can all be proud of. One suggestion that she would like to make is that the Banning City Council vote Debbie Franklin for mayor. Debbie is familiar with Banning's past City Council activities. She currently works with many groups and individuals and is constantly gathering information that will help us to move forward in the future. It is obvious that a majority of the citizens agree with the job she is doing by the support she has received. In both 2006 and 2010 she received the highest number of votes and that is an indication that people are satisfied by what is going on and what she is doing. She has a rapport with the community and that goes a long way in doing a good job in the city of Banning. As mayor Deborah would be an asset to this community and will be a great representative for the City of Banning.

Noni Tate, Program Manager with the Fair Housing Council of Riverside County, addressed the Council stating that for over 24 years the Fair Housing Council has provided services to the city of Banning through funding provided by the County of Riverside to address housing disparities and to assist in sustaining housing opportunities. Their agency provides a variety of housing counseling services as well as other services and they assist over 10,000 persons annually. Their services include landlord/tenant mediation service, anti-discrimination services, foreclosure prevention counseling, lead hazard control education, first time home buyers education and cool centers through the summer months. Their goal is to provide comprehensive services that affirmatively address and promote equal housing opportunities for all persons. Their agency has three offices and their main office is Riverside with one office in Moreno Valley and also Palm Springs. They have two other satellite offices in Corona Library and Murrieta Library on Thursdays for half a day. Over the last four months their agency has assisted 79 persons with rental housing issues in Banning with 75 of them being landlord/tenant cases and four were discrimination complaints. Their agency continues to receive calls from the city of Banning from renters who are experiencing displacement issues due to their residences being foreclosed or because they could no longer afford the rent due to the economy. During the first quarter 23% of the landlord/tenant calls received were regarding evictions. 26 of those calls received were regarding repair issues. In terms of anti-discrimination issues their number one complaint is disability and they received 75% of those calls. Their agency has incorporated training specifically on these topics and will continue to provide free training to housing providers to insure compliance with state and federal fair housing regulations. Education and reasonable accommodations and modification procedures has played an important part for many housing providers and tenants which resulted in many discrimination complaints being resolved without any further actions. Their agency also provides free foreclosure prevention counseling. The Foreclosure Prevention Department assists over 1400 Riverside County residents a year. In addition, their agency currently conducts free first time homebuyers workshop training twice a month in the cities of Riverside and Perris. On July 17th they actually had one in the city of Banning where they had 23 renters looking in to getting into a first time home ownership so that was pretty much a success and they have moved on to one on one counseling for those individuals. Some of the upcoming events that they are going to have are Champions for Justice Award Banquet which last year Marion Johnson was an honoree. She hopes that the City will continue to participate

in that and she knows that there are many, many honorable people in this city that you can nominate and definitely get involved in that.

Joseph Curtis, 6111 Solama Way addressed the Council stating that Banning needs a mayor who can unify, motivate and move the City forward on the needed structural and business hospitable changes required for a sustainable, economical development and because of the recent divisive history the next mayor must have integrity and the leadership skills to unify key players around the needed change. The next mayor must have the trust of the people; Debbie Franklin has that trust.

Sheila Huerta from Serrano Del Vista addressed the Council as a Member of the Concerned Citizens Committee for a Better Banning (see Exhibit "A").

Ralph Alexander Jr., 1515 N. Almond Way congratulated Councilmember Franklin and Mayor Botts on their re-election to the Banning City Council. He said that he came to speak on behalf of Councilmember Franklin and he cannot say anymore from what you have heard already. But what he would like to talk about is the future of this town for the younger generation. He said that he grew up in this town and graduated in 1981. There is a deep concern from him and a bunch of his classmates in his generation and era why there are no job opportunities in this town. They do love this town very much and he would hate to leave again. He left in 1995 and moved to Las Vegas for 15 years and when he came back and nothing much has changed. He would hate to leave again; this is a beautiful town. We live off of Interstate 10 and this is the gateway to heaven in either direction you come from. There are plenty of employment opportunities and he asked that the Council open up and let people bring businesses to this town so that we can prosper. Also, he grew up playing football, baseball and basketball in this town and he doesn't understand how we are allowing a football coach to teach at Banning High School and coach at Beaumont High; that is defeating the purpose. It never would have happened when they were coming up and he is asking the Council to take a look at that. Also, you want to spend money on parks and recreation why don't you open up a facility or a training facility and teach these young kids some skills and trades. If their parents are drug dealers, what are they going to teach their kids? If their parents had a job opportunity, maybe they wouldn't have to deal drugs.

Don Smith addressed the Council congratulating Debbie Franklin and Bob Botts for their victory. He believes it is a sign that despite a very negative campaign where some candidates chose to do personal insults rather than discuss the issues that the votes looked at what this Council has actually done and seen even in hard economic times you are doing the best you can to move Banning forward and he congratulates the voters of Banning in addition to the winners of the election in seeing through that negative campaign and hopefully it will send a message that two years from now that the candidates realize that they have to actually have to discuss the issues in order to win. He invited the Council and the people of Banning to three upcoming events: 1) Thursday, Nov. 11th – Veterans Day at 1:00 p.m. at the Woman's Club, 175 W. Hays there will be a dedication of a Veterans Wall, as well as, unveiling a statute with a veterans theme for the Sculpture Garden to be placed near the Veterans Wall and directly after that program there will be a reception for a new art show at the Banning Center for the Arts at 130 N. San Gorgonio Avenue where the exhibit is by the Plein Air Artists of Riverside

showing the landscaping and sculpture and beauty of the Riverside County Veteran's Memorial Cemetery; 2) Nov. 12th at 1:00 p.m. at the Woman's Club the San Jacinto Junior College Art Program will be putting on a Free Dance Ensemble, 3) Saturday, Nov. 20th starting at 9 a.m. will be the Phineas Festival at the corner of Ramsey Street and San Geronio. It will start at 9:30 a.m. with two free movies (White Christmas and Polar Express) once in each theater; first come first served. There will be a snow hill, Santa, crafts fair and festivities ending at 6:00 p.m. with the lighting of the Christmas Tree at the corner of Ramsey and San Geronio.

Nathan Johns, Banning addressed the Council congratulating Mr. Botts and Mrs. Franklin and stating that his congratulations goes a little bit beyond that because he appreciates the decency in their campaigning. He said that he was one of the ones who reported the issue at the post office where posters had been put up and after that they were not put up again. And for clarity so that the police department will know their cage at the post office was never open; it was put outside of that cage. In support of Mr. Alexander in regards to youth services one of his concerns as a recent member of the community of Banning he took a real look this summer at the number of youth Black, Hispanic, White literally walking the streets with nothing to do. We as adults have got to find something that they can do and get involved in to keep them out of trouble because the next step after that is that the police are going to come because they have gotten into trouble. So along with youth programs and youth activities there has got to be something that we can attract these kids and keep their attention and keep them out of trouble. In regards to the swimming pool they started offering swimming lessons for adults and he hopes that the City will continue with that and see if we can get it advertised so that many of these adults that cannot swim, can come and take swimming lessons. In regards to the mayor, he doesn't know why anyone would want to be mayor of any town because that is stress and pressure but he is supporting Debbie Franklin for mayor and Mr. Botts from what he understands you have been doing a great job and once again he likes the campaigning that they both did.

Joann Teland resident of Banning asked if there was a committee for handicapped in the City and if there is not, would the City entertain the creation of a Handicap Access Committee. She knows a couple of people that would be interested in volunteering their time for that. Secondly, she would like to support Debbie Franklin for mayor. She doesn't know why she wasn't selected after the last election. The people of Banning have overwhelming spoken and said that they like the job that she is doing and she thinks that because of her fiscal responsibility she is the person that should be leading Banning in the future.

Charlene Fink, 5168 Rio Bravo addressed the Council said that she is speaking on behalf of the Concerned Citizens for a Better Banning representing members from all parts of the city. In the recent election one candidate had 800 votes more than the next candidate; a 10% point advantage. Why did Councilmember Franklin score such a runaway victory? People of Banning know she cares about them because they see her everywhere doing good deeds because they know she listens and writes it down and because she was often the only no vote on spending that Banning couldn't afford. We thank the current Mayor and Council for their work however, on behalf of the Concerned Cities Committee for Better Banning she urges the Council Members to elect Debbie Franklin mayor of the City of Banning by unanimous vote.

Banning needs Debbie Franklin as mayor. In regards to the invocation she said that she was at a luncheon today at the University of Redlands and heard a woman who is from Belarus, the Soviet Union area and she spoke very well about how it is to live in Belarus and not have representative government and not be able to vote and even though it looks like they do she said whoever is the candidate that goes up against the current person somehow disappears or ends up in jail for something so it was quite moving to hear how other parts of the world today are still oppressed and we are very fortunate to be able to vote here. Also in her observance for a cost saving for Stagecoach Days there have been some articles in the newspaper about Stagecoach Days and she would like to advise this City to look at cities that have been successful in limiting their festivals to only one day and they are very successful in doing it. This would be a great cost saving to the Stagecoach Days Committee whomever that might be next year including the requested help from the City of Banning.

Dorothy Familetti-McLean addressed the Council (see Exhibit B).

CORRESPONDENCE: There was none.

CONSENT ITEMS

Mayor Botts stated that staff requested that Consent Items 5 and 8 be pulled. Councilmember Robinson pulled Consent Item No. 9 for discussion.

1. Approval of Minutes – Joint Meeting – 10/26/10

Recommendation: That the minutes of the Joint Meeting of October 26, 2010 be approved.

2. Approval of Minutes – Regular Meeting – 10/26/10

Recommendation: That the minutes of the Regular Meeting of October 26, 2010 be approved.

3. Report of Investments for August 2010

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

4. Report of Investments for September 2010

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

5. Resolution No. 2010-33, Authorizing the Destruction of City Records as Provided by Section 34090 of the California Government Code and Resolution No. 2003-26 of the City of Banning as listed in Attachment A.

(This item was pulled from the agenda to be brought forward at a later time.)

6. Resolution No. 2010-70, Approving the Revised Annual Pole Attachment Fees for Any Foreign Utility Not Participating in the Southern California Joint Pole Committee's (SCJPC) Authorized Costs Program.

Recommendation: That the City Council approves the revised pole attachment fee for any foreign utility not participating in the SCJPC's Authorized Costs program with calculations attached herewith as Exhibit A.

7. Resolution No. 2010-77, Approving the Projects for the Fiscal Year 2011-2012 Community Development Block Grant (CDBG) Program.

Recommendation: That the City Council adopt Resolution No. 2010-77 Approving the Projects for Fiscal year 2011-2012 Community Development Block Grant (CDBG) Program, and authorize staff to submit said applications to the Riverside County Economic Development Agency.

8. Resolution No. 2010-78, Authorizing a \$0.0326/ kWh Increase to the Low Income Qualified Baseline Service Rate (Also Known as the Banning Electric Alternative Rate "BEAR") and Approving the City of Banning Electric Utility Rate Schedule.

(This item was pulled from the agenda to be brought forward at a later time.)

10. Resolution No. 2010-82, Authorizing the City Manager to Direct the Preparation Of and Send Letters Of Support or Opposition Consistent With Legislative Positions Adopted by the League of California Cities.

Recommendation: That the City council adopt Resolution No. 2010-82, Authorizing the City Manager to Direct the Preparation Of and Send Letter of Support or Opposition Consistent with Legislative Positions Adopted by the League of California Cities.

Motion Hanna/Robinson that Consent Items 1, 2, 3, 4, 6, 7 and 10 be approved. Mayor Botts opened the item for public comments. There were none. **Motion carried, all in favor.**

9. Resolution No. 2010-80, Amending the Professional Services Agreement to C&S Engineers, Inc. for Design Services at the Banning Municipal Airport to Include Construction Observation and Administrative Services.

Councilmember Robinson said that we are putting a lot of money into the airport and a plan to put this back out for an FBO (Fixed Based Operator) bid and fueling station that would be 24 hours a day and some type of an advertisement in aviation magazines that this airport has been upgraded after it is completed. He would hate to see us put the money into these kinds of things and then not toot our own horn that we have got this fabulous airport.

Duane Burk, Public Work Director gave a brief staff report as contained in the agenda packet. He said these items that the Council are approving are funded primarily from the Federal

Aviation Administration (FAA) grants and they were deficiencies pointed out during the master plan study so what you are really approving are professional services to make sure that what the FAA has funding is being installed to the standards that the FAA would like to see on the airport and that this would become a much more marketable airport for general aviation.

City Manager stated that staff is planning on having a presentation about the airport and the FBO after the first of the year.

Motion Robinson/Machisic that the City Council approve Consent Item No. 9 adopting Resolution No. 2010-80, Amending the Professional Services Agreement to C&S Engineers, Inc. for Design Services at the Banning Municipal Airport to Include Construction Observation and Administrative Services, and Authorizing the Administrative Services Director to make necessary budget adjustments and appropriations from the Airport Fund to Account No. 600-5100-435.33-11 in an amount of \$40,163.70. Mayor Botts opened the item for public comments. There were none. Motion carried, all in favor.

PUBLIC HEARINGS

1. Ordinance No. 1421, Adopting the New California Fire Code (CFC 2010 Edition).
(Staff Report – Doug Clark, Riverside Co. Fire Dept. /Assistant Fire Marshal)

Mr. Clark said that the State of California has adopted the California Fire Code (CFC) for 2010 which will take place on Jan. 1, 2011. They have worked on the ordinance to remove a lot of the unusable things that the new fire code has brought into law and making it a lot more contractor friendly than it was before and also mirroring the ordinance with Riverside County Fire.

There was some Council and staff discussion regarding this ordinance.

Mayor Botts opened the public hearing to comments from the public. Seeing no one come forward Mayor Botts closed the public hearing.

Mayor Botts asked the City Clerk to read the title of Ordinance No. 1421. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8, Article II, Section 8-16 Repealing Sections 8-17 of the Banning Ordinance Code Adopting the 2010 California Fire Code In Its Entirety for 1) Regulating and Governing the Safeguard of Life and Property from Fire and Explosion Hazards (Arising from the Storage, Handling and Use of Hazardous Substances, materials and Devices) and From Conditions Hazardous to Life or Property in the Occupancy of Buildings and Premises in the City of Banning, and 2) Providing for the Issuance of Permits and the Collection of Fees Therefore.

Motion Machisic/Robinson to waive further reading of Ordinance No. 1421. Motion carried, all in favor.

Motion Hanna/Robinson that Ordinance No. 1421 pass its first reading. Motion carried, all in favor.

2. Adopting of the Latest Editions of California Building, Residential, Green Building Standards, Plumbing, Mechanical and Electrical Codes – Ordinance No. 1433
Staff Report

Mayor Botts stated that staff has asked that this item be pulled until December 14, 2010.

Mayor Botts opened the public hearing to comments from the public. Seeing no one come forward Mayor Botts continued the public hearing to the next meeting.

Motion Hanna/Franklin to continue the public hearing until December 14, 2010. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Stagecoach Days
(Staff Report – Heidi Meraz, Community Services Director)

Mrs. Meraz addressed the Council giving the staff report as contained in the agenda packet. She said the Council was given a breakdown of this year's in-kind services and the actual event costs (in-kind services) total just under \$14,000 which is much lower than it has ever been. The typical average is just over \$20,000. The committee working on this has been very diligent in trying to keep the costs to a minimum which still providing a quality event. The Stagecoach Days Committee is looking for a commitment from the City as far as the amount of in-kind services that would be provided for 2011 if the event is to continue.

Councilmember Franklin asked for clarification under the one-time capital improvements to the park are these things that are already done. Mrs. Meraz said yes and where done this past year and not specific to Stagecoach Days.

City Manager said that there was not a staff recommendation but the staff recommendation is to continue with our in-kind services in the amount of \$14,000.

Mayor Botts opened the item for public comments.

Sue Palmer addressed the Council going over the Net Financial Report for Stagecoach Days 2010 (see attached Exhibit "C"). The total income was \$53,928, total expenses were \$38,049 and balance in the bank at this time is \$15,879.

Councilmember Machisic said that he has seen eight Stagecoach Days and you and your committee have really come a long way. As he looks at the financial report he would probably like to see a financial report from all of the non-profits that we donate to.

Mrs. Palmer said she was glad he brought this up because they have not been asked by anyone to do this. Every year they come up here to the Council and want to tell the Council everything that is going on and want to give full details for all of their reports. They have no hidden agenda and want to be open and honest and she doesn't see this happening with all the other groups. In regards to in-kind services she doesn't see that happening with any other group either and why is Stagecoach Days singled out. Everyone else should have their feet to the fire also.

Councilmember Machisic said that is why he thinks this is the model that we ought to use for all of our non-profits where we donate money.

City Manager said basically we are starting to do this with all the non-profits and they also have to give complete details before they are given a check from the City and we also expect a report back.

Councilmember Machisic said that someone indicated in public comments that they were associated with a project that went from 7 a.m. to 11 p.m. on one day and would she care to comment on that in relationship to what we do.

Mrs. Palmer said if the City is interested in doing something like that we can talk to the committee and entertain whatever the City's direction might be. She said that the Committee had talked about it and they had said that they would like to go down to a three-day event instead of a four-day event. They would have the event on Friday, Saturday and Sunday and open up the park longer on Saturday and Sunday.

Councilmember Franklin asked Mrs. Palmer how many years would they like to have a commitment from the City so you know that you don't have to come back every year and asked the same question.

Mrs. Palmer said she thinks a multiply year contract was a splendid idea. They don't have a particular number and would go with whatever the Council is willing to give to them. It would certainly help because you don't want to sign any contracts until you know what is going to happen.

Motion Franklin/Hanna that the City go ahead and provide in-kind services for next year and then for another two years so that to keep with the City's two-year budget plan with an amount not to exceed \$14,000.

There was some Council discussion in regards to the police overtime for this event.

Mrs. Palmer said that she has a concern and this is something that they absolutely have no control over. They don't know how much the police are going to cost and don't know how much the street department is going to cost. They have no clue about any of this stuff and this year they have ten officers that they used and then next year what if they put twenty officers out there and then they come back to us (she said she is just using the police officers as an example) and the Council at the end and say you spent \$30,000 and now you owe us a certain

amount. She said she feels uncomfortable about that because they have no control. She said that they spent a little bit less than \$14,000 this year but if you look in 2008 it was \$18,000 and in 2007 it was \$25,000. We have no control over this so what do they do?

Mayor Pro Tem Hanna said that the Council directs the City Manager to be sure that his staff does not spend more than \$14,000 and she would like to encourage staff to continue to be creative and do the best job you can for less. That is his job and not yours.

City Manager said for some reason if it is so overly successful and there is more people going in, then of course, we will end up having to do what we have to do as far as law enforcement goes but staff will let the Council know as far as that goes. They will not get a bill. Also, he wanted to give a lot of credit to our staff. They did a wonderful job out there. Our police knowing how our budget situation is pared down the number of officers so all of them should be commended for the work that they have done and wanted to thank them all.

Mayor Botts opened the item for public comments.

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*):

Charlene Fink, 5168 Rio Bravo
David Kealy, Banning resident
Don Smith, Banning resident

City Manager said he also wanted to thank Duane Burk, Fred Mason and Chuck Thurman for making sure the park was taken care of.

Motion carried, all in favor.

2. Resolution in Support of the Southern California Association of Governments (SCAG) "Business Friendly Principles."
(Staff Report - Zai Abu Bakar, Community Development Director)

Zai gave the staff report as contained in the agenda packet and recommended adopting of this resolution.

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

Motion Hanna/Machisic that the City Council adopt Resolution No. 2010-79, In Support of "Business Friendly Principles" as Part of Southern California Association of Governments (SCAG) Development of a Southern California Economic Growth Strategy. Motion carried, all in favor.

City Manager said that Banning has always had a bad reputation and it is something that is past. He believes we have a staff that is very business-friendly and trying to be very customer service-

oriented and he thinks that as soon as our residents themselves quite talking about how unfriendly we are people will start realizing that this is the place to do business and the place to develop. As we go into the new look of Banning and the new principles that we have that everybody understands that we are the place to be.

3. Resolution No. 2010-81, Approval of the Business Retention Electric Rate Schedule and the Economic Development Rate Agreement for Business Retention of Electric Service Customer.
(Staff Report – Fred Mason, Electric Utility Director)

Mr. Mason gave the staff report as contained in the agenda packet and recommends approval of the resolution. If approved, the rate would become affective December 1, 2010.

City Manager said the Council had this on top for incentives for expansion of businesses as well as new businesses moving in at 100 kilowatts and is another business friendly principal that we have in trying to attract new business and retain our businesses.

Councilmember Machisic said when a business that uses the 100 kilowatts per month and they get a 20% reduction what is that 20% reduced down to dollars.

Mr. Mason said it depends completely on the specific customer. For instance, in looking at a Rite Aid, they might have an \$80,000 to \$100,000 dollar a month electric bill. That would give them basically a \$16,000 dollar discount per month and in the second year that would be about \$8,000 dollars.

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

Motion Robinson/Hanna that the City Council adopt Resolution No. 2010-81, Approving the Business Retention Electric Rate Schedule and the Banning Economic Development Rate Agreement for Business Retention of Electric Service Customer, attached herewith as Exhibit “A” and “B” respectively. Motion carried, all in favor.

4. Discussion on Expiration of TUMF (Transportation Uniform Mitigation Fee) Fees
(Staff Report – Duane Burk, Public Works Director)

City Manager said as you know WRCOG (Western Riverside Council of Governments) had a TUMF reduction in their fees from \$9,000 to \$4,000. In talking to our representative, Councilmember Machisic on this issue it is about ready to expire in January and in December the meeting is going to be held to determine what WRCOG is going to recommend. He wanted some guidance from the Council so staff put it on the agenda and Mr. Burk will give an oral report.

Duane Burk addressed the Council stating that the TUMF Fee will sunset on December 31, 2010 and at the last WRCOG TAC Meeting with other cities this was the topic. The reason for the oral presentation was to let the Council know what the consensus was as it relates to the other 16 cities and to give an update as to how it stimulated the economy and since we only have one

meeting this month and one in December he didn't want it to go by the wayside without the Council knowing something as it relates to letting it sunset and go back to the original adopted fee or if the Council wanted to direct the City Manager to direct staff to look at something different. At this time Mr. Burk started his power-point presentation giving a brief history of this fee (see Exhibit C). He said that the 50% reduction in fees is effective January 1, 2010 to December 31, 2010. The key thing about this as he stated in his original staff report was that we wouldn't be adding any new projects to the (TIP) Traffic Improvement Plan so if you reduce the fee and change the TIP you as a City would have to come up with the difference of the 50% and that is the risk.

Councilmember Machisic said that the Executive Committee at the first meeting in December will be asked to vote on whether to extend the one year moratorium down to 50% on the TUMF. As Mr. Burk said at one time the TUMF was \$10,000 and they did a Nexus Study and it went down to about \$9,000 and then there was a lot of pressure to stimulate building that we should reduce it county-wide for one year and that one year is coming due and they presented the item at the last meeting and we are expected to cast our vote on whether we want it extended. His understanding is that our reduction goes into the year around February or March because we passed it later than WRCOG. We have a couple of choices: 1) we can indicate to WRCOG that we think we ought to go back to the full TUMF fee; 2) extend the 50% reduction for another period of time; and 3) even if WRCOG members vote against it we have the possible consideration of waiting until our whole year is up which would be in February or March. He said he needs some direction from the Council and as Mr. Burk has pointed out there has been absolutely no building in this year so the moratorium has not affected us financially one cent but next year, we don't know.

Mayor Botts opened the item for public comments.

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, Banning resident

There was more Council and staff discussion in regards to this TUMF fee.

Motion Robinson that we don't have the money to pay the difference in the fee from the General Fund or any other fund so it seems like that is the way we've got to go is back to the 100% when it expires in February. Motion seconded by Councilmember Hanna.

City Manager said to clarify you are giving direction to Councilmember Machisic to vote no to extend the moratorium on the fees. He said if WRCOG votes no in regards to the reduction in the TUMF fee, it would just expire in February and staff would not need to come back for further direction.

Motion carried, with Mayor Botts voting no.

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

City Council

Mayor Botts –

- Said that Proposition 22 was to protect local government from the State raid and they took hundreds of thousands of dollar last year and we learned last night that they will take \$350,000 next year out of Redevelopment money but Prop 22 will protect us after next year and it won by some 60% of the vote.

Councilmember Robinson –

- He attended the Transportation NOW Meeting on Nov. 4th and went to Riverside Transit Agency meeting before that and he shared the information that on the “Go Pass System” they expected to have 4,000 riders from the schools in the area and they are already at 13,000. It is a very important feature for the kids going to college in Riverside County and he would hope that we continue to support that.

Councilmember Machisic –

- He said that the Regional Conservation Authority now have about 42,000 acres that they have purchased. Doug Wheeler who is an RCA consultant in Washington is working on a loan guarantee for a federal grant to buy land and the reason they want to buy it now is because land prices are so cheap and we have the support of Senator Feinstein and Representative Colbert and they indicated that they would carry legislation for us but would do it only after the election. According to Mr. Wheeler this is the largest program of it kind in America where we are putting acreage away and our ultimate goal is to get 150,000 acres reserved and it is going to be coupled with about 350,000 acres that is owned by the Bureau of Land Management. So we will have about 500,000 acres in Western Riverside County which will be open spaces protecting species as well as open land.
- Dave Wellmon gave a report last Monday and he was not optimistic about the State budget and he indicated that there would probably be a deficit almost immediately and the question is how much will it be.

Councilmember Franklin –

- Thursday is Veterans Day and in one of the meeting that she attended today was that they were encouraged by Supervisor Ashley’s office to try to attend at least one activity on that day and there will be several in the city.

Report by City Attorney – None at this time.

Report by City Manager

- The Inland Behavioral Health Services building is going through plan check currently and that is the one on east Ramsey.
- The application by Pearlman and Frost for the San Geronio Inn site came in today.

ITEMS FOR FUTURE AGENDAS

New Items –

Mayor Pro Tem Hanna said that she would like the issue of code enforcement brought up as a general issue. When she was first on the Council and most recently in 2003-04 the Council took a very directive approach and from her perspective she thinks that we were getting rid of some Third-World Country type of pockets in our city and the City did a tremendous job of cleaning it up. Then we had a focus along Ramsey Street a proactive kind of approach and Lincoln Street to some degree. But for the rest of code enforcement it is kind of reactionary and she is sure that every single Council person has had this experience where some resident of Banning gets a code enforcement notice and they are outraged because they can literally take 300 photos or an hour or two of videos of similar areas in town with the same problem and why should they be picked on. Well they are picked on because someone reported them. She would really like the Council to consider with staff's input a different approach if it is possible. Rather than be reactionary be proactive and establish certain levels of enforcement citywide and just go slowly, slowly in making this town a better town.

Councilmember Robinson said that in our hearing coming up in the Redevelopment Agency meeting he thinks there is a look at code enforcement and a reduction in code enforcement that we wouldn't have the funding for that.

City Manager said that it is in the Redevelopment Agency and he thinks that it is being funded through 2014 but at that time the amount of monies would end up putting code enforcement back into the General Fund and hopefully at that point in time, if not before, we could get our General Fund into a certain spot so that we can have code enforcement in the General Fund where it should be.

There was Council consensus to have this item on code enforcement come back to the Council at some point to discuss the approach of code enforcement.

Councilmember Franklin said in regards to yard signs that are placed on telephone poles maybe that is something we could include also because people continue to do it and it is not only unsightly but also a danger to our staff that work on those poles. Maybe we could talk about having a fine because the addresses are on the signs.

There was Council consensus to have staff look at this issue.

Pending Items –

1. Schedule Meetings with Our State and County Elected Officials
2. Schedule Meeting with Banning Library Board
3. Update on Economic Development Plan
4. Update on Golf Carts
5. Review of Fees and Rates

Future Meetings –

Mayor Botts said that there will be a Special Meeting (Swearing in of City Council Members and Reorganization) on December 7, 2010 at 5:00 p.m.

Meeting recessed at 7:10 p.m. and reconvened at 8:33 p.m. going back into closed session and returned to regular session at 8:48 p.m.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 8:49 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.

Received 11-9-10
Cancel mtg.

SHEILA HUERTA FROM SORRANO DEL VISTA, AND I AM A MEMBER OF THE
CONCERNED CITIZENS COMMITTEE FOR A

BETTER BANNING.

THE FACT IS THAT DEBBIE FRANKLIN HAS WON RE-ELECTION BY A LARGE
MARGIN....THE PEOPLE HAVE SPOKEN AND

DEBBIE SPEAKS FOR THE PEOPLE.

MY POSITION IS TO URGE YOU TO NOMINATE DEBBIE AS MAYOR OF BANNING ,
ABIDING BY THE PEOPLE'S

CHOICE.

I THANK YOU IN ADVANCE FOR YOUR FAIRNESS.

Sheila H. Huerta

11/7/2010

Received 11-9-10
Council mtg.

To: Banning City Council Members

From: Dorothy Familetti-McLean

November 9, 2010

First of all, congratulations to Mayor Botts and Councilwoman Franklin for being re-elected to the city council.

