AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

March 22, 2011
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

I. CALL TO ORDER

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

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

PRESENTATIONS:

1. Proclamation – Childhood Cancer Awareness Week – April 10-16, 2011 . . . . . **1**
2. Proclamation – National Public Safety Telecommunications Week – April 10-16, 2011 . . . . . **2**
3. AB 811 and WRCOG's (Western Regional Council of Governments) Program – Rick Bishop, Exec. Dir. and Barbara Spoonhour, Prog. Mgr. ***(ORAL)***

APPOINTMENTS:

1. Appointment to Parks and Recreation Advisory Committee *(ORAL)*

IV. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless any member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 9
Items to be pulled ____, ____, ____, ____ for discussion.
(Resolutions require a recorded majority vote of the total membership of the City Council)

1. Approval of Minutes – Special Meeting – 03/07/11 3
2. Approval of Minutes – Joint Meeting – 03/08/11 5
3. Approval of Minutes – Regular Meeting – 03/08/11 6
4. Approval of Minutes – Special Meeting – 03/15/11 15
5. Adoption of Strategic Goals for the City of Banning 16
6. Sole Source Purchase from ComSerCo Communications for Motorola APX 700 Multi-Band Portable Radios 18
7. Approval of Parcel Map No. 36272 (Val Monte St. and Ramsey) 20
8. Amendment No. 4 to Joint Exercise of Powers Agreement Creating the Western Riverside County Regional Conservation Authority 24
9. Resolution No. 2011-22, Approving the Lease Agreement with the Alliance for Youth Employment Skills ("AYES") for Use of Facilities Dysart Park 52

- **Open for Public Comments**
- **Make Motion**

V. PUBLIC HEARINGS

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

1. Public Hearing for the Revocation of Unclassified Use Permit 01-47501 and Termination of Development Agreement 03-1504 (for A Drag Racing Facility) – APN 532-130-008 & 018.

Staff Report 83

Recommendation: That the City Council hold a public hearing, consider the staff report, and take public comment and at the close of the hearing, the Council should discuss what action it wishes to take and direct the City Attorney to bring back a resolution with appropriate findings at its meeting on April 12, 2011.

VI. REPORTS OF OFFICERS

1. General Plan Annual Report for Year 2010

Staff Report 539

Recommendation: **That the City Council adopt Resolution No. 2011-20, Approving the General Plan Annual Report for Year 2010 and direct staff to file the report with the Governor's Office of Planning and Research and the State Housing and Community Development.**

2. Resolution No. 2011-23, Authorizing Refinancing the City's 1997 Refunding Certificates of Participation ("COP's").

Staff Report 653

Recommendations:

a) **Approve refinancing the City's 1997 COP's using a direct lender, tax exempt loans to be arranged by Bill Fawell of W. J. Fawell Co., Public Finance with a financial institution. Kyle Snow, Esq. of Best, Best & Krieger will act as Special Counsel to the city on the proposed refinancing.**

b) **Approve Resolution No. 2011-23, Authorizing proceedings to refinance the City's outstanding 1997 Cop's.**

c) **Authorize the Administrative Services Director or Deputy Finance Director to make the necessary accounting and budget entries to defease the existing COP and record the new debt.**

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

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

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Update on Economic Development Plan *(May 24th)*
3. Review of Fees and Rates
4. Consideration of Speaker Cards *(April 12th)*
5. Annual Review of Pledge of Civility and Code of Conduct *(Mar. 9th)*
6. Discuss Council Attendance/Costs to Attend Various Events
7. Policy Discussion Re. Code Enforcement *(study session)*
8. Update on Shop Local Program

IX. ADJOURNMENT

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

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 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 Tile II].

Proud History
Prosperous Tomorrow

PROCLAMATION

WHEREAS, *the American Cancer Fund for Children and Kids Cancer Connection report cancer is the leading cause of death by disease among children in the United States. This tragic disease is detected in nearly 15,000 of our nation's young people each and every year; and*

WHEREAS, *founded nearly twenty years ago by Steven A. F. Firestein, a member of the philanthropic Max Factor family, the American Cancer Fund for Children, Inc. and sister organization, Kids Cancer Connection, Inc. are dedicated to helping these children and their families; and*

WHEREAS, *the American Cancer Fund for Children and Kids Cancer Connection provide a variety of vital patient psychosocial services to children undergoing cancer treatment at Loma Linda University Children's Hospital, Rady Children's Hospital in San Diego, as well as participating hospitals throughout the country, thereby enhancing the quality of life for these children and their families; and*

WHEREAS, *through its uniquely sensitive and comforting Magical Caps for Kids Program, the American Cancer Fund for Children and Kids Cancer Connection distribute thousands of beautifully hand made caps and decorated baseball caps to children who want to protect their heads following the trauma of chemotherapy, surgery and/or radiation treatment; and*

WHEREAS, *the American Cancer Fund for Children and Kids Cancer Connection also sponsor nationwide Courageous Kid recognition award ceremonies and hospital celebrations in honor of a child's determination and bravery to fight the battle against childhood cancer.*

NOW THEREFORE, BE IT RESOLVED, *that I, Barbara Hanna, Mayor of the City of Banning along with the City Council do hereby proclaim the week of April 10 – 16, 2011 as* ***"CHILDHOOD CANCER AWARENESS WEEK"*** *in the city of Banning.*

IN WITNESS WHEREOF, *I have set my hand and caused the seal of the City of Banning, California to be affixed this 22nd day of March, 2011.*

ATTEST:

Marie A. Calderon, City Clerk

Barbara Hanna, Mayor

Proud History
Prosperous Tomorrow

PROCLAMATION

WHEREAS, *Thousands of dedicated Public Safety Dispatchers daily serve the citizens of the United States by answering their telephone calls for police, fire, and emergency medical services by dispatching the appropriate assistance as quickly as possible; and*

WHEREAS, *When an emergency occurs the prompt response of police officers, firefighters and paramedics is critical to the protection of life and preservation of property, the critical functions performed by professional Public Safety Dispatchers also include those related to forestry and conservation operations, highway safety and maintenance activities, and many other operations performed by federal, state and local government agencies; and*

WHEREAS, *The safety of our police officers and firefighters is dependant upon the quality and accuracy of information obtained from citizens who telephone the police-fire communications center; and*

WHEREAS, *Public Safety Dispatchers are the single vital link for our police officers and firefighters by monitoring their activities by radio, providing them information and insuring their safety; and*

WHEREAS, *Public Safety Dispatchers have contributed substantially to the apprehension of criminals, suppression of fires and treatment of patients; and*

WHEREAS, *each dispatcher has exhibited compassion, understanding and professionalism during the performance of their job in the past year;*

NOW, THEREFORE, *I, Barbara Hanna Mayor of Banning along with the City Council do hereby proclaim the week of April 10 – 16, 2011 as* ***"NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS WEEK"*** *in the city of Banning in of the men and women whose diligence and professionalism keep our city and citizens safe.*

IN WITNESS WHEREOF, *I have set my hand and caused the seal of the City of Banning, California to be affixed this 22nd day of March, 2011.*

ATTEST:

Marie A. Calderon, City Clerk

Barbara Hanna, Mayor

2

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/07/11
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Hanna on March 7, 2011 at 5:30 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

COUNCIL MEMBERS ABSENT: Councilmember Botts

OTHERS PRESENT: Heidi Meraz, Community Services Director
Marie A. Calderon, City Clerk

PUBLIC COMMENTS

There were none.

DISCUSSION ITEM

1. Regarding Formation of a Centennial Committee for the City's 100th Year Anniversary

Mayor Hanna welcomed everyone to the meeting and everyone introduced themselves. Mayor Hanna said that this is the first step on a two-year process to plan our year-long Centennial Celebration in 2013 and she explained the process that would be followed for the evening in regards to the purpose of a centennial celebration and what values do we want to see as a part of this celebration. Everyone in attendance shared one thing that was important to them in regards to planning this celebration and also shared their ideas and values for this event and attached is a list of the values that were developed (see Exhibit "A").

Mayor Hanna asked the group if there should be a community forum to gather as many interested parties as possible and hear all of the ideas and concerns for consideration during the visioning process for this event. There was consensus amongst the group to have a community forum and the date was set for Wednesday, March 23rd at 6:00 p.m. with the location to be determined.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 6:58 p.m.

Marie A. Calderon, City Clerk

Banning Centennial Celebration

What Values Should the Centennial Celebration Demonstrate?

March 7, 2011

Celebrate Banning's History	A sense of community	Celebrating Banning's Diversity	Be proud of Banning	Proud history – prosperous tomorrow	Empowering tomorrow's leaders
• Education of Banning's history • Pride & importance of history • Military influence in Banning	• Retaining a friendly small town environment • Small town values • Volunteerism • Spirit of cooperation & teamwork • Spiritual (churches)	• Acceptance of diversity • Inclusion of all families & heritage • Diversity of culture • Respect of self, others & community	• Civic pride • Pride of community & country • Honesty • Leadership	• Connecting values of the past to the present • Communicating our successes	• Commitment to youth and education • Multi and intergenerational activities

Exhibit "A"
2
spec.mtg.-3/7/11

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/08/11
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on March 8, 2011 at 4:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS/
BOARDMEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

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
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney stated that the City Council will meet on two items of potential litigation pursuant to the provisions of Government Code Section 54956.9, and also evaluation of City Attorney and City Manager pursuant to Government Code Section 54957. The Agency Board will meet in closed session pursuant to Government Code Section 5496.8 to discuss a real property negotiation involving Westview Terrace Apartments located at 287 W. Westward.

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

Meeting went into closed session at 4:01 p.m. and returned to regular session at 4:59 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:10 p.m.

Marie A. Calderon, City Clerk/
Agency Secretary

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/08/11
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Hanna on March 8, 2011 at 5:04 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Director
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Fred Mason, Electric Utility Director
Leonard Purvis, Police Chief
Heidi Meraz, Community Services Director
John McQuown, City Treasurer
Marie A. Calderon, City Clerk

The invocation was given by Pastor Bobby Exley, New Creation Church. Councilmember Robinson invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney stated that the City Council and Agency Board met in closed session. They discussion one matter of real property negotiations regarding the Westview Terrace Apartments located at 287 W. Westward and a status report was given and no action was taken. That matter will be on a future agenda for action. They discussion potential litigation in two cases and a status report was given and no reportable action was taken. There was discussion in regards to the City Attorney and City Manager evaluations and no reportable action was taken on either of those matters.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler, resident of Banning addressed the Council stating that some Council meetings ago she had asked some questions and they were also published in the Record Gazette and she has been assured by Bill Dickson that these questions and her concerns have been answered. She has not received an answer. She said that she has a question regarding the statements that are usually made regarding the financial monthly or quarterly statements and many businesses, including hers, has a separate accounting part that is called "accounts receivable". She doesn't know how the cities label these things but she would image that there are some monies that are due to be paid to the City such as loans, deferred developer fees and they are put on a special schedule for repayment. Where are these documents included in the financial statements? She is asking this so that they know whether these monies are actually being paid on a due schedule and that kind of thing. She said that she has to do this and she would image that everybody else in private industry has to do that. Also, when the City of Bell dirty laundry was being washed in the LA Times it was referred to the practice that Council Members get paid according to how many committees that they are on and that is part of the Bell City Council Member $10,000 dollars that they received. Even if the committees do not meet is this standard practice in all cities. Do you get paid for these committee attendances? Are there committees that pay or do not pay? And what if you are not on a committee but you attended anyway; are you being paid? These are just some questions that came up because of the Bell issue.

Mayor Hanna said that in regards to any City committee we are not paid. We are paid for Community Redevelopment Committee meetings which she believes is about $30 a month but her total income from the City of Banning last year was $5,000 dollars and that is pretty much what the Council earns per year for everything they do for the City of Banning. She said that there are regional committees and so forth that certain members are a part of and they may have certain reimbursements for those but they are not from the City.

Beverly Rashidd with the Banning Cultural Alliance stated that a couple of years ago they had the Three Inland Tenors perform at the Pass Area Performing Artists and they were an outstanding hit and every since then people asked when are they coming back. The Three Inland Tenors will be coming back on March 20, 2011 and with an expanded program with the Bolivar Family Musical Theater. The tickets are $15.00 and there will be one performance at 3:00 p.m. If they sell out, there will be a second performance later that evening.

Victor and Valentina Archuleta pastors with Victory Outreach Ministries, 4024 W. Wilson addressed the Council stating that they have been residents here for five years and they are very committed to our city and to see things happen in our city that would really make a difference. They have organized a prayer march for March 26, 2011 against gangs, drugs, and against the violence happening here in our city. He invited the Mayor and City Council Members to come out and this will be happening at 2:00 p.m. starting at Roosevelt Williams Park. They will be inviting a lot of the other churches to come out and join and they have also had interest from the other churches in getting together and the theme of this march is "Taking Back Our City". They want to help some of the youth in our city to realize that there is a better way to live life than to be caught up in some of things they are doing. He invited the community to come out and join them also because they are concerned and they don't just want to sit around and watch things happen but they want to be a church that is involved in the community and

neighborhoods and want to try to find some answers and some solutions and help out some of the young people.

City Manager said that he would like to apologize to Inge Schuler and if she would give her email address to Heidi Meraz he will send over the answers to her questions and he will get back to her in regards to her questions on loans.

CORRESPONDENCE: There was none.

CONSENT ITEMS

1. Approval of Minutes – Special Meeting – 02/22/11

Recommendation: That the minutes of the Special Meeting of February 22, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 02/22/11

Recommendation: That the minutes of the Regular Meeting of February 22, 2011 be approved.

3. Report of Investment for January 2011

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

4. Ordinance No. 1436 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Banning Municipal Code Chapter 8.32 and 8.48 Relating to Graffiti Prevention, Removal and Cost Recovery.

Recommendation: That Ordinance No. 1436 pass its second reading and be adopted.

5. Adoption of Resolution No. 2011-11, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years from Date of Completion Per California government code section 34090 California Penal code Section 832.5.

Recommendation: That the City Council adopt Resolution No. 2011-11.

6. Resolution No. 2011-16, Approving the Lease Agreement with Waste Management of the Inland Empire for the Lease of a Portion of the Property Located at 176 E. Lincoln Street.

Recommendation: That the City Council adopt Resolution No. 2011-16.

Motion Machisic/Botts to approve Consent Items 1 through 6. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. Second Reading of Ordinance No. 1437 Amending Title 6 of the Banning Municipal Code to Regulate and Control the Keeping of Animals.
(Staff Report – Zai Abu Bakar, Community Development Director)

Councilmember Robinson excused himself from the public hearing and left the room.

Zai Abu Bakar, Community Development Director addressed the Council in regards to the email that the Council received from Mr. Hironimus. She said that all the references to the Beaumont Municipal Code was already addressed in the ordinance and with regard to Section 6.02.080 she gave the Council the revised language to address the comments received. She read for the record the revised language under subsection a. of Section 6.02.080 Mandatory Spay and Neutering of the Beaumont Animal Code is amended to state the following: "An administrative citation, infraction, or other such authorized penalty may be issued to an owner or custodian of an unaltered dog or cat for a violation of this section only when the owner or custodian is concurrently citied for another violation under state or local law pertaining to the obligations of a person owning or possessing a dog or cat." She said that the remaining section that in the current staff report is deleted.

Councilmember Franklin said in regards to the Section 17.030 having to do with our rural area that is going to be definitely in ours.

Zai said that the matter that the Council considered at the last meeting is already incorporated into this ordinance this evening in regards to the different zoning designations for keeping of the peacocks and other birds.

Mayor Hanna opened the public hearing for comments from the public. Mayor Hanna closed the public hearing seeing no one coming forward to speak.

Mayor Hanna asked the City Clerk to read the title of Ordinance No. 1437: City Clerk read: Ordinance No. 1437, An Ordinance of the City Council of the City of Banning, California, Amending Title 6 of the Banning Municipal Code by Adopting by Reference the Entirety of Title 6 of the Beaumont Municipal Code Entitled "Animals" Relative to Animal Control and Regulation.

Motion Machisic/Botts to waive further reading of Ordinance No. 1437. Motion carried, with Councilmember Robinson abstaining from vote.

Motion Machisic/Botts that Ordinance No. 1437 pass its second reading and be adopted. Motion carried, with Councilmember Robinson abstaining from vote.

Councilmember Robinson returned to the City Council meeting at this time.

2. Resolution No. 2011-10, A Resolution of the City Council of the City of Banning, Approving Adoption of the Banning Park and Recreation Master Plan Update.
(Staff Report – Heidi Meraz, Community Services Director)

Ms. Meraz addressed the Council stating that the purpose of this master plan is to provide a realistic guide for the creative and orderly development and management of our recreation facilities and the programs within our city for now and into the future. This master plan update was prepared by RJM Design Group, Inc. after a through process which involved community input through a city-wide telephone survey, community workshops, information from local sports organizations and groups, as well as, a focus group with our Parks and Recreation Committee. In September a joint meeting of the City Council, Planning Commission and Parks and Recreation Committee was held and at this meeting the consultant's presented this plan in its entirety and answered questions. The Parks and Recreation Advisory Committee has formally recommended that the City Council approve the adoption of the proposed Parks and Recreation Master Plan. Approval of the plan will provide a current working document relative to the recreational needs of our city and this will also be incorporated into the General Plan being brought back as an amendment to the General Plan.

Councilmember Robinson said that they had talked about changing the Parks and Recreation Advisory Committee to a commission and he believes that it is in the documents and will it be a long and drawn out process or is that something that can be done right away.

Ms. Meraz said that will be brought back to the Council in April.

Mayor Hanna opened the public hearing for comments from the public. Mayor Hanna closed the public hearing seeing no one coming forward to speak.

Motion Machisic/Robinson that the City Council adopt Resolution No. 2011-10, Approving Adoption of the Banning Parks and Recreation Master Plan Update. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

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

City Council

Councilmember Franklin –

- Congratulated Banning High School for winning a national contest. They won a free concert by "New Boys" which is a nationally known rap group. The school created a four and a half minute rap video that is actually out on U-Tube and they competed with schools across the country and came in first place. The video is "Take a Vacation in Haiti" and it talks about all the things that we have benefit of and access here in the United States and the idea was to raise money for earthquake relief in Haiti and $4,900 was raised through this program.
- She attended the T-Now meeting last Thursday and they heard that the Go Pass Program for our college students going to Mt. San Jacinto College both here in Banning, as well as, to the campus in San Jacinto has been very successful. The students probably in April will be voting on whether or not they will pick up the cost. It will cost the students $5.50 per semester but the students do have to vote on it. So far the program has been paid for by the different cities in our district. Also, Amtrak is moving from Beaumont over to Morongo at the request of Amtrak so that will change some of the dynamics of transit in our area and details will be

coming. Also, Sunline Transit District for the Desert has put forth a grant request to have bus service come from the Desert all the way up to Cabazon, Banning and Beaumont.

- She attend a water meeting yesterday and they heard a lot of different things that are happening with the San Gorgonio Pass Water Agency and one of the good things is that the Department of Water Resources has said that the water available this year is 120% of normal coming from the Northern part of the state and that we are 109% of the seasonal average and they will be filling 60% of the requests this year where last year they only filled 50% and the year before that they only filled 40%. The mountain snow pack is at one-third of the supply for all of our households, industry and farms within Southern California.
- At the Passcom meeting this morning they talked about how we are continuing to work forward with emergency preparedness throughout our city. They discussed NEST (Neighborhood Emergency Service Teams) and they had a meeting on Feb. 24th at the fire station and 36 people showed up and they are starting to have meetings now in the neighborhoods and they are hoping that throughout the city they will have at least 9 meetings within the next two months.
- She congratulated the San Gorgonio Memorial Hospital on their 60th Anniversary and they do have a mock ICU and emergency room for people to tour and it will be once a month and if anybody is interested in seeing them they can call the hospital and find out when the tour is.

Councilmember Botts –

- Invited everyone to come to Roosevelt Williams Park on March 19th at Noon. This is the Boys and Girls Club primary location and they are going to have a celebration of that park and that there are changes in that we are in more control of that park than anyone else. The pastor talked earlier about what we need to do and the tragic rape that occurred there in that park and the Boys and Girls Club was closed that day and though the crime could have happened somewhere else it wouldn't have happened if the clubhouse had been opened because of remodeling. The park has changed and we have families coming and there is less drug sales and the Boys and Girls Club has made a real difference being there. There will be a luncheon and activities and we just want to say this is our park and it belongs to the people.