The election results showed that Councilwoman Franklin received *over* 25% of the vote. I am here to ask all the council members to listen to the voice of the residents of Banning and support Debbie Franklin unanimously for mayor when it comes time to vote.

I would like to remind the council and the public that John Machisic was mayor several years ago, Bob Botts has been mayor for the last two years, and Barbara Hanna was mayor in Banning when her name was Barbara Sheldon. Now it time for Debbie Franklin to be mayor.

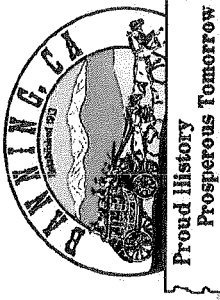
A vote for Councilwoman Franklin will show the public that you all acknowledge the voters' support for Franklin and want to join them in support of her.

This will be an extremely positive action on behalf of the council and will demonstrate to the public that you want to move forward in a united way in doing what is best for the city. Councilwoman Franklin is dedicated to the residents of Banning, and she has earned the privilege of being mayor. I urge you all to vote for Councilwoman Franklin to represent Banning as mayor.

Do the right thing!

Sincerely,

Dorothy Familetti-McLean



City of Banning Transportation Uniform Mitigation Fee (TUMF) Program

**UPDATE ON TEMPORARY TUMF REDUCTION
NOVEMBER 9, 2010**

Background

- The City is a Member Agency of the Western Riverside Council of Governments (WRCOG), a joint powers agency comprised of the County of Riverside and 16 cities located in Western Riverside County.
- WRCOG Member Agencies developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials due to new development in Western Riverside County could be partially made up by TUMF.
- As a Member Agency of WRCOG and as a TUMF Participating Jurisdiction, the City participated in the preparation of the “Western Riverside County Transportation Uniform Fee Nexus Study” (“2002 Nexus Study”).

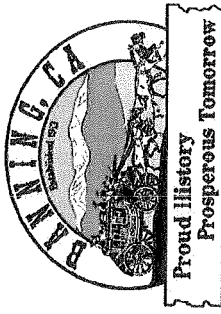
Background Cont'd

- On March 5, 2003, based on the 2002 Nexus Study, the City adopted and implemented Ordinance No. 1291 authorizing the City's participation in the TUMF program.
- On January 11, 2005, the City Council amended Ordinance 1291 by adopting Ordinance 1322 which increased the fees in order to keep pace with increased road construction costs.
- On February 6, 2006, the WRCOG Executive Committee adopted the "Western Riverside Transportation Fee Nexus Study 2005 Update" which resulted in the City's adoption of Ordinance 1344 amending and superseding the previous ordinances.

Background Cont'd

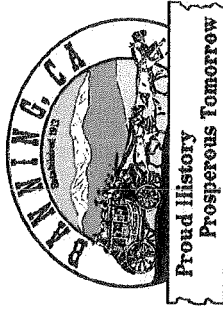
- Pursuant to the Mitigation Fee Act WRCOG prepared a new nexus study ("2009 Nexus Study").
- The 2009 Nexus Study includes the Addendum discussing the need for a temporary reduction in fees.
- On September 14, 2009 and October 5, 2009, the WRCOG Executive Committee recommended TUMF Participating Jurisdictions amend existing ordinances to reflect changes.

Temporary Fee Reduction



- On November 10, 2009, City Council adopted Ordinance No. 1412 Amending and Updating the City's TUMF Ordinance.
- On November 9, 2009, City Council adopted Resolution No. 2009-90, establishing a revised and updated fees schedule applicable under Western Riverside TUMF program and adopting a temporary TUMF fee reduction.
- The 50% Reduction in Fees is effective January 1, 2010 – December 31, 2010.
- New projects added to the TIP or construction existing current projects, during the 50% reduction one year period, will be 50% funded by the TUMF program and 50% funded by alternative funding sources.

Statistical Information - Permits Issued

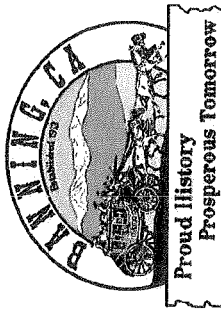


2010 Western Riverside County Single Family Permits

	First Quarter			Second Quarter			Third Quarter			Fourth Quarter			Total
	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	
Banning	0	0	0	0	0	0	0	0	0				0
Beaumont	15	85	89	20	17	31	45	19					301
Calimesa	0	0	0	0	0	0	0	0					0
Canyon Lake	0	0	0	0	0	0	0	0					0
Corona	0	0	3	0	3	3	3	19					31
Hemet	3	22	9	12	1	30	4	0					81
Lake Elsinore	38	17	10	0	41	30	12	27					175
Menifee	22	25	43	15	39	33	36	38					251
Moreno Valley	7	7	0	0	0	20	11	0					45
Murrieta	0	5	0	0	0	0	5	12					23
Norco	2	0	0	0	0	0	0	0					2
Perris	26	13	26	22	20	71	17	8					203
Riverside	2	11	1	13	3	7	0	0					37
San Jacinto	8	3	8	2	5	6	0	0					32
Temecula	35	28	41	26	6	25	38	16					218
Unincorporated County (West)*	108	103	89	182	78	117	165	151					993
Wildomar	0	10	17	0	12	11	0	0					50
Total	266	330	316	292	227	385	336	290	0	0	0	0	2442

*90% of all Unincorporated Western Riverside County (per CIRB)

Statistical Information - Homes Built



* 2010 Western Riverside County Single Family Permits

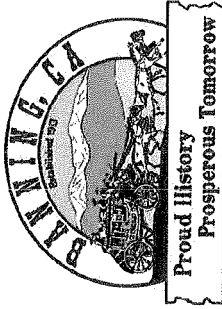
	First Quarter			Second Quarter			Third Quarter			Fourth Quarter			Total
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sept	Oct	Nov	Dec	
Banning	0	0	0	0	0	0	0	0	0				0
Beaumont	0	0	0	0	0	0	0	0	0				0
Calimesa	0	0	0	0	0	0	0	0	0				0
Canyon Lake	0	0	0	0	0	0	0	0	0				0
Corona	1	0	8	2	1	3	1	19					35
Hemet	3	20	4	7	7	23	0	2					66
Lake Elsinore	2	44	11	0	45	2	33	52					189
Menifee	35	12	33	22	0	37	31	17					187
Moreno Valley	0	0	10	2	8	1	10	7					38
Murrieta	0	0	0	0	0	0	5	8					11
Norco	1	0	0	0	0	0	0	0					1
Perris	16	19	1	8	8	17	17	8					94
Riverside	0	0	0	1	0	7	1	0					9
San Jacinto	2	4	3	11	7	6	0	0					33
Temecula	6	16	8	19	0	18	19	8					94
Unincorporated County (West)*	54	86	89	87	112	87	81	54					650
Wildomar	0	0	0	0	0	0	0	0					0
Total	120	201	167	159	188	201	198	173	0	0	0	0	1407

*Remittance Reports reported to WIRCOG from the local Jurisdictions

45

7

Statistical Information



Pass Zone 6 Month Loss with 50% Fee Reduction

50% Rate	6-Mo Total	6-Mo Total	6-Mo Total
Jurisdictions	50% Rate Paid	Full Rate	Total Difference in Fees
Calimesa			
RES	\$0.00	\$0.00	\$0.00
NON-RES			
Banning			
RES	\$0.00	\$0.00	\$0.00
NON-RES			
County			
RES	\$22,185.00	\$44,365.00	\$22,180.00
NON-RES			
Totals	\$22,185.00	\$44,365.00	\$22,180.00

Total Owed by
Jurisdiction

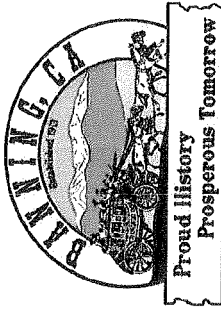
\$22,180.00

Pass Zone 6 Month Loss with 50% fee reduction

\$22,180.00

46

Review of Reduction



- 9 out of 16 cities adopted the 50 % reduction in fees with the December 31, 2010 expiration date.
- The WRCOG Administration and Finance Committee requested staff to examine information to obtain results on how the reduction stimulated the economy.
- On September 9, 2010 a subcommittee was formed to research the results.
- The committee will be reviewing the short-term financial impacts on the program including what impact the temporary fee reduction had on jurisdictions and impacts of a continuation of the fee reduction to the long-term viability of the program.

2nd Read.

ORDINANCE NO. 1421

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AMENDING CHAPTER 8, ARTICLE II, SECTION 8-16 REPEALING SECTIONS 8-17 OF THE BANNING ORDINANCE CODE ADOPTING THE 2010 CALIFORNIA FIRE CODE IN ITS ENTIRETY FOR 1) REGULATING AND GOVERNING THE SAFEGUARD OF LIFE AND PROPERTY FROM FIRE AND EXPLOSION HAZARDS [ARISING FROM THE STORAGE, HANDLING AND USE OF HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES] AND FROM CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF BUILDINGS AND PREMISES IN THE CITY OF BANNING, AND 2) PROVIDING FOR THE ISSUANCE OF PERMITS AND THE COLLECTION OF FEES THEREFOR.

WHEREAS, the California Fire Code contains regulations consistent with nationally recognized accepted practices for safeguarding, to a reasonable degree, life and property from the hazards of (i) fire and explosion, (ii) dangerous conditions arising from the storage, handling and use of hazardous materials and devices, and (iii) hazardous conditions in the use or occupancy of buildings or premises; and

WHEREAS, the City of Banning has historically adopted and followed the most current standards set forth in California Fire Code (the "Fire Code"); and

WHEREAS, the California Fire Code was recently updated to a 2010 Edition

NOW THEREFORE BE IT HEREBY ORDAINED, that an Ordinance of the City of Banning adopting the 2010 Edition of the California Fire Code in its entirety to be referred to as the Fire Code of the City of Banning, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Banning providing for the issuance of permits and collection of fees. The above-referenced codes are adopted in their entirety as amended herein below.

Section 1. REPEALS.

- (1) Banning Fire Services Ordinance No. 1380 is hereby repealed in its entirety and fully replaced by this ordinance, as amended

Section 2. FINDINGS AND ADOPTION OF THE INTERNATIONAL AND STATE CODES.

A. FINDINGS. The City Council of the City of Banning hereby finds as follows:

- (1) That the International Code Council is a private organization which has been in existence for at least three (3) years.
- (2) That California Fire Code, California Building Code, California Mechanical Code, California Plumbing Code, and California Electrical Code 2010

Edition, and the California Fire Code Standards published by International Code Council, are nationally recognized compilations of proposed rules, regulations, and standards of said organization the California Fire Code, 2010 Edition, and the California Fire Code Standards published by International Code Council, are nationally recognized compilations of proposed rules, regulations, and standards of said organization.

- (3) That the International Fire Code has been printed and published as a code in book form within the meaning of Section 50022.2 et seq., of the California Government Code and said code has been adopted and amended by the California Building Standards Commission into the California Code of Regulations (CCR) as Title 24 Part 9, Title 24 Part 2 , Title 24 Part 3, Title 24 Part 5, and Title 24 Part 3 titled the California Fire Code, California Building Code, California Mechanical Code, California Plumbing Code, and California Electrical Code 2010 Edition.
- (4) That one (1) copy of each of the following codes has been certified by the Clerk of the Board of Supervisors to be true copy, and has been filed for use and examination by the public in the office of the Clerk of the board of Supervisors prior to the adoption of this ordinance: the California Fire Code (and Standards).
- (5) That the sections of the California Fire Code and California Fire Code Standards may be referred to by the same number used in said published compilation preceded by the words "City of Banning Fire Code Section" or "International Fire Code Section" or "Fire Code Section."
- (6) That added protection from new development is necessary to supplement normal Fire Department response resources available in areas impacted by new development to provide immediate fire protection for life and safety of single family residential and multiple occupancy occupants during fire occurrence. The additional requirements and standards herein, including, but not limited to, enhanced on-site protection of property and occupants, are necessary to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Banning based upon the following:
 - (a) Climatic Conditions: Generally, the City of Banning has an arid climate. Annual rainfall averages about 15 inches. Hot, strong, dry Santa Ana winds are common to areas within the City. These winds constitute a contributing factor that causes small fires originating in high density development presently being constructed in the City of Banning that spread quickly and create the need for an increased level of fire protection. This added protection, including, but not limited to, on-site protection, will supplement normal Fire Department response available in new development,

and provide immediate fire protection for life and safety of multiple occupancy occupants during fire occurrence;

(b) Geologic and Topographic:

1. The City of Banning includes mountainous, brush covered wildlands, and agricultural lands. Elevation ranges from twenty-two hundred (2200) feet above sea level to over six thousand (6000) feet high. Topography extends from flat to 25% slope for habitable land. Travel distances in rural and wildland areas often place Fire Department response times to emergencies at risk. This condition makes the need for enhanced on-site protection for property occupants necessary.
2. Traffic and circulation in urban areas are an impetus to extreme travel distances in rural and wild land areas, often increasing Fire Department response time to emergencies, thus increasing risk to life and property, thus creating a need for enhanced on-site protection.
3. There s a major earthquake fault that bisects the City, the San Andreas. In addition, there are numerous minor faults. There are numerous areas within the City that are subject to earthquakes, landslides, wind erosion, blown sand, flooding, and wildfires. Placement of multiple occupancy buildings, location of arterial roads, and Fire Department staffing constraints due to revenue limiting State legislation, have made it difficult for the Fire Department to locate additional fire stations and provide staffing sufficient to concentrate fire companies and personnel to control fires in single and multi-story retail, commercial and industrial buildings, making enhanced built-in protection necessary.

B. ADOPTION OF INTERNATIONAL AND STATE FIRE CODES.

The City Council of the City of Banning hereby adopts as amended, revised and supplemented: 1) the California Fire Code edition 2010 California Code of Regulations Title 24 Part 9, and Part 2 in its entirety. The provisions of the above referenced codes, standards and appendices shall apply to all the unincorporated areas of the City of Banning, and shall apply to incorporated areas of City of Banning through ratification.

The provisions of the above-referenced codes, chapters, standards, and appendices adopted shall include any amendments, revisions, and supplements made subsequent to the adoption of this ordinance.

Section 3. AMENDMENTS TO THE CALIFORNIA FIRE

The Codes, Chapters, Standards and Appendices are amended as specifically set forth in the following Chapters herein:

CHAPTER 1 APPENDIX ADMINISTRATION PERMITS – page x

CHAPTER 2 DEFINITIONS – page x

CHAPTER 4 EMERGENCY PLANNING AND PARPARDNESS – x

CHAPTER 5 FIRE SERVICE FEATURES – page x

CHAPTER 6 BUILDING SERVICES AND SYSTEMS – page x

CHAPTER 9 FIRE PROTECTION SYSTEM – page x

CHAPTER 22 MOTOR FUEL DISPENSING FACILITIES– page x

CHAPTER 23 HIGH PILED COMBUSTIBLE STORAGE – page x

CHAPTER 25 TIRE REBUILDING AND TIRE STORAGE – page x

CHAPTER 35 FLAMMABLE GASES – page x

CHAPTER 38 LIQUIDIFIED PETROLEUM GASES – page x

CHAPTER 49 REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS

APPENDICIED – page x

PENALTIES – page x

CHAPTER 1 ADMINISTRATION PERMITS.

Section 101.4 of the California Fire Code is hereby amended to read as follows:

Section 101.4. SEVERABILITY.

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

Section 103.4 of the California Fire Code is hereby amended to read as follows:

Section 103.4. LIABILITY.

Any liability against the City of Banning or any officer or employee shall be as provided for in California Government Code and case law.

Fire suppression, investigation and rescue or emergency medical costs are recoverable in accordance with California Health and Safety Code Sections 13009 and 13009.1.

Any person who negligently or intentionally, or in violation of law, causes an emergency response, including but not limited to, a traffic accident or spill of toxic or flammable fluids or chemicals, is liable for the costs of securing such emergency, including those costs set out in Government Code Section 53150, et seq. Any expense incurred by the fire

department for securing such an emergency situation shall constitute a debt of such person and shall be collectable by the City of Banning or political subdivision thereof if incorporated, in the same manner as in the case of an obligation under contract, expressed or implied.

Section 104.1 of the California Fire Code is hereby amended at the end of existing paragraph to add the following:

Section 104.1. AUTHORITY OF THE FIRE CHIEF AND THE FIRE DEPARTMENT.

The chief is authorized to administer, interpret and enforce the California Fire Code. Under the chief's direction, the Riverside County Fire Department is authorized to enforce all ordinances of the City of Banning pertaining to:

- (1) The prevention of fires.
- (2) The suppression or extinguishment of dangerous or hazardous fires.
- (3) The storage, use and handling of hazardous materials.
- (4) The installation and maintenance of automatic, manual and other private fire alarm systems and fire extinguishing equipment.
- (5) The maintenance and regulation of fire escapes.
- (6) The maintenance of fire protection and the elimination of fire hazards on land and in buildings, structures and other property, including those under construction.
- (7) The maintenance of means of egress.
- (8) The investigation of the cause, origin and circumstance of fire and unauthorized releases of hazardous materials.

Section 104.2.1 of the California Fire Code is hereby added to read as follows:

Section 104.2.1. INSPECTION AND PERMIT FEES.

A fee shall be charged for each inspection and permit issued. The fee schedule shall be established by the City Council and reviewed annually.

Section 104.3 of the California Fire Code is hereby amended to add as follows:

Section 104.3. FIRE DEPARTMENT PERSONNEL AND PEACE OFFICERS.

- (1) The chief and his or her designees are authorized and directed to enforce all

applicable State fire laws and the provisions of this code and he shall perform such related duties as may be fixed by the City Council, and for such purposes, he or she shall have the power of a peace officer.

- (2) The Chief is authorized to administer, interpret and enforce this code. Under the Chief's direction, the fire department is authorized to enforce all ordinances of jurisdiction pertaining to:
 - a) The prevention of fires
 - b) The suppression or extinguishment of dangerous materials
 - c) The storage, use and handling of hazardous materials
 - d) The installation and maintenance of automatic, manual and other private fire alarm systems and fire extinguishing equipment
 - e) The maintenance and regulation of fire escapes
 - f) The maintenance of fire protection and elimination of fire hazards on land and in buildings, structures and other property, including those under construction.
 - g) The maintenance of means of egress
 - h) The investigation of the cause, origin and circumstance of fire and unauthorized release of hazardous materials.
- (3) The following persons are hereby authorized to interpret and enforce the provisions of this Code and to make arrests and issue citations as authorized by law:
 1. The Unit Chief and peace officers and public officers of the California Department of Forestry and Fire Protection.
 2. The Fire Chief, Peace Officers and Public Officers of the Riverside County Fire Department.
 3. The Riverside County Sheriff and any Deputy Sheriff.
 4. The Police Chief and any Police Officer of any city served by the County Fire Department.
 5. Officers of the California Highway Patrol.
 6. Peace Officers of the California Department of Parks and Recreation.
 7. The law enforcement officers of the Federal Bureau of Land Management.

Section 104.6.5 of the California Fire Code is hereby amended to read as follows:

Section 104.6.5. Records and Reports

Requests for copies of public and legal documents, photographs, etc., relating to department activities are available as authorized by law through the Fire Department's Custodian of Records. All document requests shall be in writing, accompanied by a check made payable to the Riverside County Fire Department, in the amount(s) set forth in Section 104.2.1

Section 105.5.6.30. of the California Fire Code is hereby amended to read as follows:

105.6.30 an operational permit

Shall be required for the kindling or maintaining of an open fire or a fire on any public street, alley, road or other public or private ground. In instructions and stipulations of the permit shall be adhered to.

Exception: Recreational fires

Section 109.4. AUTHORITY OF THE FIRE CHIEF.

The chief is hereby given the authority to officially determine and publicly announce the closure of any hazardous fire area or portion thereof. However, any closure by the chief for a period of more than fifteen (15) days must be approved by the City of Banning Counsel within fifteen (15) days of the chief's original order of closure. No person shall go in or be upon any hazardous fire area, except upon the public roadways and inhabited areas therein, during such time as the area is closed to entry. This section shall not prohibit residents or owners of private property within any closure area, or their invitees, from going in or being upon their lands. This section does not apply to any entry, in the course of duty by a peace officer or any duly authorized public officer, member of any fire department, Riverside County Fire Department or member of the U.S. Forest Service or California Department of Forestry and Fire Protection nor does this section apply to National Forest Land in any respect. During periods of closure, the chief shall erect and maintain at all entrances to the closed area sufficient signs giving adequate notice of closure.

CHAPTER 2 DEFINITIONS.

Section 202 of the California Fire Code is hereby amended to add the following to the list of definitions:

FIRE CHIEF or CHIEF shall mean the Fire Chief of the County of Riverside or his authorized representative.

HAZARDOUS FIRE AREA is land other than State designated fire hazard severity zone of FHSZ or local designation of FHSZ which is covered with grass, grain, brush, or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon such land would present an abnormally difficult job of suppression or would result in great and unusual damage through fire or resulting erosion.

CHAPTER 3 GENERAL PRECAUTIONS AGAINST FIRE is adopted in its entirety with out amendments or deletions.

CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS.

Section 404 of the California Fire Code is hereby amended to add:

Section 404.2. #14 Fire Safety and Evacuation Plans.

An approved fire safety and evacuation plan shall be prepared and maintained for the following occupancies and buildings:

15. Windowless buildings having an occupant load of 15 or more.

CHAPTER 5 FIRE SERVICE FEATURE.

Section 501.2 of the California Fire Code is hereby amended to add:

501.2 Timing of Installation

Fire apparatus access roads and a permanent water supply for fire protection shall be installed and made serviceable prior to and during the time of construction. Temporary street signs shall be installed at each intersection when construction of new roadways allows passage by vehicles in accordance with section 505.2 herein below.

Exception: When alternative methods are approved by the Chief.

Section 503.1 of the California Fire Code is hereby amended to add:

503.1 Where Required.

Fire apparatus access roads shall be provided and maintained in accordance with Section 503.1.1 through 503.1.3 set forth hereinbelow. The Riverside County Fire Department shall be the only authority authorized to designate fire lanes.

Section 503.3 of the California Fire Code is hereby amended to add:

503.2 Fire apparatus access roads

Where required, shall be identified by curbs painted red on both the top and face along the entire length of the fire apparatus access road. Where no curb exists or a rolled curb is installed, a 6 inch wide red strip or approved posted signs applied the full length of the fire apparatus access road shall be installed. (See Riverside County Fire Department standard that is incorporated herein by reference).

Exception: On school grounds this requirement shall be implemented as approved by the Chief.

503.4 Obstructions of Fire Apparatus access roads.

When other obstructions are installed that cause the distances from an approved fire department access road to exceed the maximum distance allowed in Section 503 herein, the Fire Chief is authorized to require additional fire protection as specified in Section 901.4.3 herein.

Section 503.7 of the California Fire Code is hereby added:

503.7 Loading areas and passage drop-off areas.

On private properties, where fire apparatus access roads are utilized for loading or unloading or are utilized for passenger drop-off or pick-up, an additional eight (8) feet of width shall be added to the fire apparatus access road. This width is in addition to the minimum required access road width.

Section 504.1 Required access:

504.1 shall be further amended by adding the following paragraph at the end of the first paragraph:

“Finished grade to be flat and accessible on all sides of the building where ground ladder access is the only means to reach the highest point on the building from the exterior. Distance from building for finish grade shall be flat as required by the Fire Chief. Obstructions will not be placed as to interfere with ground ladder placement.”

Section 505.4 of the California Fire Code is hereby amended to add:

Sections 510.4 of the California Fire Code are hereby added:

510.4 Radio Coverage.

Except as otherwise provided in this article, no person shall erect, construct or modify any building or structure or any part thereof, or cause the same to be done which fails to support adequate voice and/or data radio coverage for any emergency response personnel within the structure or the area immediately surrounding the structure or building. A final inspection shall not be approved for any building or structure that fails to comply with this requirement.

5110.4.2 When required by the Fire Chief, approved radios, repeaters, relays, signal amplifiers, antennas, coaxial cables, passive signal conductors, conduits and access, secondary power source and other equipment as determined shall be provided within buildings to ensure emergency response personnel radio and data communications to and from surrounding buildings and structures and emergency communications centers (see Fire Department Standards).

Section 510.5 of the California Fire Code is hereby added as follows:

513.5 Scope

510.5 The provisions of this article shall apply to any new residential or commercial buildings or structures or any commercial tenant improvements that affect more than twenty five percent (25%) of the square footage of the existing building or structure, that are determined to be within Riverside County Fire Department established marginal or non-existent radio coverage areas. Any construction as defined above will be subject to review by the Riverside County Fire Department Planning and/or Communications Division and the developer and/or building owner may be responsible for improving Fire Department communications in the affected area. Any construction performed in these areas will be subject to the addition of new communications facilities, if needed, and/or the addition of public safety radio system enhancement equipment in the building, to enhance radio coverage to and from existing communications facilities (see Fire Department Standards).

Section 510.5.1 of the California Fire Code is hereby amended to add:

510.5.1 At the time the building permit is issued, the Riverside County Fire Department's Communication and Technology units, in cooperation with appropriate fire and law enforcement departments, shall determine the frequency range or ranges that must be supported. For the purpose of this section, adequate radio coverage shall constitute a successful communications test between the building and the communications centers for all appropriate emergency service providers for the building.

Section 511 of the California Fire Code is hereby amended to add new section:

511 Fire Department Breathing Apparatus Air Systems.

All buildings having floors used for human occupancy located five (5) stories or more above or below the lowest level of Fire Department vehicular access shall be equipped with an approved breathing apparatus air refilling system. Such system shall provide an adequate pressurized air supply through a permanent piping system for the replenishment of self contained breathing apparatus carried by fire suppression, rescue and other personnel in the performance of their duties. Location and specification of access stations, and the installation of such breathing apparatus air refilling system shall be made in accordance with the requirements and standards of the Fire Chief (see Fire Department Standards).

CHAPTER 6 BUILDING SERVICES AND SYSTEMS.

Section 606.8 of the California Fire Code is hereby amended as follows:

606.8 Machinery rooms that use refrigerant shall have a detector with audible and visual alarms. The alarm signaling devices shall comply with the audible and visual requirements from NFPA 72. The detector, or a sampling tube that draws air into the detector, shall be located in an area where a refrigerant leak may be expected to concentrate. The alarm shall be actuated at a value not greater than the corresponding TLV-TWA values shown in the

California Mechanical Code for the refrigerant classification. Detectors and alarms shall be placed in one or more locations to insure maximum notification to all occupants.

Section 609.2 of the California Fire Code is hereby amended to add:

Added 609.2

Exception: Fire Stations where the use of the commercial appliance is by station personnel and not for the intention of a commercial cooking facility as defined by the California Mechanical Code.

CHAPTER 7 FIRE –RESISTIVE-RATED CONSTRUCTION shall be adopted in its entirety without amendments or deletions.

CHAPTER 8 INTERIOR FINISH, DECORATIVE MATERIALS AND FURNISHINGS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 9 FIRE PROTECTION SYSTEMS

Section 902.1 of the California Fire Code is hereby amended to add:

902.1 Common Area.

For the purposes of ADA compliance for visual notification, a common area shall be a room, space, or element made available for use of a restricted group of people (example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants). Common areas shall include restrooms, hallways, lobbies, meeting and conference rooms, classrooms, cafeterias, filing and photocopy rooms, employee break rooms, open office areas exceeding 300 square feet, examination and treatment rooms, and similar areas that are not used solely as employee work areas. Mechanical, electrical and telephone closets, janitor closets, and similar non-occupied spaces that are not common areas or assigned work areas are not required to have visual alarm devices.

Section 903.2 of the California Fire Code is hereby amended as follows: All occupancies

In all new buildings and structures which are 3,600 sqft or greater an approved automatic sprinkler system shall be provided, regardless of occupancy classification. Where the code is requiring a more restrictive requirement, the more restrictive requirement shall take precedence. All exceptions for section 903 beginning at 903.2.1 and ending at 903.2.17 shall not be allowed except for the following sections: CFC 903.2.3.1.1, CFC 903.2.6 and 903.2.11.4.

Section 903.2.11.1.1 of the California Fire Code is hereby amended as follows:

Section 903.2.11.11.1 Opening dimensions and access

Opening dimension and access. Openings shall have a minimum dimension of not less than (delete 30) 36 inches (762 mm). Such openings shall be accessible to the fire department from the exterior and shall not be obstructed in a manner that the fire fighter or rescue cannot be accomplished from the exterior.

Section 908.3.1 of the California Fire Code and California Building Code is hereby added as follows:

908.3.1 Alarms.

The gas detection system shall initiate a local alarm and shall be monitored per NFPA 72. and transmit a signal to a constantly attended control station when a short-term hazard condition is detected. The alarm shall be both visible and audible and shall provide warning both inside and outside the area where gas is detected. The audible alarm shall be distinct from all other alarms.

Section 908.3.2 of the California Fire Code and California Building Code is hereby added as follows:

908.3.2 Shutoff of gas supply.

The gas detection system shall automatically close the shutoff valve at the source on gas supply piping and tubing related to the system being monitored for whichever gas is detected.

Exception: Automatic shutdown is not required for reactors utilized for the production of highly toxic or toxic compressed gases where such reactors are:

1. Operated at pressures less than 15 pounds per square inch gauge (psig)
(103.4 kPa)
2. Constantly attended.
3. Provided with readily accessible emergency shut-off valves.

Section 908.3.3 of the California Fire Code and California Building Code is hereby added as follows:

908.3.3 Valve closure. The automatic closure of shutoff valves shall be in accordance with the following:

1. When the gas-detection sampling point initiates the gas detection system alarm is within a gas cabinet exhausted enclosure, the shutoff valve in the gas cabinet or exhausted enclosure for the specific gas detected shall automatically close.
2. Where the gas-detection sampling point is initialing the gas detection system alarm is within a gas room and compressed gas containers are not in gas cabinets or exhausted enclosures, the shutoff valves on all gas lines for the specific gas detected shall automatically close.
3. Where the gas-detection sampling point initiating the gas detection system alarm is within a piping distribution manifold enclosure, the shutoff valve for the compressed container of specific gas detected supplying the manifold shall automatically close.

Exception: When the gas-detection sampling point initiating the gas detection system alarm is at a use location or within a gas valve enclosure of a branch line down-stream of a piping distribution manifold, the shutoff valve in the gas valve enclosure for the branch line located in the piping distribution manifold enclosure shall automatically close.

.Section 912.2.1 of the California Fire Code is hereby added:

912.2.1 Visible location.

Fire department connections shall be located on the front access side of buildings, fully visible and recognizable from the street or nearest point of Fire Department vehicle access or as otherwise approved by the Fire Chief. The location of Fire Department connections shall be approved and installed as follows:

1. Within 50 feet of an approved roadway or driveway and arranged so that hose lines can be readily attached to the inlets without interference from any nearby objects including buildings, fences, posts, plantings, or other Fire Department connections and/or otherwise approved by the Fire Chief.
2. Within 200 feet of an approved hydrant.
3. So that the inlet height shall not be less than 18 inches or more than 48 inches above grade.
4. Guard posts or other approved means may be required to protect Fire Department inlet connections from vehicular damage.

5. Fire Department connection shall not be allowed in the rear of any building.

Section 914.5 of the California Fire Code and California Building Code is hereby amended as follows:

914.5 Underground (insert “and Windowless buildings.”).

Underground and Windowless buildings shall comply with sections 914.5.1 through 914.5.6 herein, each section relating to Underground buildings shall also include Windowless buildings.

CHAPTER 10 MEANS OF EGRESS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 11 AVIATION FACILITIES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 12 DRY CLEANING shall be adopted in its entirety with out amendments or deletions.

CHAPTER 13 COMBUSTIBLE DUST PRODUCING OPERATIONS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 14 FIRE SAFETY DURING CONSTRUCTION AND DEMOLITION shall be adopted in its entirety with out amendments or deletions.

CHAPTER 15 FLAMMABLE FINISHES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 16 FRUIT AND CROP RIPENING shall be adopted in its entirety with out amendments or deletions.

CHAPTER 17 FUMIGATION AND THERMAL INSECTICIDAL FOGGING shall be adopted in its entirety with out amendments or deletions.

CHAPTER 18 SEMICONDUCTOR FABRICATION FACILITIES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 19 LUMBER YARDS AND WOOD WORKING FACILITIES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 20 MANUFACTURER OF ORGANIC COATINGS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 21 INDUSTRIAL OVENS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 22 MOTOR FUEL DISPENSING FACILITIES AND REPAIR GARAGES

2202.1 Definition of Motor Vehicle.

“Motor Vehicle” includes, but is not limited to, a vehicle, machine, tractor, trailer or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. The term “motor vehicle” also includes freight containers or cargo tank used, or intended for use, in connection with motor vehicles. (As per 49 CFR Pt. 171.8 (October 2002).)

Motor Vehicle, Unattended is defined as a motor vehicle where the driver cannot see the motor vehicle or hear noises in or near the motor vehicle.

Exceptions:

- (1) Necessary absence in connection with loading and unloading the motor vehicle.
- (2) Stops for meals during the day or night, if the point of parking is well lighted.
- (3) When in case of accident or emergency, the driver must leave to obtain assistance.

CHAPTER 23 HIGH PILED COMBUSTIBLE STORAGE

Section 2301.3 of the California Fire Code is hereby amended as follows:

2301.3 Construction documents:

(Add to item #7): location and classification of commodities in accordance with Section 2303 *and NFPA 13*.

Section 2304.2 of the California Fire Code is added with new paragraph:

2304.2.1 Minimum Requirements for Client Leased or Occupant Owned Warehouses.

Designs of an automatic sprinkler system for client leased or occupant owned buildings containing high pile storage shall be based on the requirements of NFPA 13. The responsible Fire Protection Engineer shall perform a survey of the building to determine commodity classification, storage configuration, building height and other information related to the

CHAPTER 23 HIGH PILED COMBUSTIBLE STORAGE

Section 2301.3 of the California Fire Code is hereby amended as follows:

2301.3 Construction Documents.

(Add to item #7): location and classification of commodities in accordance with Section 2303 and NFPA 13.

Section 2304.2.1 of the California Fire Code is added:

2304.2.1 Minimum Requirements for Client Leased or Occupant Owned Warehouses.

Designs of an automatic sprinkler system for client leased or occupant owned buildings containing high pile storage shall be based on the requirements of NFPA 13. The responsible Fire Protection Engineer shall perform a survey of the building to determine commodity classification, storage configuration, building height and other information related to the development of an appropriate sprinkler system design. The Engineer shall also make reasonable efforts to meet with the building owner or operator to understand seasonal or customer related fluctuations to the stored commodities, storage height, and configuration. The sprinkler design shall be based on the most demanding requirements determined through the onsite survey and discussions with the building owner or operator. The technical report shall clearly define the basis for determining the commodity and sprinkler design selection, along with how the commodities will be isolated or separated, and the referenced design document(s), including NFPA 13 or the current applicable Factory Mutual Data Sheets. If a specific fire test is used as the basis of design, a copy of the fire test report shall be provided at the time of plan review.

CHAPTER 24 TENTS AND OTHER MEMBRANE STRUCTURES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 25 TIRE REBUILDING AND TIRE STORAGE shall be adopted in its entirety with out amendments or deletions.

CHAPTER 26 WELDING AND OTHER HOT WORK shall be adopted in its entirety with out amendments or deletions.

CHAPTER 27 HAZARDOUS MATERIALS-GENERAL PROVISIONS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 28 AEROSOLS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 29 COMBUSTIBLE FIBERS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 30 COMPRESSED GASES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 31 CORROSIVE MATERIALS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 32 CRYOGENIC FLUIDS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 33 EXPLOSIVES AND FIREWORKS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 34 FLAMMABLE AND COMBUTIBLE GASES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 35 FLAMABLE GASES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 36 FLAMMABLE SOLIDS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 37 HIGHLY TOXIC AND TOXIC MATERIALS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 38 LIQUIFIED PETROLEUM GASES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 39 ORGANIC PEROXIDES shall be adopted in its entirety with out amendments or deletions.

CHAPTER 40 OXIDIZERS,OXIDIZING GASES AND OXIDIZING CRYOGENIC FLUIDS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 41 PYROPHORIC MATERIALS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 42 PROXYLIN CELLULOSE NITRATE PLASTICS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 43 UNSTABLE REACTIVE MATERIALS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 44 WATER REACTIVE SOLIDS AND LIQUIDS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 45 MARINAS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 46 CONSTRUCTION REQUIRMENTS FOR EXISTING BUILDINGS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 47 REFERENCED STANDARDS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 48 MOTION PICTURE AND TELEVISION PRODUCTION STUDIO SOUND STAGES, APPROVED PRODUCTION FACILITES AND PRODUCTION LOCATIONS shall be adopted in its entirety with out amendments or deletions.

CHAPTER 49 REQUIREMENTS FOR WILDLAND-URBAN INTERFACE FIRE AREAS

Section 4904 of the California Fire Code is hereby amended to add a new section 4904.3 to read as follows:

Section 4904.3. High Fire Hazard Severity Zone Maps.

The County of Riverside Board of Supervisors hereby designates Very High Fire Hazard Severity Zones as recommended by the Director of the California Department of Forestry and Fire Protection and pursuant to Government Code Sections 51175 through 51189, as designated on a map titled "Very High Fire Hazard Severity Zones in LRA", dated __4/8/2010__, and retained on file at the Clerk of this Board, the office of the County and pursuant to Government Code Sections 51175 through 51189, as designated Fire Chief of Riverside County, the Office of the State Fire Marshal, and is more readily available at: http://www.fire.ca.gov/fire_prevention/fire_prevention_wildland_zones.php.

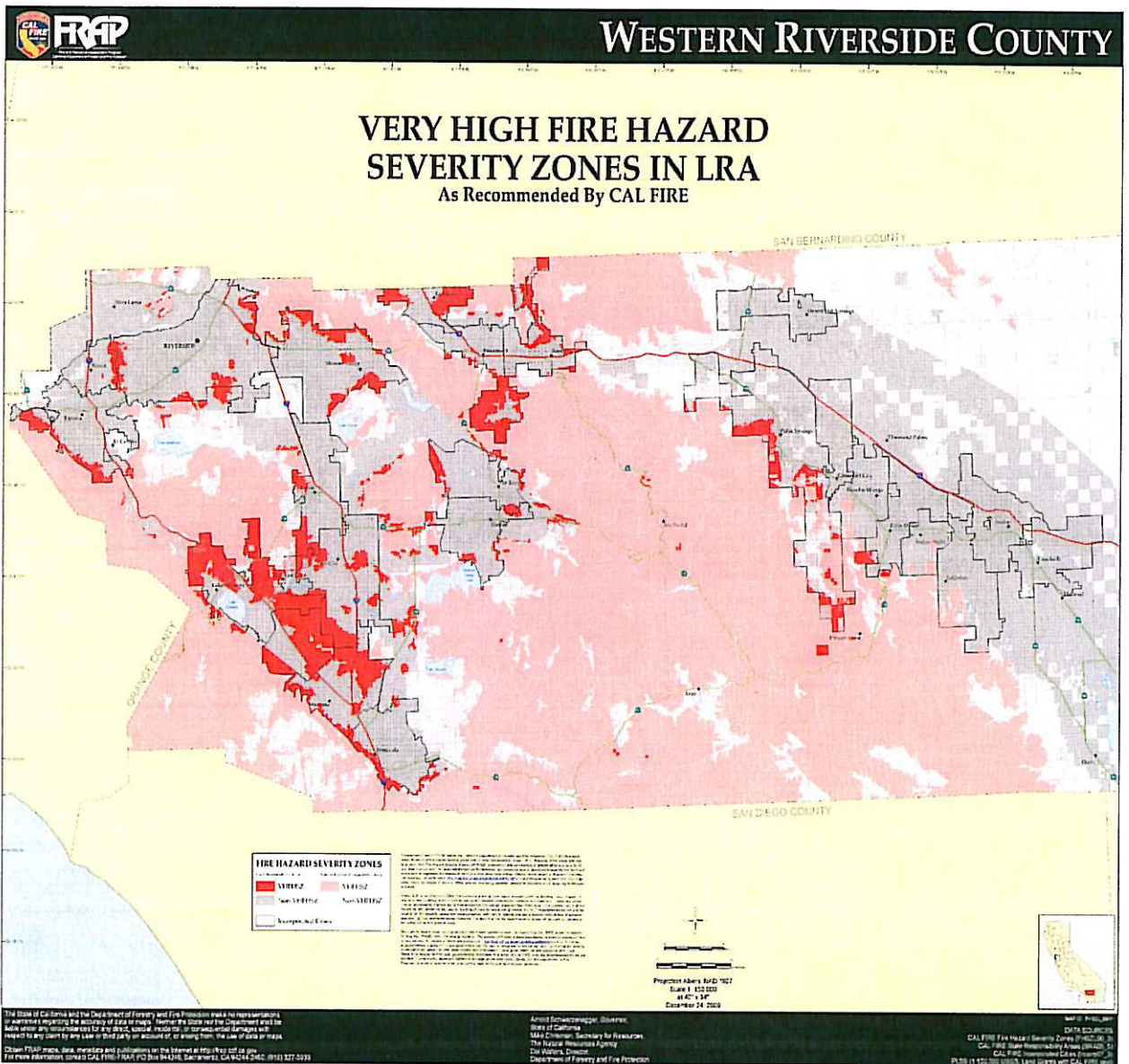
This map will supersede other maps previously adopted by the County of Riverside designating high fire hazard areas.”

With in the designated land areas as adopted by the County of Riverside Board of Supervisors and in accordance with the Government Code Sections 51175 through 51189, and in accordance with section 104.3 the following shall apply when required: Per section 51182.(a) A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency (Riverside County Fire Department) pursuant to Section 51179, shall at all times do all of the following:

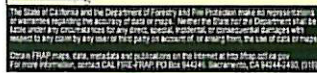
- (1) Maintain defensible space of 100 feet from each side and from the front and rear of the structure, but not beyond the property line except is provided in paragraph
- (2) The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.
- (3) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.
- (4) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that the clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.
- (5) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.
- (6) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

- (7) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.
- (8) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification (approved building plan/job card) from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure. (b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property. (c) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of non-vegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.

See following maps for reference and contact the Riverside County Fire Department for further information.



DRAFT FIRE HAZARD SEVERITY ZONES IN LRA



APPENDICIES

All Appendices to the California Fire Code are adopted in their entirety except as follows:

Appendix Chapter 4 shall be adopted in its entirety with out amendments or deletions.

Appendix B

Section B- 105.2 exception first sentence

A reduction in required fire flow of up to 50 percent as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with section 903.3.1.1 or 903.3.1.2, of the California Fire Code.

Appendix BB shall be adopted in its entirety with out amendments or deletions.

APPENDICIES

Appendix C Table C105.1 Footnotes C.

Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, serving one and two-family residential developments, standard fire hydrants shall be provided at spacing not to exceed 1000 feet along the tract boundary for transportation hazards. When serving multi-family, commercial and industrial developments, super or enhanced fire hydrants as determined by the Fire Chief shall be provided at spacing not to exceed 500 feet of frontage for transportation hazards.

Appendix CC shall be adopted in its entirety with out amendments or deletions.

APPENDIX D shall NOT be adopted or amended.

APPENDIX E shall be adopted in its entirety with out amendments or deletions.

APPENDIX F shall be adopted in its entirety with out amendments or deletions.

APPENDIX G shall be adopted in its entirety with out amendments or deletions.

APPENDIX H shall be adopted in its entirety with out amendments or deletions.

APPENDIX I shall NOT be adopted in its entirety or amended.

APPENDIX J shall be adopted in its entirety with out amendments or deletions.

-PENALTIES

Section 9 Penalties.

It shall be unlawful for any person, firm, corporation or association of persons to violate any provision of this ordinance, or to violate the provisions of any permit granted pursuant to this ordinance. Any person, firm, corporation or association of persons violating any provision of this ordinance or the provisions of any permit granted pursuant to this ordinance, shall be deemed guilty of an infraction or misdemeanor as herein after specified. Such person or entity shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, is committed, continued, or permitted.

Any person, firm, corporation or association of persons so convicted shall be: (1) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a first violation; (2) guilty of an infraction offense and punishable by a fine now exceeding three hundred dollars (\$300.00) for a second violation on the same site. The third and any additional violations on the same site shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six months in jail, or both. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve a person or entity from the responsibility for correcting the violation.

Section 3. Sections 8-17 of the Banning Ordinance Code is hereby repealed.

Section 4.

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 5.

That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidance or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2010.

Robert E. Botts, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

Dave Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1421 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 9th day of November, 2010, and was duly adopted at a regular meeting of said City Council on the 14th day of December, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
RESOLUTIONS**

Date: December 14, 2010

TO: City Council

FROM: Kirby Warner, Interim Administrative Services Director

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

RECOMMENDATION: The City Council adopt Resolution No. 2010-33, "Authorizing The Destruction of City Records As Provided By Section 34090 of The California Government Code and Resolution No. 2003-26 of The City of Banning."

JUSTIFICATION: The City Clerk and the City Attorney have certified that the records listed in Attachment A to Resolution 2010-33, are no longer required to be kept by the City.

BACKGROUND: On March, 2003, the City Council adopted Resolution No. 2003-26, setting forth the schedule for destruction of City Records. The records listed in Attachment A of Resolution No. 2010-33 have all reached the end of their retention period.

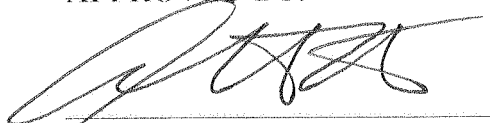
FISCAL DATA: Staff has obtained a quote for \$2,400.00 from Shred-It for the destruction of these records.

RECOMMENDED BY:



Kirby Warner
Interim Administrative Services Director

APPROVED BY:



Andrew Takata
City Manager

Attachment: City Council Resolution 2003-26

RESOLUTION NO. 2003-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING RETENTION PERIOD FOR CERTAIN CITY RECORDS AND
RESCINDING RESOLUTION NO. 1996-7-A

WHEREAS, Section 34090 of the California Government Code authorizes the period of retention for certain city records upon adoption of a resolution of the legislative body of the City and the written consent of the City Attorney; and

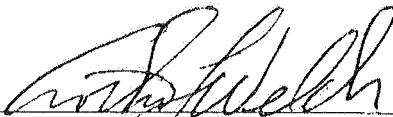
WHEREAS, Section 34090.6 of the California Government Code authorizes the destruction of certain public safety communications upon approval of the legislative body of the City and written consent of the City Attorney; and

WHEREAS, Section 12236 of the California Government Code directs the Secretary of State to "establish, publish, update, and maintain on a permanent basis guidelines for local government records retention."

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING, AS FOLLOWS:

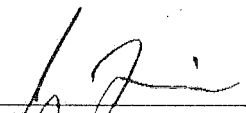
Section 1: All City records be maintained in accordance with the attached guidelines and any subsequent amendments published by the Secretary of State.

PASSED, APPROVED, AND ADOPTED this 8th day of April, 2003.



Arthur Welch, Mayor

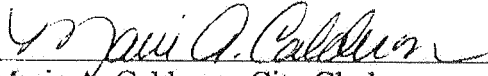
APPROVED AS TO FORM
AND LEGAL CONTENT:



John F. Wilson, City Attorney

074

ATTEST:


Marie A. Calderon, City Clerk

CERTIFICATION

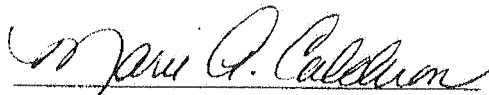
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-26 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of April, 2003 by the following vote, to wit:

AYES: Councilmembers Machisic, Palmer, Salas, Mayor Welch

NOES: None

ABSTAIN: None

ABSENT: Councilmember Jenkins


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

ADMINISTRATION (CONTINUED)

Record Series	Retention	Citation	Descriptor
HUMAN RESOURCES			
Benefit Plan Claims	P	GC6250 et seq; OMB A-129 29 CFR 1602.30; 32; Lab Rel Sec 1174*	May include dental, disability, education, health, life and vision including dependent care and Employee Assistance *29 CFR 1637.3; 29 USC 1027; 29 CFR 1627.3; 29 USC 1113
Benefit Plan Enrollment, Denied	CL + 4	GC34090; OMB A-128	
Bond, Personnel Fidelity	T + 2	GC34090	Employee Fidelity Bonds
Employee Handbook	S + 2	GC 34090	General employee information including benefit plans
Employee Programs	CL + 2	GC 34090; GC 12946	Includes EAP and Recognition
Employee Rights General Employees Safety (Police)	T + 2 T + 5	GC12946; 29 CFR 1602; 29 USC 211 (e); 203(m); 207(g)	May include Arbitration, grievances, union requests, sexual harassment and Civil Rights, complaints, disciplinary actions
Hourly Employees	T + 6	GC12946; GC34090*	*29 CFR 1627.3, Labor Relations Section 1174
Immigrant		Immigration Reform/Control Act 1986 Pub. L 99-603	I-9's
Medical Leave	CL + 30	FMLA 1993 US OSHA; 29 CFR ; 1910.20*	May include Family leave; certifications; tests; W-4's; *29 CFR 1602.30.32; 49 CFR 193-9;
Motor Vehicle Pulls (DMV)	CL + 7	GC12946, *	*CA 91009; 8 USC 1324 (a)
Negotiation	P	29 USC Sections 211(c), 203(m), 207(g)	Notes, notebooks, correspondence, contracts, and Memorandums of Agreements

ADMINISTRATION (CONTINUED)

Record Series	Retention	Citation	Descriptor
Non-Safety Employees	T + 3	Reference: 29 CFR 1627.3; CCR Sec 1174; 29 CFR 1602.30.32; GC6250 et seq; 29 CFR; GC 12946, 34090*	Non-safety employees may include: Release Authorizations; Certifications; Reassignments; outside employment; commendations disciplinary actions; terminations; Oaths of Office; evaluations-pre-employee medicals; fingerprints; identification cards (ID=s) *1607.4; 29 CFR 655.202; 29 CFR 516.6 et seq; 45 CFR 1068.6(a)
Personnel Records (copies)	CU + 2	GC34090; GC6250	Attendance; evaluations; drafts; worksheets; postings
PERS, Social Security, SSI	P	29 CFR 1627.3(2); GC 12946, 34090	EEOC/ADEA
Recruitment	CL + 3	Reference: GC12946; GC6250 et seq; 29 CFR 1602 et seq 29 CFR 1607; 29CFR 1627.3	Applications, resumes, alternate lists/logs, indices; ethnicity disclosures; examination materials; examination answer sheets, job bulletins; eligibility; electronic database
Reports	CU + 2	GC34090	Employee statistics, benefit activity; liability loss
Safety Employees	T + 5	Reference: 29 CFR 16273; CCR Sec 1174; 29 CFR 1607.4; *	Police, fire, emergency employees may include; Release Authorizations; Certifications Reassignments; outside employment; commendations disciplinary actions; terminations; Oaths of Office; evaluations-pre employee medicals *29 CFR 1602.30.32; 29 CFR 655.202; 29 CFR 516.6 et seq; 45 CFR 1068.6(a)
Surveys and Studies	CU + 2	GC 12946, 34090; 29 CFR 516.6(2); 29 CFR 1602.14	Includes classification, wage rates
Training Records Non-Safety	CU + 7	GC6250 et seq	Employee applications, volunteer program training, class training materials, internships;
Personnel (by name)	T + 7	GC34090	Paperwork documenting officers internal and external training
Safety	CU + 2	GC34090	Certifications/designations
Vehicle Mileage Reimbursement Rates	S + 2	GC 34090	Annual mileage reimbursement rates

FINANCE

Record Series	Retention	Citation	Descriptor
ACCOUNTING			
Accounts Payable	AU + 4	GC34090	Invoices, check copies, supporting documents
Accounts Receivable	AU + 4	GC 34090	
Applications	CL + 2	GC34090	Utility connections, disconnects, registers, service
Assessment Districts	P	GC 34090	Collection information; Original documentation files with municipal clerk
Bank Reconciliation	AU + 5	GC34090; 26 CFR 16001-1	Statements, summaries for receipts, disbursements & reconciliation
Billing Records	AU + 2	GC34090	Customer name, service address, meter reading, usage, payments, applications/cancellations
Budget	AU + 2	GC 34090	
Budget adjustments, journal entries	AU + 2	GC34090	Account transfers
Checks	AU + 5	GC34090; CCP 337	Includes payroll, canceled & voided checks
Deposits, Receipts	AU + 4	GC 34090; CCP 337	Checks, coins, currency
Invoices	AU + 2	GC34090	Copies sent for fees owed, billing, related documents
Journals			
Utility Billing	CU + 2	GC34090	Billing including monthly activity
Ledger, General	P	GC34090; *	* CCP 337
Voucher	AU + 4	GC34090; CCP 337	Account postings with supporting documents
Taxes, Receivable	AU + 3	CCP338	
Warrant Register	AU + 2	GC 34090.7	
ADMINISTRATIVE SERVICES			
Budget Operating (copies)	S	GC34090	Departmental Reference
Budget, Proposed	CU + 2	GC34090	Presented to Council
Adopted	P	GC 34090	
FIXED ASSETS			
Inventory	AU + 4	GC34090; 26 CFR 301 65-1(F)	Reflects purchase date, cost, account number
Surplus Property			
Auction	AU + 2	GC34090	Listing of property
Disposal	AU + 4	GC34090; CCP 337	Sealed bid sales of equipment
Vehicle Ownership & Title	L	VC 9900 et seq.	Title transfers when vehicle sold
LICENSE			
Business	T + 4	GC34090; CCP 337	Paid & reports

FINANCE (CONTINUED)

Record Series	Retention	Citation	Descriptor
PAYROLL			
Adjustments	AU + 4	GC 34090 29 CFR 516.5 – 516.6	Audit purposes
Employee Time Sheets	AU + 6	GC34090; 29 CFR 516.2*	Signed by employee for audit & FEMA Reports *20 CFR 516.6(1); IRS Reg. 31.6001-1(e)(z); R&T 19530; LC 1174(d)
PERS Employee Deduction Reports	T + 4	GC34090; CAC 22- 1085-2	Record of deductions (<i>PERS Public Employee Retirement System</i>) *26CFR 31.6001-1; 29 CFR 516.5, 516.6, LC 1174(d)
Register	P	GC34090; GC37207	Labor costs by employee & program
Salary Records	T + 3	GC34090; 29 CFR 516.2	Deduction authorization, beneficiary designations, unemployment claims, garnishments
PURCHASING			
Bids, RFQ's, RFP's Successful Unsuccessful	AU + 4 AU + 5 CU + 2	GC34090; CCP 337; *	Requests for Qualifications; Requests for Proposals regarding goods and services * GC 25105-1; GC 34090
Requisitions			
Purchase Orders	AU + 4	GC34090; CCP 337	Original documents
Stores	CU + 2	GC34090	Completed forms for ordering
Vendor Register	P	GC34090	Alpha vendor listing of purchase orders, invoices, account numbers and check date
REPORTS			
Audits	P	GC 34090	
Deferred Compensation	T + 5	GC34090; 26 CFR 16001- 1*	Records of employee contributions and city payments *29 CFR 1627.3(2)
Federal and State Tax	AU + 4	GC34090; 29USC 436 *	Forms 1096, 1099, W-4's and W-2's *26 CFR 31.6001.1-4; IRS REG 31.6001-1(e)(2); R&T 19530; 29 CFR 516.5-516.6
Financial, Annual	AU + 7	GC 34090.7	
Investment Transactions	P	GC34090; CCP 337; GC 53607	Summary of transactions, inventory & earnings report
Labor Distribution	AU + 2	GC34090	Costs by employee & program
Meter Reading	CU + 2	GC34090	
State Controller	P	GC34090	Controller may destroy after 5 years
Utility Rebates	CU + 2	GC34090	
TREASURER			
Bank Statements	AU + 2	FC 3368, 30210; GC 43900 et seq.	Financing authority

RESOLUTION NO. 2010-33

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

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

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

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

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

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

PASSED, APPROVED, AND ADOPTED this 14th day of December, 2010.

Robert E. Botts, Mayor
City of Banning, CA

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-33, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

RESOLUTION NO. 2010-33

ATTACHMENT “A”

REQUEST FOR DESTRUCTION OF RECORDS

Date: October 28, 2010
Department: Human Resources & Risk Management

We are requesting destruction of the attached records due to:


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

Approvals:

Department Head *[Signature]* Date *11/29/10*
City Clerk *[Signature]* Date *11-29-10*
City Attorney _____ Date _____

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

DEPARTMENT	BUILDING
Human Resources/Risk Management	CRA Building
INVENTORY TAKEN BY:	PROGRAM MANAGER:
	

RECORDS INVENTORY									
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
RECORDS SERIES	DESCRIPTION	FILE LOCATION	MEDIA TYPE	YEARS COVERED	REFER STATUS	DOCUMENT ORIG COPY	VOLUME CUBIC FEET	REMARKS	
Personnel Files	Lester, Stepheni	CRA	P	2/16/2006	I	X	1	Confidential	
Non-Safety	Locker-David, Crystal	CRA	P	3/31/2006	I	X	1	Confidential	
	Lopez, Carlos	CRA	P	6/14/2004	I	X	1	Confidential	
	Mayfield, Ira	CRA	P	6/30/2006	I	X	1	Confidential	
	Medina, Charles	CRA	P	5/24/2006	I	X	1	Confidential	
	Megli, Gerald	CRA	P	8/18/2006	I	X	1	Confidential	
	Millen, Chris	CRA	P	12/29/2006	I	X	1	Confidential	
	Mosley, Dalia	CRA	P	9/7/2006	I	X	1	Confidential	
	Nuckols, Marie	CRA	P	4/10/2006	I	X	1	Confidential	
	Osborne, Daniel	CRA	P	9/22/2005	I	X	1	Confidential	
	Palmer, Sue	CRA	P	12/11/2006	I	X	1	Confidential	
	Pettie, Candi	CRA	P	8/11/2006	I	X	1	Confidential	
	Perryman, Erika	CRA	P	8/9/2005	I	X	1	Confidential	
	Perryman, David	CRA	P	8/13/2005	I	X	1	Confidential	
	Perryman, Micah	CRA	P	8/18/2006	I	X	1	Confidential	
	Rocha, Eugene	CRA	P	5/17/2006	I	X	1	Confidential	
	Senn, Waylynn	CRA	P	8/19/2006	I	X	1	Confidential	
	Shaffer, Sheryl	CRA	P	6/30/2006	I	X	1	Confidential	
	Stewart, Jonathon	CRA	P	8/5/2005	I	X	1	Confidential	
	Taylor, Yolanda	CRA	P	4/5/2006	I	X	1	Confidential	
	Vaccarello, Paul	CRA	P	8/18/2005	I	X	1	Confidential	
	Williams, Andrew	CRA	P	9/13/2006	I	X	1	Confidential	
	Witham, Linda	CRA	P	4/28/2006	I	X	1	Confidential	

REQUEST FOR DESTRUCTION OF RECORDS

Date: October 28, 2010
Department: Finance

We are requesting destruction of the attached records due to:

☐
☒

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

Approvals:

Department
Head

J. Wan

Date

11/29/10

City Clerk

Moni Q. Caldron

Date

11-29-10

City Attorney

Date

Destruction Date:	Destroyed By:	Remarks:

Return signed original to City Clerk when completed.