Councilmember Machisic –

- He attended the WRCOG (Western Riverside Council of Governments) meeting and one of the things that he passed out to the Council was a copy of individual organizations approaching SB 371 on lowering emissions in California by lowering the use of cars. He said that they are taking three primary approaches for reducing driving: 1) Encourage a denser development, closer to transit; 2) Invest in transit and other alternatives (walking or biking); and 3) Using pricing incentives to raise the cost of driving (e.g. fuel tax, toll lanes, carpool lanes, parking fees). And in follow-up they also state: Pricing Tools Effective, But Underutilized: State and federal fuel taxes have been unchanged since the early 1990's, coastal regions are expanding high-occupancy toll lanes, local governments influence parking – few charge for parking and most require employee parking; and public and business opposition is a major issue to pricing tools. Also in regards to public transit it says that transit usage is up modestly in all metro areas but it is still very low. It is only 4.5% of all commuters and 75% of people still drive alone to work. So we still have a long way to go as far as getting more people off the road. He also said that there are a couple of other observations in that job density, more than housing density, associated with higher transit

ridership. They also found that even if transit is located in high density areas if they don't have the jobs, they won't go. In fact, rail ridership drops sharply when jobs are beyond one-quarter of a mile. It also talks about new stations and states that new stations are in high density areas but no increase in job growth after stations are opened as an average. What California Should Do: 1) Encourage job growth near transit (shift from the current tilt towards housing); 2) Increase the cost of driving and parking (most effective, but unpopular and underutilized). There were comments made by the members of the Executive Board of WRCOG and one of the things that they talked about extensively was the loss of redevelopment money which is a potential realization that appears to be coming down the pike is that a lot of things are used in transportation. He said that one of the Supervisors in the county was particularly unhappy in that places in Riverside County such as our area we have no access to commuter trains at all and the prospect of commuter trains is down the road by a number of decades. In fact, we are not even in the planning stage so it is very difficult to do. They mentioned the importance of jobs and if we had the jobs in Riverside County, then we could get some of the cars off the road. Also, in regards to TUMF (Transportation Uniform Mitigation Fee) the Pass Area has received in TUMF money $250,000 for the Highland Springs Construction and have also received $767,000 for the engineering on the I-10 Bypass.

Councilmember Robinson –

- He said we had a meeting not too long ago with the Banning Library Board and from that a Task Force has been put together of all of the youth groups in Banning but he hopes that we were able to get a hold of the Transit Agency Youth Program Director for him to also attend because he has put together a new slide presentation and they are working on a brochure through T-Now on how youth can get around the Pass Area.

Mayor Hanna –

- In regards to the Task Force they are just having those entities that already have established youth programs to come together so that each of the organizations know what each other is doing and then we can put all that information out to the public so there is a complete source of information about what is available. She said the Council and the Library Board both have a heart for the youth of this community and we are really concerned about what is going on in the summer because everybody's budgets are cut back along with staffing. There is a possibility that if we all talk together we might suggest there is a way of doing things especially if we could get more volunteers to do more for our youth. This meeting will take place on Monday, March 21st at 3:00 p.m. but it is by invitation only and if anyone wants to attend, she would appreciate them contacting her. She also asked the Council if they wanted this to be a posted City Council Meeting or should she just bring these groups together and then report back. **There was Council consensus for her to bring these groups together and then report back.** She said that there could be two Councilmembers in attendance but if there were three or more it would have to be a posted meeting.
- We have started our planning for the City of Banning Centennial. We will have our 100th Anniversary in 2013 and last night we had the first meeting and 50 people attended and the group decided that we would have a Community Forum. We would like to invite anyone that has any interest in the city of Banning in celebrating our 100th Anniversary with any ideas so that we can have a meeting using "Open Space Technology" where any idea is posted on the wall and becomes part of the agenda and we break into small groups, have discussions, write

notes and at the end we will be able to compile a report of all the ideas that are brought out for the Centennial. This will take place on Wednesday, March 23rd at 6:00 p.m. with the location to be announced as soon as possible and she is hoping to use the Banning High School Gym.

City Committee Reports - None

Report by City Attorney – None at this time.

Report by City Manager

- The groundbreaking for the Inland Behavioral Health Services was held about a week ago and some Council Members were in attendance.
- There was a fire on Ramsey Street at Ray's RV and he wanted to congratulate CalFire who did an excellent job and in fact, our new Southern Regional Division Chief who lives up on Banning Heights was the first one who spotted the fire and called it in.
- Almond Way is looking really good and the handicap ramps are in and also on George St. and Nicolet St.

Mayor Hanna said that a Special Joint Meeting of the City Council, Planning Commission and Parks and Recreation Advisory Committee was scheduled for tomorrow, March 9th at 3:00 p.m. and that has had to be canceled so it will be rescheduled and everyone will be notified of the new time and date.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Robinson said that we hear often about public comments and getting back to people and he is hoping that we can look at a system to respond to these public comments. Also we had one person that was kind of indigent that we were not paying immediate attention to her during the public comments but what everybody should know is that we have a very large book and in that we have a section for public comments and so the first thing we do is to write down your name and what the comment is generally about.

City Manager said our goal is that if staff can answer it here, we will do that right away if we can and if can't, we can get back to them if we have their name.

Councilmember Franklin addressed staff stating that, if the rest of the Council is in concurrence, to get a list of which properties we have outstanding loans on and any other sources of revenue that should be coming back to the City through loans or fees or whatever so that we know what is out there and what the process is as to how we follow-up to make sure that is happening. **There was Council consensus.**

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Update on Economic Development Plan *(May 24h)*
3. Review of Fees and Rates

4. Consideration of Speaker Cards *(April 12th)*
5. Annual Review of Pledge of Civility and Code of Conduct *(Mar. 9th)*
6. Discuss Council Attendance/Costs to Attend Various Events
7. Policy Discussion Re. Code Enforcement *(study session)*
8. Update on Shop Local Program

ADJOURNMENT

By common consent the meeting adjourned the meeting at 5:35 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.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/15/2011
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Hanna on March 15, 2011 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:	Councilmember Botts Councilmember Franklin Councilmember Machisic Councilmember Robinson Mayor Hanna
COUNCIL MEMBERS ABSENT:	None
OTHERS PRESENT:	Marie A. Calderon, City Clerk

CLOSED SESSION

The City Council met in Closed Session pursuant to Government Code Section 54957 with regards to City Attorney and City Manager evaluations.

ADJOURNMENT

By common consent the meeting adjourned at 7:10 p.m.

_____
Marie A. Calderon, City Clerk

CITY COUNCIL AGENDA
CONSENT

DATE: **March 22, 2011**

TO: **Honorable Mayor and City Council**

FROM: **Andy Takata, City Manager**

SUBJECT: **Strategic Goals Adoption**

RECOMMENDATION: It is recommended that the City Council adopt the Strategic Goals as outlined in the attached document titled "Goals for City of Banning".

JUSTIFICATION: These goals were identified during the initial phase of the strategic planning process. Staff will bring forth the actual Strategic Plan in April. At such time, the goals will be further defined through a set of specific objectives to include performance measures and impacts.

BACKGROUND: In January 2011, the City Council and City management team participated in a strategic planning workshop which formulated City goals and priorities. The Council directed the City Manager to refine the strategic goals and seek input from staff.

FISCAL DATA: Fiscal impacts will be analyzed and brought forth as part of the Strategic Plan.

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

RECOMMENDED BY:

Andy Takata
City Manager



GOALS FOR CITY OF BANNING

1. **FISCAL STABILITY**

   Achieve fiscal sustainability by managing city finances, services and assets to produce a balanced budget, to increase reserves and to maintain desired city services and facilities.

2. **PUBLIC SAFETY**

   Provide police, fire and emergency services to maintain a safe and secure community.

3. **INFRASTRUCTURE AND CITY FACILITIES**

   Provide infrastructure improvements needed to provide auto, bicycle and pedestrian mobility recreation opportunities, electricity, water and recycled water for the community.

4. **ECONOMIC DEVELOPMENT**

   Adopt and implement marketing, investment, and planning strategies to increase Banning's tax base, provide local jobs and increase shopping, restaurants and entertainment choices for residents and visitors provide reasons for visitors to come to Banning.

5. **QUALITY OF LIFE**

   Build and maintain a high standard of community appearance, character and livability by effective planning and code enforcement, attention to long term vision and citizen involvement and recreation facilities and services.

6. **COMMUNITY RELATIONS**

   Implement pro-active policies and programs which enhance resident-friendly service, responsiveness, two-way communication and transparency to achieve citizen trust of and respect of and involvement in the City.

7. **REGIONAL COOPERATION AND PARTNERSHIPS**

   Advocate, create and participate in regional efforts, partnerships and cooperative arrangements to assist in achieving the City's Goals.

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **March 22, 2011**

TO: **City Council**

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

SUBJECT: **Sole Source Purchase from ComSerCo Communications for Motorola APX 7000 Multi-Band Portable Radios.**

RECOMMENDATION: "Review and approve the Police Department's request to purchase Motorola 7000 Multi-Band Portable Radios from ComSerCo Communications, as a sole source provider, with the 2010 COPS Law Enforcement Technology Grant in the amount of $300,000.00."

JUSTIFICATION & BACKGROUND: The Banning Police Department presently operates on a VHF based radio frequency. During the past three years, law enforcement agencies surrounding the City of Banning have been involved in regional efforts, Eastern Riverside County Interoperable Communications Authority (ERICA) and the Riverside County Public Safety Enterprise Communication System (PSEC), to implement a 700/800 MHz radio frequency to operate on. It is estimated by the end of the second quarter of 2011, these law enforcement agencies will be operating on these new frequencies. Presently, the Banning Police Department is unable to join the regional efforts due to budget restraints. Both regional radio systems are Motorola based systems.

To overcome the imminent communication deficiency, the Banning Police Department consulted with representatives from Motorola, ERICA, PSEC, and ComSerCo Communications, which is the only authorized Motorola dealer in Riverside County for public safety radio systems. Across the board, representatives from each organization recommended the Motorola APX 7000 Multi-Band Portable Radio as the solution. In addition to meeting the requirements under the Project 25 standards-based communications network, the radio is capable of operating on the Banning Police Department's VHF frequency and the new 700/800 MHz frequencies in use by jurisdictions surrounding the City of Banning. The estimated cost of the project is $300,000.00.

ComSerCo Communications is the only authorized Motorola dealer and service center for public safety radio systems in Riverside County. Subsequently, a full and open competition is unfeasible because there are no other Motorola dealers or service centers in the Riverside County area to participate.

In addition to the previous reasons provided for "sole source" procurement, ComSerCo Communications is currently under contract to maintain and repair the Banning Police Department's public safety radio system, which includes portable radios. The Banning Police Department intends on extending this maintenance contract to include the new Motorola APX 7000 Multi-Band Portable Radio.

STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will help facilitate the Police Department's goals of better serving the community and its citizens.

FISCAL DATA: Funding for the portable Motorola radios is in place through the 2010 COPS Law Enforcement Technology Grant awarded to the Banning Police Department on August 30, 2010 in the amount of $300,000.00. Subsequently, no general funds are required for this purchase. The Finance Department is authorized to make necessary budget adjustments related to these funds.

The actual number of radios purchased will be dependent on the price of the radios at the time of purchase. It is anticipated that between 38-42 radios will be purchased with the available grant.

RECOMMENDED BY:	**REVIEWED BY:**	**APPROVED BY:**
Leonard Purvis	June Overholt	Andrew Takata
Chief of Police	Administrative Services Director	City Manager

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **March 22, 2011**

TO: **City Council**

FROM: **Kahono Oei, City Engineer**

SUBJECT: **APPROVAL OF PARCEL MAP NO. 36272**

RECOMMENDATION:

1. Approve Parcel Map 36272 and authorize the City Engineer to sign the Parcel Map.

2. Accept dedication as shown on the Parcel Map 36272, and direct the City Clerk to sign the Parcel Map certifying Council's acceptance.

JUSTIFICATION: Parcel Map 36272, attached herewith as Exhibit "A," has been examined and is found to be in substantial conformance with the Subdivision Map Act and all conditions imposed thereon have been met.

BACKGROUND: Inland Behavioral Health Service project is located on the corner of Val Monte Street and East Ramsey Street. As part of the condition of the project, the developer is conditioned to merge the existing parcels as shown on Parcel Map 36272.

The map was examined and in conformance with the Subdivision Map Act. All of the public improvements conditioned for this project will be constructed as part of the project.

FISCAL DATA: Not applicable.

RECOMMENDED BY:

Duane Burk,
Director of Public Works

APPROVED BY:

Andy Takata,
City Manager

EXHIBIT "A"

22

NUMBERED LOTS: 1
ACREAGE: 1.17 GROSS

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

PARCEL MAP NO. 36272

LOT 16, 17 & "C", AND PORTIONS OF LOT 15 & LOT "A" OF HUNTER'S VAL MONTE TRACT, BOOK 17, PAGE 91 OF MAPS, AND BLOCK 174 OF THE BANNING COLONY LANDS, BOOK 3, PAGE 149, EXCEPTING THEREFROM THE EAST 340 FEET AND THE WEST 260 FEET, RECORDS OF COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

SEPTEMBER 2009

OWNER'S CERTIFICATE

WE HEREBY STATE THAT WE ARE THE OWNERS OF THE LAND INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID LAND; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS PARCEL MAP AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE; THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES: WE HEREBY DEDICATE TO THE CITY OF BANNING, AN EASEMENT FOR PUBLIC STREET PURPOSES OVER PARCEL "A" AND THE EASEMENTS FOR PUBLIC UTILITY PURPOSES, AS SHOWN HEREON.

BY: _____ DATE _____

BY: _____ DATE _____

FOR:
INLAND BEHAVIORAL AND HEALTH SERVICES, INC.

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss

ON _____ BEFORE ME, _____
PERSONALLY APPEARED _____
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, AND THAT BY HIS/HER/THEIR SIGNATURE ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS 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: _____

NOTARY ACKNOWLEDGMENT

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO } ss

ON _____ BEFORE ME, _____
PERSONALLY APPEARED _____
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, AND THAT BY HIS/HER/THEIR SIGNATURE ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSONS 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: _____

SIGNATURE OMISSIONS

PURSUANT TO SECTION 66436 OF THE SUBDIVISION MAP ACT, THE SIGNATURES OF THE FOLLOWING OWNERS OF EASEMENTS AND/OR OTHER INTERESTS HAVE BEEN OMITTED:

THE BANNING LAND COMPANY AND BANNING WATER COMPANY, HOLDER OF AN EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF IRRIGATING DITCHES, PIPES OR FLUMES PER MAP BOOK 3, PAGE 49 O.R. SAN DIEGO COUNTY, STATE OF CALIFORNIA

STATE OF CALIFORNIA, HOLDER OF CERTAIN RIGHTS OF ACCESS PER DOCUMENT REC. 4/29/54 BOOK 1582, PAGE 47, O.R. AND 4/25/55 BOOK 1727, PAGE 480 O.R. COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

ENGINEER'S CERTIFICATE

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED ON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF PETER DE MEL ON SEPTEMBER 1, 2009. I HEREBY STATE THAT ALL MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED, OR WILL BE IN ACCORDANCE WITH THE TERMS OF THE MONUMENT AGREEMENT FOR THE MAP, AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

DATE: _____ 2011

JOSEPH S.C. BONADIMAN
R.C.E. NO: 30238
EXPIRATION DATE: 3-31-2012

REGISTERED PROFESSIONAL ENGINEER
JOSEPH S.C. BONADIMAN
No. C-30238
Exp. 3-31-12
CIVIL
STATE OF CALIFORNIA

TAX COLLECTOR'S CERTIFICATE

I HEREBY CERTIFY THAT ACCORDING TO THE RECORDS OF THIS OFFICE, AS OF THIS DATE, THERE ARE NO LIENS AGAINST THE PROPERTY SHOWN ON THE WITHIN MAP FOR UNPAID STATE, COUNTY, MUNICIPAL, OR LOCAL TAXES, OR SPECIAL ASSESSMENTS COLLECTED AS TAXES, EXCEPT TAXES OR SPECIAL ASSESSMENTS COLLECTED AS TAXES NOW A LIEN BUT NOT YET PAYABLE, WHICH ARE ESTIMATED TO BE $ _____

DATE: _____, 20____
DON KENT
COUNTY TAX COLLECTOR

BY: _____, DEPUTY

CLERK OF THE BOARD OF SUPERVISOR'S CERTIFICATE

I HEREBY CERTIFY THAT A BOND IN THE SUM OF $ _____ HAS BEEN EXECUTED AND FILED WITH THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, CALIFORNIA, CONDITIONED UPON THE PAYMENT OF ALL TAXES, STATE, COUNTY, MUNICIPAL, OR LOCAL, AND ALL SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH AT THE TIME OF FILING OF THIS MAP WITH THE COUNTY RECORDER ARE A LIEN AGAINST SAID PROPERTY BUT NOT YET PAYABLE AND SAID BOND HAS BEEN DULY APPROVED BY THE BOARD OF SUPERVISORS.

DATE: _____, 20

CASH TAX BOND
DON KENT
COUNTY TAX COLLECTOR

BY: _____, DEPUTY

KECIA HARPER-IHEM
CLERK OF THE BOARD OF SUPERVISORS

BY: _____, DEPUTY

CITY ENGINEER'S CERTIFICATE

THIS MAP CONFORMS TO THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. THE SUBDIVISION AS SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE TENTATIVE MAP, IF REQUIRED, AND ANY APPROVED ALTERATIONS THEREOF. I HEREBY STATE THAT THIS MAP HAS BEEN EXAMINED BY ME OR UNDER MY SUPERVISION.

DATE: _____, 2011

KAHONO OEI, CITY ENGINEER
R.C.E. 52652
EXPIRATION DATE: 12-31-12

REGISTERED PROFESSIONAL ENGINEER
KAHONO OEI
No. C-52652
Exp. 12-31-12
CIVIL
STATE OF CALIFORNIA

CITY SURVEYOR'S CERTIFICATE

I HEREBY STATE THAT I HAVE EXAMINED THIS MAP, AND HAVE FOUND THAT IT CONFORMS WITH MAPPING PROVISIONS OF THE SUBDIVISION MAP ACT AND I AM SATISFIED SAID MAP IS TECHNICALLY CORRECT.

_____ DATE

ERIC A. NELSON
ACTING CITY SURVEYOR
P.L.S. 5563, EXP. 9/30/11

LICENSED LAND SURVEYOR
ERIC A. NELSON
L.S. 5563
Exp. 9-30-11
STATE OF CALIFORNIA

CITY ACCEPTANCE CERTIFICATE

I HEREBY STATE THAT THE CITY COUNCIL OF THE CITY OF BANNING, BY A MOTION DULY SECONDED AND PASSED, APPROVED THIS MAP ON THE _____ DAY OF _____, 2011, AND ACCEPTED ON BEHALF OF THE CITY OF BANNING AN EASEMENT FOR PUBLIC STREET PURPOSES OVER PARCEL "A", AND THE EASEMENTS FOR PUBLIC UTILITY PURPOSES AS SHOWN HEREON.

_____ DATE

MARIE CALDERON
CITY CLERK, CITY OF BANNING

FILED THIS _____ DAY OF _____, 2011 AT _____ M., IN BOOK _____ OF PARCEL MAPS, AT PAGES _____, AT THE REQUEST OF THE CITY OF BANNING.
NO. _____
FEE _____

LARRY W. WARD, ASSESSOR - COUNTY CLERK - RECORDER

BY: _____, DEPUTY

SUBDIVISION GUARANTEE: FIRST AMERICAN TITLE COMPANY

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

PARCEL MAP NO. 36272

LOT 16, 17 & "C", AND PORTIONS OF LOT 15 & LOT "A" OF HUNTER'S VAL MONTE TRACT, BOOK 17, PAGE 91 OF MAPS, AND BLOCK 174 OF THE BANNING COLONY LANDS, BOOK 3, PAGE 149, EXCEPTING THEREFROM THE EAST 340 FEET AND THE WEST 260 FEET, RECORDS OF COUNTY OF RIVERSIDE, STATE OF CALIFORNIA.