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RECORDS MAINTENANCE, RETENTION, STORAGE AND DESTRUCTION

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RECORDS MAINTENANCE, RETENTION, STORAGE AND DESTRUCTION

PURPOSE

The purpose of the records management program is to ensure that records of continuing administrative, legal, fiscal, historical, and research value are preserved and readily accessible. That records no longer of current use to the City are properly stored or destroyed. This purpose is accomplished through the following:

1. Identify and preserve the use of records with enduring value for historical or other research.
2. Increase the usefulness of records by preserving only the material that is truly essential and desirable, and storing them in a manner that makes them easy to access.
3. Provide a procedure for the orderly and lawful destruction of records with no further value.

All terms used herein shall have their normal meaning unless otherwise defined in Appendix A.

OBJECTIVES

The objective of this policy is to provide guidelines for each city department to establish and implement an appropriate records retention program which meets the following requirements:

1. All records will be retained for at least the minimum period as stated in applicable state or federal law or regulation; or for a longer period as may be required by a department's needs.
2. All records which may substantially affect the rights and obligations of the City will be retained for a period of time, which will reasonably assure the availability of those records when needed.
3. Adequate records will be developed and maintained to document the City's compliance with various statutory or contractual requirements. Such records shall be retained for a period of time which will reasonably assure the availability of those records when needed.
4. Destruction of records shall take place according to a standard policy.
5. Any destruction procedure shall have a mechanism, which will provide that it can be stopped at any point.
6. Vital records will be identified and appropriately safeguarded.

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7. The privacy and security of records shall be appropriately assured.
8. Records contained on electronic media are also covered by the program.

ADMINISTRATION OF RECORDS RETENTION PROGRAM

Department Heads are responsible for administering the city records retention program. This includes reviewing the retention schedule on an annual basis, and seeing that its recommendations are implemented as soon as practical, and on a regular basis thereafter.

Departments shall retain records no longer than stated by the records retention schedules. Each department shall follow procedures described in this policy for annual review of department records, including transfer to storage of inactive files and destruction of files in the office that are scheduled for destruction.

SAFEGUARDS

1. Department heads shall approve all destruction requests by their departments.
2. Documents relevant to any pending, contemplated, or threatened legal, administrative or investigatory proceeding shall not be destroyed. The City Attorney's Office and Risk Management are aware of pending legal actions and can advise departments of special needs for records. The City Attorney's Office must approve all records destruction requests.

RESPONSIBILITIES

RECORDS MANAGER RESPONSIBILITIES

The City Clerk is the Records Manager of the City of Banning.

The Records Manager shall:

1. Facilitate meetings of Records Coordinators, and the provision of training as needed to achieve the objectives of this policy.
2. Work with the Records Coordinators to develop imaging program policies for each department. Such policies shall include who is responsible for imaging records shared by multiple departments, and what level of electronic sharing is appropriate for each type of record.
3. Provide technical assistance to departments in records management policies, procedures, and techniques including filing systems, protection of records, and disaster recovery.

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4. Maintain an up-to-date copy of the City's Records Retention Schedule.
5. Coordinate records storage efforts for the efficient and economical storage, maintenance, and servicing of semi-active and inactive records.
6. Maintain the monthly goals and quarterly logs submitted by the Records Coordinators.
7. Prepare a semi-annual report to the City Manager indicating how each department is progressing with their goals.
8. Work with the Records Coordinators to implement the efficient destruction of records on at least an annual basis.

ASSISTANT RECORDS MANAGER RESPONSIBILITIES

The Assistant Records Manager of the City of Banning is the City Attorney. The City Attorney may appoint a designee to fulfill the Assistant Records Manager's responsibilities.

It is the responsibility of the Assistant Records Manager to assist the Records Manager with all of the above listed items. In addition, the Assistant Records Manager shall perform all of those duties in the Records Manager's absence.

DEPARTMENT RESPONSIBILITIES:

A. Review of Records

Identification of records to be destroyed in accordance with this policy shall occur on at least an annual basis according to the following schedule:

Department	Review Period
City Manager	December
City Clerk	July
City Attorney	May
Community Development-Includes Building & Safety, Code Enforcement, & Planning	November
Community Services	October
Finance	March

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Department	Review Period
Human Resources/Risk Management	April
Public Works	January
Utilities	February

B. Records Inventory

To facilitate the management of such records, every department shall prepare and maintain a records inventory on the form provided as Attachment A. This form is also available in the computer. This will be coordinated through the City Clerk's office.

C. Records Coordinator

Every department head shall take the following steps to implement this policy:

1. Appoint a Records Coordinator to work with the Records Manager (City Clerk) in the inventory of departmental records and the implementation of their program. The Records Coordinator shall:
 - Attend records meetings as scheduled.
 - Oversee the development of a records inventory for that department.
 - Oversee the imaging program for that department.
 - Set written goals on a quarterly basis specifying the amount of time they will spend each month on implementing this policy, and what documents they will work on. These goals will be submitted to the Records Manager at the beginning of each quarter. (See Attachment C)
 - On a quarterly basis, submit a log of actual hours spent towards those goals. (See Attachment D)
2. Approve the Records Coordinator's monthly goals.
3. Transfer records to storage in accordance with this policy.
4. Review and approve "Request for Destruction of City Records" (see attached) forms as needed.

A copy of each department's inventory will be filed with the City Clerk. When fully completed, the signed, original "Request for Destruction of City Records" shall also be returned to the City Clerk.

Every department head may request modifications to this policy by the Records Manager.

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RECORDS COMMITTEE RESPONSIBILITIES

The Records Committee shall consist of the Records Manager, the Assistant Records Manager, and the Records Coordinator for each department.

The Records Manager shall serve as the Chairperson, and the Assistant Records Manager shall serve as the vice-chair.

The Records Committee shall be responsible for:

1. Making recommendations for modifications of this policy.
2. Developing "best practices" guidelines for each department for the implementation of this policy.
3. Developing written guidelines for the implementation of the City's document imaging program.
4. Developing written guidelines for the management and retention of Electronic Communications Records.
5. Making recommendations relating to technology or other solutions that enhance the City's ability to meet the objectives of this policy.

All recommendations of the Records Committee shall be submitted in writing to the City Manager, for presentation to management.

RECORD MAINTENANCE RESPONSIBILITIES

The City Clerk's office shall have possession and control of all Permanent and Archival Records of the city. The City Clerk's office shall also possess and control official agendas, minutes, staff reports, resolutions, ordinances, and their attachments. The City Clerk shall maintain, possess and control correspondence from Council; all original contracts and agreements, evidence of land use transfers of the City; and all other original documents relating to these items.

Records not listed above shall be maintained by the department that created the records unless otherwise notified by the Records Manager in writing.

RECORDS DISPOSITION PROCEDURES

OVERVIEW

The following steps shall be followed in implementing and this policy by a department:

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1. Inventory departmental records.
2. Appraise records to determine value or usefulness. (whether active, semi-active, permanent or destruction)
3. Determine retention period based on the appraisal and the Records Retention Schedule.
4. Apply the approved Records Retention Schedule to the records.

INVENTORY

A complete list of the records in each department is the first step to implementing a records management program. The purpose of the inventory is to identify and quantify records and to determine the frequency of their use.

The department's Records Coordinator shall coordinate the development of this inventory. The inventory shall include the following data:

1. Identification (title, name, number, etc.).
2. Description of files (contents of files).
3. Dates covered by records.
4. Location of records.
5. Filing arrangement of records (alpha, numeric, chronological).
6. Volume of records (box size, number of boxes, etc.)
7. Type and quantity of filing equipment.

APPRAISAL

The records will be appraised by the Records Manager and the department's Records Coordinator to determine their disposition using the following factors:

- Administrative Value
- Legal Value
- Fiscal Value
- Research and Historic Value

Records with administrative value are created to help accomplish the functions for which the City is responsible and have administrative value only as long as they are needed to perform current or future work. Their administrative use is exhausted when the transactions to which they relate are complete and from that point on they lose value rapidly.

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Records with legal value contain evidence of legally enforceable rights or obligations of the City. Examples are records that provide the basis for action, such as legal decisions and opinions; fiscal documents representing agreements, such as leases, titles and contracts; and records of action in particular cases, such as claim papers and legal dockets.

Fiscal records pertain to the financial transactions of the City, such as budgets, ledgers, allotments, payrolls and vouchers. After some records have served a basic administrative function, they may still have sufficient fiscal value to justify additional retention to be available for court action and/or audits.

Some records also have enduring value because they reflect significant historical events or document the history and development of the City. Others contain accumulated data that can be useful for both scientific and genealogical research. Local historical societies and libraries may be asked to help assess this potential value.

RECORDS RETENTION

Pursuant to City Council Resolution 2003-26 or its successor statute, City Records will be maintained in accordance with the Local Government Records Management Guidelines ("LGRAM Guidelines") as established and amended by the California Secretary of State.

The Records Manager and Assistant Records Manager will keep and advise you of any changes to the LGRAM Guidelines.

RECORDS MAINTENANCE/STORAGE

It is the policy of the City of Banning that only the final "approved" version of a document is an official City Record. Upon completion of a project or approval of the final version of any document, all Non-Records (See definition in Appendix A) related to the project, whether in paper or electronic format shall be destroyed without making a copy. It is not necessary to obtain the approval of the City Clerk or the City Attorney prior to destroying Non-Records unless you have been notified of any pending or active litigation relating to any Non-Records.

E-MAIL

E-mail, as with their paper counterparts, are public records if (i) they contain information relating to the conduct of the public's business and (ii) they are prepared, owned, used, or retained by any state or local agency. (See Appendix A)

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Non-Record E-mail: To eliminate Non-Record e-mail, all city owned or controlled computers, servers and back-up media are configured to automatically and permanently delete all e-mail after 30 days.

If an e-mail does meet the definition of a City Record (see Appendix A), it is the responsibility of the user to take appropriate action to preserve the e-mail. Appropriate action shall consist of:

1. Printing the e-mail and placing a copy in the file; or
2. Saving the e-mail to a separate location where it will not be automatically deleted.

OTHER ELECTRONIC COMMUNICATIONS RECORDS

Electronic Communications Records are subject to the retention requirements of this policy.

Electronic communications records not in active use shall be copied to LaserFiche and stored on optical disk or other lawful storage media for the duration of their retention period. When selecting a storage media, preference shall be given to the more stable media available (at this time, optical disk).

TRANSFERRING RECORDS TO STORAGE

When no longer needed, records may be transferred to inactive storage for the balance of their retention schedule. The phrase "inactive storage" includes department storage rooms and the city's records storage facility (currently the CRA building). Regardless of the location, all records sent to storage should be described in such a way that they can be found again.

All office files should be reviewed according to schedule, and all inactive materials transferred to storage. This review should also be used to identify records eligible for destruction (see "DESTRUCTION OF RECORDS").

A. Record Transfer Tasks Checklist

The following checklist outlines the tasks involved in the transfer of office records to inactive storage.

1. Prepare a records disposition evaluation list. See Attachment A.
2. Identify and pack records in records storage cartons and assign an identification number to each carton.

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3. Fill out a "Request for Destruction of Records" (Attachment B) form and calculate the destruction date for each carton.
4. Check the "Request for Destruction of Records" form for accuracy.
5. Place a copy of the completed form in the storage carton.
6. Make a copy of the form for the Records Manager.
7. File the original form in the department's stored records file.
8. Supervise the transfer of the cartons to inactive storage.

B. TRANSFER PROCEDURES

Procedures for completing each step of the records transfer procedure are detailed in the remainder of this section.

1. Prepare a records disposition evaluation list.

The evaluation list specifies, for each record group listed on the retention schedule, which files are old enough to be moved to storage, and establishes a cutoff date (stated as a calendar year) for those records which should remain in office files. The evaluation list converts the retention event codes and time periods on the retention schedule into actual calendar "cutoff" years, which you can compare to the dates of the files. Every record that is from, or older than, the cutoff year can be transferred; every record that is newer than the cutoff year should remain in the office.

For retention scheduling purposes, records are evaluated based on the year in which they were created, rather than the month or day. All records created in 1992 are evaluated as a group, regardless of whether they were created in January or December. This greatly simplifies retention and disposition scheduling.

SPECIAL RULES FOR RECORDS WITH RESEARCH OR HISTORIC VALUE

If certain records have been identified as having research or historic value, and if the City no longer has other need for these records, these records may be transferred to an appropriate facility. The City Council must approve any such transfer.

Examples of appropriate facilities include, but are not limited to:

University libraries, public libraries, historic or genealogical societies, or any other such facility that provides appropriate access to members of the public wishing to research that type of information.

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DESTRUCTION OF RECORDS

City Records may only be destroyed in accordance with one of the following two methods.

Method No. 1 - Destruction Without Making a Copy

1. The Department Head will complete the attached "Request For Destruction of City Records" and forward to the City Clerk's Office.
2. The City Clerk's Office will confirm that the minimum retention period for such City Records has passed and that none of the records is subject to a longer retention period by virtue of being an attachment to another City Record, and/or that the document has no significant historic or research value.
3. The Request will then be forwarded to the City Attorney's Office. The City Attorney will confirm that such City Records are not subject to a longer retention period by virtue of any legal action, pending or in progress, against the City.
4. A resolution will be sent to the City Council requesting destruction of such records.
5. The approved Request will then be returned to the Department and the City Records shall then be destroyed.

If the City Record is a Confidential Record it may only be destroyed by shredding. If a department has a small number of records to destroy, the files may be destroyed by a designated individual from the department on the City owned shredder. After shredding the files, the individual must sign and date the destruction request. If Confidential Records have been stored on an optical disk, the disk will be broken prior to being discarded.

If a department has a large volume of confidential records to destroy, arrangements for pick-up by an outside agency may be made. An individual from the department, designated by the department head, must accompany the City Records to the site of destruction to witness the total destruction of the City Records. Only after watching the destruction process of the records may the witness sign and date the destruction notice.

Method No. 2 - Destruction After Making a Copy

The Department Head may, without written consent of the City Clerk and the City Attorney cause to be destroyed any and all City Records if all of the following conditions are complied with:

1. The City Record is:
 - photographed,
 - micro-photographed,

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- reproduced by electronically recorded video images on magnetic surfaces,
 - recorded in the electronic data-processing system,
 - recorded on optical disk,
 - reproduced on film or on any other medium which does not permit additions, deletions, or changes to the original document,
 - or reproduced on film, optical disk, or any other medium in compliance with the minimum standards or guidelines, or both, as recommended by the American National Standards Institute or the Association for Information and Image Management for recording of permanent or non-permanent records, whichever applies.
2. The photographs, micro-photographs, or other reproductions on film, optical disk, or any other medium are made as accessible for public reference as the original records were.
 3. A true copy of the archival quality of the film, optical disk or any other medium reproductions shall be kept in a safe and separate place for security purposes.

No page of any record, paper, or document shall be destroyed if any page cannot be reproduced in accordance with the above procedures with full legibility. Every non-reproducible page shall be permanently preserved in a manner that will afford easy reference.

Scanning a document to LaserFiche and burning it on CD, complies with all of the above procedures.

Prior to the destruction of any such records, department staff shall complete the attached "Request for Destruction of City Records" and forward to the Department Head. The Department Head will confirm that all documents listed have been copied in accordance with these policies.

Approved by:



Randy Anstine, City Manager

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APPENDIX A - DEFINITIONS

DEFINITIONS

Active Records: As a measure of activity for records that are referred to at least once a month per cubic foot of records. Also - As a retention period for a Perpetual Record that remains "active" until some event occurs to change its status, at which time it has fulfilled its function. (See also Perpetual Record.)

Administrative Records: Records commonly found in all offices and typically retained only for short time periods - less than five years. Examples include subject, chronological, budget, and policy files.

Archival Records: Records with enduring value because they reflect significant historical events, document the history and development of the city, or provide valuable research data.

Assistant Records Manager: The Assistant Records Manager for the City of Banning shall be the City Attorney or his/her designee.

City Record: A "public record" as defined in the California Public Records Act. Public records include writing or other forms of recording that contain:

1. Information relating to the conduct of the public's business, and
2. materials prepared, owned, used, or retained by the City regardless of physical form or characteristics [California Government Code Section 6252(d)].

Except for certain situations defined by statute, such City records are subject to disclosure under the California Public Records Act.

For purposes of this policy, records held by employees, including electronic communications records, are not City records unless such records exist pursuant to an employment or agent relationship the employee has or has had with the City.

Confidential Records: A "confidential record" is defined as those which are exempt from disclosure under the California Public Records Act (California Government Code Section 6250 et seq.), the Brown Act, and under any other provision of law establishing a privilege or confidentiality as to such records.

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Discovery: The pretrial disclosure of pertinent facts or documents by one or both parties to a civil action or proceeding. Anything requested during discovery must be disclosed if it exists - even non-records and records that should have been destroyed earlier. Discovery effectively freezes selected holdings until released by opposing attorney or the court.

Non-records: Material not usually included within the definition of records, such as unofficial copies of documents kept only for convenience or reference, working papers, appointment logs, stocks of publications and processed documents, and library or museum material intended solely for reference or exhibition. Also, documents such as rough notes, calculations or drafts assembled or created, and used in the preparation or analysis of other documents. (See also Discovery.)

Permanent Records: Records that are required in perpetuity, usually identified by statute or other written guidance. Examples include construction permits, maps & plats, development agreements, vendor registers, etc..

Perpetual Records: Records required to be retained for an indefinite period of time and then stored or destroyed after some event takes place. Examples include office personnel files which are kept until a person leaves the office, policy files kept until the policy is changed, contract files kept until the contract terminates, etc.

Program Records: Records that relate to the primary function of the City in response to its daily mission. Examples include lien files, recorders files, election files, probate records, medical records, etc.

Records: All papers, maps, exhibits, magnetic or paper tapes, photographic films and prints, punched cards, and other documents produced, received, owned or used by the City regardless of physical form or characteristics.

Records Manager: The Records Manager for the City of Banning shall be the City Clerk or his/her designee.

Records Retention Schedule: The California Secretary of State Local Government Records Management Guidelines is set as the Records Retention Schedule for the City of Banning.

Retention Period: The length of time a record must be retained to fulfill its administrative, fiscal and/or legal function. Then a record should be disposed of as soon as possible in accordance with the approved Records Retention Scheduled.

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APPENDIX B - FORMS

CITY COUNCIL MEETING

DATE: December 14, 2010

TO: Honorable Mayor and City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Accept the Right-of-Way Dedication from Assessor's Parcel Number: 419-101-009

RECOMMENDATION: Accept the Right-of-Way dedication from Assessor's Parcel Number 419-101-009 (physical address of 5701 W. Ramsey Street) and direct the City Clerk to accept and record said dedication. The parcel number is described in the attached Exhibit "A" and Exhibit "B".

JUSTIFICATION: It is essential to obtain the right-of-way so that the constructed improvements can meet the requirements of the General Plan.

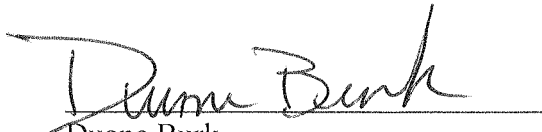
BACKGROUND: On January 12, 2010 the City Council and Community Redevelopment Agency approved City Council Resolution No. 2010-03 and Community Redevelopment Agency Resolution No. 2010-01, "Awarding the Construction Contract and Approving the Professional Services Agreement for Surveying Services for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations".

The scope of work for Project No. 2009-04 included the grinding/cold planing of existing pavement, construction of curb and gutter, sidewalks, handicap ramps, driveways, street lights, AC pavement, signing and striping and relocation of existing utilities.

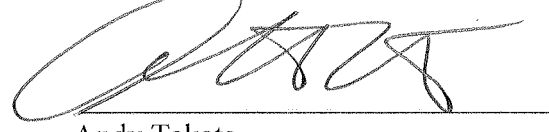
It was agreed upon, between the owner of said property and City staff, that the right-of-way dedication, although approved, would not be recorded until the improvements were completed. As of November 1, 2010, the contractor has completed said improvements.

FISCAL DATA: Not applicable.

RECOMMENDED BY:


Duane Burk
Director of Public Works

APPROVED BY:


Andy Takata
City Manager

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
CITY CLERK
CITY OF BANNING
99 East Ramsey Street
Banning, CA 92220-0998

GRANT DEED

(RIGHT-OF-WAY DEDICATION)

The grantors under this deed are:

- (1) ELIZABETH NICASSIO (a widow) individually (as her sole and separate property) and as successor co-trustee of the Tony Piazza Revocable Living Trust dated April 2, 2004.
- 2) ROSALIE GRAY (a married woman) individually (as her sole and separate property) and as successor co-trustee of the Tony Piazza Revocable Living Trust dated April 2, 2004.
- (3) CARLA S. GIBSON (a married woman) individually (as her sole and separate property) and as successor co-trustee of the Tony Piazza Revocable Living Trust dated April 2, 2004.
- (4) TONI ROBERGE (a married woman) individually (as her sole and separate property) and as successor co-trustee of the Tony Piazza Revocable Living Trust dated April 2, 2004.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Grantors as tenants in common hereby GRANT to the City of Banning, a Municipal Corporation, for street right-of-way purposes, all that real property situated in the City of Banning, County of Riverside, California, described as follows:

SEE EXHIBITS "A" and "B" ATTACHED HERETO AND MADE A PART HEREOF.

APN: 419-101-009

This Grant Deed may be signed on separate counterpart signature pages, which when fully assembled shall be deemed the original.

CO-GRANTOR:

Dated:

4-15-10

Elizabeth Nicassio

Elizabeth Nicassio (a widow)
individually (as her sole and
separate property) and as successor
co-trustee of the Tony Piazza
Revocable Living Trust dated April
2, 2004

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of SAN BERNARDINO

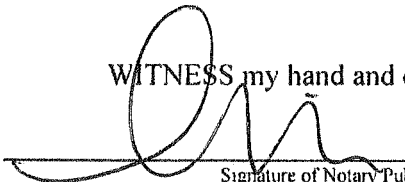
On APRIL 15, 2010 before me, S. FILO, NOTARY PUBLIC
(Here insert name and title of the officer)

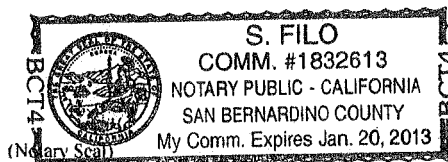
personally appeared ELIZABETH NICASSIO

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

GRANT DEED

(Title or description of attached document)

RIGHT-OF-WAY DEDICATION

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

ROW Ded. 419-101-009

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

☒ Individual (s)

☐ Corporate Officer

(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☒ Trustee(s)

☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

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 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

CO-GRANTOR:

Dated: 4-21-2010

Rosalie Gray

Rosalie Gray (a married woman)
individually (as her sole and
separate property) and as successor
co-trustee of the Tony Piazza
Revocable Living Trust dated April
2, 2004

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of New Mexico
California

County of Chaves

On 4-21-2010 before me, Nancy Montgomery
(Here insert name and title of the officer)

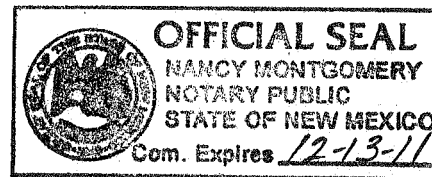
personally appeared ROSALIE GRAY

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of New Mexico that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Nancy Montgomery
Signature of Notary Public
Comm. exp. 12-13-11



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

GRANT DEED

(Title or description of attached document)

ROW Dedication

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

ROW Ded. 419-101-009

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☒ Trustee(s)
☐ Other _____

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- Securely attach this document to the signed document

114

CO-GRANTOR:

Dated: April 22, 2010

Carla S. Gibson
Carla S. Gibson (a married woman)
individually (as her sole and
separate property) and as successor
co-trustee of the Tony Piazza
Revocable Living Trust dated April
2, 2004

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of ORANGE

On APRIL 22, 2010 before me, VITA HERNANDEZ, NOTARY PUBLIC,
(Here insert name and title of the officer)

personally appeared CARLA S. GIBSON

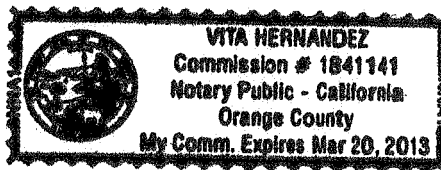
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

GRANT DEED

(Title or description of attached document)

ROW Dedication

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

ROW Ded. 419-101-009

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☒ Trustee(s)
☐ Other _____

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- Securely attach this document to the signed document

116

CO-GRANTOR:

Dated: 21st April 2010

Toni Roberge

Toni Roberge (a married woman)
individually (as her sole and
separate property) and as successor
co-trustee of the Tony Piazza
Revocable Living Trust dated April
2, 2004

G:\TINA\TINA\piazza trust\doc\wont\sig\toni Roberge.doc

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of ~~California~~ Washington

County of Pierce

On 4/21/2010 before me, Jacinda L. Johnson / Notary
(Here insert name and title of the officer)

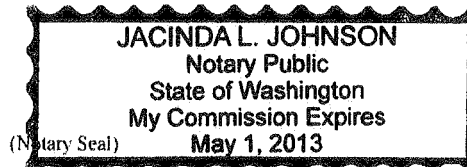
personally appeared TONI ROBERGE

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ Washington that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jacinda L. Johnson
Signature of Notary Public



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

GRANT DEED

(Title or description of attached document)

ROW Dedication

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

ROW Ded. 419-101-009

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☒ Individual (s)
☐ Corporate Officer

(Title)

- ☐ Partner(s)
☐ Attorney-in-Fact
☒ Trustee(s)
☐ Other _____

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EXHIBIT "A"

LEGAL DESCRIPTION (RIGHT OF WAY DEDICATION) Portion APN: 419-101-009

THE SOUTH 8.00 FEET OF LOT 15, GRAND VIEW RANCHO, AS PER MAP RECORDED IN MAP BOOK 23, PAGES 19 AND 20, RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA

THE AREA OF THE DESCRIBED PROPERTY IS 800 SQUARE FEET, MORE OR LESS.

Prepared under my supervision:

Henry C. Poquiz
L.S. 6048

8/4/19

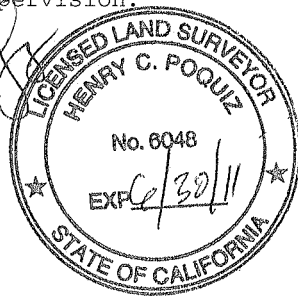


EXHIBIT "B"



SCALE: 1"=20'

LOT 15, M.B. 23/19-20

APN: 419-101-009

N01°54'00"E

N01°54'00"E

N88°06'00"W 100.00'

N88°06'00"W 100.00'

N88°06'00"W

RIGHT OF WAY

RIGHT OF WAY

SURVEY CENTERLINE

8'

30'

38'

RAMSEY STREET



CITY OF BANNING, CALIFORNIA
DEED PLAT
RAMSEY STREET

DRAWN BY: HCP
CHECKED BY: _____
APPROVED BY: _____
DATE: AUGUST 4, 2008

120

**CITY COUNCIL AGENDA
CONSENT CALENDAR**

DATE: December 14, 2010

TO: City Council

FROM: Kirby J. Warner, Interim Administrative Services Director

SUBJECT: Banning Police Officers Association - Memorandum of Understanding 2010-2011

RECOMMENDATION: Adopt Resolution No. 2010-83 approving the successor Memorandum of Understanding Between the City of Banning and the Banning Police Officers Association for the period July 1, 2010 through June 30, 2011 ("BPOA MOU 2010-2011").