JOSEPH E. BONADIMAN & ASSOCIATES INC.
consulting engineers land surveyors

SEPTEMBER 2009

SCALE: 1"=30'

VICINITY MAP
NTS

ENGINEER'S NOTES

BASIS OF BEARINGS
THE BASIS OF BEARINGS FOR THIS MAP IS BASED ON THE CENTERLINE OF RAMSEY STREET AS SHOWN ON RECORD OF SURVEY 118/ 43, OFFICIAL RECORDS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING: S 89°05'17" E

- —●— DENOTES FOUND MONUMENT AS NOTED.
- —○— DENOTES SET 1" I.P. TAGGED R.C.E. 30238
- (XX.XX) DENOTES RECORD DATA PER HUNTER'S VAL MONTE TRACT, M.B.17/91
- [XX.XX] DENOTES RECORD DATA RS 118/43
- {XX.XX} DENOTES RECORD DATA PER CAL TRANS ROW MAP NO. 421541
- <XX.XX> DENOTES RECORD DATA PER GRANT DEED, BOOK 1582, PAGE 47
- ((XX.XX)) DENOTES RECORD DATA PER GRANT DEED, DOC. NO. 2002-344505
- [[XX.XX]] DENOTES RECORD DATA PER MAP OF PART OF BANNING COLONY LANDS, M.B. 3/49
- NFNS INDICATES "NOTHING FOUND, NOTHING SET"
- EBP INDICATES "ESTABLISHED BY PROPORTION"
- ACCESS RIGHTS RELINQUISHED PER O.R. 1582/47 & O.R. 1727/450.

ALL DISTANCES SHOWN ARE MEASURED IN FEET AND DECIMAL PARTS THEREOF.
THIS PARCEL MAP CONTAINS 1.17 ACRES GROSS.

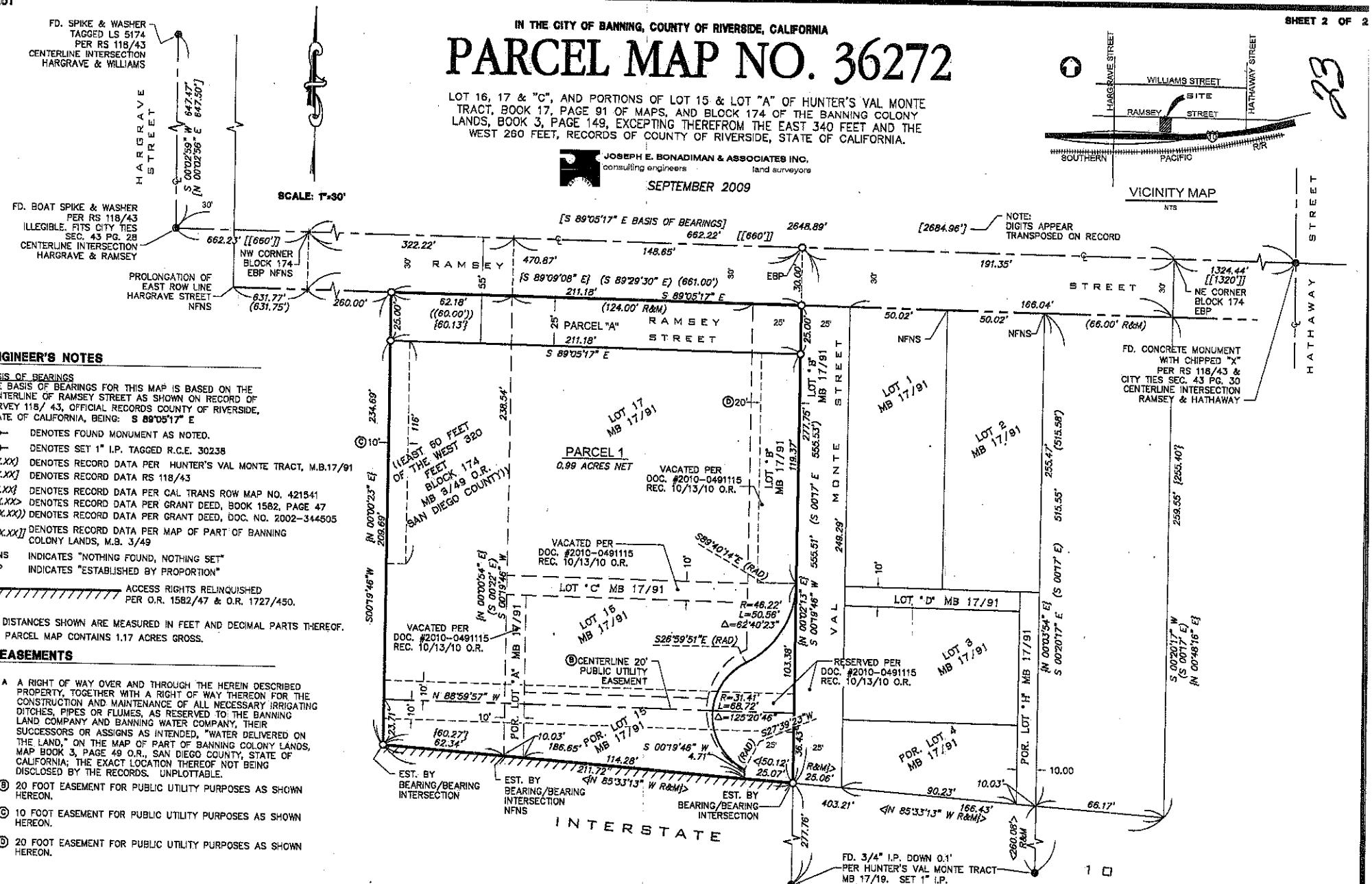
EASEMENTS

A A RIGHT OF WAY OVER AND THROUGH THE HEREIN DESCRIBED PROPERTY, TOGETHER WITH A RIGHT OF WAY THEREON FOR THE CONSTRUCTION AND MAINTENANCE OF ALL NECESSARY IRRIGATING DITCHES, PIPES OR FLUMES, AS RESERVED TO THE BANNING LAND COMPANY AND BANNING WATER COMPANY, THEIR SUCCESSORS OR ASSIGNS AS INTENDED, "WATER DELIVERED ON THE LAND," ON THE MAP OF PART OF BANNING COLONY LANDS, MAP BOOK 3, PAGE 49 O.R., SAN DIEGO COUNTY, STATE OF CALIFORNIA; THE EXACT LOCATION THEREOF NOT BEING DISCLOSED BY THE RECORDS. UNPLOTTABLE.

(B) 20 FOOT EASEMENT FOR PUBLIC UTILITY PURPOSES AS SHOWN HEREON.

(C) 10 FOOT EASEMENT FOR PUBLIC UTILITY PURPOSES AS SHOWN HEREON.

(D) 20 FOOT EASEMENT FOR PUBLIC UTILITY PURPOSES AS SHOWN HEREON.



CITY COUNCIL AGENDA

DATE: **March 22, 2011**

TO: **City Council**

FROM: **Zai Abu Bakar, Community Development Director**

SUBJECT: **Amendment No. 4 to the Joint Exercise of Powers Agreement Creating the Western Riverside County Regional Conservation Authority**

RECOMMENDATION:
That the City Council adopt Resolution No. 2011-21 approving Amendment No. 4 to the Joint Exercise of Powers Agreement Creating the Western Riverside County Regional Conservation Authority.

BACKGROUND:
The original Joint Powers Agreement (JPA) was dated January 27, 2004 and it was entered into between the County of Riverside and 14 cities in Western Riverside County. There have been a number of amendments since the original JPA. The latest amendment is Amendment No.4 to add the most recent incorporated City of Eastvale for a total of 26 cities under the JPA.

FISCAL DATA:
There is no anticipated fiscal impact to the General Fund as a result of this amendment.

RECOMMENDED BY:

Andrew J. Takata
City Manager

PREPARED BY:

Zai Abu Bakar
Community Development Director

Attachments:
1. City Council Resolution 2011-21 with Amendment No. 4

ATTACHMENT 1

Resolution No. 2011-21

RESOLUTION NO. 2011-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING AMENDMENT NO. 4 TO JOINT POWERS AGREEMENT CREATING THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

WHEREAS, the original Joint Powers Agreement (JPA) was dated January 27, 2004 and it was entered into between the County of Riverside and 14 cities in Western Riverside County; and

WHEREAS, there have been a number of amendments to the JPA. The latest is Amendment No. 4 to add the City of Eastvale; and

WHEREAS, the City Council has reviewed the request at its meeting on March 22, 2011; and

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1: Approval of Amendment No. 4

The City Council hereby approves Amendment No. 4

PASSED, APPROVED AND ADOPTED this 22nd day of March 2011.

Barbara Hanna, Mayor
Banning City Council

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2011-21 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of March 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

FOURTH AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT CREATING THE WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION AUTHORITY

This Joint Powers Agreement dated _____, 2011 is made by and between the COUNTY OF RIVERSIDE, and the Cities of BANNING, BEAUMONT, CALIMESA, CANYON LAKE, CORONA, EASTVALE, HEMET, LAKE ELSINORE, MENIFEE, MORENO VALLEY, MURRIETA, NORCO, PERRIS, RIVERSIDE, SAN JACINTO, TEMECULA and WILDOMAR, hereinafter sometimes referred to collectively as "Parties," for the purpose of acquiring, administering, operating and maintaining land and facilities for ecosystem conservation and habitat reserves for certain rare, threatened and endangered species covered by the Western Riverside County Multiple Species Habitat Conservation Plan, hereinafter referred to as the "MSHCP."

RECITALS

WHEREAS, the Cities and the County, hereinafter sometimes jointly referred to as "Parties", are authorized and empowered to contract with each other for the joint exercise of powers pursuant to Article 1, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California, hereinafter referred to as "the Act"; and

WHEREAS, the County and the Cities each have the authority and power to prepare and implement habitat conservation plans for the protection of rare, threatened and endangered species, and to acquire, own, maintain and operate habitat reserves for such species in connection with said habitat conservation plans; and

WHEREAS, the formation of a single public agency would most efficiently serve the interests of the County and Cities by allowing the County and the Cities to jointly exercise the aforementioned powers; and

WHEREAS, the County in consultation with the Cities has prepared the MSHCP; and

WHEREAS, the County and the Cities desire to organize themselves pursuant to

this Joint Powers Agreement, hereinafter referred to as the "Agreement", to implement the MSHCP should the MSHCP ultimately be approved by the County and Cities; and

WHEREAS, the original Joint Powers Agreement was dated January 27, 2004 and was entered into between the County of Riverside and fourteen (14) cities in western Riverside County; and

WHEREAS, the Cities of Menifee and Wildomar became member agencies on April 7, 2009; and

WHEREAS, the parties and the City of Eastvale desire that the City of Eastvale become a member of the Western Riverside County Regional Conservation Authority.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

Section 1. Purpose. The purpose of this Agreement is to create a public agency to acquire, administer, operate and maintain land and facilities to establish habitat reserves for the conservation and protection of species covered by the MSHCP and to implement the MSHCP in the event the MSHCP is approved by the County and Cities and appropriate permits are issued by the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Additionally, this Agreement shall permit the financing of public capital improvements and those purposes permitted under the Marks-Roos Local Bond Pooling Act of 1985, being Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Bond Law").

Section 2. Creation of the Authority. Pursuant to the Act and the Bond Law, there is hereby created a public agency to be known as the "Western Riverside County Regional Conservation Authority," hereinafter referred to as the "RCA." The RCA shall be a public agency, separate and apart from its members, and as provided by law and not otherwise prohibited by this Agreement, shall be empowered to take such actions as may be necessary or desirable to implement and carry out the purposes of this Agreement.

Section 3. **Powers.** In carrying out the purpose of this Agreement, the RCA shall have the following powers:

A. To make and enter into contracts;

B. To employ agents, consultants, attorneys and employees;

C. To acquire property, and any interest in property, both real and personal by purchase, gift, option, grant, bequest, devise or otherwise, and hold and dispose of such property;

D. To conduct and direct studies and to develop and implement plans to complement, modify or supplement the MSHCP;

E. To incur debts, liabilities, and obligations;

F. To sue and be sued in its own name;

G. To employ reserve managers and other personnel to operate, maintain, and administer the habitat reserves established through implementation of the MSHCP;

H. To be an applicant, make applications for, and receive grants from governmental and private entities and to participate in State bond issues;

I. To prepare project reports and applications, to qualify for grants, and to enter into grant contracts and to do all other things necessary to comply with State and Federal laws and regulations with respect to grants;

J. To borrow or receive advances of funds from its members or from such other sources as may be permitted by law;

K. To contract with its members and other entities who operate or will operate the habitat reserves established through implementation of the MSHCP;

L. To issue bonds, notes, warrants and other evidences of indebtedness to finance costs and expenses to carry out the powers of the RCA;

M. To acquire, hold, and dispose of equipment;

N. To lobby state and federal governments and their officials as well as private entities to obtain funding for implementation of the MSHCP and employ individuals or entities to conduct such lobbying activities on its behalf; and

O. To exercise the powers granted to it under the Act, including, but not limited to, the Bond Law and the powers common to each member, as may be necessary to accomplish the purposes of this Agreement.

P. To invest money in the treasury pursuant to Section 6505.5 of the Act that is not required for the immediate necessities of the Authority, as the Authority determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the California Government Code.

Section 4. Term. The term of this Agreement shall continue until terminated by the Parties hereto by their mutual written consent as set forth in Section 5 of this Agreement.

Section 5. Termination, Withdrawal and Amendment.

A. This Agreement shall be automatically terminated and considered null and void in the event the MSHCP is not approved by the County and the Cities or appropriate permits are not issued by the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

B. Any Party to this Agreement may withdraw for any reason upon giving all other Parties sixty (60) days advance written notice of the effective date of such withdrawal. This Agreement shall thereupon be deemed automatically amended to reflect the withdrawal of said Party from the RCA and this Agreement. Upon withdrawal of any Party from the RCA and this Agreement, the withdrawing Party shall not receive any distribution, partial or otherwise, of any cash or other assets of the RCA.

C. Provided there is mutual consent by the governing bodies of each of the Parties to this Agreement, evidenced in writing, this Agreement may be: (1) amended to add new Parties; or (2) amended to change any portion of this Agreement. Alternatively, any Western Riverside County city may become a party to the Authority upon such terms

and conditions as established by the Board or Executive Committee. Any Western Riverside County city shall become a party to the Authority by the adoption by the city council of this Agreement and the execution of a written addendum to this Agreement agreeing to the terms of this Agreement and agreeing to any additional terms and conditions that may be established by the Board or Executive Committee.

D. The Parties to this Agreement specifically agree that this Agreement creates an entity which may acquire or hold property. Pursuant to California Government Code Sections 6511 and 6512, upon completion of the purposes of this Agreement or upon termination thereof, any property or assets acquired or surplus money on hand which was obtained pursuant to this Agreement and which is not required by law or contract to be distributed in a different manner, may be returned to the then Parties to the Agreement in proportion to the contributions made, or in the alternative, may be transferred to any local, state, federal or private entity who agrees to assume the duties and obligations of the RCA. However, any distribution of assets shall be subject to the prior discharge of enforceable liability against the RCA. Subject to the foregoing, each Parties proportionate share shall be based upon each Parties contributions to the RCA submitted to the RCA in accordance with Sections 17.A. and B. below.

Section 6. RCA Board and Membership. This Agreement and the authority hereby created shall be administered by the governing body of the RCA which shall be known as the "Board of the Western Riverside County Regional Conservation Authority" hereinafter referred to as the "Board."

The regular members of the Board shall be the five members of the Riverside County Board of Supervisors and one member from each incorporated city who is signatory to the Agreement. Written notification of the appointment of a City representative shall be provided to the Chairperson of the Board.

Each member of the Riverside County Board of Supervisors may appoint an alternate member and each City may appoint one alternate member. Each regular member and alternate City appointed member must hold an elective office on the

respective governing body appointing the regular or alternate member. The Board of Supervisors may appoint a city council member of a member city to represent each Board of Supervisor member as an alternate at meetings of the RCA Board or committees. Notwithstanding the prior sentence, in no event shall the same person serve as a city representative and alternate for the Board of Supervisor's member of the same meeting. Notice of the appointment of an alternate shall be made in writing to the chairperson of the RCA Board. In the absence of a regular member, the alternate member shall, if present, participate in a meeting of the Board the same as if the alternate member were the regular member.

Regular members and alternate members shall serve on the Board during the term for which they were appointed or until their successor has been appointed or their appointment has been revoked, whichever is earlier. However, a regular or alternate member's position on the Board shall automatically terminate if and when the term of the elected public office of such regular or alternate member is terminated. When a vacancy occurs, it shall be the duty of the respective Party having the vacancy to promptly inform the Board of the name of the replacement regular or alternate member.

Regular members and alternate members, if participating in a meeting of the Board on behalf of a regular member, shall be entitled to compensation for participation in meetings of the Board and necessary traveling and personal expenses incurred in the performance of the member's duties as authorized by the Board. Such compensation shall be fixed by resolution of the Board.

Section 7. Meetings of the RCA Board.

A. **Meetings.** The Board shall establish the time and place for its regular and special meetings. The dates, hour and location of regular meetings shall be fixed by resolution of the Board and a copy of such resolution shall be provided to the governing body of each of the Parties and with each Party's designated regular and alternate member. Special meetings and adjourned meetings may be held as required or permitted by law.

B. **Ralph M. Brown Act.** All meetings of the Board, including without limitation, regular, special and adjourned meetings, shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code).

C. **Quorum and Voting.** A majority of the members of the Board shall constitute a quorum for the transaction of business and all official acts of the Board shall require the affirmative vote of a majority of the members of the Board. Each regular member or alternate member acting in the place of a regular member shall have one vote at meetings of the Board. However, any member of the Board, immediately after a vote of the Board and prior to the start of the next item on the agenda may call for a weighted vote. For an item to be passed by weighted vote, all of the following requirements shall be met:

I. the item shall be approved by a majority of the Board members present at the meeting who represent the Riverside County Board of Supervisors, who each shall have one vote;

II. the item shall be approved by a majority of the Board members present at the meeting who represent Cities, who each shall have one vote; and

III. the item shall be approved by Board members present at the meeting who represent Cities representing a majority of an equal combination of 1) the population of the county living in incorporated areas within the boundaries of the MSHCP Plan area, and 2) the number of acres currently within the Criteria Cells in the incorporated areas as follows: Banning – 78 acres; Beaumont – 10,098 acres; Calimesa – 3,380 acres; Canyon Lake – 303 acres; Corona – 2,315 acres; Eastvale – 1,024 acres; Hemet – 1,158 acres; Lake Elsinore – 14,336 acres; Menifee – 249 acres; Moreno Valley – 2,325 acres; Murrieta – 8,726 acres; Norco – 734 acres; Perris – 3,181 acres; Riverside – 1,201 acres; San Jacinto – 4,580 acres; Temecula – 3,899 acres; and Wildomar – 4,151 acres. Population data shall be determined through California Department of Finance estimates, adjusted annually.

In addition, the Board may, through resolution, revise the above-referenced number of acres due to the addition of a new member entity or other appropriate adjustments as the Board deems necessary.

D. The Board may adopt, from time to time, such rules and regulations for the conduct of its meetings and affairs as it may deem necessary, including, without limitation, the designation of a person to record and transcribe the minutes of each public meeting of the RCA.

Section 8. Officers. The Board shall select a Chairperson and a Vice-Chairperson at its first meeting and at the first meeting held in each succeeding calendar year. Additionally, at its first meeting and at the first meeting held in each succeeding calendar year shall, the Board shall select any other officers it deems appropriate. In the event an officer resigns or ceases to be an officer, the Board shall select a replacement therefore at the next regular meeting of the Board. In the absence or inability of the Chairperson to act, the Vice-Chairperson shall act as Chairperson.