JUSTIFICATION: Section 3505.1 of the Meyers-Milias-Brown Act ("MMBA")(Gov't Code Sections 3500-3511) provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination." Once approved by the governing body of the local agency, a memorandum of understanding becomes a binding agreement between the employee organization and the local government. *Thus, City Council approval of the proposed BPOA MOU 2010-2011 is required by the MMBA in order to be binding on the parties.*


BACKGROUND: The City's labor relations negotiation team and the Banning Police Officers Association ("BPOA") labor representatives began meet and confer negotiations in March of 2010 regarding a successor memorandum of understanding ("MOU"). The existing Memorandum of Understanding between the City and the Banning Police Officers Association would expire by its own terms on June 30, 2010. The City's negotiating team and the BPOA continued negotiations after the expiration of the existing BPOA MOU, which a final agreement being reached as reflected in the attached BPOA MOU 2010-2011.

Due to ongoing municipal economic challenges, City staff was forced to make reductions throughout the entire budget. City Council further directed staff to meet & confer in good faith as part of the ongoing MOU negotiations with the BPOA to make necessary reductions to employee benefits to meet budget obligations. The City negotiation team and BPOA representatives negotiated certain lay offs and a status quo MOU agreement for one year with certain additional cost savings.

In agreement with the BPOA, all new employees hired on or after January 1, 2011 shall be required to pay the full employee contribution to the California Public Employees Retirement System (CalPERS), which currently is nine percent (9%) for Public Safety (sworn personnel) and eight percent (8%) for Miscellaneous (civilian personnel employees). The reduction in costs will result in future savings. In addition, payouts of vacation, comp and holiday time accruals will continue to be capped at 50% of the current MOU limits for Fiscal Year 2010-2011.

FISCAL DATA: The savings are already reflected in the 2010-2011 fiscal year budget.

PREPARED BY:



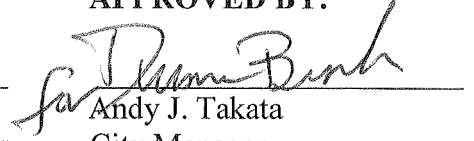
Rita Chapparosa
Deputy Human Resources Director

RECOMMENDED BY:



Kirby J. Warner
Administrative Services Director

APPROVED BY:



Andy J. Takata
City Manager

RESOLUTION NO. 2010-83

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING A SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN
THE BANNING POLICE OFFICERS ASSOCIATION AND THE CITY OF BANNING**

WHEREAS, the City of Banning ("City") has formally recognized the Banning Police Officers Association ("BPOA") as the exclusive employee organization for the police bargaining unit; and

WHEREAS, the prior Memorandum of Understanding between the City and the BPOA expired on June 30, 2010; and

WHEREAS, the City and BPOA have successfully met and conferred to negotiate a successor BPOA Memorandum of Understanding for the period July 1, 2010 through June 30, 2011 pursuant to the Meyers-Milias-Brown Act ("MMBA")(Gov't Code Sections 3500-3511) and the City's Employer-Employee Relations Resolution No. 2010-45; and

WHEREAS, MMBA Section 3505.1 provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination"; and

WHEREAS, once approved by the governing body of a local agency, a memorandum of understanding becomes a binding agreement between the employee organization and the local agency.

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

SECTION 1:

1. That the City Council approves the Memorandum of Understanding Between the City and the Banning Police Officers Association for the period July 1, 2010 through June 30, 2011, a copy of which is attached hereto and by this reference made a part hereof.

PASSED, APPROVED AND ADOPTED this 14th day of December, 2010 at Banning, California.

Robert E. Botts, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

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

ATTEST:

Marie A. Calderon
City Clerk of the City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-83 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Original ✓

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF BANNING,
AND
THE CITY OF BANNING POLICE OFFICERS ASSOCIATION
JULY 1, 2010 – JUNE 30, 2011**

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ARTICLE 1 - PREAMBLE

1.1 - Agreement - This Memorandum of Understanding ("MOU" or "Agreement") is entered into between The City of Banning, a Municipal Corporation, hereinafter known as "the City" or "City" and the authorized representatives of the Banning Police Officers Association, the recognized employee organization of the Police Unit, hereinafter known as "the Union" or "Union", relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 - 3511 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act.

1.2 - Recognition - The City hereby formally recognizes the Banning Police Officers Association as the only Recognized Employee Organization representing employees in the unit of representation presently or hereafter employed by the City and eligible for inclusion in the Police Unit. It is understood that this Agreement shall constitute a bar to any petition or request for recognition of any unit which includes classifications of employees covered by this Agreement or such petitions to represent such employees at any time during the term hereof. This provision shall not preclude employees from otherwise exercising their rights as may be provided by the Meyers-Milias-Brown Act or the Employer-Employee Relations Resolution of the City.

1.3 - Term - Except as otherwise provided herein, this Agreement between the City and the Union relative to wages, hours, and other terms and conditions of employment shall become effective on July 1, 2010 through June 30, 2011 and thereafter shall remain in full force and effect and continue in effect year-by-year unless one (1) of the parties notifies the other in writing no later than March 31, 2011 of its request to modify, amend or terminate this MOU or no later than March 31st of any year after 2011.

1.4 - Represented Classifications - This Agreement covers employees in the following classifications: Police Sergeant, Police Staff Sergeant, Police Master Sergeant, Police Officer, Community Service Officer and Evidence Technician.

ARTICLE 2 - CONTINUATION OF RULES & POLICIES

2.1 - Other Written Policies - Subject to the terms of this Agreement, all City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2007-41) and the Administrative Policies of the City of Banning and the Banning Police Department shall apply during the term of this Agreement.

2.2 - Meet and Confer - The Union and the City agree to meet and confer during the term of this MOU over the adoption, amendment or revision, including repeal, of City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2007-41) and the Administrative Policies of the City of Banning and the Banning Police Department, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Milias-Brown Act. Should an impasse be reached following such meet and confer sessions, the provisions of the Employer- Employee Relations Resolution (Resolution No.

2007-41) or any amendment thereto or successor Employer- Employee Relations Resolution will apply.

2.3 - Past Practice - For purposes of this Agreement, a "past practice" shall be defined as an unwritten policy, procedure or work rule, whether or not it affects a mandatory subject of bargaining, and upon which the City, the Union and the bargaining unit employees may have relied through a course of conduct. As of the effective date of this Agreement, all past practices are void, and of no further force or effect.

ARTICLE 3 - EMPLOYEE RIGHTS

3.1 - Non-Discrimination - The provisions of this Agreement shall apply to bargaining unit employees without illegal discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, citizenship status, or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or non-membership in the Union, or because of any activities or refraining from activities on behalf of the Union.

3.2 - Union Membership - The Union will accept into membership all eligible persons of the bargaining unit without regard to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, or any other basis protected by applicable law.

3.3 - Rights Granted by State and Federal Law - Except as otherwise provided in this Agreement, the employees covered by this Agreement shall have all rights which may be exercised in accordance with State and Federal Law, and applicable ordinances, resolutions, rules and regulations. However, employees covered by this Agreement shall not have the right to a grievance for violation of any such law, ordinance, resolution or rule, except as specifically set forth herein.

Gov't Code Section 3502 - Employees shall have the rights provided to them under Government Code section 3502 of the Meyers-Milias-Brown Act.

ARTICLE 4 - MANAGEMENT RIGHTS

4.1 - The Union recognizes and agrees that the City and its representatives have the responsibility and the authority to manage and direct all operations and activities of the City including, but not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards and the processes and the materials to be employed; the right to subcontract any work or operation; to expand or diminish services; to determine the procedures and standards of selection for employment and promotion; determine classifications; direct its employees; take disciplinary action; relieve its employees of duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted and to assign work to employees and

to establish and change work schedules and assignments and to determine the days and hours when the employees shall work; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and work performance technology.

ARTICLE 5 - DUES DEDUCTION

5.1 - Dues Deduction - The City shall deduct one (1) month's current and periodic Union dues from the wages and/or Leave benefits of each employee who voluntarily executes and delivers to the City a payroll deduction authorization form.

5.2 - Sufficient Earnings - The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings.

5.3 - Non-Pay Status - In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Union dues.

5.4 - Cancellation - An employee's authorization for deduction of dues may be canceled at any time by written notice from the employee to the City with a copy to the Union. An Employee's deduction authorization shall automatically be canceled if the employee leaves the employ of the City or is transferred out of the representation unit.

5.5 - Funds Transmission - The aggregate amount of such deductions by the City shall be transmitted monthly to the President of the Union or his or her designee. The City shall provide the President of the Union or his or her designee with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 5.2 and 5.3. The Union shall notify the City of the names of its President and other officers and designees each year following election of the board and appointment of members to committees to which the Union is entitled to appoint members under this Agreement.

5.6 - Indemnification - The Union shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of deduction of employee organization dues. In addition, the Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

ARTICLE 6 - UNION REPRESENTATIVES

6.1 - Two (2) employees selected by the Union may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first providing twenty-four (24) hour notice to the Department Head. Additional employees who are not on duty may participate at no additional cost to the City. Such meetings shall be scheduled in a manner consistent with the City's operating requirements and work schedules. Nothing

herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

ARTICLE 7 - BULLETIN BOARDS

7.1 - Authorized Postings - The City will furnish adequate bulletin board space where currently available. The Department Head shall designate the bulletin boards to be used for posting notices. Bulletin boards may be used for the following notices:

- (a) Scheduled Union Meetings, Agenda and Minutes.
- (b) Information on Union Elections and the Results.
- (c) Posting of Union special, recreational, and related bulletins.
- (d) Reports of Official Business of Union Including Reports of Committees or the Board of Directors
- (e) MOU, Pay Scales, Job Announcements, Promotion Lists, Etc.
- (f) Such other items as may be approved by the Department Head upon request of the Union.

7.2 - Posted Notices - Posted notices shall not be defamatory or violate any of the City's policies, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed by an authorized representative of the Union. The Union may give notices to the represented employees through the use of the City mail system and/or the City computer e-mail system.

ARTICLE 8 - MEMORANDUM OF UNDERSTANDING COPIES

8.1 - The City shall provide the Union with thirty-five (35) executed copies of this Memorandum after it has been fully executed by the parties. The City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the representation unit after the effective date of the Agreement. The City may charge for any additional copies. The Union shall be responsible for providing copies of this MOU to represented employees at Union expense.

ARTICLE 9 - MEETINGS

9.1 - Items of Mutual Concern - Upon mutual agreement of both the City and the Union, the parties may meet to discuss items of mutual concern. A meeting conducted under this section shall not constitute a meet and confer or hearing under any grievance procedure.

9.2 - Use of City Facilities - The Union may be granted permission to use City facilities for the purpose of meeting with employees to conduct Union business provided space for such meetings can be made available without interfering with City needs. The Union shall

be held fully responsible for any damages to and security of any facility that is used by the Union.

9.3 - Budget Oversight Committee - The City agrees to the creation of a Budget Oversight Committee, with the Union entitled to appoint one (1) member. Said Committee shall have an equal number of members appointed by the City's recognized Employee Associations and the City. Said Committee shall be advisory only to the City Manager.

ARTICLE 10 - HOURS OF WORK

10.1 - Schedules - Unless modified by the Department Head as set forth in section 10.2 and 10.4 below, the Police Unit employees described below shall work the following work periods:

- (a) Employees assigned to uniformed patrol shall have a work schedule of seven (7) twelve (12) hour shifts each fourteen (14)-day work period.
- (b) Employees assigned to the detective bureau shall have a work schedule as assigned by the Department Head.

10.2 - Department Head Discretion - Employees may be assigned to a work schedule consisting of the days and hours as determined by the Department Head.

10.3 - Briefing - Preshift briefing shall be at the discretion of the Department Head and if required, shall count as hours worked.

10.4 - Schedule Changes - The Department Head in the exercise of his or her discretion may change the work schedule and/or work period of Police Unit employees. Accordingly, work schedule and work period changes are not subject to meet and confer requirements. The Department Head shall notify the Union regarding any change in work schedule and/or work period no later than thirty (30) days before the date the change is implemented.

10.5 - Shift Assignments - Each year, the Department Head shall post a shift assignment notice on which officers shall indicate their shift assignment preference. The Notice will solicit three shift preferences and any additional information regarding their reasons for requesting a particular shift. The Department Head shall consider each request, giving those with seniority a higher priority, and make an effort to accommodate individual preferences. However, it is recognized that the Department Head shall have the ultimate authority to make shift assignments based on the needs of the Department. These shift assignments shall be for the full year except for individual changes as determined by the Department Head.

10.6 - Outside Employment - Prior to any bargaining unit employee accepting outside employment, he or she shall request and receive authorization from the Department Head. Authorization for outside employment shall be made according to the policies and procedures in place at the time of request.

ARTICLE 11 - SHIFT EXCHANGE

11.1 - Employees may be permitted to trade shifts provided that:

- (a) No additional compensation or other cost to the City results from such assignment;
- (b) Exchanging employees are fully qualified to perform the required tasks of both assignments; and
- (c) Written requests for shift representation must be submitted on the prescribed Department form and approved by the Department Head or his or her designee prior to the start of the requested shift.

ARTICLE 12 - SALARIES, PERFORMANCE EVALUATIONS, INCENTIVE PAY

12.1 - Assignment to Ranges — Commencing July 1, 2009, all employees were placed on ranges with defined steps as shown on the attached salary schedule. Range minimum, mid-point and maximum are identical to current ranges. The salary table is calibrated in approximate 2.5% increments. Initially, employees will stay at current salary until their review date (after July 1, 2009) at which time assuming a satisfactory evaluation employee will move up to nearest defined step and then one (1) full step more, which represents at least a 2.5% increase. Subsequent annual increase for satisfactory performance will be two (2) steps or approximately 5%. Unit members will be evaluated using the evaluation form in place prior to implementation of the previous Pay for Performance program.

- (a) No employee shall be granted a step increase unless and until such employee has obtained an acceptable evaluation consistent with the applicable administrative policies of City.
- (b) A first denial of a step increase shall not be an allowable subject of the exercise of employee rights under any grievance procedure afforded by the City or collective bargaining agreement.
- (c) An employee denied a step increase for unacceptable performance shall be entitled to be re-evaluated in six (6) months from the date of the performance evaluation which led to the denial of the step increase. If the employee's overall performance is rated acceptable, the employee shall be granted the appropriate step increase effective the first pay period following the six month re-evaluation period. Such step increase shall not be retroactive.
- (d) If the employee's performance continues to be unacceptable after the six (6) month re-evaluation period, the employee shall be given a final denial of a step increase for the remainder of the regular evaluation period. Denial of a

step increase under this subsection may, at the employee's option, be subject to the collectively bargained grievance procedure for unit members.

- (e) An employee at the top of his or her range shall have his or her performance evaluated at least annually within thirty (30) days of his or her anniversary date.

12.2 - – Premium Pay - City shall additionally pay a five percent (5%) premium for the following special assignments, provided that no such premium shall attach when the officer is otherwise working an eighty-four (84) hour shift:

- Professional Standards Supervisor (Sgt. rank only)
- Detective Sergeant
- Detective (ARCNET)
- K-9 Officer
- Motor Officer
- School Resource Officer
- Youth Resource Officer
- CET
- Any other assignment determined to be appropriate and approved by the Chief of Police in consultation with the Human Resources Department.

12.3 – Field Training Officer (FTO) - Any Police Unit member who serves as an FTO shall receive additional pay of five percent (5%) during actual training. Any Police Unit member who has been assigned as a FTO and serves in any other special assignment is entitled to additional premium pay to a maximum of ten percent (10%) of their salary during such assignment. The amounts in this article shall not be pyramided except as set forth above.

12.4 – Bilingual Pay - Employees certified to use sign language or to speak Spanish, or any of the Hmong languages (Chinese, White Lao, Blue Lao), or any other foreign language designated for Bilingual Pay by the City Manager, shall be paid a bonus equivalent to five percent (5%) of their base salary for such use on the job. Initial certification and any requirement with respect to demonstration of the continuing ability to use sign language or to speak the foreign language shall be determined by the City using methods selected by the Human Resource Department.

ARTICLE 13 - OVERTIME

13.1 - 7(k) Exemption -The City has adopted a fourteen (14) day work period pursuant to the "7k exemption" of 29 U.S.C. section 207(k) under the Fair Labor Standards Act (FLSA). Except as provided below in connection with uniformed patrol officers, an employee shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty (80) hours in the fourteen (14) day work period. Uniformed patrol officers assigned to work twelve (12) hour shifts as outlined in Article 10.1 above, shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty-four (84) hours in the fourteen (14) day work period. This section 13.1 does not

preclude the Chief of Police from establishing the practice of scheduling an employee to work a pay period of any duration which is not less than eighty (80) hours and not more than eighty-four (84) hours, subject to the shift change provisions of the MOU. At all times, the full eighty-four (84) hours shall be accounted for on the time card. Unassigned hours of the eighty-four (84) shall be so indicated.

(a) The City shall pay the PERS contribution, as required by the MOU, for the first eighty-four (84) hours of PERS eligible time worked during a pay period. Hours earned as overtime and paid at time and one-half (1/2) shall not be counted as PERS eligible hours. All overtime worked shall be authorized by a supervisor in advance, if possible. Otherwise, the claim for overtime shall be subject to review by the Department Head. Overtime may be paid as accrued compensatory time subject to the following: Compensatory time may not be accumulated in excess of two hundred forty (240) hours. Employees may cash out accumulated comp time twice per year (July and December) up to a maximum of eighty (80) hours per year unless otherwise restricted herein. Any cash out will be at the employee's current rate of pay inclusive of all premium pay.

(i) The "regular hourly base rate of pay" includes only salary as described in Article 13.1. Acting pay as set forth in Section 14.1 and educational incentive pay as provided in Article 18.4.

(b) In calculating overtime, the practice of the Finance Department shall be as follows:

(i) All hours appearing on the time card as "Reg Hours" shall first be totaled.

(ii) All hours otherwise defined as "hours worked" under the MOU shall then be totaled.

(iii) Finally, all hours recorded as overtime on the time card shall be totaled.

(iv) All hours totaled above, which are in excess of eighty-four (84) hours for patrol personnel and eighty (80) hours for special assignments during the pay period, shall be treated as overtime.

(v) In the case of correction of the time card by the Finance Department, the affected employee shall be given timely notice of such correction prior to the preparation of the pay check.

(c) Any assigned hours which are not worked, and are not otherwise accounted for through a reduction in accrued leave, shall be treated as Leave-Without-Pay ("LWOP") and the employee may be subject to a personnel action as prescribed in the personnel policies of the City.

(d) Accruals, and reductions in accruals, are based on an eighty (80) hour pay period.

13.2 - Hours Worked. - "Hours worked" means time spent in required court appearances as set forth in Article 15, and time paid for vacation, holidays, sick leave, CTO and administrative leave for officer involved shooting or other non-disciplinary leave.

13.3 - Call Out Minimum. - Bargaining Unit employees shall be paid a minimum of two (2) hours' pay for any time worked during the first hour when called-out for emergencies, and time and one-half (1/2) for each hour worked there-after. For example, should an employee be called-out to work two (2) hours of emergency duty he or she would be compensated with three and one-half (3 ½) hours' pay at the regular hourly base rate of pay; two (2) hours' pay for the first hour worked and one and one-half (1 ½) hours pay for the second hour worked.

13.4 - Pyramiding of Overtime. - There shall be no pyramiding or duplication of overtime payments and other premiums for the same hour worked.

13.5 - Compensatory Time. - Accrued compensatory time may be taken by the employee on an "hour accrued/hour off" basis. However, in the event an employee terminates his employment and/or the City is otherwise obligated or desires to "cash out" accrued compensatory time, the employee shall be paid for any accrued time at his or her then regular hourly base rate of pay.

13.6 - Maximum Comp Time Accrual. - Comp time may be accrued to a maximum of two hundred forty (240) hours.

ARTICLE 14 - ACTING PAY AND PROMOTION PAY

14.1 - Represented employees temporarily assigned to work in a higher classification by management shall be compensated for working their thirty-first (31st) consecutive day worked of such assignment within the fiscal year, and consecutive days worked thereafter, at a rate five percent (5%) above their normal rate of compensation while working in the higher classification. The conditions of this subsection are prerequisites to the receipt of any higher acting pay. At such time as an employee is no longer performing work out of his or her pertinent classification, he or she shall be compensated at his or her regular rate of pay for his or her pertinent classification.

14.2 - Represented employees promoted to work in a higher classification shall be placed in the lowest step of the higher classification that pays more than the employee received in the lower classification.

ARTICLE 15 - PAY FOR JURY DUTY: COURT APPEARANCES, "ON CALL" DUTY

15.1 - Any employee who shall be summoned for attendance to any court for jury duty during his or her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him or her shall be paid into the City treasury. Any employee who shall be called as a witness arising out of and in the course of his or her City employment shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him or her shall be paid into the City treasury. An

employee absent as a witness in a private matter shall not be entitled to be paid during such absence, except that he or she may, however, use Vacation Leave, Holiday Leave and Compensatory Leave for such absence.

15.2 - Represented employees shall be compensated for off-duty court appearances. The City will pay a minimum of three (3) hours for travel to and appearances in court at a rate of one and one-half (1 ½) times the base rate of pay. All travel shall be calculated based on the time required to travel from any Banning Police Station to the destination. All hours required in excess of three (3) hours shall be compensated at one and one-half (1 ½) times the base rate of pay.

15.3 - Employees required to be on call for court appearances before noon shall be compensated for one (1) hour. Those required to be on call for court purposes after noon shall be compensated for one (1) hour. Requirement for multiple court appearances in the same time frame shall constitute one (1) period of on call. For purposes of this section, an employee shall not be deemed to be on call while appearing in court. Employee shall not be paid for being on call under this Section for a day on which the employee is compensated for being in court under Section 15.2.

15.4 - Any detective scheduled for "on call" duty shall receive four (4) hours of either compensatory time off or pay for each scheduled day off on which the detective is assigned to "on call" duty, other than for court appearances as outlined above.

15.5 - An employee shall be on call for purposes of the receipt of the four (4) hours where:

- (a) the employee is scheduled to provide a mandatory response; and
- (b) that response is to be to the station, or other designated location within two (2) hours; and
- (c) the employee is required to provide the Department with sufficient information to obtain immediate contact with the employee.

15.6 - All Police Unit members who are required to respond to a traffic accident call out would receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before their arrival time. The Evidence Technician will be entitled to receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before his/her arrival for any call outs.

15.7 - Scheduled Training. Any employee who is scheduled by the Department to attend day long training during his or her normal shift or working hours shall be deemed to be on duty and there shall be no loss of salary. The Department will abide by the "day for a day" theory for any day long training not lasting more than four (4) days. This policy provides that the employee will not owe the Department time should the day long training course be shorter than the officer's regularly scheduled work day. This theory applies only to scheduled full-day training courses. For overtime calculation purposes, only actual hours in training will count as actual hours worked.

ARTICLE 16 - EQUIPMENT, UNIFORM ALLOWANCE, SAFETY AND TRAINING

16.1 - The City will provide covered employees safety equipment in accordance with California State Law. Said safety devices and safeguards shall remain the property of the City of Banning and their use may be required and regulated by the Department Head or his or her designee.

16.2 - The Department Head or his or her designee shall have sole authority to assign the use of or regulate the use of City property by represented employees including but not limited to City vehicles.

16.3 - The City agrees to pay a uniform allowance of \$110 per month to Police Unit members. Payments will be made on a monthly basis on the second pay period of the month. Such money shall be used for the purpose of purchasing and maintaining uniforms in order that individual officers and civilian employees who wear regulation uniforms may maintain a professional appearance.

16.4 - The City shall reimburse Police Unit employees the reasonable replacement value of personal property, not including uniforms for which the above uniform allowance is paid, which is destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the Department Head the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to \$200 per pair. Replacement for watches is limited to \$50. Sums paid hereunder shall be secondary to any applicable insurance. If an individual pays a sum of money to the City pursuant to a court order as restitution for damaging the uniform of a bargaining unit employee, then the City will reimburse that amount to the Police Unit employee.

16.5 - The Department Head or his designee may at his or her discretion authorize an employee to carry optional weapons. Nothing in this Agreement shall require the Chief of Police to approve the use of any specific weapon or ammunition.

ARTICLE 17 - MILEAGE, MEALS AND OTHER TRAVEL REIMBURSEMENT

17.1 - The City will reimburse expenses for meals, lodging and tuition when a Police Unit employee attends a City directed educational program. Reimbursement shall be equal to but not exceed the amount permitted under applicable P.O.S.T. standards. If the employee's meals and lodging expenses exceed reimbursement provided by P.O.S.T., then the employee may be required to demonstrate that such expenses are reasonable by providing receipts for all expenses and written justification. Only reasonable expenses will be reimbursed.

17.2 - Accommodation arrangements for attendance at a City directed educational program shall be made by the Police Unit employee. The City agrees to provide any accompanying information concerning available lodging arrangements for the program to the employee as soon as it becomes available to the City.

17.3 - Upon request, an employee attending a City directed educational program shall receive an advance up to the P.O.S.T. established limits established for the particular educational program.

17.4 - At the conclusion of the educational program, the employee shall show by certificate awarded or some other manner that the program was attended and completed.

17.5 - Except as otherwise set forth in this MOU, the scheduling of training/educational programs shall be done in accordance with Departmental procedures.

ARTICLE 18 - TUITION AND BOOKS REIMBURSEMENT; EDUCATION INCENTIVE

18.1 - Qualifications - All Police Unit employees enrolled in an approved Bachelor of Arts/Science Degree or Master of Arts/Science Degree programs shall be eligible to receive reimbursement for tuition and cost of books actually paid for their approved professional and technical courses subject to the provisions below.

(a) The employee has furnished evidence that the course has been completed with at least a "C" grade.

(b) Police Unit employees will receive a maximum of \$3,000 for tuition and actual expenses paid for books for expenses incurred per fiscal year for any academic training in a university or college recognized by an accrediting institution as determined by the Human Resources Director.

18.2 - Reimbursement Requirements

(a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).

(b) Reimbursements will be made only after proof of completion of course with "C" average or better and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

18.3 - Attendance - Employees may utilize shift changes and one (1) hour or more increments of Vacation or Holiday Leave to attend courses that have been approved under this Article. Employees may also convert Sick Leave to Vacation Leave for this purpose.

18.4 - Education Incentive Pay - Educational incentive pay shall be earned as follows:

(a) Possession of an Intermediate POST Certificate entitles the unit member to \$200 a month; and possession of a Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, entitles the employee to \$300 a month.

(b) Possession of an Associate of Arts/Science Degree in any academic field entitles the employee to \$75 per month.

(c) Possession of a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$150 per month.

(d) Possession of a Masters of Arts/Science Degree in any academic field entitles the employee to \$225 per month.

(e) Possession of a Ph.D. in any academic field entitles the employee to \$300 per month.

(f) Possession of an Intermediate POST Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$275 per month; Possession of an Intermediate POST Certificate and a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$350 per month; Possession of an Intermediate POST Certificate and a Masters of Arts/Science Degree in any academic field entitles the employee to \$425 per month; Possession of an Intermediate POST Certificate, and a Ph.D. in any academic field entitles the employee to \$500 per month.

(g) Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$375 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Bachelors of Arts/Science Degree in any academic field entitles the employee to \$450 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Masters of Arts/Science Degree in any academic field entitles the employee to \$525 per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Ph.D. in any academic field entitles the employee to \$600 per month.

(h) For all Police Unit members who are employed with the City at the time of the execution of this MOU, **possession** of 60 semester units from an accredited college with a minimum of 39 units being in an occupationally related field (i.e. Police Science, Social Science, Political Science, Public Administration, etc.) shall entitle the employee to receive pay of \$100 per month. Determination as to whether courses are occupationally related will be made by the Department Head with right of appeal to the City Manager.

(i) The amounts in this article shall not be pyramided except as set forth above.

ARTICLE 19 - SICK AND BEREAVEMENT LEAVE

19.1 - Sick Leave Accrual - Represented employees shall accrue three and sixty-nine hundredth (3.69) hours of Sick Leave per pay period. Sick Leave shall accrue without limit.

19.2 - Use of Sick Leave - Sick Leave, shall be granted only where consistent with the City's sick leave and Pregnancy Leave policy (currently AP-1 and AP-02).

19.3 - [Intentionally left blank]

19.4 - Conversion to Vacation - Any employee who has taken forty (40) hours of Sick Leave or less during the fiscal year ending June 30 of each year shall be entitled to convert up to forty (40) hours of unused sick leave to vacation. The month of August will be the month for annual conversion. Only those employees who have completed twelve (12) months of service with the City as of June 30th of any year will be eligible for such annual conversion and there shall be no interim pro-rata conversion.

For fiscal year 2010-2011, all annual cash out and/or conversion of hours options related to all types of accrued leave shall be reduced by fifty percent (50%) for each Police Unit member. All existing accrual maximums (caps) shall remain in place.

19.5 - Cash Out Upon Separation - After ten (10) years continuous City service, and upon voluntary separation under satisfactory conditions or involuntary disability retirement, sworn personnel shall be eligible to receive a cash payment equivalent to forty percent (40%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Civilian personnel shall be eligible to receive a cash payment equivalent to thirty percent (30%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Such reimbursement will be computed based upon the employee's final compensation rate.

19.6 - Conversion to Deferred Compensation - Beginning with the 11th year of City service, unit members may convert the value of the total amount of their sick leave bank, minus forty (40) hours, to either Deferred Compensation, or the Retiree Health Savings. Thereafter, the employee may contribute one hundred percent (100%) of the value of unused sick leave, minus forty (40) hours for such purposes.

For fiscal year 2010-2011, all annual cash out and/or conversion of hours options related to all types of accrued leave shall be reduced by fifty percent (50%) for each Police Unit member. All existing accrual maximums (caps) shall remain in place.

19.7 - Use of Other Leave - An employee who has exhausted all accumulated Sick Leave while on Sick Leave may utilize accrued Vacation or Holiday Leave or accrued compensated time off for the purposes described in 19.2 above or 19.8 below.

19.8 - Bereavement Leave - Employees covered by this Agreement will be allowed three (3) shifts off duty with pay for Bereavement Leave upon the death of a member of their family. For the purpose of this subsection, "family" includes the following persons: the employee's spouse, mother, father, brother, sister, children, grandparents, grandchildren and the employee's spouse's mother, father, brother, sister, children, grandparents and grandchildren.

ARTICLE 20 - VACATION AND HOLIDAY LEAVE

20.1 - Vacation Leave Accrual - For employees of the City as of date of this Agreement, Vacation Leave shall accrue in accordance with the following schedules:

- (a) one (1) through four (4) years service: ten (10) days per year = three and eight-hundredth (3.08) hours per pay period
- (b) Beginning the fifth (5th) year through the ninth (9th) year: fifteen (15) days per year = four and sixty-two hundredth (4.62) hours per pay period
- (c) Beginning the tenth (10th) year & thereafter: twenty (20) days per year = six and fifteen hundredth (6.15) hours per pay period

20.2 - Maximum Accrual - Vacation Leave may be accrued to a maximum of three-hundred twenty (320) hours for non-supervisory personnel and three-hundred thirty-six (336) hours for supervisory personnel. Holiday leave may be accrued to a maximum of one-hundred sixty (160) hours per employee.

20.3 - Approval Required - Vacation Leave shall be taken with approval of the Department Head at any time following the completion of the one (1) year probationary period, but the Vacation Leave taken shall not be in excess of that actually accrued at the time such Vacation Leave is taken. Vacation Leave must be approved a minimum of fourteen (14) days in advance of the first day of such Vacation by the Department Head or his or her designee. Exceptions may be made to the fourteen (14)-day notice requirement for emergencies or at the discretion of the City by the Department Head or Division Supervisor.

20.4 - Payment Upon Termination - Any employee, who has been in continuous full-time service of the City for a period of 1 year or more, who is about to terminate his or her employment and has earned Vacation Leave to his or her credit, shall be paid for such Vacation Leave on the effective date of such termination. It shall not be necessary to carry such employee on the payroll for the Vacation Leave period, and the vacancy

created may be filled at any time after the employee ceases to perform the duties of his or her office or employment. When separation is caused by death, payment of all outstanding compensation, including Salary and all remaining Sick Leave, Vacation, Comp Time or Holiday Time accruals shall be paid into the employee's direct deposit account the same as regular payroll.

20.5 - Payment of Excess Hours - Unused vacation accrual in excess of the employee's annual entitlement, if any, may be paid off at the option of the employee up to a maximum of forty (40) hours every twelve (12) months. The employee may otherwise be scheduled for mandatory vacation time off by the Department Head for a period of time equal to the excess accrual.

For fiscal year 2010-2011, all annual cash out and/or conversion of hours options related to all types of accrued leave shall be reduced by fifty percent (50%) for each Police Unit member. All existing accrual maximums (caps) shall remain in place.

20.6 - Holidays - City Holidays are as follows:

- New Year's Day
- Martin Luther King Day
- President's Day
- Memorial Day
- Fourth of July
- Labor Day
- Veteran's Day
- Thanksgiving
- Day after Thanksgiving
- Christmas
- one (1) floating holiday

20.7 - Holiday Accrual - Employees shall accrue Holiday leave at the rate of three and thirty-eight hundredths (3.38) hours per pay period.

20.8 - Approval Required - Holiday Leave must be approved a minimum of fourteen (14) days in advance by the Department Head or his or her designee of the first day of such Holiday leave. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the City by the Department Head or immediate supervisor.

20.9 - Cash Out - Employees may cash out accrued holiday leave twice per year (July and December) up to a maximum of 88 hours per calendar year.

For fiscal year 2010-2011, all annual cash out and/or conversion of hours options related to all types of accrued leave shall be reduced by fifty percent (50%) for each Police Unit member. All existing accrual maximums (caps) shall remain in place.

20.10 - Payment Upon Termination - Any employee who is about to terminate his or her employment, and has earned Holiday Leave to his or her credit, shall be paid for such Holiday Leave on the effective date of such termination.

ARTICLE 21 - MEDICAL AND DENTAL INSURANCE

21.1 City Contributions to Cafeteria Plan - The City agrees to the following contribution to each employee's cafeteria account: The City will contribute to each employee's cafeteria account an amount equal to the payment of that employee's medical insurance premium related to a City sponsored medical plan (excludes dental) up to a maximum of \$11,000 annually. In addition, the City will contribute \$50 per month into each employee's cafeteria account. An employee opting out of a City sponsored medical plan, i.e. demonstrating proof of medical coverage from another plan, will receive a cafeteria contribution equal to \$5,725 plus an additional \$50 per month. These dollars may be used toward any City benefit offered under the cafeteria plan. All dollars will be allocated equally on a month Employees will be responsible for all taxes associated with this payment.

(a) The contribution shall first be used to provide for health insurance for the employee. The employee shall be covered by health insurance with a City approved health insurance plan unless the employee provides proof to the City that the employee is covered by another acceptable health plan as determined by the City's Human Resource Department. Additionally, all members of the Police Unit shall participate in a long-term disability plan approved for participation by the members of the Police Unit, provided that such plan does not require the City to incur costs for its administration.

(b) The balance may be used for any of the following or any combination thereof:

- (i) Health insurance for the employee's spouse and/or dependents.
- (ii) Dental Plan for the employee, and the employee's spouse and/or dependents.
- (iii) Eye care plan for the employee, and the employee's spouse and/or dependents.
- (iv) Deferred compensation program.

21.2 IRS 125 Plan - Police Unit employees may participate in the City's Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pretax salary or wages for the reimbursement of medical care expenses, dependent care expenses, or both. Premiums for LTD are excluded from the pretax provisions of the Section 125 program.

K/3

21.3 Insurance Advisory Committee - The City shall maintain the Insurance Advisory Committee to which the Association may appoint two (2) representatives.

21.3.1 Purpose. The purpose of the Advisory Insurance Committee shall be to advise the City relative to health, life, and related insurance plans which may be provided to employees of the City of Banning including the type of plans, scope of coverage, and the selection of insurance carriers.

21.3.2 Voting. The Insurance Committee shall determine issues by a majority vote of the members, each member having one (1) vote, except that any such determination shall constitute an advisory recommendation only to the City Manager.

21.3.3 Selection of Members. Insurance Committee Members shall be selected as follows:

(a) Representatives of bargaining units shall be selected in a manner to be determined by each respective unit.

(b) The City's Representative shall be the City Manager or his designated representative.

21.3.4 Meetings. The Insurance Advisory Committee shall meet as may be necessary to conduct the business of the committee.

21.3.5 Status. The Insurance Advisory Committee will be advisory only, with no power or prerogative to decide on behalf of the City on issues pertaining to employee insurance coverage.

ARTICLE 22 - RETIREMENT AND MEDICARE.

22.1 PERS - The City will continue to pay each Police Unit member's employee contribution to the Public Employees Retirement System (PERS). The City shall pay nine percent (9%) of the Public Safety (sworn personnel) employees' regular and special compensation as defined by PERS as the date of this Agreement and eight percent (8%) of the Miscellaneous (civilian personnel) employees. For all Police Unit employees hired on or after January 1, 2011, each new hire shall be required to pay the full employee contribution to the Public Employees Retirement System (PERS), which currently is nine percent (9%) for Public Safety (sworn personnel) and eight percent (8%) for Miscellaneous (civilian personnel) employees.

22.2 PERS Formulas - The City agrees to continue to pay the employer's portion of the "Three Percent at Fifty" (3% @ 50) Public Safety PERS Retirement for Public Safety (sworn personnel) employees and the Two Point Five Percent at Fifty-Five (2.5% @ 55) Miscellaneous PERS Retirement. Both plans contain the "single highest year" benefit.

22.3 F.I.C.A. - Police Unit employees will pay employee portion of FICA and the City shall be responsible for payment of the employer's portion.

ARTICLE 23 – MISCELLANEOUS BENEFITS

23.1 Life Insurance - The City shall provide a life insurance policy to each employee in the Police Unit in the amount of \$50,000.00.

23.2 Direct Deposit - All Police Unit employees shall be paid by direct deposit of their payroll check into an account of their choice, except those employees who either do not hold an account with a financial institution that offers direct deposit or who do not hold an account of any type and such employees will be required to pay a \$10 administration fee per payroll. It shall be the responsibility of the employee to establish and maintain such account.

23.3 Computer Loan - Every Police Unit employee shall be entitled to participate in an interest free loan program for the purchase of a computer. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. The cumulative amount of loans outstanding hereunder shall not exceed \$20,000. The loan shall be upon the terms and conditions established by the City. These conditions shall include the prohibition against developing, maintaining or storing any department files or department related files or information or any criminal justice files, including but not limited to Megan's Law files and information, on such equipment. Wrongful possession of such information on the equipment shall constitute grounds for discipline up to and including dismissal. For purposes of this section "department files or department related files" are information concerning any individual or group of individuals, developed or obtained in the course and scope of the duties of the owner of the equipment purchased hereunder, or the course and scope of the duties of the provider of the information to such owner, as a law enforcement officer or employee of a law enforcement agency. The definition includes, but is not limited to, information regarding an individual or group of individuals which is not available to the general public and which is available to the owner of the equipment because, and not necessarily solely because, of their status as a public safety officer.

23.4 - Utility Allowance - Any Police Unit employee who resides within the City shall receive \$150 per month as a discount against the cost of electric and water service during the period of such residency.

23.5 - Deferred Compensation Plan – The City has established a deferred compensation plan under Section 457 of the IRS code. Police Unit employees may participate in this plan at their own expense and at their option. Employees may opt to deposit into their established deferred compensation account, any funds paid to them under any leave pay out provisions in this MOU. Deposits into deferred compensation accounts shall be subject to IRS rules and regulations.

23.6 – Gun Loan – The City has established a loan program for those police officers approved by the Chief of Police who wish to purchase a weapon. Repayment of the loan shall be through payroll deduction. The complete policy is established in Resolution 2005-66.

ARTICLE 24- LAYOFFS AND RE-EMPLOYMENT

24.1 - Purpose. The purpose of this Article is to provide a fair and equitable basis for the reduction in force of full-time classified personnel due to insufficient work or lack of funds.

24.2 - Reasons for Lay Off. The City of Banning retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at a level of service acceptable to the City. Lack of funds means that the City in its sole discretion has determined that it cannot sustain operations at the current level of employment within the funding available. For the purpose of this subsection, the determination of the City shall be binding.

24.3 Notice of Lay Off. Any lay off initiated under the provisions of this Agreement can take place at any time during the year. The City shall notify the affected employees in writing at least ten (10) working days prior to the employee's last day of work. The City reserves the right to pay the employee for such ten (10) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate Police Unit representative. Any notice of lay off shall specify the reason for the lay off and the effective date. The form and timing of any such notice shall be subject to the established grievance procedure, provided however, the City's decision to lay off is not subject to the grievance procedure. The date of the layoff shall not be delayed by the pendency of a grievance.

24.4 Order of Lay Off. Any lay off shall be effective within the job classification or job classifications selected by the City. Once the City has determined which classification or classifications will be affected by the layoff, the order of lay off shall be based on seniority among employees in the classification with "satisfactory job performance." "Satisfactory job performance" as used in this section shall be established when an employee has not more than two (2) overall less than satisfactory evaluations within the past five (5) years. For purposes of this Article, seniority is defined as the length of uninterrupted service within the classification of employees to be laid off as measured from the date of the layoff notice.

24.5 Reduction of Class. Any employee who has been designated to be laid off may choose to be reduced in class and compensation if the employee has greater seniority in a class than those employees in a lower class or position.

24.6 Equal Seniority. If two (2) or more employees subject to lay off have equal class seniority, then the determination as to who has greater seniority shall be based upon total length of uninterrupted service with the City.

24.7 Reemployment Rights. Laid off employees will be eligible for reemployment under the provisions of the Personnel Rules.

24.8 Reduction in Workweek. The Personnel Rules authorize the City Council to change or alter the work week by resolution.

ARTICLE 25- GRIEVANCE AND DISCIPLINE APPEALS PROCEDURE

25.1 - Procedure - Subject to the provisions of this MOU, any permanent Police Unit employee who has a grievance, as defined below, or has been disciplined, as defined below, shall be entitled to have the matter reviewed through the procedures outlined in this Article. This Article shall also include and satisfy all rights which a permanent bargaining unit employee may have under California Government Code Section 3304(b).

25.2 - Definitions:

(a) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "grievance" is defined as a dispute between the employee and the City, or the Union and the City, over the interpretation or application of this MOU, or the second denial of a step increase to an employee. The term "grievance" does not include "discipline" as defined herein.

(b) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "discipline" is limited to any action taken by the City against a permanent Police Unit employee which (1) is punishment or discipline of the employee, (2) will result in a reduction or loss in the employee's salary, (3) is either (i) an involuntary termination from City employment (ii) involuntary suspension from employment without pay, (iii) involuntary move from one (1) job classification to another job classification where the second job classification has a lower rate of pay at the top step than the top step of the job classification from which the employee was moved, or (iv) involuntary reduction in step within a job classification, and (4) is not the result of a lay off or (v) a written reprimand.

25.3 - Informal Step. An attempt shall be made to ascertain all facts and adjust such grievance or discipline on an informal basis between the employee and, if he or she desires, the employee's representative, on the one hand, and the immediate supervisor, on the other hand. Presentation of such grievance or discipline shall be made within fourteen (14) calendar days of the incident causing the grievance or discipline, or the date on which the employee first became aware of it.

25.4 - Step One. If the grievance or discipline is not adjusted to the satisfaction of the employee within seven (7) calendar days after presentation to the grievance or discipline to the immediate supervisor, and if the employee or the Union wishes to resolve the matter, the grievance or discipline shall be submitted in writing by the employee or his or her representative to the Police Chief in consultation with the Human Resources Director within the next fourteen (14) calendar days. The Police Chief shall meet with the employee, his or her representative or both within seven (7) calendar days of receipt of such written grievance; and deliver his or her decision in writing to the employee, along with reasons for such decision, within seven (7) calendar days after meeting.

25.5 Step Two. If the grievance or discipline dispute is not adjusted to the satisfaction of the employee and the union under the procedures set forth immediately above, the employee or his/her representative may submit written notice to the City Manager of his/her intent to submit the matter to mediation. Such written notice must be delivered to the City Manager within fourteen (14) calendar days after the date of the Chief of Police's written decision. The Union agrees that submission of any matter to mediation must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

25.6 Grievances Related to MOU Interpretation - On grievances pertaining to the interpretation or administration of this MOU, the Union agrees that the decision of the arbitrator's decision shall be final and binding upon the City. On disputes related to discipline, the decision of the arbitrator shall be advisory to the City Manager, whose decision shall be the final decision of the City.

25.7 Grievances Related to Discipline - On grievances related to discipline, the written notice in Step Three below shall set forth in detail the employee's and/or Union's view of the basis for the disciplinary dispute and shall separately set forth the issue or issues to be submitted to the advisory arbitrator. The procedures set forth below shall be followed thereafter.

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.

(c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.

(d) The City shall pay for the costs of the advisory arbitrator.

25.8 Step 3 - Within seven (7) calendar days after the Union and City receive the advisory arbitrator's recommendation on the dispute related to discipline, either the Union or the Department Head may submit written argument to the City Manager as to whether the arbitrator's opinion should be accepted, rejected or modified. Within fourteen (14) calendar days after the seven (7) day-period above has expired, the City Manager shall advise the Union and the Department Head whether the City Manager is accepting, rejecting, or modifying the advisory arbitrator's recommended decision. The decision of the City Manager shall be final and binding.

25.9 - Modification of Time Limits - The above time limits may be modified by mutual agreement.

ARTICLE 26- SEVERABILITY CLAUSE

26.1 - Severability - If any of the provisions contained in this Memorandum of Understanding are determined to be unlawful, then only such provision(s) shall be deleted from this Memorandum of Understanding with the remainder of this Memorandum of Understanding remaining in force and effect. Upon the issuance of a decision by a Court of Competent Jurisdiction declaring any section of this Memorandum to be unlawful, unenforceable, unconstitutional, or not applicable, the parties agree to meet and confer as soon as possible concerning only those sections.

ARTICLE 27- COMPLETE AGREEMENT

27.1 Entire Agreement - This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

27.2 Items Not Covered - All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control.

ARTICLE 28- INVESTIGATION DOCUMENTS AND MATERIALS

The City shall continue to maintain investigation documents and material in accordance with its Records Management Program. No. A-28 in the Administrative Policy which was adopted by Resolution No. 2003-26.

ARTICLE 29 - RE-OPENERS

29.1 - During the term of this MOU, unless otherwise provided, the parties shall not meet and confer with respect to any subject or matter whether or not referred to in this MOU, unless mutually agreed to otherwise.

ARTICLE 30 -- RATIFICATION AND EXECUTION

This MOU has been developed as a result of meet and confer sessions between representatives of the City and the Union regarding issues related to wages, hours and other terms and conditions of employment. The City's representatives and the Union have reached an understanding as to certain recommendations to be made to the City Council for the City of Banning and have agreed that the parties hereto will jointly urge said Council to adopt a new wage and benefit resolution which will provide for the changes contained in said joint recommendation. The parties hereto acknowledge that this MOU shall not be in full force and effect until adoption by the Banning City Council.

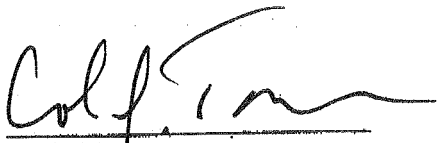
In witness whereof, the parties have caused their signatures to be affixed this ____ day of September, 2010.

For: the City of Banning

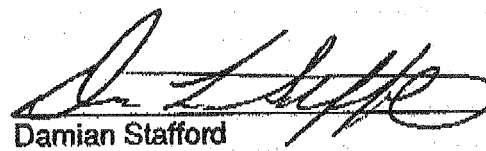
For the Banning POA

Andy Takata,
City Manager

Mike Bennett
President



Colin Tanner,
Lead Negotiator



Damian Stafford
Lead Negotiator

ARTICLE 30 – RATIFICATION AND EXECUTION

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In witness whereof, the parties have caused their signatures to be affixed this 13th day of September, 2010.

For: the City of Banning

For the Banning POA

Andy Takata,
City Manager



Mike Bennett
President

Colin Tanner,
Lead Negotiator

Damian Stafford
Lead Negotiator

CITY COUNCIL AGENDA

DATE: December 14, 2010

TO: City Council

FROM: Kirby J. Warner, Interim Administrative Services Director

SUBJECT: Adopt Resolution No. 2010-84, Approving an Updated Resolution for Employer Paid Member Contributions to the California Public Employees' Retirement System


RECOMMENDATION: Adopt Resolution No. 2010-84 approving a Resolution for Changes to Employer Paid Member Contributions ("EPMC") to the California Public Employees' Retirement System ("CalPERS").

JUSTIFICATION: During labor negotiations for a successor memorandum of understanding with the Banning Police Officers Association ("BPOA"), the BPOA agreed to change the EPMC formula the City pays to CalPERS by having Police Unit employees hired on or after January 1, 2011 pay the full EPMC. This contribution is 9% for Police Safety employees and 8% for Miscellaneous (non-safety members). This will result in reducing future costs for the City's General Fund as new employees are hired in the Police Unit.

BACKGROUND: CalPERS requires employees to contribute a percentage of their income based upon their enrolled retirement formula. Employers can choose to pick up a portion or the entire amount of this required employee contribution. This is known as Employer Paid Member Contributions—or EPMC. Employer Contribution Rates, as a percentage of payroll, can substantially increase as a result of EPMC. The City in the past negotiated to pay the entire EPMC for all employees as part of the City's retirement plan with CalPERS. Recent economic conditions and the resulting reductions necessary in the City's budget have created the need to reduce expenditures. Council directed staff to meet and confer with the BPOA in good faith to negotiate necessary reductions to employee benefits wherever possible to reduce expenditure levels now and in the future. As a result, staff negotiated a two tiered EPMC benefit whereby the City continues to pay the full EPMC for existing Police Unit employees, but Police Unit employees hired on or after January 1, 2011 shall be required to pay the full EPMC. This contribution is 9% for Police Safety employees and 8% for Miscellaneous (non-safety members). This will result in reducing future costs for the City's General Fund as new employees are hired in the Police Unit.

FISCAL DATA: There will be no immediate fiscal impact but savings in the general fund will be realized in the future.

PREPARED BY:


Rita Chapparosa

Deputy Human Resources Director

RECOMMENDED BY:


Kirby Warner

Interim Administrative Services Director

APPROVED BY:


Andy J. Takata

City Manager

RESOLUTION NO. 2010-84

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING AN UPDATED RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

WHEREAS, the governing body of the City of Banning has the authority to implement Government Code Section 20691, which allows a contracting agency to pay all or a portion of the normal contributions required by the California Public Employees' Retirement System ("CalPERS") to be paid by a member, otherwise known as Employer Paid Member Contributions ("EPMC"), and also allows a contracting agency to periodically increase, reduce, or eliminate the payment by the contracting agency of all or a portion of the normal contributions required to be paid by members;

WHEREAS, the governing body of the City of Banning has a written labor policy or agreement which specifically provides for the City as the employer to pay the normal member contributions;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Banning of a resolution to commence said Employer Paid Member Contributions;

WHEREAS, the governing body of the City of Banning has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to employees in the safety group with the classification of Police Officer, Police Sergeant, Police Staff Sergeant, and Police Master Sergeant.
- This benefit shall also apply to miscellaneous employees under the Banning Police Officer Association agreement with the classification of Police Evidence Technician and Community Service Officer.
- This benefit shall consist of paying nine percent (9%) of the normal member contribution as EPMC for the safety members and seven percent (7%) for miscellaneous members hired prior to January 1, 2011.
- All employees in the above classifications hired after January 1, 2011 will be required to pay their own member contributions.
- The effective date of this Resolution shall be effective January 1, 2011 for all employees in the above classifications or otherwise covered by the Banning Police Officer Association agreement hired on or after this date.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the City Council of the City of Banning, California elects to pay EPMC, as set forth above. This Resolution shall supersede and/or replace any and all prior EPMC resolutions.

PASSED, APPROVED AND ADOPTED this 14th day of December, 2010 at Banning, California.

Robert E. Botts, Mayor
City of Banning, California

APPROVED AS TO FORM AND
LEGAL CONTENT

David J. Aleshire, Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon
City Clerk of the City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2010-84 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December, 2010, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CITY COUNCIL AGENDA

DATE: December 14, 2010

TO: City Council

FROM: Kirby Warner, Interim Administrative Services Director

SUBJECT: Authorized Budget Positions – Fiscal Year 2010-2011

RECOMMENDATION: That the City Council approve the authorized positions as budgeted for Fiscal Year 2010-11.

BACKGROUND: The budget was adopted by City Council on June 21, 2010. The Personnel costs in the adopted budget represent part-time and full-time salaries and benefits in each department. The schedule of authorized positions identifies the number of specific positions each department has available. The purpose of the action is to ratify the final positions that exist following the elimination of positions, restructuring and layoffs that occurred.

FISCAL DATA: The Authorized Budgeted Positions are included in the approved FY 2010-2011 Budget.

Recommended By:



Kirby Warner
Interim Administrative Services Director

Approved By:



Andy J. Takata
City Manager

Authorized Budget Positions
FY 2010 to 2012

<u>TITLES</u>	<u>ELECTED</u>	<u>FULL TIME</u>	<u>PT/Temp RESERVE</u>	<u>Comments</u>
<u>COUNCIL</u>				
Council	5			
<u>CITY MANAGER</u>				
City Manager		1		
<u>CITY CLERK</u>				
City Clerk	1			
Executive Assistant		1		
<u>ADMINISTRATIVE SERVICES</u>				
<u>Finance</u>				
City Treasurer	1			
Administrative Services Director/Deputy City Manager		1		
Deputy Finance Director		1		
Accountant		1		
Financial Services Specialist		2	0.5	
<u>Purchasing</u>				
Finances Services Specialist		1		
<u>Utility Billing</u>				
Senior Billing Representative		3		
Utility Billing Representative		4		
Receptionist		1		
Lead Field Service Representative		1		
Field Service Representative		3		
<u>Human Resources/Risk Management</u>				
Deputy Human Resources Director		1		
Human Resources Technician		1		
<u>Information Systems/TV Government Access</u>				
Information Technology Coordinator		1		
Information Technology/Media Technician		1		
<u>POLICE</u>				
Police Chief		1		
Police Captain		1		Backfilled by Police Officer
Lieutenant		2		
Police Master Sergeant		1		
Police Sergeant		3		1-Backfilled by Police Officer
Police Staff Sergeant		4		
Police Officer		22		Positions Funded: 2-grants; 1-school district; 1-CRA & 4-County MOU
Police Information Technology Technician		1		
Lead Records Specialist		1		
Police Records Assistant		1		
Lead Public Safety Dispatcher		2		
Public Safety Dispatcher		6		
<u>FIRE</u>				
Office Specialist		1		
Contract - CDF Employees		17		17- Contract to CDF
<u>COMMUNITY DEVELOPMENT/CRA</u>				
Community Development Director		1		
Redevelopment Manager		1		
Executive Secretary		1		
Econ/RDA Project Coordinator		1		
Code Compliance Officer		1		
Office Specialist		1		
<u>Planning</u>				
Assistant Planner		1		
Development Project Coordinator		1		

Authorized Budget Positions
FY 2010 to 2012

<u>TITLES</u>	<u>ELECTED</u>	<u>FULL TIME</u>	<u>PT/Temp RESERVE</u>	<u>Comments</u>
<u>PUBLIC WORKS</u>				
<u>Engineering/Public Works</u>				
Public Works Director		1		
City Engineer		1		
Associate Civil Engineer			0.25	
Executive Secretary		1		
Public Works Inspector		1		
<u>Building Maintenance</u>				
Bldg Maintenance Specialist		1		
<u>Parks/Streets</u>				
Public Works Superintendent		1		
Maintenance Worker		4		
<u>Fleet Maintenance</u>				
Fleet Maintenance Mechanic		2		
<u>Streets</u>				
Senior Maintenance Worker		2		
Motor Sweeper Operator		1		
Work Release Crew Lead		1		
<u>Airport</u>				
Airport Attendant			1.40	
<u>Water</u>				
Water/Wastewater Superintendent		1		
Senior Civil Engineer		1		
Executive Secretary		1		
Office Specialist		1		
Water Crew Lead		1		
Valve Flush Lead		1		
Construction Crew Lead		1		
Water Crew Supervisor		2		
Water Services Worker		6		
<u>Wastewater</u>				
Wastewater Collection Crew Supervisor		1		
Wastewater Collection System Technician		2		
<u>Community Services</u>				
Community Services Director		1		
Office Specialist		1		
Caretaker			0.75	
Program Coordinator			0.75	
Building Attendants			1.25	
Assistant Pool Manager			0.20	
Lifeguards			1.08	
Cashier			0.63	
<u>Transit</u>				
Bus Driver-Lead		1		
Bus Drivers		4		
Bus Drivers - Part Time			3.65	
Office Specialist		1		
<u>Transit/Dial-a-Ride</u>				
Dial-A-Ride Driver			1.88	
Fleet Maintenance Mechanic		1		

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Authorized Budget Positions
FY 2010 to 2012

<u>TITLES</u>	<u>ELECTED</u>	<u>FULL TIME</u>	<u>PT/Temp RESERVE</u>	<u>Comments</u>
Electric				
Electric Utility Director		1		
Electric Operations Manager		1		
Associate Electrical Engineer		1		
Apprentice Electric Meter Test Technician		1		
Meter Test Technician		1		
Executive Secretary		1		
Powerline Crew Supervisor		3		
Powerline Technician		5		1-Backfilled by Powerline Apprentice
Electric Service Planner		1		
Powerline Apprentice		3		
Warehouse Service Specialist		1		
Power Resource & Revenue Administrator		1		
Public Benefit Coordinator		1		
Utility Services Assistant		1		
TOTAL ALL	179.34	7	160	12.34

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 14, 2010

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Resolution No. 2010-89 Authorizing an appropriation \$5,300 from the City's General Fund to the Police Department's clothing and accoutrements account to replace funds used to purchase bulletproof vests.

RECOMMENDATION: "Adopt Resolution No. 2010-89 authorizing an appropriation in the amount of \$5,300 from the General Fund to the Police Department's clothing and accoutrements account to replace funds used to purchase replacement bulletproof vests for police officers."