A. **Treasurer.** The treasurer of a member agency shall serve as the treasurer of the RCA. The Board pursuant to the adoption of a resolution shall appoint the treasurer of a member agency to serve as the Treasurer. The Treasurer shall have the custody of the RCA money and disburse RCA funds pursuant to the accounting procedures developed in accordance with the provisions of this Agreement, the Act, and with those procedures established by the Board. The Treasurer shall assume the duties described in Section 6505.5 of the Government Code, namely: receive and receipt for all money of the RCA and place in the Treasury of the Treasurer to the credit of the RCA; be responsible upon an official bond as prescribed by the Board for the safekeeping and disbursement of all RCA money so held; pay, when due, out of money of the RCA so held, all sums payable, only upon warrants of the officer performing the functions of the Controller who has been designated by the RCA or Board; verify and report in writing on the first day of July, October, January and April of each year to the RCA the amount of money held for the RCA, the amount of receipts since the last report,

and the amount paid out since the last report; and perform such other duties as are set forth in this Agreement or specified by the Board.

B. **Controller.** The Finance Director of a member agency shall serve as the Controller of the RCA. The Board pursuant to the adoption of a resolution shall appoint the finance director of a member agency to serve as the Controller. The Controller shall draw warrants to pay demands against the RCA when such demands have been approved by the Board or by any other person authorized to so approve such by this Agreement or by resolution of the Board. The Controller shall perform such duties as are set forth in this Agreement and such other duties as are specified by the Board.

There shall be strict accountability of all funds and reporting of al receipts and disbursements. The Controller shall establish and maintain such procedures, funds and accounts as may be required by sound accounting practices, the books and records of the RCA in the possession of the Controller shall be open to inspection at all reasonable times by representatives of the Parties.

The Controller, with the approval of the RCA, shall contract with an independent certified public accountant or firm or certified public accountants to make an annual audit of the accounts and records of the RCA, and a complete written report of such audit shall be filed as public records annually, within six (6) months of the end of the fiscal year under examination, with each of the Parties. Such annual audit and written report shall comply with the requirements of Section 6505 of the Government Code. The cost of the annual audit, including contracts with, or employment of such independent certified public accountants in making an audit pursuant to this Agreement shall be a charge against any unencumbered funds of the RCA available for such purpose. The Board by unanimous vote, may replace the annual audit with a special audit covering a two-year period.

Section 9. MSHCP Advisory Committee. Within thirty (30) days after issuance of the permits by the U.S. Fish and Wildlife Service and California Department

of Fish and Game for the MSHCP, the Board shall form an MSHCP Advisory Committee. The MSHCP Advisory Committee shall consist of the Riverside County Habitat Conservation Agency (RCHCA) Board of Directors and one representative from each City who is not a member of the RCHCA. Within six (6) months of execution of this Agreement, or at any time thereafter, the Board may review the RCA organizational structure established by this Agreement to determine if it is facilitating MSHCP implementation.

Section 10. Executive Director. The Board shall retain an Executive Director to administer the MSHCP in compliance with the duties and responsibilities set forth in Sections 5.0 and 6.0 of the MSHCP. As required by the MSHCP, the RCA shall initially contract with the County of Riverside to provide an appropriate department or individual to act as the Executive Director within thirty (30) days of the formation of the RCA. The appropriate department or individual shall be recommended by the County's Executive Officer and considered by the Board. It is understood by the Parties to this Agreement that the Board may accept or reject the County Executive Officer's recommendation of an appropriate department or individual to serve as the Executive Director. This contract shall be for an initial term of three (3) years. At least six (6) months prior to the expiration of this initial contract term, the Board shall review the County department's or individual's performance as Executive Director. Based upon this review, the Board may elect to extend the contract with the County or select an alternative entity or individual for the Executive Director position upon expiration of the initial term.

Section 11. RESERVED

Section 12. Monitoring Program Administrator. Upon issuance of the permits for the MSHCP by the U.S. Fish and Wildlife Service and California Department of Fish and Game and for a period of eight (8) years thereafter, the California Department of Fish and Game shall serve as the Monitoring Program Administrator for the MSHCP. The Monitoring Program Administrator shall be responsible for implementing the monitoring program contained in Section 5.0 of the MSHCP and shall perform all duties

and responsibilities as set forth in Sections 5.0 and 6.0 of the MSHCP. Thereafter, the Board may elect to have the Department continue acting in the capacity or shall select an alternative individual or entity for this position if the Board determines that the Department cannot adequately perform the duties and responsibilities of this position.

Section 13. Reserve Managers. The Board shall retain at least one Reserve Manager to manage lands owned by the RCA within the MSHCP Conservation Area. This Reserve Manager(s) shall report to the Executive Director and shall perform all the duties and responsibilities set forth in Section 5.0 and Section 6.0 of the MSHCP. Additionally, Reserve Managers managing lands owned by any Party to this Agreement that are within the MSHCP Conservation Area shall report to the Executive Director.

Section 14. Independent Science Advisors. The Board shall retain, as appropriate, independent science advisors who are qualified biologists and conservation experts with expertise in species covered by the MSHCP and their habitats. Additionally, to the extent feasible, the independent science advisors shall have experience in land management. Independent science advisors shall be retained on an annual basis, shall report to the Executive Director and shall comply with the duties and responsibilities set forth in Section 6.0 of the MSHCP.

Section 15. Funding Coordination Committee. Within one hundred and twenty (120) days after issuance of the permits by the U.S. Fish and Wildlife Service and California Department of Fish and Game for the MSHCP, the Board shall form a Funding Coordination Committee to provide recommendations to the Board on local funding priorities and local MSHCP Conservation Area acquisitions. Members of this committee shall be appointed by the Board and shall consist of, at a minimum, representatives of the Parties to this Agreement, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game. To the extent feasible, members of the Funding Coordination Committee shall have expertise in real estate or land use planning and/or experience implementing large scale conservation programs.

The Funding Coordination Committee shall make recommendations to the Board through the Executive Director on local land acquisitions and funding priorities. Additionally, this Committee shall provide a forum to discuss land acquisition priorities of the U.S. Fish and Wildlife Service and California Department of Fish and Game and acquisitions by other entities using non-local sources of revenue. The Board shall establish policies under which the Funding Coordination Committee shall make recommendations to the Board. Such policies shall include conflict of interest guidelines for the Committee members.

The Planning Directors of each Party to this Agreement shall receive prior notice of all meetings of the Funding Coordination Committee. Such notice shall include a meeting agenda and a list of potential acquisition sites, if applicable. The Planning Directors or their designated representatives may participate in Committee meetings, as appropriate.

Section 16. Reserve Management Oversight Committee. The Reserve Management Oversight Committee (RMOC) shall be formed within sixty (60) days of the effective date of the contract between the RCA and the County concerning the establishment of an Executive Director. The RMOC shall be composed of, at a minimum, one representative appointed by each of the following entities:

A. U. S. Fish and Wildlife Service,

B. California Department of Fish and Game,

C. Riverside County Regional Parks and Open Space District,

D. Bureau of Land Management,

E. U.S. Forest Service,

F. California Department of Parks and Recreation,

G. RCA, and

H. Up to five (5) other private or public agencies or entities that own or manage land within the MSHCP Conservation Area.

The RMOC shall serve as the intermediary between the Reserve Managers and the decision making function of the RCA. The Executive Director shall serve as chair of the RMOC.

Section 17. Rules and Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. The Act, the Bond Law, and the laws of the State of California applicable to a general law city shall govern the RCA in the manner of exercising its powers, subject, however, to such restrictions as are applicable to said city in the manner of exercising such powers, as required by Government Code Section 6509. The Board, at its first meeting or as soon thereafter as may be possible, shall adopt such rules and regulations as the Board may deem necessary for the conduct of the RCA's affairs. Among these rules shall be a conflict of interest code and a purchasing ordinance. The Board may, as it deems appropriate, review and revise these rules and regulations.

Section 18. Fiscal Year. The fiscal year of the RCA shall be the period commencing on July 1 of each year and ending on and including the following June 30.

Section 19. Contributions/Estimated Budget.

A. Contributions of Development Mitigation Fees. The Parties to this Agreement shall impose a development mitigation fee on all new development to support the acquisition of additional reserve lands pursuant to the MSHCP. All development mitigation fees collected by the Parties shall be forwarded to the RCA within ninety (90) days after receipt by each Party. The RCA may, in its discretion, conduct an audit of the development mitigation fees collected by any Party to this Agreement.

B. Other Contributions. The RCA may accept contributions of money or property from the Parties or other individuals or entities including but not limited to contributions from Parties, MSHCP Permittees and Special Participating Entities who obtain take authorization under the MSHCP for public utility, schools, transportation, flood control and other public infrastructure projects. Additionally, a Party may hold and

manage its own property as a contribution to implementation of the MSHCP and the MSHCP Conservation Area. Landfill Tipping Fees and Density Bonus Fees collected by the County may be contributed to the RCA on an annual basis subject to the discretion of the Board of Supervisors.

C. Use of Contributions. When approved by the Board, revenues received by the RCA, including without limitation, fees and other contributions, shall be used to implement the MSHCP. In addition, the RCA shall reimburse the County for any and all litigation costs, including but not limited to attorneys fees, incurred in defense of any legal challenge concerning the adoption of the MSHCP or any related actions as well as any costs incurred to establish the Executive Director and any other necessary staff prior to entering into the contract contemplated in Section 10 of this Agreement.

D. Budget. The annual budget for the RCA shall be prepared by the Executive Director. The annual budget shall be based on an estimate of the amount of revenue necessary to implement the MSHCP during the ensuing fiscal year and shall consider necessary land acquisition, improvements, maintenance, management, monitoring, administration, and operation costs during the current fiscal year as such costs are set forth in the then current approved budget for the RCA.

Section 20. MSHCP Reporting Requirements. In order to assist in the preparation of the annual report required to be prepared by the RMOC and submitted to the USFWS, CDFG, and RCA as set forth in the MSHCP and Implementing Agreement, the Parties shall on a monthly basis provide the following information to the RCA:

A. grading permit activity including the number of the permit issued, the location of the development site identified by assessor's parcel number, and the amount of acreage disturbed;

B. single family home and mobile home construction activity within the Criteria Area including the number of the grading, building, site preparation or installation permit issued and the location of the development site identified by assessor's parcel number;

C. development mitigation fee collection including identification by assessor's parcel number of the project for which the fee was collected, the amount of the fee paid, and any exemptions or credits that may have been included in any calculation of the fee; and

D. any other information required to comply with the provisions of the MSHCP as may be determined necessary by the Executive Director.

In addition, the County shall submit on an annual basis all information contained in the Existing Agricultural Operations Database including the amount of new agricultural land, if any, added to the Database as well as any documentation concerning the expansion of agricultural operations within the Criteria Area.

Section 21. Joint Project/Acquisition Review Process. To ensure that the requirements of the MSHCP and its Implementing Agreement are properly met, a joint project/acquisition review process shall be instituted by the RCA. This process is set forth in Section 6 of the MSHCP.

Section 22. Liabilities. Except as may be provided herein, the debts, liabilities and obligations of the RCA shall be the debts, liabilities and obligations of the RCA alone, and not of the Parties to this Agreement.

Section 23. Indemnification. Provided that a Party has acted in good faith and in accordance with this Agreement, the approved MSHCP and its Implementing Agreement and the Permits, the RCA shall defend, indemnify and hold such Party free and harmless from any loss, liability or damage incurred or suffered by such Party by reason of litigation arising from or as a result of any of the following: the Party's development mitigation fee ordinance; the Party's participation in the RCA; actions taken to approve and/or implement the MSHCP; claims of inverse condemnation or unconstitutional takings against a Party; or any other act performed or to be performed by the Party pursuant to this Agreement, the MSHCP, its Implementing Agreement or the Permits; provided, however, that such indemnification or agreement to hold harmless

pursuant to this Section shall be recoverable only out of RCA assets and not from other Parties.

Section 24. Notices. Notices required or permitted hereunder shall be sufficiently given if made in writing and delivered either personally or by registered or certified mail, postage prepaid to said respective Parties, as follows:

A. Regional Conservation Authority
Executive Director
3403 10th Street, Suite 320
Riverside, CA 92501
(951) 955-9700
(951) 955-8873 fax

B. County of Riverside
Transportation and Land Management Agency
Agency Director
4080 Lemon Street, 7th Floor
Riverside, CA 92501
(951) 955-6742
(951) 955-6879 fax

C. City of Banning
City Manager
99 E. Ramsey Street
Banning, CA 92220
(951) 922-3103
(951) 922-3128 fax

D. City of Beaumont
City Manager
550 E. 6th Street
Beaumont, CA 92223
(951) 769-8520
(909) 769-8526 fax

E. City of Calimesa
City Manager
908 Park Ave
Calimesa, CA 92320
(909) 795-9801
(909) 795-4399 fax

F. City of Canyon Lake
City Manager
31516 Railroad Canyon Road

Canyon Lake, CA 92587
(951) 244-2955
(951) 246-2022 fax

G. City of Corona
City Manager
P.O. Box 940
Corona, CA 92878
(951) 736-2371
(951) 736-2493 fax

H. City of Eastvale
City Manager
6080 Hamner Avenue, Suite 103
Eastvale, CA 91752
(951) 361-0900
(951) 361-0888 fax

I. City of Hemet
City Manager
445 E. Florida Avenue South
Hemet, CA 92543
(951) 765-2300
(951) 765-3785 fax

J. City of Lake Elsinore
City Manager
130 S. Main Street
Lake Elsinore, CA 92530
(951) 674-6727 ext. 261
(951) 674-2392 fax

K. City of Menifee
City Manager
29683 New Hub Drive, Suite C
Menifee, CA 92586
(951) 672-6777

L. City of Moreno Valley
City Manager
P.O. Box 88005
Moreno Valley, CA 92553
(951) 413-3008
(951) 413-3760 fax

M. City of Murrieta
City Manager
24601 Jefferson Avenue

Murrieta, CA 92562-9755
(951) 698-1040
(951) 698-9885 fax

N. City of Norco
City Manager
2870 Clark Avenue
Norco, CA 92860
(951) 270-5611
(951) 270-5622 fax

O. City of Perris
City Manager
101 North D Street
Perris, CA 92570
(951) 657-5882
(951) 657-1087 fax

P. City of Riverside
City Manager
3900 Main Street
Riverside, CA 92522
(951) 826-5991
(951) 826-5470 fax

Q. City of San Jacinto
City Manager
595 S. San Jacinto Avenue, Building B
San Jacinto, CA 92583
(951) 487-7342
(951) 654-3728 fax

R. City of Temecula
City Manager
PO Box 9033
Temecula, CA 92589-9033
(951) 694-6440
(951) 694-6499 fax

S. City of Wildomar
City Manager
23738 Clinton Keith Road
Wildomar, CA 92595
(951) 677-7751

The listed addresses shall serve as the official address for any notices until such time as any Party gives notice to all other Parties of a change in address in accordance with the terms of this section.

Section 25. Severability. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable and the remainder of the Agreement or the application of such provisions to the other party or to other persons or circumstances shall not be affected thereby.

Section 26. Other Agreements Not Prohibited. Other agreements by and between the Parties of this Agreement or any other entity are neither prohibited nor modified in any manner by execution of this Agreement. Furthermore, the Parties hereto agree upon request to execute, acknowledge and deliver all additional papers and documents necessary or desirable to carry out the intent of this Agreement.

Section 27. Other Obligations. The responsibilities and obligations of each Party to this Agreement shall be solely as provided in this Agreement, or as may be provided for in supplemental agreements to be executed by the Parties.

Section 28. Non-Assignability. The rights, titles and interests of any Party to this Agreement shall not be assignable or transferable without the consent of the governing body of each Party hereto.

Section 29. Section Headings. The section headings herein are for convenience of the Parties only, and shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions or language of this Agreement.

Section 30. Construction of Language. It is the intention of the Parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

Section 31. Cooperation. The Parties recognize the necessity and hereby agree to cooperate with each other in carrying out the purposes of this Agreement, including cooperation in matters relating to the public, accounting, litigation, public relations and the like.

Section 32. Future Amendments. To preserve a reasonable degree of flexibility, many parts of this Agreement are stated in general terms. It is understood that there may be Amendments to this Agreement which will further define the rights and obligations of the Parties.

Section 33. Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Parties hereto.

Original JPA Approved January 27, 2004
Amendment No. 1 Approved April 29, 2007
Amendment No. 2 Approved March 11, 2008
Amendment No. 3 Approved April 7, 2009
Amendment No. 4 Approved _____, 2011

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized as of the date first above written.

Dated:_____ **COUNTY OF RIVERSIDE**

Attest:

_____ By:_____
Chairman, Board of Supervisors

Dated:_____ **CITY OF BANNING**

Attest:

_____ By:_____
City Clerk Mayor

Dated:_____ **CITY OF BEAUMONT**

Attest:

_____ By:_____
City Clerk Mayor

Dated:_____ **CITY OF CALIMESA**

Attest:

_____ By:_____
City Clerk Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF CANYON LAKE

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF CORONA

By: _____
Mayor

Dated: _____

Attest:

_____

CITY OF EASTVALE

By: _____

Dated: _____

Attest:

_____
City Clerk

CITY OF HEMET

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF LAKE ELSINORE

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF MENIFEE

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF MORENO VALLEY

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF MURRIETA

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF NORCO

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF PERRIS

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF RIVERSIDE

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF SAN JACINTO

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF TEMECULA

By: _____
Mayor

Dated: _____

Attest:

_____
City Clerk

CITY OF WILDOMAR

By: _____
Mayor

CITY COUNCIL AGENDA
STAFF REPORT

DATE: **March 22, 2011**

TO: **City Council**

FROM: **Heidi Meraz, Community Services Director**

SUBJECT: **Resolution No. 2011-22 "Approving the Lease Agreement with the Alliance for Youth Employment Skills ("AYES") for the Use of Facilities at Dysart Park"**

RECOMMENDATION

Adopt Resolution No.2011-22, Approving the Lease Agreement with the Alliance for Youth Employment Skills ("AYES") for the Use of Facilities at Dysart Park".

JUSTIFICATION

AYES will implement a program on the requested facilities that will teach job skills to developmentally disabled young adults. Participants will be taught how to harvest seeds and grow plants that are native to Southern California and are naturally drought tolerant. In turn for the use of space, AYES will provide beautification and landscape in some areas of the park and maintain the areas that are utilized by their programs.

Given the consideration of underutilized space at Dysart Park and the need to provide programs that develop job skills for the youth and young adults in our community, the program that has been proposed by the Alliance for Youth Employment Skills is an appropriate use for areas of the park.

BACKGROUND

Staff met with Mr. Ben White, Program Coordinator for AYES and Ms. Jackie Lassater, also a coordinator of the program to determine the feasibility of using spaces and at Dysart Park to provide a workability program that they currently provide at the Milo P. Johnson School in Banning. The program provides horticulture and landscape training for youth and young adults as well as encompasses developing skills in marketing, sales, logistics and website development and management.

The request for use of space was taken to the Parks and Recreation Advisory Committee at their regularly scheduled meetings on October 20, 2010 and November 17, 2010. Mr. White and Ms. Lassater were present at both meetings to answer questions regarding the program and the need for the space that is being requested at Dysart Park. At the November 17, 2010 meeting the Parks and Recreation Advisory Committee made a recommendation to the City Council to approve an appropriate leases agreement with AYES for the use of Dysart Park.

On January 22, 2011 staff brought forward a request for City Council to give direction regarding providing a lease agreement for AYES to use the requested portions of Dysart Park; Mr. White was again present and spoke briefly about the program and answered questions. Direction was given by Council that a lease agreement be developed for the use of Dysart Park by AYES.

Attached to this report is a list of questions that were posed regarded the use of the park for the AYES program. Each question has been answered

The space that is being requested by AYES is as follows:

(1) Exclusive use of 6,000 square feet of ground located at the east end of the arena, bordered by a tree line on the west and an access road on the east

(2) Non-exclusive use of the mobile structure and exclusive use of one office within the mobile structure

(3) Non-exclusive use of three outdoor shade structures

The lease has been prepared and is essentially the same as agreements that are in place with other non-profit organizations that utilize city facilities. The rent on said space would be $1.00 per year and AYES would be responsible for their portion of utilities used on site as well as providing appropriate insurance.

FISCAL DATA

There will be no fiscal impact in that AYES will be responsible for maintaining the areas that they are using and will be paying for their water and utility usage. The annual value of this agreement based on current daily use fees for Dysart Park is $8,640.00.

RECOMMENDED BY:

Heidi Meraz
Community Services Director

APPROVED BY:

Andrew J. Takata
City Manager

REVIEWED BY:

June Overholt
Administrative Services Director

Will this use interfere with other equestrian events or multiple uses that may develop at the park?