JUSTIFICATION: During September 2010, the police department was required to purchase 13 replacement bulletproof vests for police officers. Each vest has an effective life span of 5 years, after which time it must be replaced. The total cost of the vests was \$10,600. The vests were paid for with funds from the police department's clothing and accoutrements account.

The Banning Police Department actively participates in the U.S. Department of Justice's Bulletproof Vest Program, which allows agencies to recoup 50% of their costs on bulletproof vest purchases for law enforcement officers. On November 2, 2010, the Banning Finance Department notified the police department it had received a \$5,300 refund from the Bulletproof Vest Program for the vests purchased in September 2010, which was deposited into the City's General Fund.

Replacement of the \$5,300 in the clothing and accoutrements account will allow the police department to make additional purchases while remaining within its budget.

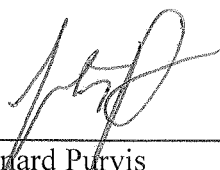
STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will help facilitate the Police Department's ability to purchase necessary uniforms and accoutrements within its allotted budget.

FISCAL DATA: The appropriation request of \$5,300 from the General Fund into the police department's clothing and accoutrements account (001-2200-421-3604) is a 50% refund for funds used out of the account in September 2010 to purchase bulletproof vests, which was obtained through U.S. DOJ Bulletproof Vest Program.

RECOMMENDED BY:

REVIEWED BY:

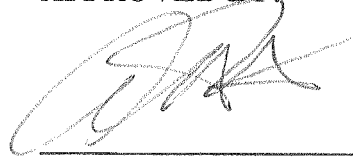
APPROVED BY:



Leonard Purvis
Chief of Police



Kirby Warner
Administrative Services Director



Andrew Takata
City Manager

RESOLUTION NO. 2010-89

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING A ONE TIME APPROPRIATION FROM THE CITY'S GENERAL FUND TO THE POLICE DEPARTMENT'S CLOTHING AND ACCOUTREMENTS ACCOUNT IN THE AMOUNT OF \$5,300 FOR THE REPLACEMENT OF FUNDS USED TO PURCHASE BULLETPROOF VESTS.

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

WHEREAS, the City of Banning Police Department is mandated to provide bulletproof vests for its police officers; and

WHEREAS, the Police Department is responsible for replacing each police officer's bulletproof vest every 5 years; and

WHEREAS, a bulletproof vest is one of the most essential pieces of safety equipment a police officer must have; and

WHEREAS, the City's procedures requires the City Council to adopt a resolution authorizing the expenditure of general funds.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning appropriates general funds in the amount of \$5,300 to the police department's clothing and accoutrements account (001-2200-421-3604) as a 50% replacement cost of \$10,600 that was used from the account to purchase 13 bulletproof vests. Additionally, the Finance Department is authorized to make the necessary budget adjustments related to this appropriation.

PASSED, APPROVED, AND ADOPTED this 14th day of December, 2010.

Bob Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

Aleshire & Wynder, LLP
City Attorney

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-89 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December 2010, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 14, 2010

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Resolution No. 2010-90 Authorizing an adjustment in Banning's Parking Violation Penalty Schedule due to increased surcharges by the State of California.

RECOMMENDATIONS: "Adopt Resolution No. 2010-90 authorizing an added penalty of \$13.00 to each parking citation issued to cover the cost of state imposed surcharges used to fund services such as Emergency Management Programs and Criminal Justice Facility Construction."

JUSTIFICATION: The added \$13 will cover \$12.50 of surcharges, per issued citation, required by the State of California to fund Emergency Management Programs and Criminal Justice Facility Construction. The state surcharges directly reduce revenue into the City's General Fund by \$12.50 per citation. The average number of parking citations issued annually over the past three years was 266. This equates to an approximate annual loss of \$3,325 to the City's General Fund.

Based on the State of California's inability to process in \$.50 increments, the net impact of the \$13 increase in parking fees would result in an estimated \$133 increase in revenue to the City's General Fund, if the number of parking citations issued remains consistent with the current annual average.

BACKGROUND: In 1993, the Banning City Council adopted Resolution 1993-110 establishing Banning's Parking Violation Penalty Schedule. A recent review of the Penalty Schedule (Attached Appendix A) found the penalties have not been adjusted since they were first implemented. However, a review of other municipality and county government parking violation schedules indicates Banning's penalties are still appropriate and need not be adjusted, with one exception. Since the late 1990's, the State of California has periodically imposed surcharges to parking violation penalties to fund Emergency Management Programs and Criminal Justice Facility Construction. The surcharges are authorized under California Government Code Sections 76000, 76100, 76101, and 70372.

Prior to December 7, 2010, the surcharges equaled \$9.50 per parking citation. However, with the passage of SB 857 an additional \$3.00 is being added to the surcharges per California Government Code 76000.3 for a total of \$12.50 per parking citation.

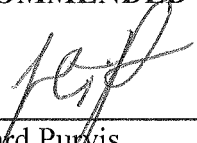
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The requested adjustment will be used to offset surcharges charged by the State of California for the noted programs.

STRATEGIC PLAN INTEGRATION: Approval of this request will enhance the City's ability to financial ensure the Citizens of Banning have a safe, pleasant, and prosperous community in which to live, work, and play.

FISCAL DATA: The added \$13 penalty, per citation, will offset the State mandated surcharges in the amount of \$12.50 per citation. Based on the annual average of parking citations issued by the Banning Police Department, the requested increase will save approximately \$3,325 in the City's General Fund. Because the State of California is unable to process penalties in \$.50 increments, the additional \$.50, per citation, will result in an estimated \$133 annual increase in revenue to the City's General Fund.

RECOMMENDED BY:

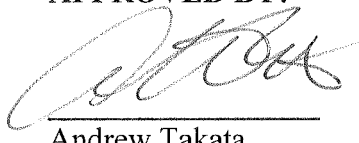


Leonard Purvis
Chief of Police



Kirby Warner
Administrative Services Director

APPROVED BY:



Andrew Takata
City Manager

RESOLUTION NO. 2010-90

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING AN ADDED PENALTY OF \$13.00 PER PARKING CODE VIOLATION, AS LISTED IN THE CURRENT BANNING PARKING VIOLATION PENALTY SCHEDULE, TO OFFSET STATE IMPOSED SURCHARGES.

WHEREAS, the Banning City Council is responsible for approving City fee schedules;
and

WHEREAS, the Banning City Council is committed to being fiscally responsible; and

WHEREAS, the City's procedures require the City Council to adopt a resolution authorizing an increase to parking violation penalties.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning immediately authorizes an increase of \$13.00, per parking code violation, to offset State mandated surcharges. The Police Department and Finance Department are authorized to make the necessary changes to the Banning Parking Violation Penalty Schedule and Banning Police Department Notice of Parking Violation citations.

PASSED, APPROVED, AND ADOPTED this 14th day of December, 2010.

Bob Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

Aleshire & Wynder, LLP
City Attorney

Marie A. Calderon, City Clerk
City of Banning

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CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-90 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December 2010, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

APPENDIX A

Code	Section	Description	Fee
1012045	10.12.045 BMC	PARKING IN EXCESS OF 72 HRS	45
1016020	10.16.020 BMC	COMMERCIAL VEH-PKG PROHIBITED	100
13101	13-101 BMC	PROHIB PKG OF COMM VEH 8PM-6AM	80
1321	13-21 BMC	PROHIB STOP/PARK AT RED CURB	45
1322	13-22 (A) BMC	PROHIBITED STOPPING OR PARKING	45
1323	13-23 BMC	PKG NOT TO OBSTRUCT TRAFFIC	45
1324	13-24 BMC	ALL NIGHT/VEH MAINT PKG PROHIB	50
1325	13-25 BMC	STANDING/PARKING ONE-WAY RDWY	45
1326	13-26 BMC	PARKING ON GRADES	45
1327	13-27 BMC	UNLAWFUL PKG-PEDDLERS/VENDORS	80
1328	13-28 BMC	TEMPORARY PARKING RESTRICTIONS	45
1329	13-29 BMC	TIME LIMIT PKG ZONES-GREEN CRB	45
1330	13-30 BMC	PARKING WITHIN SPACE MARKING	45
1332	13-32 BMC	PKG PASS/FRGHT LOAD ZONES-TIME	45
1333	13-33 BMC	STOPPING IN ALLEY	45
1334	13-34 BMC	DESIGNATED BUS AND TAXI ZONES	80
1335	13-35 BMC	RESTRICTED USE OF BUS/TAXI ZNE	45
1339	13-39 BMC	TRLR/SEMI-TRLR PKG PROHIBITED	80
1340	13-40 BMC	COMM PKG BUS/RES DISTRICTS	80
1396B	13-96(B) MC	COM VEH OVER 10,000LBS	100
1397	13-97 BMC	VEH OVR 10,000LBS TRK RTE ONLY	80
16020A1	10.16.020A1 BMC	VEH PKD TRANS ANIMALS/NUISANCE	100
16020A2	10.16.020A2 BMC	VEH PKD W/HAZARDOUS W/IN CITY	100
16020A3	10.16.020A3 BMC	PKD ON ROAD FOR REPAIR	100
16020B1	10.16.020B1 BMC	OVR 10,000LBS IN RES AREA	100
16020B2	10.16.020B2 BMC	OVR 10,000LBS ON LOT/UNIMPROVD	100
16020B3	10.16.020B3 BMC	OVR 10,000LBS W/IN 100 FT RES	100
16020B4	10.16.020B4 BMC	OVR 10,000LBS W/IN 100' DRVWAY	100
16020B5	10.16.020B5 BMC	OVR 10,000LBS CMCRL PROP	100
16020B6	10.16.020B6 BMC	OVR 10,000LBS NON-RES PROP	100
16020B7	10.16.020B7 BMC	OVR 10,000LBS IN ALLEY	100
16020B8	10.16.020B8 BMC	OVR 10,000LBS ADJ PUB FACILITY	100
16020B9	10.16.020B9 BMC	OVR 10,000LBS UNATTCH TRAILER	100
16020C	10.16.020C BMC	OVR 10,000 IDLING OVR 15 MIN	100
21113A	21113 (A) CVC	UNAUTH PKG ON PUBLIC GROUNDS	35
21211A	21211 (A) CVC	STOPPING/PARKING ON BICYCLE LN	35
225001	22500.1 CVC	PARKING IN POSTED FIRE LANE	80
22500A	22500 (A) CVC	PARKING WITHIN INTERSECTIONS	35
22500B	22500 (B) CVC	PARKING IN CROSSWALK	35
22500C	22500 (C) CVC	PARKING ADJACENT TO SAFETY ZNE	35

APPENDIX A

22500D	22500 (D) CVC	PKG W/IN 15' OF FIRE STA DRVWY	35
22500E	22500 (E) CVC	PARKING BLOCKING A DRIVEWAY	35
22500F	22500 (F) CVC	PARKING ON A SIDEWALK	35
22500G	22500 (G) CVC	PARKING BLOCKING EXCAVATION	35
22500H	22500 (H) CVC	DOUBLE PARKING	35
22500I	22500 (I) CVC	PARKING IN A POSTED BUS ZONE	250
22500J	22500 (J) CVC	PKG BLKG WHEELCHAIR ACCESS	325
22500K	22500 (K) CVC	PARKING ON A BRIDGE	35
22500L	22500 (L) CVC	PKG BLKG WHEELCHAIR ACCESS	325
22502A	22502 (A) CVC	PKG MORE THAN 18" FROM CURB	35
22505B	22505 (B) CVC	POSTED NO PARKING	35
225078	22507.8 (A) CVC	PKG IN/OBSTRUCT DISABLED SPACE	325
225078A	22507.8 (A) CVC	PKG IN DISABLED SPACE	325
225078B	22507.8 (B) CVC	OBSTRUCT/BLK DISABLED SPACE	325
225078C	22507.8 (C) CVC	PKG ON BLUE CROSSHATCH	325
225078C1	22507.8(C)(1)CVC	OBSTRUCTING DISABLED PKG SPACE	325
225078C2	22507.8(C)(2)CVC	OBSTRUCTING DISABLED PKG SPACE	325
22514	22514 CVC	PKG W/IN 15' OF FIRE HYDRANT	35
22515B	22515 (B) CVC	UNATTENDED VEHICLE	35
22516	22516 CVC	LOCKING PERSON IN VEHICLE	35
22521	22521 CVC	PARKING W/IN 7.5' OF RR TRACK	35
22522	22522 CVC	PKG W/IN 3' SIDEWLK ACCESS RMP	325
22523	22523 CVC	ABANDONED VEHICLE	275
4000A	4000A CVC	UNREGISTERED VEHICLES	60
4000A1	4000A CVC	UNREGISTERED VEHICLES	60
5200	5200 CVC	DISPLAY OF LICENSE PLATES	60
5204	5204 (A) CVC	IMPROPER DISPLAY OF TABS	30
5204A	5204 (A) CVC	IMPROPER DISPLAY OF TABS	30
ADMINFEE	ADMIN FEE	ADMINISTRATIVE FEE	25
BOUNCE	BAD CHECK	BAD CHECK FEE	10
CORRAMT	CORRECTABLE AMT	CORRECTABLE AMOUNT	10
MIS325	MISC 06/01/95	PARKING VIOLATION	325
MIS35	MISC 06/01/95	PARKING VIOLATION	35
MIS375	MISC 06/01/95	PARKING VIOLATION	375
MIS45	MISC 06/01/95	PARKING VIOLATION	45
MIS60	MISC 06/01/95	PARKING VIOLATION	60
MIS70	MISC 06/01/95	PARKING VIOLATION	70
MIS80	MISC 06/01/95	PARKING VIOLATION	80
MIS90	MISC 06/01/95	PARKING VIOLATION	90
XXXX	XXXX	ORIGINAL CITATION NOT RECEIVED	0

CITY COUNCIL AGENDA
CONSENT ITEM

DATE: December 14, 2010

TO: City Council

FROM: Heidi Meraz, Community Services Director

SUBJECT: Resolution No. 2010-91 “Authorizing the Purchase of five (5) camera systems and accessories from Safety Vision of Houston, Texas to be installed in the Banning Pass Transit Buses”


RECOMMENDATION: The City council adopts Resolution No. 2010- 91 authorizing the purchase of the Safety Vision Road Recorder 6000PRO DVR Camera Systems and Accessories in an amount not to exceed \$44,933,48.

JUSTIFICATION: The Road Recorder 6000PRO DVR Camera Systems and Accessories will replace the 6000 DVR and current hard drive in the current fleet on route as well as match the security equipment that is installed in the two new buses that were delivered earlier this year and are being readied for service. The Road Recorder 6000PRO DVR Camera Systems will bring the video recording system on the buses up to date and offer both the drivers and passengers a stronger sense of security. The buses currently on route are currently equipped with Road Recorder 5000 DVR’s. Safety Vision is the sole source for this purchase as it will be an upgrade of outdated equipment that will utilize current wiring which must be compatible with the new system.


BACKGROUND: The current video recording system on the buses is outdated. Repairs are becoming increasingly difficult as parts are becoming more difficult to obtain. The purchase of the Safety Vision Road Recorder 6000PRO DVR’s Camera Systems will modernize and improve the video surveillance capabilities on the buses and help ensure the safety of our drivers and passengers.

FISCAL DATA: Funds for this purchase have been designated and are available in Transit Fund 610-5800-434-90-56. This account is funded through Local Transportation Funds which are allocated by the Riverside County Transportation Commission on an annual basis.

RECOMMENDED BY:

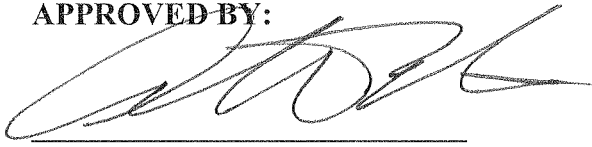

Heidi Meraz
Community Services Director
Director

REVIEWED BY:


Kirby Warner
Interim Administrative Services
Director

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APPROVED BY:

A handwritten signature in black ink, appearing to read 'AT', is written over a horizontal line.

Andy Takata
City Manager

RESOLUTION NO. 2010-91

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE PURCHASE OF FIVE (5) CAMERA SYSTEMS AND ACCESSORIES FROM SAFETY VISION OF HOUSTON, TEXAS TO BE INSTALLED IN THE BANNING PASS TRANSIT BUSES.

WHEREAS, the safety of passengers and drivers is of paramount concern and is greatly enhanced with effective camera and recording systems; and

WHEREAS, the cameras and recording systems currently on Banning Pass Transit Buses is outdated and needs to be upgraded to ensure reliability; and

WHEREAS, the camera and recording systems currently installed in the Banning Pass Transit Buses are Safety Vision Road Recorders which require upgrades from Safety Vision of Houston, Texas; and

WHEREAS, funds for this purchase are available in the Transit Fund, 610-5800-434-90-56 and are designated to upgrade cameras and recorders.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Banning authorizes the purchase of the Safety Vision Road Recorder 6000PRO DVR Camera Systems and Accessories in an amount not to exceed \$44,933.48.

PASSED, APPROVED AND ADOPTED this 14th day of December, 2010.

Robert E Botts, Mayor
City of Banning

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

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

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. 2010-91 was adopted by the City Council of the city of Banning at a regular meeting thereof held on the 14th day of December, 2010, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 14, 2010

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Approve Amendment to Original Agreement with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

RECOMMENDATION: "The City Council amend the current limit on compensation for services (\$25,000) with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department to \$60,000."


JUSTIFICATION: Amendment of this contract allows the Police Department to continue utilizing the investigative services of Norman A. Traub Associates for sensitive personnel matters.

BACKGROUND & ANALYSIS: During the course of this fiscal year the Banning Police Department has required the professional and independent services of Norman A. Traub Associates for personnel investigations involving employees of the City of Banning. Because of the number of investigations required this year, the limit on compensation for services with Norman A. Traub Associates of \$25,000 has been reached, as documented in the City's Consultant Services Agreement between the City of Banning and Norman A. Traub Associates for FY 2010-11.

The requested increase in the spending limit for services with Norman A. Traub Associates is necessary to complete several personnel investigations that require an independent and professional review for the protection of the City and the Banning Police Department.

FISCAL DATA: Sufficient funds are available in the Police Department 2010-11 adopted budget professional services account number 001-2200-421.33-11 and booking fees account 001-2200-421.41-10.

RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


Kirby Warner
Administrative Services Director

APPROVED BY:


Andrew Takata
City Manager

**CITY COUNCIL/ COMMUNITY REDEVELOPMENT AGENCY
AGENDA**

DATE: December 14, 2010

TO: City Council and Community Redevelopment Agency

FROM: Duane Burk, Director of Public Works

SUBJECT: Notice of Completion for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations"

RECOMMENDATION: City Council accept Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations," as complete and direct the City Clerk to record the Notice of Completion.

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

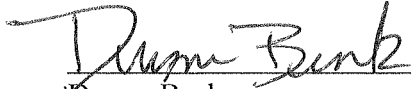
BACKGROUND: On January 12, 2010 the City Council adopted Resolution No. 2010-03 and the Community Redevelopment Agency adopted Resolution No. 2010-01 awarding the Construction Contract for Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various Locations" to Larry Jacinto Construction, Inc. of Mentone, California in the amount of \$878,442.40.

The scope of work for Project No. 2009-04 included the grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C. overlay per the City Engineer's recommendations; constructing A.C. berms, sidewalks, curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, fire hydrants, water meters, and water valve covers to grade; removing and replacing water services, water meter boxes; and installation of street lights and electrical conduit, striping improvements, landscaping; and cleaning on various streets. The Contractor complied with all National Pollutant Discharge Elimination System (NPDES) requirements to reduce storm water run-off by implementing applicable Best Management Practices (BMPs).

FISCAL DATA: This project was completed under the original contract amount of \$878,442.40, with a total project cost of \$799,451.91, approximately 91% of the original contract amount. Through a competitive grant application process City staff obtained three separate SB-821 Bicycle and Pedestrian Facilities grants from the Riverside County Transportation Commission summing up to an amount equal to \$152,500.00 for the construction of sidewalks and handicap ramp improvements. The remaining amount was paid using the 2007 CRA Bond Proceeds fund and the Measure "A" fund.

SIGNATURES ON NEXT PAGE

RECOMMENDED BY:



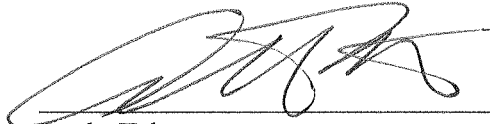
Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

1 WHEN RECORDED MAIL TO:

2
3 The Office of the City Clerk
4 of the City of Banning
5 P.O. Box 998
6 Banning, California 92220
7

8 FREE RECORDING:
9 Exempt Pursuant to
10 Government Code §6103
11

12
13 NOTICE OF COMPLETION

14 PROJECT NO. 2009-04

15 STREET IMPROVEMENTS AND SIDEWALK IMPROVEMENTS AT VARIOUS
16 LOCATIONS

17
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the
19 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of
20 the Civil Code of the State of California, and is hereby accepted by the City of Banning,
21 pursuant to authority conferred by the City Council this December 14, 2010, and the
22 grantees consent to recordation thereof by its duly authorized agent.
23

24 That the OWNER, the City of Banning, and Larry Jacinto Construction, Inc. of Mentone,
25 California, the vendee, entered into an agreement dated January 25, 2010, for
26 Construction of Project No. 2009-04, "Street Improvements and Sidewalk Improvements
27 at Various Locations". The scope of work for Project No. 2009-04 included the
28 grinding/cold planing of existing asphalt; grading, placing new A.C. and base, and A.C.
29 overlay per the City Engineer's recommendations; constructing A.C. berms, sidewalks,
30 curbs, gutters, driveways, cross gutters, spandrels and handicap ramps in accordance with
31 the City of Banning and CALTRANS Standard Specifications; adjusting manholes, fire
32 hydrants, water meters, and water valve covers to grade; removing and replacing water
33 services, water meter boxes; and installation of street lights and electrical conduit,
34 striping improvements, landscaping; and cleaning on various streets.

1 (1) That the work of improvement was completed on November 1, 2010, for
2 Project No. 2009-04, "Street Improvements and Sidewalk Improvements at Various
3 Locations".

4 (2) That the City of Banning, a municipal corporation, whose address is
5 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work
6 of improvement.

7 (3) That said work of improvement was performed at various locations
8 throughout Banning, California 92220.

9 (4) That the original contractor for said improvement was Larry Jacinto
10 Construction, Inc., State Contractor's License No. 458118.

11 (5) That Performance and Payment bonds were required for this project.
12

13 Dated: December 14, 2010

14 CITY OF BANNING
15 A Municipal Corporation
16
17
18

19 By _____
20 Andy Takata
21 City Manager
22

23 APPROVED AS TO FORM:
24
25
26
27

28 _____
29 David J. Aleshire, Aleshire & Wynder, LLP
30 Agency Counsel
31
32
33
34

JURAT

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this _____ day of
_____, 2010 by _____ proved to me on this basis of
satisfactory evidence to be the person(s) who appeared before me.

(S e a l)

Notary Public in and for said County
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

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

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

Executed on _____, 2010 at Banning, California.

City Clerk of the City of Banning

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CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA

DATE: December 14, 2010

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2010-11 UA, "Supporting Southern California Edison Company's Application for Surrender of License for Federal Energy Regulatory Commission (FERC) Project No. 344 and urging the FERC to set terms and conditions that help assure the safety and reliability of the project facilities for continued long-term water supply"

RECOMMENDATION: The Utility Authority adopt Resolution No. 2010-11 UA:

- I. Supporting Southern California Edison's Application for Surrender of License for Federal Energy Regulatory Commission (FERC) Project No. 344.
- II. Notifying the FERC that the Banning Utility Authority supports Southern California Edison's surrender, repair, and transfer of ownership of the Whitewater Flume (also known as FERC Project No. 344) for continued operation for water supply.
- III. Requesting FERC support and urging the FERC to set terms and conditions that help assure the safety and reliability of the project facilities for continued long-term water supply.

JUSTIFICATION: It is necessary to file this Resolution with the FERC in order to demonstrate public support of the project while at the same time formally establishing the City's needs regarding the reliability and safety of the facilities that will be transferred to the City and Banning Heights Water Company.


BACKGROUND: In June of 2010, an Agreement for Transfer of San Gorgonio Hydroelectric Project No. 344 Water Conveyance Facilities, also known as the Whitewater Flume, was fully executed between Southern California Edison Company (SCE), the City of Banning, Banning Heights Water Company, and San Gorgonio Pass Water Agency (Pass Water Agency). Part of the Agreement calls for SCE to surrender their Federal Energy Regulatory Commission (FERC) license for the project which is a necessary first step in obtaining the permits required to make needed repairs, transfer ownership and to allow for continued long-term operation of the project facilities for water supply.

Assisting SCE throughout the surrender process is in the City's best interest. Execution of the June 2010 Agreement implies City support; however, adoption of this Resolution is necessary in order to formally reinforce that there is public support; to assure that existing and future needs are considered by FERC throughout the decision-making process; and to address existing key public concerns as it relates to system repairs and the reliability and safety of the system. Consequently, the City urges the FERC to set terms and conditions that help assure that the City's long-term needs and interests are protected.

STRATEGIC PLAN INTEGRATION: Approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply to the present and future customers of the Water Utility.


FISCAL DATA: There are no costs directly associated with the Resolution. Indirectly, the Resolution could have the effect of improving the quality of the repairs carried out by SCE and thereby save the City funds in the long-term by reducing the need for future maintenance and repairs. The Participating Entities are currently evaluating the purchase and repair of the water conveyance system. The City will be responsible for ten percent of the associated costs.

RECOMMENDED BY:




Duane Burk
Director of Public Works

REVIEWED BY:



Kirby Warner
Interim Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2010-11 UA

A RESOLUTION BY THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, SUPPORTING SOUTHERN CALIFORNIA EDISON COMPANY'S APPLICATION FOR SURRENDER OF LICENSE FOR FERC PROJECT NO. 344 AND URGING THE FERC TO SET TERMS AND CONDITIONS THAT HELP ASSURE THE SAFETY AND RELIABILITY OF THE PROJECT FACILITIES FOR CONTINUED LONG-TERM WATER SUPPLY

WHEREAS, Southern California Edison Company (SCE) has utilized a historic City of Banning water supply and pre-1914 appropriative water right to generate electric power for many years under a license (No. 344) from the Federal Energy Regulatory Commission (FERC); and

WHEREAS, SCE has decided to cease generating electric power and has filed an Application for Surrender of License with the FERC; and

WHEREAS, the continued operation of the project facilities in a safe and reliable condition for water supply is important to the well-being of the City's approximately 30,000 citizens; and

WHEREAS, the project facilities are seriously deteriorated and in need of substantial repair and/or replacement to assure long-term reliability and safety for water supply; and

WHEREAS, SCE has entered into an agreement with the City of Banning, Banning Heights Mutual Water Company, and San Geronio Pass Water Agency to repair the project facilities and transfer ownership to the water rights holders.

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

Section 1. The Banning Utility Authority supports SCE's Application for Surrender of License for FERC Project No. 344.

Section 2. The Banning Utility Authority authorizes staff to inform the Federal Energy Regulatory Commission (FERC) of its support of Southern California Edison's surrender, repair, and transfer of ownership of the Whitewater Flume (also known as FERC Project No. 344) for continued operation for water supply.

Section 3. The Banning Utility Authority authorizes staff to request FERC support and to urge the FERC to set terms and conditions that help assure the safety and reliability of the project facilities for continued long-term water supply.

PASSED, ADOPTED AND APPROVED this 14th day December, 2010.

Robert E. Botts, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-11 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at its Joint Meeting thereof held on the 14th day of December, 2010.

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Banning Utility Authority

CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA

DATE: December 14, 2010

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2010-12UA, "Approving the 2nd Amendment to the Professional Services Agreement with Raftelis Financial Consultants, Inc. for the Development of Water Rates and Connection Fees"

RECOMMENDATION: Adopt Resolution No. 2010-12UA, "Approving the 2nd Amendment to the Professional Services Agreement with Raftelis Financial Consultants, Inc. for the Development of Water Rates and Connection Fees."

JUSTIFICATION: The 2nd Amendment to this Agreement is essential for the completion and the revision of the reports prepared in connection with the rate increase approved by the City Council on October 12, 2010.


BACKGROUND: On April 14, 2009 the City Council approved the Professional Services Agreement for financial planning the development of water rates and connections fees in the amount of \$42,000.00. On June 22, 2010 Amendment No. 1 was approved by the City Council and the Banning Utility Authority in the amount of \$25,000.00 to complete the Water and Wastewater Rate Study Report in efforts to accomplish a long over due increase of rates.

On May 25, 2010 the Banning City Council held a workshop to discuss the Water and Wastewater Rate Study Report which included recommendations to increase the rates. On October 12, 2010 the City Council adopted Ordinance No. 1428, and Ordinance 1429 approving the increase of the Water and Wastewater Rates for the Water and Wastewater Utilities as proposed by the City Council making revisions to the Water and Wastewater Rates Study Report prepared by Raftelis Financial Consultants, Inc.