No. The use of space required for this program and the shared use of office space should not interfere with either equestrian program of other programs of multiple use nature.

Will Mr. White be partnering with other groups, such as Sun Lakes Garden Club?

At this point Mr. White has taken the beginning steps to develop partnership opportunities with groups in the community; however formal presentations and agreements have not been made.

Will this impact equestrian events that will be held at the park?

No, given that the area that is being proposed will not be located in any type of a high traffic area or situated where it will it interfere with access to fire lanes or other roadways there will be no impact.

Does this use interfere with the updated Parks and Recreation Master Plan?

No. The updated plan proposes the following improvements:

- Picnic Shelter/tables
- (1) dog park/off leash dog area
- (2) soccer fields
- Expand equestrian arena
- Equestrian trailhead

Clearly this states "Expand equestrian arena" which requires explanation.

Any of the improvements that are recommended in the updated Parks and Recreation Master Plan will be require professional design and at that point the current use of all spaces would be evaluated.

Key to keep in mind is that the growing that AYES has proposed is done in containers and pots and could be relocated to another acceptable are of the park. Also important is that the proposed lease agreement allows the City to end the agreement with a 30 day notice.

Why put this at Dysart Park?

There is no reason to not put this program at Dysart Park as it will not interfere with present or projected use, will have appropriate insurance, will not be a financial burden on the City and will provide positive programming for an underserved population in our community.

Are credits administered for this program?

No, credits are not currently offered through this program. This program is currently being offered at the Milo P. Johnson School as an "Alternative Functional Skills Program".

The Milo P. Johnson School currently operates two types of programs at their site; one being for learning disabled students and the other being an alternative education program.

Present participants in the AYES program are learning disabled students between the ages of 18 – 22 years old. The program is designed to filter academics into real life skills for these students. The program teaches sorting, measuring and organizational skills as well as science skills.

This program could potentially grow into perhaps a R.O.P. program, but at the onset it is strictly a workability program for the developmentally disabled students at Milo P. Johnson School.

How is this program supervised?

As the program currently exists the students are supervised by Mr. White, Ms. Lassater and a staff person from Milo P. Johnson.

How can the facility be used by other groups if AYES will use the facility all year?

The placement of the planting project in the designated area east of the arena puts it in a location that is not used by other groups. Generally, special events are held on the weekends and the classroom space would not be used by AYES during the weekends. When groups renting the park for special events request use of the building staff would communicate with AYES making sure the building is vacated during the designated dates and times.

Is the space to be used for classroom suitable?

It is the opinion of Mr. White that the space available will meet their needs. The space is clean, dry, has a large conference table with chairs and a bathroom.

How will the students be transported to the park?

At the current state of the program, transportation will be provided by the Riverside County Office of Education. The students will be taken to and from the Milo P Johnson School to the park in vans.

For future program needs, the park is accessible by city bus at Westward and 22nd Streets.

Have provisions been made for pesticides or herbicides?

According to Mr. White, to this point neither has been used. If in the future it is necessary to use either, they will be used they will be used within specified guidelines.

Will the use of the building be problematic for the Stagecoach Days Committee; since the committee uses an office for storage and operations?

Currently the Stagecoach Days Committee has exclusive use of one office in the building which they use for storage during the year and operations during the Stagecoach Days Festival. The lease of space to AYES would not interfere with the use of this office by the Stagecoach Days Committee as the office will continue to be available for exclusive use of the Stagecoach Days Committee.

RESOLUTION NO. 2011-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE LEASE AGREEMENT WITH THE ALLIANCE FOR YOUTH EMPLOYMENT SKILLS ("AYES") FOR THE USE OF FACILITIES AT DYSART PARK

WHEREAS, the City of Banning owns and operates Dysart Park; and

WHEREAS, The Alliance for Youth Employment Skills desires to reserve a right to regularly use the facilities of Dysart Park for providing a program which will teach skills to youth and young adults in the community; and

WHEREAS, it was determined that the spaces being requested at Dysart Park could be leased to the Alliance for Youth Employment Skills to meet their needs while at the same time having the park remain available for special events and other programs as need be; and

WHEREAS, the City is willing to reserve facilities at Dysart Park for the Alliance for Youth Employment Skills;

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

The Council adopts Resolution No. 2011-22, Approving the Lease Agreement with the Alliance for Youth Employment Skills ("AYES") for the Use of Facilities at Dysart Park

PASSED, APPROVED, AND ADOPTED this 22nd day of March, 2011.

_____

Barbara Hanna, Mayor
City of Banning

ATTEST:

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-22, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of March, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Marie A. Calderon,
City Clerk of the City Banning

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") is made and entered into this 1 day of April, 2011, by and between the CITY OF BANNING, a California general law municipal corporation ("CITY"), and the ALLIANCE FOR YOUTH EMPLOYMENT SKILLS, ("AYES"), a not-for-profit project under the sponsorship of Housing Assistance Program for Veterans Inc., a California not-for-profit corporation.

AGREEMENT

NOW, THEREFORE, the parties incorporate the Recitals as set forth herein and agree as follows:

ARTICLE 1. Term and Termination

A. The initial term of this Lease is for twelve months (12), commencing on April 1, 2011, and ending on March 31, 2012, unless sooner terminated as provided for herein. CITY shall maintain the right to extend this agreement at its sole discretion.

B. Notwithstanding any provisions to the contrary in this Lease, CITY may terminate this Lease before the expiration of the stated term if (i) AYES does not receive approval by the appropriate governmental authority to continue to occupy the premises; (ii) if such approval has been granted, but is subsequently withdrawn by such governmental authority due to budgetary constraints, or (iii) AYES fails to continue to operate the AYES programs for which the premises were originally leased (iv) either party elects to terminate this lease by notice delivered to the other party at least thirty days (30) prior to such termination. In the event of the occurrence of any of the forgoing, CITY may, in its sole discretion, give written notice to AYES, to terminate this lease and neither party shall have any further obligation to the other hereunder.

ARTICLE 2. Lease

A. CITY hereby leases to AYES, and AYES hereby rents from CITY, all of those certain premises, which are specifically identified on the "Site Map", attached hereto as "Exhibit A" and incorporated herein by this reference (the "Premises"), to be leased to AYES on the terms and conditions contained in this Lease. The Premises are portions of that larger City-owned park commonly known as "A.C. Dysart Equestrian Park" (hereinafter, the "Park"). The Premises are marked with an "X" in "Exhibit A" and consist of the following elements:

(1) 6,000 square feet of ground located at the east end of the arena, bordered by a tree line on the west and an access road on the east, (the "Open Area"), and

(2) Use of one mobile structure (the "Mobile Unit"), and

(3) Use of three outdoor shade structures (the "Shade Areas").

B. CITY shall provide AYES use of the space identified as the Premises in the Site Map during the term of this Agreement, portions of which are "non-exclusive" and shall be shared with others as authorized and approved by the City of Banning or its duly authorized agents or representatives. Other portions of the Premises are leased to AYES on an "exclusive" basis and shall be used exclusively by AYES except as otherwise provided by this Agreement. The exclusive and non-exclusive use areas of the Premises are as follows:

(1) During the hours that AYES is utilizing the Premises, it shall have exclusive use of the Open Area.

(2) Exclusive use of one storage room in the Mobile Unit, which storage unit shall be designated by the CITY on or before the Commencement Date of this Lease.

(3) Except for the one storage unit designated for AYES' exclusive use, AYES shall have non-exclusive use of the remainder of the Mobile Unit.

(4) Non-exclusive use of the Shade Areas.

C. In addition to the Premises specifically leased to AYES, the CITY grants to AYES, for the benefit of AYES and its employees, suppliers, shippers, contactors, customers and invitees, during the term of this Lease, the non-exclusive right to use those Common Areas (as hereinafter defined) of the Park in common with others. AYES is entitled to use the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by CITY under the terms hereof or under the terms of any rules and regulations or restrictions governing the use of the Park. In exercising any rights of access on, over or across Common Areas, AYES shall not disrupt or interfere with any other public or special event users.

D. CITY shall provide AYES with a schedule of planned uses of the Park space and facilities such that AYES has reasonable advance notice of uses by others which could interfere with the activities of AYES and so that AYES can plan its activities so as not to interfere with other permitted uses ("Notice of Event"). The CITY will make a reasonable effort to provide such Notice of Event to AYES at least ten (10) days before the scheduled event. Notwithstanding the foregoing, AYES specifically acknowledges and accepts that certain CITY-sponsored events will take precedence over AYES' use of the Premises. In particular, without limitation, the CITY's "Stagecoach Days" event in September may entail the CITY's exclusive use of the entire Park. AYES hereby accepts that it may be excluded from the Premises on such days designated for CITY-sponsored events.

E. CITY or such other person(s) as CITY may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable rules and regulations ("Rules and Regulations") for management, safety, care and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or AYES of the Project and their invitees. AYES agrees to abide by and conform to all such Rules and Regulations, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform.

F. CITY shall have the right, in CITY's sole discretion, from time to time to perform the following:

(1) To make changes to the Common Areas, including without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways so long as the Premises leased are not altered;

(2) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises remains available;

(3) To designate other land outside the boundaries of the Premises to be part of the Common Areas;

(4) To add additional buildings and improvements to the Common Areas;

(5) To use the Common Areas while engaged in making additional improvements, repairs, or alterations to the Project, or any portion thereof; and

(6) To do or perform such other acts or make such other changes in, to or with respect to the Common Areas and Project as CITY may, in the exercise of sound business judgment, deem to be appropriate.

G. The term "Common Areas" is defined as all areas and facilities outside the Premises and within the exterior boundary line of the Premises and interior utility raceways and installations within the Premises that are provided and designated by the CITY from time to time for the general non-exclusive use of CITY, AYES and their respective employees, suppliers, shippers, customers, contractors and invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas.

ARTICLE 3. Minimum Rent

A. This Lease is entered into for good and valuable consideration for the period commencing on the Commencement Date and ending on the Termination Date as provided for herein. AYES shall pay to CITY as and for consideration the yearly rental amount of one dollar ($1.00). The rent shall be payable in advance of the first day of the term of this lease addressed to:

City of Banning
99 Ramsey Street
Banning, CA 92220
Attn: Community Services Director

or, at another address that the CITY may use from time to time designate by written notice from CITY to AYES.

ARTICLE 4. Utilities

Except where separate metering and billing is not practicable and to the extent such amounts are deemed by CITY to be inconsequential and de minimis, during the Term stated herein, AYES shall be solely responsible for and shall promptly pay, before delinquency, all charges or assessments for water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises by AYES at the rates charged by the supplying utility companies. Throughout the term of this lease, CITY shall have the right to make reasonable allocations to AYES for utilities that are not separately metered or billed and AYES shall pay said amounts within 15 days of receipt of notice of such allocation.

ARTICLE 5. Taxes

A. CITY shall pay to the public authorities charged with the collection on or before the last day on which payment may be made without penalty or interest, all real estate taxes that are assessed against the Premises or arise because of the occupancy, use, or possession of the

Premises subsequent to the commencement of the Term, and all installments of assessments that are due during the Term as required by law.

B. CITY shall be required to pay, discharge, or remove any tax (including penalties and interest), assessments, tax liens, forfeiture, or other imposition or charge against the Premises or any part of the Premises or any improvements. CITY shall maintain the premises free from any encumbrance that may interfere with AYES's right of use and enjoyment.

ARTICLE 6. Use of Premises

A. AYES will occupy and use the Premises exclusively and solely for the purpose of the administration, conduct, operation, and promotion of the employment skills training programs, activities and services of AYES, (including without limitation the conduct of educational and training classes, the ongoing operation of a plant nursery, public education with respect to native and drought-tolerant plants and water conservation) and for no other use or purpose. AYES program focuses upon vocational training for at-risk and/or special needs youth in the vocation of horticulture, nursery operations and seed processing. AYES use of the Premises shall specifically be limited to the following activities:

(1) Growing plants in containers on the ground of the Open Area. Temporary, moveable shade coverings may be placed in the Area to protect young, growing plants and seedlings from direct summer sun;

(2) The horticultural activities shall propagate drought-hardy and native California plants suitable for planting in public parks, highways and facilities;

(3) Once mature, plants grown by AYES on the Premises may be planted in the Park, subject to the CITY's prior approval of the location and design of such plantings;

(4) The CITY-designated storage room in the Mobile Unit shall be used for storage of AYES' supplies, and AYES warrants that such supplies shall be safe for indoor storage;

(5) AYES shall not use, or permit the Premises, or any part thereof, to be used for any purposes other than the purposes for which the Premises are hereby leased.

B. Youth participants in the AYES program activities on the Premises shall at all times be under the supervision and guidance of qualified adult program instructors. As of the Commencement Date, the program instructors utilized by AYES are those persons identified in "Exhibit B" hereto. All program instructors shall have an educational background, work experience and/or credential qualifying the instructor to (i) supervise at-risk or special needs minors, and (ii) provide vocational training in the fields of horticulture, botany, planting, nursery operations or seed processing. Any instructors or program supervisors retained by AYES for the purpose of AYES' activities on the Premises shall have an educational background, work experience and/or credential reasonably equivalent to the qualifications of those people identified in "Exhibit B".

C. AYES shall open for business in the Premises no later than the Commencement Date and shall thereafter operate continuously for business to the public in the Premises. AYES

shall conduct its business in the Premises during the usual and customary days and hours for such type of business.

D. AYES shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises. AYES shall, at AYES's own cost and expense, comply with all requirements of CITY's insurance carriers that are necessary for the continued maintenance at reasonable rates of fire and liability insurance policies.

E. AYES, at its sole cost, shall comply with any and all laws concerning the Premises or AYES 's use of the Premises, including, without limitation, the obligation at AYES 's cost to alter, maintain or improve the Premises in compliance with and conformity with all laws relating to the condition, use or occupancy of the Premises during the term (including the Americans With Disabilities Act).

F. AYES agrees not to use the Premises for any immoral or unlawful purpose.

G. AYES shall not commit any waste or any public or private nuisance upon the Premises.

H. AYES shall comply with all laws, rules, and orders of all federal, state and municipal governments or agencies that may be applicable to use of the Premises.

I. AYES shall at all times keep the Premises in a neat and attractive appearance.

J. AYES' use or storage of any chemical or other fertilizers on the Premises shall be undertaken safely, according to manufacturer's directions, and in such a manner as to prevent any contamination to soils, noxious fumes, odors, or combustible conditions.

K. AYES's use of the Premises is subject to: (i) the effect of any covenants, conditions, restrictions, easements, development agreements, mortgages or deeds of trust, ground subleases, rights of way, and other matters or documents of record now or hereafter recorded, (ii) the effects of any zoning laws of the CITY, county and state where the premises are situated.

L. AYES agrees (i) that as to its leasehold estate it, and all persons in possession or holding under it, will conform to and will not violate said matters of record, and (ii) that this lease is and shall be subordinate to said matters of record and any amendments or modifications thereto.

ARTICLE 7. Condition of Premises

AYES acknowledges that as of the date of this Lease, AYES has inspected the Premises and all improvements on the Premises and that the Premises and improvements are in good order, repair, and condition. AYES therefore takes occupancy of the Premises "AS-IS".

The parties agree that any additional improvements or alterations to the Site, not otherwise specified herein, must be authorized by CITY in writing and performed at the sole cost and expense of AYES.

ARTICLE 8. Repairs and Maintenance

A. AYES, at its sole cost and expense, shall keep the Premises in reasonable order, condition and repair and shall make all replacements necessary to keep the Premises in such condition. AYES, at its expense, shall repair promptly any damage to the Premises caused by AYES or its agents, employees, or program participants, or caused by the installation or removal of AYES 's personal property. All replacements shall be of a quality equal to or exceeding that of the original. Should AYES fail to make these repairs and replacements or otherwise so maintain the Premises for a period of fifteen (15) days after written demand by CITY, or should AYES commence, but fail to complete, any repairs or replacements within sixty (60) days after written demand by CITY, CITY may enter the Premises and make such repairs or replacements and AYES shall pay to CITY the costs incurred by CITY in making such repairs or replacements together with interest thereon at the maximum rate permitted by law from the date of commencement of the work until repaid. CITY shall be responsible for exterior maintenance of the Premises.

B. AYES agrees to deliver to CITY physical possession of the Premises at the end of the Term, or any extension of the Term, in good condition and repair, reasonable wear and tear and loss by fire or other casualty or by earthquake or other act of God excepted.

ARTICLE 9. AYES Improvements and Alterations

A. AYES shall be responsible for constructing any improvements necessary to use the Premises for the purpose of facilitating the conduct of administrative services at its sole cost and expense (the "AYES's Work"). AYES shall have sole responsibility for all architectural and space planning involved in AYES's Work. All such construction shall be subject to the CITY's prior written approval.

B. All construction work required or permitted by this Lease shall be subject to the prior written approval of CITY and done in a good and workmanlike manner, and in compliance with all applicable laws and ordinances, regulations, and orders of governmental authority and insurers of the Premises.

C. Except for the AYES's Work approved by CITY by written agreement, AYES shall not make any alterations to the building and improvements on the Premises, without CITY's prior written consent. Approval may be conditioned upon the receipt by CITY of a set of plans and specifications for the alterations no later than thirty (30) days prior to the scheduled construction of the alterations. AYES will indemnify and defend CITY for all liens, claims, or damages caused by remodeling, improvements, additions, alterations, and major repairs. CITY agrees, when requested by AYES, to execute and deliver any applications, consents, or other instruments required to permit AYES to do this work or to obtain permits for the work.

D. Except as otherwise set forth in this Article, all alterations and improvements made to the Premises shall become the property of CITY and shall remain on and be surrendered with the Premises at the expiration or sooner termination of this lease, including any renewals or extensions.

E. At least ten (10) days before any construction commences or materials are delivered for any alterations that AYES is making to the Premises, AYES shall give written notice to CITY as to when the construction is to commence or the materials are to be delivered. CITY shall then have the right to protect CITY and CITY's interest in making the alterations; provided, however, that it shall be AYES' duty to keep the Premises free and clear of all liens,

claims, and demands for work performed, materials furnished, or operations conducted on the Premises at the request of AYES.

F. AYES will not at any time permit any mechanics', laborers, or material men's liens to stand against the Premises for any labor or material furnished to AYES or claimed to have been furnished to AYES or AYES's agents, contractors, or sub-contractors, in connection with work of any character performed or claimed to have been performed on the Premises by or at the direction or sufferance of AYES; provided, however, that AYES shall have the right to contest the validity or amount of any lien or claimed lien, upon giving to CITY a letter executed by AYES assuring that the lien or claimed lien will be paid, when and to the extent that the lien is finally determined to be valid and owing. AYES 's right, however, to contest these liens shall not extend beyond the point where CITY's title to the Premises could be lost. On final determination of the lien or claim of lien, AYES will immediately pay any final judgment rendered, with all property costs and charges, and shall have the lien released or judgment satisfied at AYES's own expense. If AYES fails to pay the judgment promptly or otherwise fails to prevent any sale, foreclosure, or forfeiture of the Premises because of a lien, CITY shall have the right, upon five (5) days' written notice to AYES, to pay or prevent this action, and the amount paid by CITY shall be immediately due and payable to CITY.

ARTICLE 10. Signs

A. AYES may place and maintain signs on the Premises provided, however, that AYES shall first obtain any necessary governmental permits' or licenses therefore and maintain it in good appearance' and repair at all times during this lease. At the Termination Date, any of the items mentioned in this section that are not removed from the Premises by AYES may, without damage or liability, be destroyed by CITY.

B. Any Trade Fixtures that are not removed from the Premises by AYES within thirty (30) days after the Termination Date shall be deemed abandoned by AYES and shall automatically become the property of CITY as owner of the real property to which they are affixed.

ARTICLE 11. Entry

AYES shall permit CITY or CITY's agents, representatives, or employees to enter the Premises at all reasonable times and upon at least two (2) hours prior notice to inspect the Premises to determine whether AYES is complying with the terms of this lease and to do other lawful acts that may be necessary to protect CITY's interest in the Premises under this lease or to perform CITY's duties under this Lease. CITY's entry and any work conducted by CITY or its contractors shall be performed without interruption or unreasonable interference with AYES's ability to operate its business and to remain open to the public for business.

ARTICLE 12. Surrender of Premises; Holding Over

A. On the Termination Date or upon termination of this Lease, AYES shall promptly surrender and deliver the Premises to CITY in as good condition as they are now at the date of this lease, reasonable wear and tear excepted.

B. At the end of the Lease term, should AYES hold over for any reason, it is agreed that in absence of a written agreement to the contrary, that tenancy shall be form month-to-month only and not a renewal of this lease, or an extension for further term. AYES shall pay Monthly Rent in an amount established by CITY, and the month-to-month tenancy shall be subject to

every other term, covenant and condition in this lease that is consistent with and not contrary to a month-to-month tenancy.

ARTICLE 13. Damage and Destruction

A. If the building or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, CITY may elect to repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction to the extent that proceeds of insurance are available. Damage to or destruction of any portion of the building except the premises occupied by AYES, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle AYES to surrender the Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building fixtures, or other improvements on the Premises are totally destroyed or damaged or the CITY does not elect to repair the Premises and the Premises are partially or wholly unsuitable or inadequate for the purposes for which AYES was using the Premises prior to the destruction or damage, the CITY at its sole option may terminate the Lease.

B. If the Premises are damaged or destroyed in whole or in part and the available insurance proceeds are equal to the cost of repair, less any applicable deductible amount, CITY may, at its option, proceed with due diligence to have plans and specifications prepared, to commence rebuilding, reconstruction, or restoration as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work. If the insurance proceeds are not equal to the cost of repair, CITY may, but shall not be obligated to do whatever may be necessary for the rebuilding, recordation, repair, or restoration of any building or improvements damaged or destroyed at its own cost and expense.

C. AYES shall give prompt notice to CITY in case of fire or accidents in the Premises or of any damage or defects in the Premises or any fixtures or equipment therein.

ARTICLE 14. Waiver for Loss and Damage.

Except as may be expressly provided for to the contrary in this Lease, CITY shall not be liable for any damage to property of AYES, or of others, located in, on or about the Premises, nor for the loss of or damage to any property of AYES or of others by theft or otherwise. CITY shall not be liable to AYES, AYES 's employees or representatives for any injury or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other places or by dampness or by any other cause of whatsoever nature, except as may be proximately caused by an act or omission of CITY or its employees, contractors or agents. CITY shall not be liable to AYES, AYES 's employees or representatives for any such damage caused by persons in the Premises, or the public, or caused by operations in construction of any private, public or quasi-public work, that are not proximately caused by CITY, or its employees, contractors or agents. CITY shall not be liable for any latent defects in the Premises or in the Building at any time after the commencement of AYES's Work. All property of AYES kept or stored on the Premises shall be so kept or stored at the sole risk of AYES and AYES shall hold CITY harmless from any claims arising out of damage to the same, including subrogation claims by AYES 's insurance carriers, unless such damage shall be proximately caused by the acts or omissions of CITY, or its employees, contractors or agents.

ARTICLE 15. Assignment and Subletting

A. AYES shall not assign this lease in whole or in part, nor sublet all or any part of the Premises, without the prior written consent of CITY. The consent by CITY to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this lease is assigned by AYES, or if the Premises or any part thereof are sublet or occupied by any person or entity other than AYES, CITY may collect Rent from the assignee, subtenant or occupant, for its own use and purpose and terminate this Lease. Collection shall not be deemed a waiver on the part of CITY, or the acceptance of the assignee, subtenant or occupant as AYES, or a release of AYES from the further performance by AYES of covenants on the part of AYES herein contained.

B. Irrespective of any assignment or sublease, AYES shall remain fully liable under this lease and shall not be released from performing any of the terms, covenants and conditions of this Agreement.

ARTICLE 16. Involuntary Assignment.

No interest of AYES in this lease shall be assignable by operation of law (including, without limitation, the transfer of this Lease by testacy or intestacy). Each of the following acts shall be considered an involuntary assignment: (a) if AYES is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which AYES is bankrupt; or, if AYES is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors; (b) if a writ of attachment or execution is levied on this Lease; or (c) if, in any proceeding or action to which AYES is a party, a receiver is appointed with authority to take possession of the Premises. An involuntary assignment shall constitute a default by AYES, and Owner shall have the right to elect to terminate this Lease, in which case this lease shall not be treated as an asset of AYES.

ARTICLE 17. Indemnification

A. Indemnification of CITY. AYES hereby waives all claims against CITY for damage to equipment or other personal property, in, upon, or about the Premises and for injuries to persons in or about the Premises, from any cause relating to AYES's use of the Premises. AYES agrees to indemnify and defend (with counsel reasonably acceptable to CITY) CITY, its officers, agents, and employees against, and shall hold and save them and each of them harmless from any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any persons, firm, or entity arising out of or in connection with the negligent performance of the work, operations, or activities of AYES, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Premises, or arising from the failure of AYES to fulfill any obligation hereunder to keep the Premises in good condition and repair, or arising from the negligent acts or omissions of AYES or its agents, employees, subcontractors, or invites hereunder, or arising from AYES's negligent performance of or failure to perform any term of this lease.

B. Indemnification of AYES. CITY hereby waives all claims against AYES for damage to equipment or other personal property, in, upon, or about the Premises and for injuries to persons in or about the Premises, from any cause relating to the activities and use of the CITY, its officers, agents, employees and invitees. CITY agrees to indemnify AYES, its officers, agents, and employees against, and shall hold and save them and each of them harmless from any

and all claims or liabilities that may be asserted or claimed by any persons, firm, or entity arising out of or in connection with the intentional acts or omissions of CITY, its agents, employees, subcontractors, or invitees, provided for herein.

ARTICLE 18. Insurance

A. Liability Insurance Coverage. AYES, at its sole expense, shall obtain prior to entering onto the Property and/or commencing any activity described in this lease, and shall maintain or cause to be maintained during the entire term of this lease, comprehensive general liability insurance, including, but not limited to, owned and non-owned vehicle liability, personal injury, blanket contractual, broad form property damage, and product/completed operations liability coverage shall be on a per occurrence basis and shall have limits of not less than $1,000,000.00 (one million dollars) combined single limit per occurrence for bodily injury, personal injury and property damage liability.

B. AYES and all persons performing work for, or on behalf of AYES, including, but not limited to, their contractors or subcontractors, shall, at AYES's own cost and expense, procure and maintain during the performance of the said work, a policy of worker's compensation insurance and employer's liability insurance in such amount as to willfully comply with the laws of the State of California.

C. All of the above policies of insurance shall name CITY, its officers, employees, and agents as additional insureds. In the event any of said policies of insurance are canceled, AYES shall, prior to the cancellation date, submit new evidence of insurance.

ARTICLE 19. Default

A. AYES's Default. The occurrence of any of the following shall constitute a default by AYES: (i) abandonment and/or vacation of the Premises; (ii) failure to operate in the Premises for fifteen (15) consecutive days; (iii) failure to perform any nonmonetary provision of this lease if the failure to perform is not cured within ten (10) days after notice has been given to AYES; (iv) failure to timely deliver an estoppel certificate as required by this Agreement.

B. Notices given under this Section shall not be deemed a forfeiture or a termination of this Lease unless CITY so elects in the notice. Notices given under this Section shall be in lieu of and not in addition to any statutory notice required by law.

C. CITY's Remedies. CITY shall have the following remedies if AYES commits a default:

(1) CITY can continue this Lease in full force and effect after AYES 's default and abandonment, and the Lease will continue in effect as long as CITY does not terminate AYES 's right to possession, and CITY may enforce all CITY's rights and remedies under the Lease. During the period AYES is in default, CITY can enter the Premises and re-let them, or any part of them, to third parties.

(2) CITY can terminate AYES 's right to possession of the Premises at any time. No act by CITY other than giving notice to AYES shall terminate this lease. Acts of maintenance, efforts to relet the Premises or the appointment of a receiver on CITY's initiative to protect CITY's interest under this Lease shall not constitute a termination of AYES 's right to

possession. On termination, CITY has the right to recover from AYES any and all amounts and court costs, necessary to compensate CITY for all detriment proximately caused by AYES 's default.

(3) CITY, at any time after AYES commits a default, can cure the default at AYES's cost. If CITY at any time, by reason of AYES 's default, pays any sum or does any act that requires the payment of any sum, the sum paid by CITY shall be due immediately from AYES to CITY at the time the sum is paid, and if paid at a later date shall bear interest at the maximum rate an individual is permitted by law to charge from the date the sum is paid by CITY until CITY is reimbursed by AYES. The sum, together with interest on it, shall be additional rent.

(4) Upon the occurrence of an Event of Default, CITY shall also have the right, with or without termination of this Lease, to re-enter the Premises and remove all persons and property from the Premises. CITY may store the property removed from the Premises in a public warehouse or elsewhere at the expense and for the account of AYES.

These remedies are not exclusive; they are cumulative and in addition to any remedies CITY may have now or later allowed by law.

D. Default by CITY. If CITY fails to perform any of the covenants or conditions required on its part to be performed pursuant to this Lease, where such failure continues for a period of thirty (30) days after receipt of written notice specifying the nature and extent of such default in detail (provided, however, that if such default is of a nature that it cannot reasonably be cured within thirty (30) day period, CITY shall have such additional time as may be required to effect such cure provided CITY commences the cure within such 30 day period), CITY's liability shall be limited to CITY's interest in the Premises. CITY shall not be liable to AYES for any damages sustained as a direct result of such default. Neither CITY nor any of its officers, employees, or agents shall be personally liable.

ARTICLE 20. Waiver of Rights of Redemption.

AYES expressly waives any and all rights of redemption granted by or under any present or future laws in the event of AYES being evicted or dispossessed for any cause, or in the event of Owner obtaining possession of the Premises, by reason of the violation by AYES of any of the covenants or conditions of this lease, or otherwise.

ARTICLE 21. Waiver of Breach

Any express or implied waiver of a breach of any term of this lease shall not constitute a waiver of any further breach of the same or other term of this lease.

ARTICLE 22. Successors and Sale of Premises

A. Successors and Assigns. Except as provided in this lease, all rights and liabilities herein given to, or imposed upon, the respective parties hereto shall extend to and bind the several respective heirs, executors, administrators, successors, and assigns of said parties. No rights, however, shall inure to the benefit of any assignee of AYES unless the assignment to such assignee has been approved by CITY in writing as provided for herein.

B. Sale of Premises. In the event CITY shall sell, convey, transfer or exchange the Premises, AYES agrees to recognize and attorn to the purchaser or transferee, as the CITY hereunder and CITY shall be and is hereby relieved and released from any liability under any and all of its covenants and obligations under the lease arising out of any act, occurrence or event arising after such sale, conveyance, transfer or exchange.

ARTICLE 23. Miscellaneous

A. Governing Law/Venue. This lease shall be governed by and construed in accordance with California Law. In the event of litigation the appropriate venue shall be the Riverside Superior Courts.

B. Compliance with Laws. CITY shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force pertaining to the use of the Property; and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the general plan and zoning ordinances, state and federal statues, or other governmental regulations now in force, or which shall hereinafter be in force.

C. Amendments. This lease may be modified only in writing and only if signed by the parties at the time of the modification.

D. No Brokerage Commission. Each party agrees and acknowledges that no commission is due any real estate broker in connection with this lease.

E. Rights Cumulative. The rights and remedies of CITY specified in this lease shall be cumulative and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of CITY and AYES in addition to any other rights and remedies provided by law.

F. No Partnership. CITY does not, in any way or for any purpose, become a partner of AYES in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with AYES by reason of this lease. The provisions of this Lease relating to the Percentage Rent payable hereunder are included solely for the purposes of providing a method whereby Rent is to be measured and ascertained.

G. Force Majeure. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, governmental moratorium, riots, insurrection, war or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this lease (but excluding delays due to financial inability), then performance of such act shall be excused for the period of such delay.

H. Notices. Any notice to either the parties hereto required or desired under the provisions and conditions of this instrument shall be given in writing by certified mail, registered mail, or by personal delivery addressed to the party for whom it is intended at the following addresses Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

To CITY:	City of Banning Attn: Community Services Director 99 Ramsey Street Banning, CA 92220 Attn: [Name, title] Fax: (951) [number]
With a copy to:	Aleshire & Wynder, LLP 18881 Von Karman Avenue, Suite 1700 Irvine, CA 92612 Attn: David J. Aleshire
To AYES:	Alliance for Youth Employment Skills 15450 Lazy Valley Rd. Banning, CA 92220 Attn: Ben White, Program Coordinator

Either party, AYES or CITY, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

I. Captions and Section Numbers. The captions, section numbers, article numbers, and index appearing in this lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles of this lease nor in any way affect this Lease.

J. AYES Defined, Use of Pronoun. The word "AYES" means the Alliance for Youth Employment Skills and its sponsoring organization, the Housing Assistance Program for Veterans Inc, a California not for profit corporation. The persons signing as AYES shall be jointly and severally liable. The use of the neuter singular pronoun to refer to CITY or AYES shall be deemed a proper reference even though CITY or AYES may be an individual, a partnership, a corporation, or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this lease apply in the plural sense where AYES is a corporation, association, partnership, or individual, male or female, shall in all instances be assumed as though in each case fully expressed.

K. Partial Invalidity. If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this lease, or the application for such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and enforced to the fullest extent permitted by law.

L. Recording. AYES shall not record this lease or a memorandum thereof.

M. Legal Expenses.

(1) In the event that any time during the Term either CITY or AYES shall institute any action or proceeding against the other relating to the provisions of this lease, or any default hereunder, or engage an attorney to enforce such provision then, and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the successful party for the

actual expenses of attorneys' fees and disbursements incurred therein by the successful party.

(2) The successful party in such suit shall be entitled to its costs of suit and actual attorneys'' fees whether or not such action is prosecuted to judgment. "Successful party" within the meaning of this Section shall include, without limitation, a party who brings an action against the other or who defends against an action brought by the other and whose position is substantially upheld.

N. Authority. If AYES is a corporation or partnership, each individual executing this lease on behalf of such entity represents or warrants that he or she is duly authorized to execute and deliver this lease on behalf of such entity and that such entity shall be bound by all the terms and provisions hereof.

O. Severability. In the event that any provision of this lease shall be held to be invalid, the same shall not affect, in any respect whatsoever, the validity of the remainder of this lease.

P. Run With the Land. The covenants contained in this lease shall run with the land and shall be binding on successors and assigns of the parties.

Q. Corporate Authority. The persons executing this lease 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 lease on behalf of said party, (iii) by so executing this lease, such party is formally bound to the provisions of this lease, and (iv) the entering into this lease does not violate any provision of any other lease to which said party is bound.

R. Entire Agreement. This lease and the Exhibits attached hereto and forming a part hereof, set forth all the representations, covenants, promises, agreements, conditions and understandings between CITY and AYES concerning the Premises and there are no representations, covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Any subsequent alteration, amendment, change or addition to this Lease must be in writing, signed by CITY and AYES.

[SIGNTURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this lease to be duly executed by their respective duly authorized officers or representatives as of the date first set forth above.

CITY OF BANNING COMMUNITY, a California general law municipal corporation

By: _____
[Name, title]

ATTEST:

_____
City Clerk

APPROVED AS TO FORM

ALESHIRE & WYNDER, LLP

_____
Lona N. Laymon, Asst. City Attorney

ALLIANCE FOR YOUTH EMPLOYMENT SKILLS**

By: _____
Ben W. White, AYES Program Coordinator

By: _____
Wayne Weisberger, President, Housing Assistance Program for Veterans Inc., a California nonprofit corporation

*Two signatures are required if a corporation.

**LESSEE'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 LESSEE'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On _____, ____ before me, _____, personally appeared _____,

☐ personally known to me - OR - ☐ 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.

WITNESS my hand and official seal.

_____

(SIGNATURE OF NOTARY)

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER_____

_____

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

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

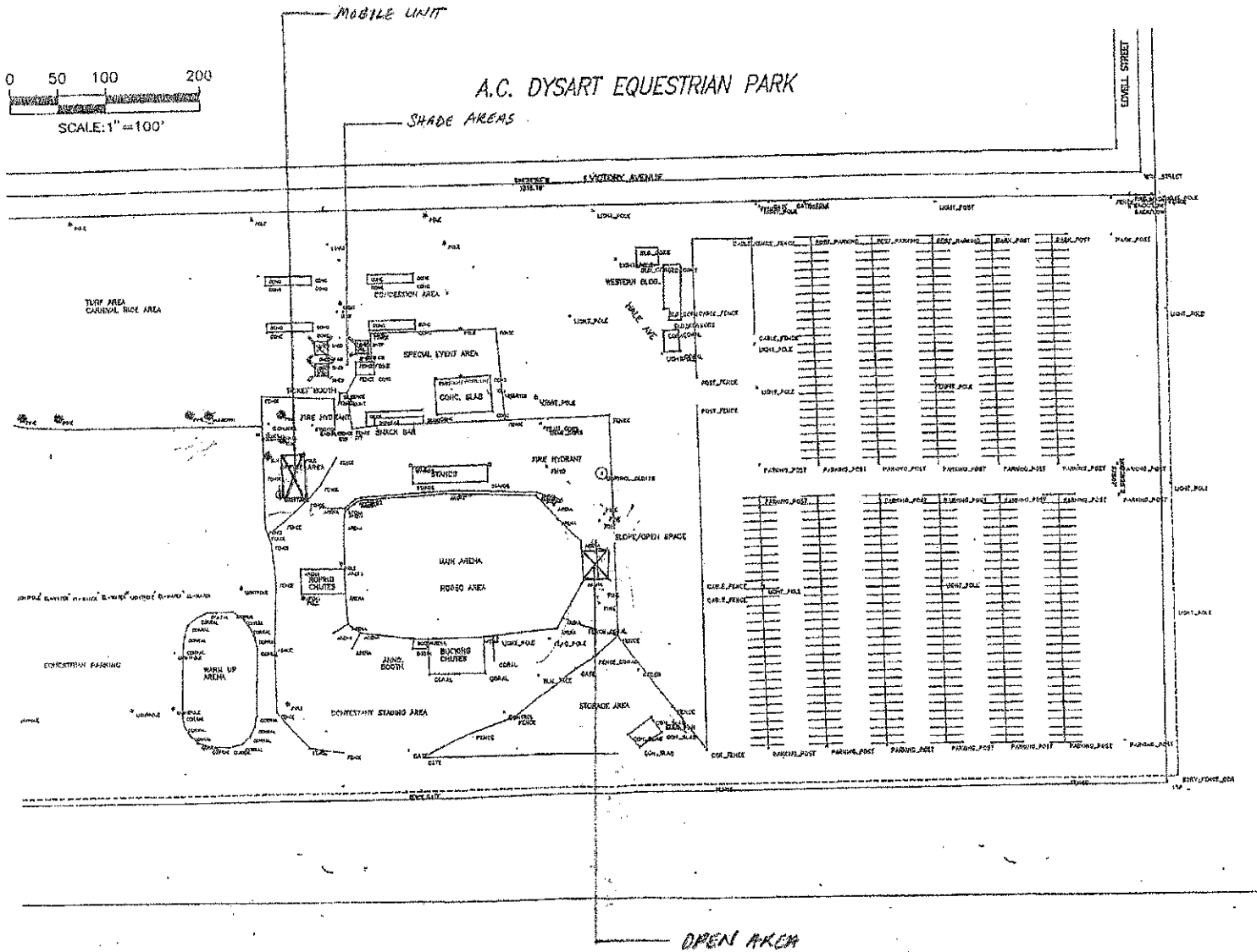
_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
PREMISES

Certain portions of that public park parcel known and designated as A.P.N. 537-190-006 on the tax maps of the County of Riverside (see attached).


MOBILE UNIT
A.C. DYSART EQUESTRIAN PARK
SHADE AREAS
0 50 100 200
SCALE: 1" = 100'
EDWELL STREET
VICTORY AVENUE
TURF AREA
CARNIVAL RIDE AREA
CONCESSION AREA
WESTERN BLDG.
SPECIAL EVENT AREA
TICKET BOOTH
CONC. SLAB
FIRE HYDRANT
SNACK BAR
STANDS
MAIN ARENA
RODEO AREA
SLOPE/OPEN SPACE
CHUTES
BUCKING CHUTES
ANIMAL BOOTH
EQUESTRIAN PARKING
WARM UP ARENA
EQUESTRIAN STAGING AREA
STORAGE AREA
OPEN AREA

96

EXHIBIT "B"
PROGRAM INSTRUCTOR CREDENTIALS

Housing Assistance Program for Veterans Inc.