The revisions to the City of Banning Water and Wastewater Rates Study Report required additional services related to the public hearings and related tasks. Amendment No. 2, as shown in Exhibit "A" attached hereto, will finalize the report and includes additional compensation in the amount of \$18,679.03 to be paid to Raftelis Financial Consultants, Inc.

FISCAL DATA: An appropriation in the amount of \$18,679.03 from the Water Fund Balance to Account 661-6300-471.33-11 (Professional Services) is necessary in order to cover the additional services.

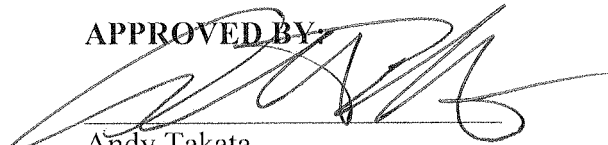
RECOMMENDED BY:


Duane Burk
Director of Public Works

REVIEWED BY:


Kirby Warner
Interim Administrative Services Director

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2010-12 UA

RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH RAFTELIS FINANCIAL CONSULTANTS, INC. FOR THE FINANCIAL PLANNING AND DEVELOPMENT OF THE WATER AND WASTEWATER RATE STUDY REPORT

WHEREAS, on April 14, 2009 the City Council approved an Agreement in the amount of \$42,000.00 to Raftelis Financial Consultants, Inc for financial planning and development of water rates which resulted in the preparation of the City of Banning Water and Wastewater Rate Study Report dated June of 2010; and

WHEREAS, on May 25, 2010 the City of Banning held a workshop to discuss the Water and Wastewater Rate Study Report which includes recommendations to increase water and wastewater rates; and

WHEREAS, on June 22, 2010 Amendment No. 1 was approved by the City Council and the Banning Utility Authority in the amount of \$25,000.00 to revise and complete the report; and

WHEREAS, staff respectfully requests the approval of Amendment No. 2 in the amount of \$18,679.03 for additional scope of work which included revisions of the Water and Wastewater Rate Study Report.

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

Section I. The Banning Utility Authority approves the Second Amendment to the Agreement with Raftelis Financial Consultants, Inc. in the amount of \$18,679.03 to include additional services and compensation as shown in Exhibit "A" attached hereto.

Section IV. The Administrative Services Director is authorized to make necessary appropriations in the amount of \$18,679.03 from the Water Fund Balance to Account No. 661-6300-471.33-11 (Professional Services).

PASSED, ADOPTED AND APPROVED this 14th day of December, 2010.

Robert E. Botts, Chairman
Banning Utility Authority

ATTEST:

Marie A. Calderon, Secretary

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

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

CERTIFICATION:

I, Marie Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-12 UA was adopted by the Banning Utility Authority of the City of Banning at its joint meeting thereof held on the 14th day of December, 2010.

AYES:

NOES:

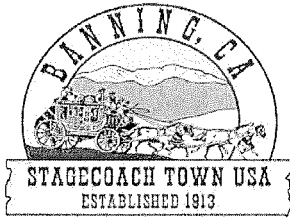
ABSENT:

ABSTAIN:

Marie A. Calderon, Secretary
Banning Utility Authority

EXHIBIT “A”

**PROPOSED AMENDMENT NO. 2
RAFTELIS FINANCIAL CONSULTANTS, INC.**



PUBLIC WORKS DEPARTMENT
P.O. Box 998
Banning, CA 92220

SECOND AMENDMENT
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF BANNING
AND
RAFTELIS FINANCIAL CONSULTANTS, INC.

ARTICLE 1. PARTIES AND DATE

This Second Amendment to the Professional Services Agreement ("Amendment") dated as of the 14th day of December, 2010 is entered into by and between the City of Banning ("City") and Raftelis Financial Consultants, Inc. (RFC).

ARTICLE 2. RECITALS

2.1 City and RFC entered into that certain Agreement for Services dated the 14th day of April, 2009 ("Agreement"), whereby RFC agreed to provide the review and development of the Water and Wastewater rates through a Financial Planning of the City's Water System Study. Amendment No. 1 for additional services in the amount of \$25,000.00 was fully executed on May 25, 2010,

2.2 City and RFC now desire to enter into a Second Amendment to the Agreement to include additional services and compensation to the original Agreement.

ARTICLE 3. TERMS

3.1 A new Exhibit "A" attached to this amendment is hereby added to the Agreement to reflect the additional services to be provided for the additional compensation of \$18,679.03 for the revisions to the City of Banning Water and Wastewater Rates Study Report.

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

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

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

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

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

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

CITY OF BANNING

Raftelis Financial Consultants, Inc.

By: _____

Andrew J. Takata

City Manager

Signature: _____

Name: _____

Title: _____

Date: _____

Date: _____

2nd Signature Required if a Corporation:

Name: _____

Title: _____

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

City Attorney

Exhibit "A"

Compensation & Scope of work

The scope of additional work and associated fees are described are included in Tasks 1, 4 and 6 in the proposal to develop Water Rates dated January 2010. Tasks 1, 4 and 6 are as follows:

Task 1 – Project Management & Meeting

- 1.1 Coordinate project activities between RFC staff and City staff. Provide direction to staff as required to meet project objectives and deadlines. Ensure adequate levels of staff and resources throughout the course of the project. Review all study-related work and provide overall quality assurance.
- 1.2 Perform general administrative duties, including client correspondence, billing, and project documentation.

Task 4 – Review and Development of Rates

The water revenue requirements from each customer class will be recovered through the proposed rate structure. The tiers may be revised in consultation with City Staff. The following subtasks will be performed:

- 4.1 RFC will develop a conservation-oriented rate structure which will be equitable to customers and entire the City's revenue stability. RFC will meet with City Staff to discuss different rate alternatives and scenarios.
- 4.2 RFC will compare the proposed water rates developed for the City with neighboring agencies of comparable service characteristics.

Task 6 – Final Report, Presentation and Prop 218

RFC, with assistance of City staff, will prepare a final report encompassing all study findings, input, and recommendations at the conclusion of the project and present findings to City staff and at public meetings. Specific subtasks include:

- 6.1 Incorporate the City's comments of the draft report into the final report and submit electronic and hard copies to the City.
- 6.2 Present the final report and recommendations to the City.
- 6.3 RFC will assist the City in preparing the Proposition 218 and make a presentation to the City Council at a public hearing.

RFC agrees to complete the above mentioned additional tasks to the Financial Planning of the City's Water System for an additional amount of not-to-exceed \$18,679.03 to be added to the original contract amount of \$67,000.00 for a grand total of \$85,679.03.

CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA

DATE: December 14, 2010

TO: Banning Utility Authority

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2010-13 UA, "Awarding a Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, California for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS)"

RECOMMENDATION: Adopt Resolution No. 2010-13, "Awarding the Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, California for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS)."


JUSTIFICATION: Maintaining the Water and Wastewater Geographic Infrastructure System, also known as GeoViewer, will enable the City to continue to provide web-based mapping information to better serve the public providing efficient record accessibility on hydrant locations, water mains, sewer mains, pressures and as-builts.

BACKGROUND: In May of 2006, the Water and Wastewater Divisions began to transfer records into an on-line hard copy mapping system. The mapping system is based on a GIS system improving the record keeping of water and wastewater infrastructure. The program assists with day to day operations, enabling personnel to perform efficient research of the City's existing utilities and infrastructure. The City's water and wastewater data has not been updated for a few years due to the loss of personnel and the reorganization of the City's departments. The approval of this contract will bring the divisions up to date on adding tentative tracts/as-builts, subdivision plans and profile drawings, reservoirs, and pump stations.


Nobel Systems, Inc. is a reputable specialized company providing the abovementioned services to many other utilities utilizing new technology to enhance mapping. Additionally, Nobel Systems, Inc. provided the City with initial set-up of the system and is a sole source provider for the GeoViewer System. Staff respectfully requests the approval of the proposed agreement in the amount of \$50,000.00 as shown in Exhibit "A" attached hereto.

FISCAL DATA: Funds in the amount of \$50,000.00 for this agreement are available in the Fiscal Year 2011 Water Division Operation Budget, Account No. 660-6300-471.33-11 and the Wastewater Division Operations Budget, Account No. 680-8000-454.33-11.

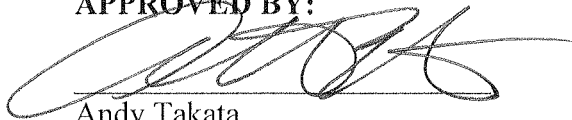
RECOMMENDED BY:


Duane Burk
Director of Public Works

REVIEWED BY:


Kirby Warner
Interim Administrative Services Director

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2010-13 UA

A RESOLUTION BY THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDED A PROFESSIONAL SERVICES AGREEMENT TO NOBEL SYSTEMS, INC. OF SAN BERNARDINO, CALIFORNIA FOR THE MAINTENANCE, TRAINING AND SUPPORT OF THE WATER AND WASTEWATER GEOGRAPHIC INFRASTRUCTURE SYSTEM (GIS)

WHEREAS, the City is the Urban Water Supplier for the water service area of the City of Banning; and

WHEREAS, in May of 2006 the City's Water Division began to transfer records into an on-line hard copy mapping system; and

WHEREAS, the mapping system is based on a GIS system of the water and wastewater utilities and infrastructures such as hydrant locations, water mains, sewer mains, pressures and as-builts; and

WHEREAS, maintaining the Water and Wastewater, also known as GeoViewer, will enable personnel to more efficiently access information, enabling personnel to more effectively perform day to day operations; and

WHEREAS, Nobel Systems, Inc., a sole source provider, performed the initial set-up of the system and is a reputable specialized company that is well known in the industry; and

WHEREAS, funding is available from the Water and Wastewater Operations Fiscal Year 2011 Budget, Account No. 660-6300-471.3311 and 680-8000-454.33-11.

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

Section 1. The Professional Services Agreement for the GeoViewer Maintenance, Training and Support for the Water and Wastewater GIS Systems is awarded to Nobel Systems, Inc. of San Bernardino, California, in the amount "Not to Exceed" of \$50,000.00 as shown in Exhibit "A" attached hereto.

Section 2. The City Manager is authorized to execute the Professional Services Agreement with Nobel Systems, Inc. of San Bernardino, California, and this authorization will be rescinded if the parties do not execute the contract agreement within Sixty (60) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 14th day of December 2010.

Chairman
Banning Utility Authority

APPROVED AS TO FORM
AND LEGAL CONTENT:

David Aleshire
City Attorney

ATTEST:

Marie A. Calderon, Secretary

EXHIBIT “A”

NOBEL SYSTEMS, INC. PROPOSED AGREEMENT

CONTRACT SERVICES AGREEMENT

By and Between

**THE CITY OF BANNING,
A MUNICIPAL CORPORATION**

and

NOBEL SYSTEMS

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
NOBELB SYSTEMS**

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this 20TH day of December, 2010 by and between the City of Banning, a municipal corporation (“City”) and NOBEL SYSTEMS, (“Consultant” or “Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.” ”). (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning’s Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

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

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

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competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the

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

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$50,000.00 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>BALAJI KADABA</u>	<u>OPERATIONS MANAGER</u>
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept

informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used,

either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

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

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or

failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of

Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim

for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other

appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party

of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of N/A (\$ N/A) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate

such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during

employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

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

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

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

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF BANNING, a municipal corporation

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP



David Aleshire, City Attorney

CONTRACTOR:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Address: _____

Two signatures are required if a corporation.

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL		_____
<input type="checkbox"/> CORPORATE OFFICER		TITLE OR TYPE OF DOCUMENT

TITLE(S)		
<input type="checkbox"/> PARTNER(S)	<input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT		
<input type="checkbox"/> TRUSTEE(S)		_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR		DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____		

SIGNER IS REPRESENTING:		
(NAME OF PERSON(S) OR ENTITY(IES))		SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S) ☐ LIMITED
☐ GENERAL

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

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

- I. Contractor will perform the following Services:**
- A. Updating Water and Sewer GIS data with field notes and Asbuilt scans.
 - B. Show Sewer cleaning and valve and fire hydrant locations along with pertinent information available in spreadsheet as external table and Printing of revised Sewer and Water Atlas Books.
 - C. CCTV Inspection Report Generation using Geo Viewer Online.
- II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**
- A. Revised/Update Geodatabase for both Water and Sewer facilities
 - B. Create and Print Atlas Books for Sewer and Water facilities
 - C. Update GeoViewer for new data and CCTV Inspection Report.
- III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City appraised of the status of performance by delivering the following status reports:**
- A. Project Status Report on weekly basis.
 - B. PAR (Problems and Resolution) forms for City's review and feedback.
 - C. Procedure and Standards document used for data conversion/update process.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**
- V. Contractor will utilize the following personnel to accomplish the Services:**
- A. Balaji Kadaba
 - B. Ahmed Khattab
 - C. Toby Detling

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

- A. Section 5.4 Performance Bond
- B. Section 7.7 Liquidated Damages

EXHIBIT "C"
COMPENSATION

I. Contractor shall perform the following tasks:

		RATE	TIME
A.	Task A	<u>\$37,000.00</u>	<u>4-8 Weeks</u>
B.	Task B	<u>\$5,800.00</u>	<u>1 Week</u>
C.	Task C	<u>\$7,200.00</u>	<u>3-6 Weeks</u>

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.

VI. The City will compensate Contractor for the Services performed at the completion of each task upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall not exceed \$50,000.00, as provided in Section 2.1 of this Agreement.

VI. The Contractor's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

- I. Contractor shall perform all services timely in accordance with the following schedule:**

	<u>Days to Perform</u>	<u>Deadline Date</u>
A. Task A	<u>20 – 40 Days</u>	<u>6/30/11</u>
B. Task B	<u>5 Days</u>	<u>1/15/11</u>
C. Task C	<u>15 – 30 Days</u>	<u>6/30/11</u>

- II. Contractor shall deliver the following tangible work products to the City by the following dates.**

A. Revised/Update Geodatabase for both Water and Sewer facilities – 6/30/10

B. Create and Print Atlas Books for Sewer and Water facilities – 1/15/11

C. Update GeoViewer for new data and CCTV Inspection Report – 6/30/10

- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

	Task	Performance Date
1.	Needs Assessment and Timeline (may vary based upon on-site meetings). Includes timeline approval, statistics from current website due, department listing from client.	1-2 weeks from initial timeline meeting
2.	Website Design and Navigation Architecture. Includes main navigation and standards meeting, main navigation and standards worksheet due, pictures due, initial design meeting, initial content meeting, content process meeting, website design comp due to client, initial design feedback meeting, and design approval.	2-3 weeks
3.	Site Development and Module Setup (varies based upon development options). Includes wireframe due	2-3 weeks
4.	Content Development (varies based upon amount of content). Includes content worksheets due, content starts, content development completed, content finalized and approved.	5-6 weeks
5.	Reviews and testing.	2 weeks
6.	Training.	1 week
7.	Final Review and Test.	1-2 weeks
8.	Marketing.	1 week
9.	Go Live.	1 week
	Total (maximum)	21 weeks (22 weeks)

[Put in Phase numbers and approximate dates.]

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: December 14, 2010

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Resolution No. 2010-93, accepting the 2011 Supplemental Law Enforcement Services Fund Allocation and authorizing the Banning Police Department to use the funds towards the purchase of law enforcement related equipment and training.

RECOMMENDATION: “The City Council adopt Resolution No. 2010-93 accepting the 2011 Supplemental Law Enforcement Services Fund (SLESF) allocation and authorize the Banning Police Department to apply the funds towards the purchase of law enforcement related equipment and training.”

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

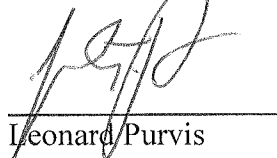
BACKGROUND: The Banning Police Department anticipates using funds from SLESF to purchase equipment and provide advanced officer training, which will enhance the department’s ability to provide a high level of professional service to the citizens of Banning. Anticipated purchases, may include but are not limited to, vehicles, technology equipment and software, evidence collection materials, communication related parts, tactical equipment, and advanced officer training.

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

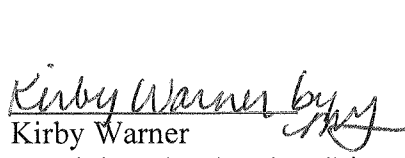
STRATEGIC PLAN INTEGRATION: Council approval of this resolution will meet the city’s goal to protect the citizens of this community with updated technology, equipment, and well trained police officers.

FISCAL DATA: The Supplemental Law Enforcement Services Fund (SLESF) allocation for 2011 is \$100,000. There is no city match required for this grant. The appropriation is requested in the resolution.

RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


Kirby Warner
Administrative Services Director

APPROVED BY:


Andrew Takata
City Manager

224A

RESOLUTION NO. 2010-93

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING ACCEPTING THE 2011 SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND ALLOCATION AND AUTHORIZING THE BANNING POLICE DEPARTMENT TO USE THE FUNDS TOWARDS THE PURCHASE OF LAW ENFORCEMENT RELATED EQUIPMENT AND TRAINING.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning hereby accepts the 2011 Supplemental Law Enforcement Services Fund (SLESF) allocation, appropriates funds in the amount of \$100,000, and authorizes the Finance Department to make necessary budget adjustments related to these funds.

PASSED, APPROVED, AND ADOPTED this 14th day of December 2010.

Robert E. Botts, Mayor

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

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

ATTEST:

Marie A. Calderon, City Clerk

224B

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2010-93 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of December 2010, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**Supplemental Law Enforcement Services Fund
Expenditure Plan
FY 2010-2011**

City: City of Banning

Beginning Fund Balance 105,499

current Year Allocation 100,000

Expenditure Planned

Salaries and Benefits

Services and Supplies 105,499

Equipment 100,000

Administrative Overhead

Total Planned Expenditures 205,499

Date approved by the City Council : _____

The City Manager hereby certifies that the Supplemental Law Enforcement Services Plan was submitted to the City Council and approved as listed.

City Manager

Date

Please provide the name of a contact person if there are any questions:

Name

Contact Number

**CITY COUNCIL AGENDA
PUBLIC HEARING**

DATE: December 14, 2010

TO: Mayor and City Council

FROM: Zai Abu Bakar, Community Development Director

SUBJECT: Ordinance No. 1433 - Adoption of the Latest Editions of California Building, Residential, Green Building Standards, Plumbing, Mechanical and Electrical Codes

RECOMMENDATION: That the Council introduce the first reading of Ordinance No. 1433 and set for second reading of the Ordinance at the Council meeting on January 11, 2011.

JUSTIFICATION: The State's Health and Safety Code requires local governments to adopt the most recent editions of the model codes related to construction. The Construction Codes include the California Building, Residential, Green Building Standards, Plumbing, Mechanical, and Electrical Codes. If the City Council approves Ordinance No. 1433 the most recent editions of the Construction Codes with the applicable amendments will be in effect within the City of Banning as required by State law. This procedure is in accordance with California Government Code Title 5, Division 1, Part 1, as published by the Building Standards Bulletin 09-02.

BACKGROUND/ANALYSIS: The City Council held a public hearing regarding Ordinance No. 1433 on November 9, 2010 and continued the hearing to December 14, 2010 to address concerns raised by the City Attorney related to the penalty provisions. The penalty provisions are now addressed in the ordinance.

The State's Health and Safety Code Section 17958 mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years. The 2010 Edition of the California Code of Regulations Title 24, which incorporates the below-listed model codes, becomes effective on January 1, 2011.

Ordinance No. 1433 amends Title 15 of the Municipal Code by repealing references to the prior editions of the model codes.

The list below identifies the model codes upon which the 2010 Title 24 is based. The two new codes that are included in this adoption are 2010 California Residential Code and 2010 California Green Building Standards Code.

California Building Standards Code
2010 California Building Code
2010 California Residential Code
2010 California Green Building Standards Code

Reference Model Code
2009 International Building Code (ICC)
2009 International Residential Code (ICC)

2010 California Plumbing Code
2010 California Mechanical Code
2010 California Electrical Code
2006 International Property Maintenance Code

2009 Uniform Plumbing Code (IAPMO)
2009 Uniform Mechanical Code (IAPMO)
2008 National Electrical Code (NFPA)

The Construction Codes proposed for adoption by reference include the following:

- 2010 California Building Code
- 2010 California Residential Code
- 2010 California Green Building Standards Code
- 2010 California Plumbing Code
- 2010 California Mechanical Code
- 2010 California Electrical Code
- 2006 International Property Maintenance Code

The Community Development Department is recommending that no changes or modifications be made to the Codes.

FISCAL REVIEW: No fiscal impact.

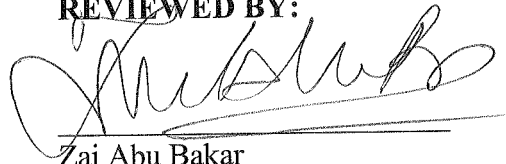
CONCLUSION: That the City Council approves Ordinance No. 1433 adopting the latest editions of the Construction Codes which will be in effect within the City of Banning as required by State law.

APPROVED BY:



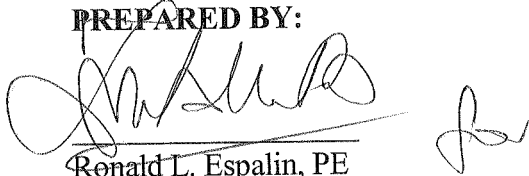
Andrew J. Takata
City Manager

REVIEWED BY:



Zai Abu Bakar
Community Development Director

PREPARED BY:



Ronald L. Espalin, PE
Building Official

Attachments

1. Ordinance No. 1433
2. Attachment A – Penalty Provisions

ORDINANCE NO. 1433

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING CHAPTER 15.08 OF THE BANNING MUNICIPAL CODE BY ADOPTING BY REFERENCE THE ENTIRETY OF THE LATEST CALIFORNIA BUILDING CODE, RESIDENTIAL CODE, GREEN BUILDING STANDARDS CODE, PLUMBING CODE, MECHANICAL CODE, ELECTRICAL CODE, AND INTERNATIONAL PROPERTY MAINTENANCE CODE, ALL AS RELATIVE TO CONSTRUCTION CODES

WHEREAS, the State's Health and Safety Code Section 17958 mandates that the California Building Standards Commission adopt and publish the California Building Standards Code (Title 24 California Code of Regulations) every three (3) years; and

WHEREAS, the State's Health and Safety Code requires local governments to adopt the most recent editions of the model codes related to construction.

WHEREAS, the construction codes include the California Building, Residential, Green Building Standards, Plumbing, Mechanical, and Electrical Codes.

WHEREAS, the adoption of the Ordinance related to construction codes is consistent with California Government Code Title 5, Division 1, Part 1, as published by the Building Standards Bulletin 09-02.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. ADOPTION

Chapter 15.08 of the Banning Municipal Code relating to "Adoption of Uniform Codes" is hereby amended by deleting the existing Chapter 15.08 in its entirety and adopting a new Chapter 15.08 to read as follows in its entirety:

"Chapter 15.08 Construction Codes

Sections:

15.08.010 Incorporation by Reference.

15.08.020 Interpretation of the Banning Municipal Code and Zoning Code with regard to references to the amended Construction Codes

15.08.030 Additional Penalties

15.08.010 Incorporation by Reference.

A. Except as otherwise provided in this chapter for the purposes of prescribing regulations for erecting, construction, enlargement, alteration, repair, improving, removal, conversion, demolition, occupancy, equipment use, height, and area of building and structures, the following construction codes are hereby adopted as “Chapter 15.08, Construction Codes,” and all appendices, tables, and indices thereto, as the same existed on December 14, 2010, are hereby adopted by reference and incorporated as if fully set out herein, and the provisions thereof shall be controlling within the limits of the city.

1. California Building Code, 2010 Edition, including Chapter 1 Division II, based on the 2009 International Building Code as published by the International Code Council;
2. California Residential Code, 2010 Edition, based on the 2009 International Residential Code as published by the International Code Council;
3. California Green Building Standards Code, 2010 Edition;
4. California Plumbing Code, 2010 Edition, based on the 2009 Uniform Plumbing Code as published by the International Association of Plumbing and Mechanical Officials;
5. California Mechanical Code, 2010 Edition, based on the 2009 Uniform Mechanical Code as published by the International Association of Plumbing and Mechanical Officials;
6. California Electrical Code, 2010 Edition, based on the 2008 National Electrical Code as published by the National Fire Protection Association;
7. International Property Maintenance Code, 2006 Edition, as published by the International Code Council; the Uniform Code For The Abatement of Dangerous Buildings, 1997 Edition, as published by the International Code Council.

B. One copy of the Construction Codes, described in this Section, has been deposited in the office of the city clerk and shall be at all times maintained by the city clerk for use and examination by the public.

15.08.020 Interpretation of the Banning Municipal Code and Zoning Code with regard to references to the amended Construction Codes

For the purposes of interpreting the adopted Construction Codes in the Banning Municipal Code and Zoning Code, references to the Uniform Building Code shall be replaced with the latest adopted California Building Code, if any.

15.08.030 Additional Penalties

In addition to those penalty provisions adopted by reference from those codes listed in Section 15.08.010, the following penalties shall also apply:

It shall be unlawful for any person, firm, corporation or association of persons to violate any provision of this ordinance, or to violate the provisions of any permit granted pursuant to this ordinance. Any person, firm, corporation or association of persons violating any provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, shall be deemed guilty of an infraction or misdemeanor as hereinafter specified. Such person or entity shall be deemed guilty of separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, is committed, continued, or permitted.

Any person, firm, corporation or association of persons so convicted shall be: (1) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a first violation; (2) guilty of an infraction offense and punishable by a fine not exceeding three hundred dollars (\$300.00) for a second violation on the same site. The third and any additional violations on the same site shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six months in jail, or both. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve a person or entity from the responsibility for correcting the violation.”

SECTION 2. FINDINGS

The City of Banning is not making any amendments to the California Building Codes; therefore, the findings are not required per the California Government Code Section 17958.7.

SECTION 3. PENALTIES ADOPTED BY REFERENCE

Violation of or failure to comply with any of the provisions of Chapter 15.08, Construction Codes shall be subject to those penalty provisions set forth in Attachment “A” hereto. These penalty provisions are so set forth herein to meet the requirements of Government Code Section 50022.4; such penalty provisions are also adopted by reference pursuant to Section 1 without any revisions (unless otherwise specified above) and, therefore, such penalty provisions as printed in Attachment “A” need not be codified in the Banning Municipal Code.

SECTION 4. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portions thereof,

irrespective of the fact that any one or more sections, subsections, subdivisions, sentences clauses, phrases or portions thereof be declared invalid or unconstitutional.

SECTION 5. EFFECTIVE DATE

This Ordinance shall be in full force and effective 30 days after its passage.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, this _____ day of January, 2011.

Robert E. Botts, Mayor
City of Banning

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

Dave 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 Ordinance No. 1433 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 14th day of December, 2010, and was duly adopted at a regular meeting of said City Council on the _____ day of January, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT "A"

Penalties. In addition to the penalty provision provided in Section 15.08.030 of this chapter, the following penalty provisions are incorporated by reference into Chapter 15.08, but will not be expressly stated therein:

California Building Code Section 114.1 - Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, repair, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

California Building Code Section 114.2 - Notice of violation. The building official is authorized to serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

California Building Code Section 114.3 - Prosecution of violation. If the notice of violation is not complied with promptly, the building official is authorized to request the legal counsel of the jurisdiction to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

California Building Code Section 114.4 - Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the *approved construction documents* or directive of the *building official*, or of a *permit* or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

California Residential Code – R113.3 Prosecution of violation. If the notice of violation is not complied with in the time prescribed by such notice, the *building official* is authorized to request the legal counsel of the *jurisdiction* to institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

California Residential Code - R113.4 Violation penalties. Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the *approved construction documents* or directive of the *building official*, or of

a *permit* or certificate issued under the provisions of this code, shall be subject to penalties as prescribed by law.

California Residential Code - R114.2 Unlawful continuance. Any person who shall continue any work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties as prescribed by law.

California Plumbing Code Section 102.3.1 - Violations. It shall be unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, or maintain any plumbing or permit the same to be done in violation of this code.

California Plumbing Code Section 102.3.2 - Penalties. Any person, firm, or corporation violating any provision of this code shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punishable by a fine and/or imprisonment set forth by the governing laws of the jurisdiction. Each separate day or any portion thereof, during which any violation of this code occurs or continues, shall be deemed to constitute a separate offense.

California Plumbing Code – Section 1327.12 Corrections. Notices of correction or violation shall be written by the Authority Having Jurisdiction and posted at the site of the work, mailed or delivered to the permittee or an authorized representative. Refusal or failure to comply with any such notice or order within ten (10) days of receipt thereof shall be considered a violation of this code, and shall be subject to the penalties set forth elsewhere in this code for violations.

California Mechanical Code Section 111.0 - Violations. It shall be unlawful for a person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, or maintain mechanical systems or equipment or cause or permit the same to be done in violation of this code.

International Property Maintenance Code Section 106.4 – Violation Penalties. Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

International Property Maintenance Code Section 106.5 – Abatement of Violation. The imposition of the penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to restrain, correct or abate a violation, or to prevent illegal occupancy of a building, structure or premises, or to stop an illegal act, conduct, business or utilization of the building, structure or premises.