Wayne Weisberger, President
45765 Coyote Road
Banning, CA 92220

November 15 2010

Honorable Committee Members
Parks and Recreation Advisory Committee
City of Banning, California

Dear Gentlepersons:

This letter serves as confirmation that Housing Assistance Program for Veterans Inc., a California not-for-profit, public benefit corporation ("HAP") is the sponsoring organization for the Alliance for Youth Employment Skills "AYES". Earlier this year, HAP amended its Articles of Incorporation to broaden the scope of the organization's purpose and permit it to make arrangements for and provide materials, equipment, services and facilities for employment training and development for youth and young adults. We recognize that there is a significant need for programs to help young persons transition into the workplace, particularly during this time of economic challenge throughout our country and particularly in our geographic area which is experiencing unemployment rates significantly higher than the nation as a whole.

AYES Project Coordinator Ben White has kept me and the other board members of HAP advised of progress in finding a suitable location to better serve the Banning community and we are hopeful that your committee will act favorably and expeditiously to help address this pressing need.

Sincerely yours

Wayne Weisberger
President

Professional Background

January 2000 – present: Real estate investment and land use planning in Riverside County and Berkeley, California.

1994-1999: Principal and co-director of the Law Leadership Institute, Morristown, NJ. Provided consulting services, training and educational programs to law firms, legal associations and corporate law departments.

1989-1994: AT&T Capital Corporation legal counsel with various additional executive duties. Served as senior vice president and chief legal counsel for AT&T Capital Corporation – Leasing Services. Executive duties included serving as the division's principal corporate officer responsible for risk management, operations and facilities.

1987-1989: AT&T Corporate Law and Securities Department – Attorney.
Responsibilities included financial contracts and arrangements for securing capital for the corporation including the issuance of publicly traded securities and various arrangements and undertakings with financial institutions. Provided legal counsel to AT&T's treasury department and to the board of directors of AT&T Communications, Inc. and its' various subsidiaries. Responsible for various filings and regulatory matters with the Securities and Exchange Commission.

1983-1987: AT&T Communications – Federal Regulatory Attorney.
Represented the company before the Federal Communications Commission primarily with respect to financial and accounting issues. Dealt with various legal issues relating to the landmark decision requiring the division of American Telephone and Telegraph Company into AT&T Communications and seven independent regional Bell telephone operating companies. Handled various contract and corporate law matters.

1981-1983: Riker Danzig Scherer & Hyland – Private law practice attorney with leading New Jersey law firm. Primarily handled state utility regulatory matters. Also handled contracts, economic development authority, and real estate matters. (Recipient of the Charles Danzig Award for excellence in legal writing for work published in *Public Budgeting and Finance*.)

1975-1980: Internships during college and law school with the U.S. House of Representatives, Exxon Corporation, Philip Morris, Inc. and McCarter & English.

Education

1981: J.D. University of Virginia School of Law

M.A. (Public Administration) University of Virginia

1977: B.A. *summa cum laude*, with distinction, Boston University. Received the college prize

JACKIE L. LASATER, LEP
13733 36TH AVE. N.E
SEATTLE, WA 98125

CREDENTIALS

State of California, Commission on Teacher Credentialing, Professional Clear Administrative Services Credential #080029869, Authorization in School Administration

State of California, Clear Pupil Personnel Services Credential #080029866, Authorizations in School Psychology, School Counseling, & School Social Work

State of Washington, Education Certificate #293961R, Endorsement in Program Administration

State of Washington, Educational Staff Associate Certificate #293961R, School Psychology

State of Washington, Educational Staff Associate Certificate #293961R, School Counseling

LICENSES

California Board of Behavioral Sciences, Licensed Educational Psychologist #2584

EDUCATION

Professional Administrative Services Credential Program, School Administration. Humboldt State University, Arcata, CA 95521. Completed May of 1993

Master of Arts Degree, Psychology, Humboldt State University, Arcata, CA 95521. Coursework: School Psychology, School Counseling, Marriage and Family Therapist. Completed in May 1989

Bachelor of Arts Degree, Psychology, Minor, Native American Studies, Humboldt State University, Arcata, CA 95521. Completed August 1986.

EXPERIENCE

Assistant Superintendent/Special Education Local Plan Area – May 1, 2000 to June 30, 2006. Calaveras County Office of Education, Special Education Administrative Unit, P. O. Box 760, Angels Camp, CA 95221. Duties: Administration of personnel, budget, Board Policies & operating procedures, programs and services.

Program Specialist/School Psychologist – August 1993 to May of 2000. El Dorado Union High School District, P. O. Box 1450 Placerville, CA 95619.

Program Specialist/Psychologist – August 1990 to August 1993. Humboldt County Office of Education, 901 Myrtle Avenue, Eureka, CA 95501.

School Psychologist/School Counselor – July 1989 to August 1990, and July 2006 to June 2008. Edmonds School District, Lynnwood, Washington.

Alliance for Youth Employment Skills ("AYES")

Program Description

The Alliance for Youth Employment Skills (AYES) is a new initiative to provide vocational training and development for Banning and surrounding area young people. This operation focuses on assisting economically disadvantaged, special needs and at-risk youth populations. Currently, AYES is working to establish a California native plant horticultural facility which will provide youth program participants with a broad array of employment-related skills building opportunities. This horticultural operation will propagate a wide range of drought-tolerant plants suitable for use in public projects including parks, public facility and highway landscaping. In addition to performing job responsibilities in plant propagation, nursery operations, and seed processing and packaging, area young people will also be engaged in certain facets of botanical and horticultural monitoring, research and development; systems design and implementation; marketing; sales; public education; and management (all to the extent warranted by each participant's interests, capacities, maturity, motivation, and demonstrated level of responsibility).

AYES' initial program commenced in September 2010 with the Milo P. Johnson Center for Learning in Banning with 12 participants from Banning and Beaumont. In the short period since its inception, the AYES program has become an integral part of the life skills and job skills training for these students. AYES anticipates integrating its presently existing services to young adults with learning disabilities together with its services to the broader population of young adults in the Banning area once a suitable location becomes available. The ability to address individual needs and limitations in a workplace context itself is a valuable skill set that contributes substantially to the depth and quality of training made available to all of the participants. It is also a way to weave the fabric of community more closely as we come together to address an array of challenges; and together, turn these challenges into opportunities that enrich the lives of the participants as well as contribute to the broader community in which we live.

AYES has approached the City of Banning seeking approval to use portions of Dysart Park for this project. Dysart Park has substantial areas not presently utilized that would be well suited for growing plants in containers on the ground and for placing shade coverings to protect young growing plants and seedlings from the hot midday summer sun, until they become mature. These areas are in close proximity to a 3,000 square foot mobile structure that includes lockable storage space as well as space suitable for indoor instruction and training. (AYES would use this facility in such a manner that it could continue to fully meet the needs of other functions and events such as the annual Stagecoach Days.) The Dysart Park facility is reasonably centrally located within Banning and is within reasonable proximity to public transportation. Dysart Park is a presently underutilized community asset that provides an excellent opportunity to contribute to addressing the employment-related challenges to young adults in the Banning area as well as provide other positive contributions to the community at large.

October 25, 2010

To Whom It May Concern:

The Alliance for Youth Employment Skills (YES) under the coordination of Ben White and Jackie Lasater has been an instrumental work alliance for the students at the Milo P Johnson Center for Learning. The students in the adult life skills class need to acquire vital learning skills and work experience and YES has been an important part of developing and providing a basis for those skills. Ben White and Jackie Lasater have developed a program which requires the students to use many of the work skills needed upon completion of the program such as packaging, labeling, sorting, gathering, processing, planting and transplanting. They are learning about the importance of water conservation and other issues that make "going green" a natural part of their lives. The students are not only learning life skills and work skills they are learning about the community and incorporating science in the midst of learning; not to mention the self esteem the students have gained in participating in a hand on project with real life results.

This is a great experience for the students at Milo P Johnson and has become a vital program to educate and communicate important real world skills to the students.

Sincerely,

Brenda Barnor

Student Programs and Services
Adult Life Skills Teacher
671 N Florida St Bldg D
Banning, CA 92220
(951) 826 4551

CITY COUNCIL
PUBLIC HEARING

DATE: **March 22, 2011**

TO: **Honorable Mayor and City Council**

FROM: **Dave Aleshire, City Attorney**
Lona Laymon, Assistant City Attorney

SUBJECT: **PUBLIC HEARING FOR THE REVOCATION OF UNCLASSIFIED USE PERMIT 01-47501 AND TERMINATION OF DEVELOPMENT AGREEMENT 03-1504 (FOR A DRAG RACING FACILITY) – APN 532-130-008 & 018**

RECOMMENDATION:

That the City Council hold a public hearing, consider the staff report, and take public comment and at the close of the hearing, the Council should discuss what action it wishes to take and direct the City Attorney to bring back a resolution with appropriate findings at its meeting on April 12, 2011.

The actions which may be considered by the Council include the following:

1. Affirm the prior decision of the City Council in Resolution 2008-34 and find that revocation of Unclassified Use Permit 01-47501 is **proper** for one or more of the following reasons:

A. The UUP expired on its own terms on August 14, 2006 because the UUP already was extended four times and no further extensions were permitted under Banning Municipal Code Section 9116.10.

B. Pursuant to Banning Municipal Code Section 9116.8, Unclassified Use Permit 01-47501 expired on its own terms because no use or construction commenced within one year of approval or extension thereof;

C. Pursuant to Banning Municipal Code Section 9116.8, assuming construction or use commenced, it was discontinued for at least one year such that Unclassified Use Permit 01-47501 automatically expired without further City action;

D. Pursuant to Banning Municipal Code Section 9116.11(c), Unclassified Use Permit 01-47501 is subject to revocation by the City because use of the site ceased or was abandoned for six or more consecutive months; or

Pursuant to Banning Municipal Code Section 9116.11(d), Unclassified Use Permit 01-47501 is subject to revocation by the City because BAA failed to meet one or more of the conditions of approval within the timeframe provided under the Permit.

Pursuant to Section 4.2 of the Development Agreement No. 03-1504, termination of Development Agreement is proper because the term of the Development Agreement is concurrent with the UUP.

2. Reverse the prior decision of the City Council in Resolution 2008-34 and find that, based on the existing administrative record, revocation of Unclassified Use Permit 01-47501 is **improper** because the findings are insufficient to support the decision in Resolution 2008-34.

3. Determine whether, based on new evidence not already in the existing administrative record presented at the March 22, 2011 hearing, the prior decision of the City Council in Resolution 2008-34 should be affirmed or reversed.

BACKGROUND:

This matter involves the City's revocation of Unclassified Use Permit 01-47501 ("UUP") issued to All-American Racing, LLC, whose rights were assigned to Banning Airport Associates, and Andy Marocco (collectively, "BAA") and termination of Development Agreement 03-1504 ("Development Agreement") permitting the development of a drag racing facility ("Project") on several parcels of property near the Banning Municipal Airport. The UUP was issued in 2001, but after almost eight years, the Project had not been constructed and no grading of the property occurred. In its resolution finding that no use or construction had commenced, or if it had, the use or construction was discontinued for at least six months, the City revoked the UUP and terminated the Development Agreement, whose term was concurrent with the UUP, in March 2008.

Shortly thereafter, BAA filed a lawsuit, including an administrative writ of mandate, declaratory relief, and inverse condemnation actions, against the City for revocation of the UUP and termination of the Development Agreement. After a hearing on the writ of mandate, the Riverside County Superior Court remanded the matter back to the City for a re-hearing and to make proper findings to support its decision revoking the UUP and terminating the Development Agreement.

The City is now required to determine, based on the following facts and documents provided herewith as part of the administrative record, whether to revoke the UUP and terminate the Development Agreement. The Court requires the City's decision to be made on or before April 22, 2011.

Public comment is permitted during the re-hearing. However, the Court said that "neither party is permitted to introduce any further evidence on remand, except pursuant to the standards provided by the Code of Civil Procedure Section 1094.5(e). (*Ashford v. Culver City Unified School Dist.*, (2005) 130 Cal.App.4th 344, 350.)" Under Section 1094.5(e), new evidence can be introduced only if the Court finds either: (i) the new evidence was improperly excluded during the original hearing; or (ii) the new evidence could not, with reasonable diligence, have been produced at the original hearing. To the extent new evidence or documents are introduced during public comment, the City has the discretion to consider such evidence only if it was improperly excluded during the original hearing or if it could not have been produced at the original hearing.

Staff's recommendation is that the City Council hold a hearing, consider the staff report, take public comment on March 22, 2011, and discuss the information presented and give direction to the City Attorney to prepare a resolution incorporating appropriate findings. The resolution will be brought back at the meeting of April 12, 2011.

A. Chronology of events

On August 22, 2000, the Banning Community Redevelopment Agency ("Agency") voted by resolution to approve a 90-day exclusive negotiating agreement with All-American Racing, LLC ("AAR") and Andy Marocco. (Administrative Record ("AR") at pp. 00062-00072.) The purpose of the agreement was to negotiate the terms of a development agreement to build a drag racing facility consisting of an at-grade drag racing strip, grandstands, concession stands, restrooms, and parking spaces (the "Project"). The Project was to be located approximately 1,300 feet to the east of the northeast corner of Westward Avenue and Hathaway Street on two parcels of land: a 40-acre parcel to be acquired by AAR, and a 20-acre parcel owned by the City of Banning (collectively, the "Site"). (AR at pp. 00072, 00464.) As part of the Banning Municipal Airport, the 20-acre parcel was subject to Federal Aviation Administration ("FAA") approval for any sale, lease, or transfer of interest. (AR at pp. 00950.)

AAR applied for a use permit for the 20-acre parcel and conducted various traffic, noise, and environmental studies. Pursuant to the California Environmental Quality Act ("CEQA"), a Mitigated Negative Declaration was prepared for the Project. On July 3, 2001, the City's Planning Commission approved Unclassified Use Permit No. 01-47501 ("UUP") to use the Site as a drag racing facility, subject to extensive conditions of approval. (AR at pp. 00359-00367.) On August 14, 2001, the City Council approved the UUP and the final conditions of approval. (AR at pp. 00418-00435.) AAR was notified that it could challenge the approval of the UUP and any condition. (AR at p. 00886.) AAR did not.

On May 28, 2002, the City, FAA, and AAR entered into a Memorandum of Understanding ("MOU") for the City to lease the 20-acre parcel to AAR under conditions and terms of the FAA and to work towards a development agreement. (AR at pp. 000897-00903, 00905-00908.) The MOU provided AAR a 5-year lease with options for renewal at a rate of $12,500 per year paid to the City. (AR at p. 00898.)

However, by July 5, 2002, AAR did not commence construction or otherwise use the UUP at the Site, and the UUP was set to expire on August 14, 2002. AAR timely requested a one-year extension of the UUP, and the Planning Commission granted the extension to August 14, 2003. (AR at pp. 00913, 00916-00918, 00932-00936.)

Additionally, the FAA informed the City that while a 5-year lease of the 20-acre parcel to operate a racing facility was permissible, a permanent lease (including a 20-year lease as contemplated in the MOU) for drag strip racing or any other non-aeronautical purposes was not viable or permitted by the FAA. (AR at pp. 00919-00920.)

On October 22, 2002, the City Council adopted Resolution 2002-111 approving a lease agreement with AAR of the 20-acre parcel ("Lease Agreement"), a license agreement for the City to use an adjacent lot for parking facilities ("License Agreement"), and a reimbursement agreement wherein the City would reimburse AAR up to $125,000.00 for constructing ***offsite***

street improvements of Barbour Street near the Site ("Reimbursement Agreement"). (AR at pp. 00945-00946, 01009-01019.) The Reimbursement Agreement provided that the City would reimburse AAR in two phases, $62,500.00 each: (1) after completion of ***offsite*** improvement of Barbour Street, and (2) after completion of ***onsite*** improvements for the racing facility. (AR at pp. 00985, 01000-01001.) On November 26, 2002, the Lease Agreement, License Agreement, and Reimbursement Agreement were executed by the parties.

In early 2003, two years after the approval of the UUP, AAR requested a grading permit. (AR at p. 01218.) However, City staff was concerned about below grade "cuts" in soil that the City had not previously approved and wanted the County Airport Land Use Commission to review the grading plan, per UUP Engineering Condition of Approval A(6). (AR at p. 01218.) The City staff also considered the grading plan a substantial modification to the UUP and would not issue a grading permit until the condition was met. (AR at p. 01231.) Contrary to staff, the City Council determined the below grade cuts in the grading plan were minor and did not require a modification to the UUP. (AR at pp. 01237-01241.) The City went further to amend the Lease Agreement and extended the timeframe for AAR to obtain possession and control of the 40-acre parcel where the actual racing facility was going to be constructed. (AR at pp. 01307-01308.)

On July 14, 2003, AAR requested its second extension of the UUP. (AR at p. 01370.) AAR stated it was working towards obtaining a grading permit and began clearing brush and vegetation from the Site and softening the soil with water. (AR at p. 01370.) On July 24, 2003, a grading permit was issued. (AR at p. 01396.) On August 5, 2003, the Planning Commission approved extending the UUP for one more year, to expire on August 14, 2004. (AR at pp. 01402-01411, 01412-01419.)

After extensive negotiations, the City approved Development Agreement 03-1504 with AAR for the Project ("Development Agreement"), per Government Code Section 65868 and Banning Municipal Code Chapter 22A. (AR at pp. 01435-01438.) On November 26, 2003, the Development Agreement was executed. (AR at p. 01667.) The term of the Development Agreement was concurrent with the UUP. (AR at pp. 01669-016670.) A failure to comply with any condition of approval of the UUP or a term of the Development Agreement constituted a default under the Development Agreement, whereby it could be terminated. (AR at p. 01674.)

In December 2003, per UUP Engineering Condition of Approval (B)(6), AAR finally began ***offsite*** improvements to Barbour Street. (AR at p. 01743.) After installation of pavement, curbs, and some utilities, the City accepted the work done on Barbour Street. (AR at p. 01768.) However, a dispute over landscaping arose, as AAR alleged the landscaping was not a condition of approval. (AR at pp. 01774-01775.) As a result, a cost support agreement was executed, whereby the Agency would reimburse AAR for $25,000 for landscaping, in addition to the $125,000.00 under the Reimbursement Agreement. (AR at pp. 01780-01784.) The City issued AAR a check for $62,500.00, upon completion of the Barbour Street improvements.

After the offsite improvements of Barbour Street were completed, AAR nonetheless again requested an extension of the UUP. (AR at p. 01771.) On July 30, 2004 for the third time, the City extended the UUP an additional year to August 14, 2005. (AR at p. 01786.)

On October 21, 2004, the City and AAR began discussing the FAA land release and sale of the 20-acre parcel to AAR. Specifically, Lease Agreement Section 1.5(B) provided that AAR was

E6

required to show proof that it obtained possession and control of the 40-acre parcel. (AR at p. 01794.) Although AAR previously provided a copy of a purchase agreement for the 40-acre parcel, said agreement had expired and no other proof was supplied showing that AAR had the right to be on the 40-acre parcel to begin onsite construction. (AR at pp. 01794-01795.) On January 21, 2005, AAR informed the City that it finally entered into escrow to purchase the 40-acre parcel. (AR at pp. 01811.)

By August 2005, no grading, use, or construction commenced ***on*** the Site. Thus, a fourth extension of the UUP was granted on August 9, 2005. (AR at pp. 01820-01821.) About the same time, AAR assigned and transferred all of its rights to the Project, including the Development Agreement, Lease Agreement, Reimbursement Agreement, and the UUP, to BAA. (AR at pp. 02010-02017.)

By September 2005, the grading permit from July 2003 expired and was outdated because it did not include the modifications to the drag strip. BAA applied for and was granted a new grading permit on September 22, 2005. (AR at p. 02188.)

On December 13, 2005, the City and BAA entered into a Master Agreement detailing Site assembly, property acquisition costs, and plans for the drag racing facility. The Master Agreement also envisioned the purchase of additional property for a master planned business park surrounding the Site. Thus, BAA needed to modify the UUP and complete a new environmental analysis under CEQA for the additional business park. (AR at p. 02212.) The Master Agreement expressly terminated the MOU, Lease Agreement, License Agreement, Reimbursement Agreement, and Cost Support Agreement. (AR at pp. 02204-02205.) Through the Master Agreement, the City agreed to enter into a purchase and sale agreement to convey the 20-acre parcel to BAA. In addition, as a condition precedent to the City's assistance in Site assembly, BAA was to show "reasonable progress on the Raceway Project," which explicitly required BAA to do the following:

> (a) [BAA] has commenced and thereafter ***diligently*** and ***continuously*** carrie[d] out, the ***mass grading*** required for the Raceway Project on ***both*** the [40-acre parcel] and the [20-acre parcel]; and
>
> (b) [BAA] has ***applied for an amendment to the UUP and Development Agreement*** and related Environmental Review as may be necessary to expand the scope of the Raceway Project to include extension of the drag strip and ancillary facilities onto the Raceway Extension Parcel.
>
> (AR at p. 02207 [Emphasis added].)

Moreover, the Master Agreement explicitly stated that "this agreement does not and shall not be construed to vest [BAA] with any right or entitlement to construct, building [*sic*], or operate either the Raceway Project or the Business Park Project. This agreement is not and shall not be construed to be a development agreement within the meaning of Government Code § 65864 *et seq.* or other permit approval, or entitlement..." (AR at p. 02212.) Additionally, the City could terminate the Master Agreement if BAA failed to acquire title to the 20-acre parcel within 1 year of the agreement, commence the Project within 90 days after acquiring title to the 20-acre parcel, or complete the Project within 2 years. (AR at pp. 02215-02216.)

87

By June 2, 2006, the City sent another letter requiring BAA to commence grading pursuant to its grading permit on the 40-acre parcel, to enter into a purchase agreement for the 20-acre parcel and deposit $50,000.00 into escrow, and to apply for a modification of the UUP to expand the use to include a business park. (AR at pp. 02242-02243.) The purchase and sale agreement for the sale of the 20-acre parcel was executed on July 25, 2006. (AR at pp. 02256-02277.) Escrow opened on August 4, 2006. (AR at pp. 02299.)

However, two issues stalled closing of escrow. First, the FAA land release was not completed until November 30, 2006. (AR at p. 02299.) Second, burrowing owls were found on the 20-acre parcel, and the California Department of Fish and Game did not authorize the parties to proceed until relocation of the burrowing owls was completed on February 20, 2007. (AR at pp. 02290, 02297.) Therefore, the City permitted the purchase and sale of the 20-acre parcel to be completed by April 13, 2007, or the City would have the right to terminate the Master Agreement. (AR at pp. 02298-02299.)

By April 13, 2007, escrow of the 20-acre parcel still had not closed. The City agreed to extend escrow until May 14, 2007. (AR at p. 02308.) The City still needed to obtain the final appraisal report, and BAA was required to deposit an additional $163,750.00 into escrow.

On May 17, 2007, the City informed BAA that no major grading was occurring and it was in violation of the grading permit issued on September 22, 2005. (AR at p. 02325.)

On June 26, 2007, the City sent BAA a Notice of Default for failure to make a timely deposit of $163,750.00 into escrow. The City gave BAA 30 days until July 26, 2007 to cure the default. (AR at p. 02333.) By July 27, 2007, no deposit was made, and the City notified BAA that it was required to make the deposit immediately and close escrow by August 25, 2007. (AR at pp. 02344-02345.) Otherwise, the City would terminate the Purchase Agreement. (AR at p. 02345.)

BAA failed to make the deposit until September 11, 2007. (AR at p. 02404.) The City issued a Notice of Termination. (AR at pp. 02405-02407.)

At the hearing for termination of the Master Agreement and Purchase Agreement on September 14, 2007, the City seriously discussed ways the project could be salvaged and provided an opportunity for BAA to proceed forward with the Project. The City continued the hearing to October 23, 2007. (AR at pp. 02422-02426.) Again, BAA failed to move forward with the Project. On October 23, 2007, the City Council terminated the Master Agreement and Purchase Agreement. (AR at pp. 02475-02478, 02479-02482.) The City informed BAA of the reasons specifically in its letter dated November 1, 2007. (AR at pp. 02582-02584.)

On November 27, 2007, the City informed BAA that the UUP had expired on August 14, 2006 and became null and void for failure to commence a use or construction. Furthermore, the City informed BAA that it exhausted the three permissible extensions under Banning Municipal Code Section 9116.10. (AR at p. 02590.) The term of the Development Agreement was concurrent with the UUP. On December 10, 2007, the City provided notice to BAA that the hearing to revoke the UUP and terminate the Development Agreement would be held on January 11, 2008 before the Planning Commission. (AR at p. 02593.) The hearing was continued to January 28, 2008. (AR at pp. 02645, 02647.) Notice was provided.

At the January 28, 2008 hearing to revoke the UUP, BAA argued that Barbour Street improvements constituted commencement of construction and use of the Site because the improvements were required as a condition of approval and were made for the purpose of the Project. (Planning Commission January 28, 2008 Meeting Transcript ("1-28-08 Transcript"), p. 16, lns. 1-4.) BAA also argued that some grading of the Site did occur pursuant to the grading permits. (AR at p. 02325.)

Additionally, BAA argued, that because they contributed over $190,000.00 to Barbour Street improvements, their expense was part of their reasonable investment-backed expectation. (1-28-08 Transcript, p. 17, lns. 2-8.) However, since the City and Agency reimbursed BAA $62,500 for Barbour Street improvements, BAA only spent $130,000. (1-28-08 Transcripts, p. 17, lns. 9-10.) BAA stated that it incurred other costs in an amount of almost $500,000. (1-28-08 Transcripts, p. 17, lns. 16-19.)

On January 28, 2008, the Planning Commission terminated the Development Agreement and revoked the UUP on two alternative grounds: (i) the UUP was expired because BAA failed to commence a use or construction within the timeframe permitted, and (ii) the use that commenced, if any, had been halted and was therefore considered discontinued, pursuant to Banning Municipal Code Sections 9116.8 and 9116.11. (AR at pp. 02671-02678, 02680-02698.)

Planning Commission Resolution 2008-05 found that the UUP was extended four times between 2002 and 2006, that the extensions were given because no use or construction was commenced on the Site, even though BAA completed Barbour Street in 2004, that two grading permits were issued but nothing beyond clearing and grubbing was done at the Site under those grading permits, that clearing and grubbing work did not constitute evidence of use or construction, and that the groundbreaking ceremony was done by the Chamber of Commerce and not the City and likewise not considered construction. (AR at pp. 02675-02677.)

Also, the Planning Commission found that construction of Barbour Street was not considered evidence of use because it was completely ***offsite*** and the UUP was extended twice more (in 2004 and 2005) after those offsite improvements were already completed. (AR at p. 02677.) Moreover, the Planning Commission found that the UUP expired in August 14, 2006 and no further extensions were permitted under the Banning Municipal Code. (AR at p. 02677.)

BAA appealed the termination of the Development Agreement and revocation of the UUP on February 6, 2008 to the City Council. (AR at pp. 02700.) At the March 11, 2008 hearing, the City Council affirmed the Planning Commission's findings and decision. (AR at pp. 02703-02709.) On April 16, 2008, BAA filed a writ of mandate to reverse the City Council's decision and a complaint for inverse condemnation in the Riverside County Superior Court.

B. <u>The Court's decision</u>

After a review of the briefs each submitted by the City and BAA and the administrative record, the Court held a hearing on December 23, 2010 on the writ of mandate portion of the case. The City argued that, although the UUP was initially granted in 2001, and extended 4 additional times from 2002 to 2006, no use had commenced to vest BAA's rights in the UUP because the Barbour Street improvements were offsite, and although Plaintiffs obtained a grading permit, no actual grading beyond a ground-breaking ceremony and clearing and grubbing of brush occurred.

89

Alternatively, the City argued that the BAA's rights to use the property expired under the terms of the Banning Municipal Code because BAA did not engage in construction work on the Site for more than one year prior to revocation of the UUP.

BAA argued that the groundbreaking ceremony in July 2006, the construction of Barbour Street improvements, and clearing and grubbing on the Site constituted construction and a use on the Site under the UUP, per Section 9116.8 of the Banning Municipal Code. They also argued that because a use commenced, the UUP was vested and the City had no right to take away the UUP.

The Court granted BAA's writ of mandate because it found that the findings to support the City's revocation of the UUP and termination of the Development Agreement were unclear. In so doing, the Court reviewed the resolution revoking the UUP, based on Banning Municipal Code Section 9116.8, which provides that any use permit for which a use is not commenced or commenced but discontinued for one year becomes null and void. The Court found that it was unclear how the City was interpreting Section 9116.8 and how the City dealt with BAA's arguments during the original hearing. The Court did not rule on either side's arguments in deciding that the City's findings in City Council Resolution 2008-34 were unclear.

Also, the Court did not decide the merits of the case at the hearing. The Court made no other findings of fact and remanded the matter back to the City so that proper findings to support the decision can be made. The Court gave the City 120 days, until April 22, 2011, to conduct a hearing to make adequate findings to support the City's decision. The Court did not permit any party to introduce new evidence at the re-hearing. The Court made no other findings regarding the termination of the Development Agreement.

DISCUSSION:

A. The UUP was extended various times but finally expired on August 14, 2006.

Pursuant to Banning Municipal Code Section 9116.10, a permit may be extended up to three times only. Section 9116.10 states, in pertinent part:

> The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. ***In no instance shall more than three extensions be granted.*** ...
>
> (AR at p. 00008.)

Also, the UUP contained the following condition of approval:

> 1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. ***In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.***
>
> If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval. All conditions of approval for each phase of development must be met on or before their respective

expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; ***otherwise, the approval shall expire and become null and void.***

(AR at p. 00428 [Emphasis added].)

According to Planning Condition of Approval 1, above, all conditions of approval under the UUP were required to be completed within the timeframe provided, which in this case is one year. If the conditions were not completed, the UUP would become "null and void" unless an extension of the UUP was requested before expiration. Since BAA did not meet all of its conditions, it requested and was granted a total of four (one more than the three allowable) extensions. The fourth extension provided that the UUP would expire on August 14, 2006. Under Section 9116.10, no more extensions were allowed beyond August 14, 2006.

BAA was required to complete all conditions under the UUP on or before August 14, 2006. BAA failed to do so, and the UUP automatically expired on August 14, 2006 and no further extension was permitted under the Banning Municipal Code. Also, no revocation hearing was required because the UUP automatically expired.

B. <u>Pursuant to Banning Municipal Code Section 9116.8, where no use or construction commences timely, the UUP is automatically null and void.</u>

Pursuant to Banning Municipal Code Section 9116.8, which was in effect at the time the UUP was issued, a conditional use permit[1] expires under the following two circumstances:

A Conditional Use Permit shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147, § 1(part).)

If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147, § 1(part).)

(AR at p. 00007.)

Thus, the UUP automatically expires and is without further force and effect if: (i) no use or construction commences within one year of issuance or extension of the UUP, or (ii) a use or construction did commence but was discontinued for one year.

Here, BAA (through its predecessor, AAR) was required to commence construction or use on the Site within a year of obtaining the UUP and was granted four one-year extensions in total, with a final expiration date of August 14, 2006. Notwithstanding its construction of the Barbour Street

[1] The City had a policy of treating unclassified use permits in the same manner as conditional use permits.

offsite improvements between December 2003 and April 2004 (AR at p. 01768), BAA requested its third extension of the UUP in May 2004 (AR at p. 01771). The City granted the third extension of the UUP until August 14, 2005. (AR at p. 01786.) The construction was completely offsite and no part of the Project commenced on the Site.

Likewise, at that time, the City staff did not consider the clearing or grubbing of brush from the Site as "commencement of construction or other appropriate evidence of use" under Section 9116.8. Two grading permits were issued during the time the UUP was valid. Again, the City required BAA to extend the UUP even though it issued BAA grading permits, as no grading occurred at the Site amounting to construction or commencement of use. By October 2004, only clearing and grubbing work and "what appears to be preliminary grading or other excavation activities" occurred. (AR at p. 01794.) The second grading permit was issued in September 2005, and by June 2006, the City requested BAA to "commence grading operations on the [40-acre parcel], and proceeding diligently thereafter without extended interruption." (AR at p. 02243.) Initial grading began in July 2006, one month before the UUP was to expire. (AR at p. 02290.) The only evidence of grading by BAA in the record consists of minor clearing and grubbing i.e., removing brush, plants, rocks, and debris from the top soil.

Similarly, the groundbreaking ceremony was not considered by the City staff to be "commencement of construction or other appropriate evidence of use" under Section 9116.8. Regardless of whether the City participated in the ground-breaking ceremony in July 2006 (AR at pp. 02285-A), there is no evidence in the record that BAA actually commenced construction after holding the ceremony. In fact, BAA failed to meet the grading permit requirements. (AR at pp. 02583.)

Commencement of construction or use under Section 9116.8 shall be "determined by the Planning Commission or its designee." In all four extensions, the Planning Commission or its designee, the Community Development Director, exercised discretion and determined at that time that completion of Barbour Street, clearing and grubbing of the Site, and the groundbreaking ceremony were not sufficient to constitute a use or construction.

C. Under BMC Section 9116.8, even if construction or use is commenced, the UUP expires if use is discontinued for at least one year.

Even assuming there was construction or commencement of use, said construction or use was discontinued for at least one year such that the UUP automatically expired under Section 9116.8.

Again, under Section 9116.8, "If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City."

Arguably, the most recent construction activity on the Site was the groundbreaking ceremony in July 2006, assuming a ceremony can be considered actual construction. No actual construction work began afterwards. In the City's July 27, 2007 letter to BAA requiring it to deposit funds into escrow for the 20-acre parcel, the City required that "BAA ***commence[d] construction*** on the raceway project within ninety (90) days of the purchase of the subject property and complete[d] such construction within two (2) years of the purchase." (AR at pp. 02344 [emphasis

added].) Thus, at the time of that letter, the City did not consider the groundbreaking ceremony or other clearing or grubbing as construction under Section 9116.8.

D. <u>Use of the site ceased or was abandoned for six or more consecutive months and the UUP is subject to revocation.</u>

Even if it can be found that construction or evidence of use began and was not discontinued for one year such that the UUP did not expire without further City action, the UUP can be revoked after a public hearing under Banning Municipal Code Section 9116.11.

Banning Municipal Code Section 9116.11, which was in effect at the time the UUP was issued, states, in relevant part:

> ...A revocable conditional use permit may be revoked or modified and an irrevocable conditional use permit may be modified by the commission if any one (1) of the following findings can be made:
>
> (a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;
>
> (b) That the Conditional Use Permit was obtained by misrepresentation or fraud;
>
> (c) ***That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months***;
>
> (d) ***That one or more of the conditions of the Conditional Use Permit have not been met***;
>
> (e) That the use is in violation of any statute, ordinance, law, or regulation; or
>
> (f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance. (Ord. No. 1147, § 1(part).)
>
> (AR at pp. 00008-09 [emphasis added].)

Per subsection (c) of Section 9116.11, the City can revoke the UUP if use of the Site ceased or was abandoned for at least six (6) or more consecutive months.

As already stated above, if groundbreaking can be considered construction, the most recent construction activity was the groundbreaking ceremony in July 2006. No construction activity occurred after that, according to the City's July 27, 2007 letter (AR at pp. 02344). Under Section 9116.11(c), the City could have considered the use abandoned as early as February 2007 and held a public hearing to revoke the UUP at that time.

Even if BAA successfully argues that clearing and grubbing of brush qualifies as grading, and grading qualifies as construction work, the most recent grading activity was documented in May 2007, when the City informed BAA that it was not controlling dust by watering or other approved measures in violation of its grading plan. (AR at p. 02325.) No further evidence of construction activity or other use exists. Also, the evidence is clear that no use occurred on the 20-acre parcel because BAA never acquired it. (AR at pp. 02582-02584.) The City could have

considered the use abandoned six months after grading activity ceased, or in December 2007, and held a public hearing to revoke the UUP.

E. <u>The UUP is subject to revocation by the City because BAA failed to meet one or more of the Conditions of Approval within the timeframe provided under the UUP.</u>

Per subsection (d) of Section 9116.11, the City can revoke the UUP if one or more conditions of approval are not met within the timeframe provided under the UUP.

Again, the UUP contained the following condition of approval:

> 1. ***All*** conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. ...
>
> If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval. ***All conditions of approval for each phase of development must be met on or before their respective expiration date***, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; ***otherwise, the approval shall expire and become null and void.***
>
> (AR at p. 00428 [Emphasis added].)

BAA was required to meet all of the conditions of approval under the UUP by August 14, 2006. Some of the conditions of approval BAA was required to complete by that date included some of the following:

- Planning Condition of Approval 10: Submit detailed landscape and irrigation plans, including along offsite improvements required by Engineering department. (AR at p. 01413.)
- Engineering Condition of Approval B(1): Construct street improvements for Barbour Street. (AR at p. 01416)
- Engineering Condition of Approval B(2): Construct infrastructure improvements for utility connections from the Site to Westward Avenue, Barbour Street, and Hathaway Street. (AR at p. 01416)
- Engineering Condition of Approval C(1): Prepare street improvement plans for Westward Avenue where it fronts the Site. (AR at p. 01417.)
- Engineering Condition of Approval C(2): Construct street improvements at Westward Avenue where it fronts the Site. (AR at p. 01417.)
- Engineering Condition of Approval D(1): Dedicate additional right-of-way along Barbour Street to Scott Street. (AR at p. 01417.)

Aside from the Barbour Street improvements, BAA completed none of the above conditions of approval.

Additionally, BAA failed to consummate the purchase of the 20-acre parcel by failing to deposit funds into escrow. Although the 20-acre parcel was encumbered by FAA regulations and concerned a burrowing owl issue, the parcel was released from FAA regulation on November 30, 2006. The burrowing owl issue came up in October 2006, only three months before the 1 year

deadline BAA was supposed to close escrow and acquire the 20-acre parcel. To the extent the FAA land release and burrowing owl issues stalled the acquisition, all issues were resolved at the end of February 2007. (AR at pp.2299.) BAA did not deposit the escrow money until September 11, 2007, after several notices of default were provided to them.

Moreover, completing the above conditions did not require ownership of the 20-acre parcel. BAA had possession or control of the 40-acre parcel, and the City urged BAA on several occasions to begin grading work and construction activity and to obtain building permits for the 40-acre parcel and the other off-site improvements. (AR at p. 02208, Master Agreement § 4.2.3 [Construction of Raceway Project].) As of June 2, 2006, the City required BAA to "commence grading operations on the [40-acre parcel] and proceed diligently thereafter without extended interruption." (AR at p. 02243.)

F. Expiration or revocation of the UUP simultaneously can serve to terminate the Development Agreement.

Section 4.2 of the Development Agreement states:

> Duration of Agreement. The term of the Agreement shall commence on, and the effective date of the Agreement shall be, the effective date of City Ordinance No. 1308 as set forth in Section 1.6 above and the term shall extend for a period concurrent with Unclassified Use Permit (UUP) 00-47501 [*sic*] (term of the agreement) following the effective date unless the Agreement is earlier terminated or its term modified in the manner provided in this Agreement.
>
> (AR at pp. 01669-70.)

Accordingly, because the term of the Development Agreement is concurrent with the UUP and no modifications regarding the term have been made, if the City determines that the UUP is expired or properly revoked, then the Development Agreement is terminated as well.

Based on the existing administrative record and/or new evidence presented by BAA, if any, in accordance with Section 1094.5(e) of the Code of Civil Procedure, the City Council should determine whether the prior decision in City Council Resolution 2008-34 revoking the UUP and terminating the Development Agreement should be affirmed or reversed.

FISCAL DATA:

No impact.

APPROVED BY:

Andy Takata
City Manager

PREPARED BY:

Lona Laymon
Assistant City Attorney

RECOMMENDED BY:

Dave Aleshire
City Attorney

REVIEWED BY:

Zai Abu Bakar
Community Development Director

Attachments:

Exhibit "A" - Packet of Relevant Administrative Record documents

1. Banning Municipal Code Section 9116 (AR pp. 00001-00009)
2. Redevelopment Agency Staff Report for Meeting dated August 22, 2000 (AR p. 00046)
3. Redevelopment Agency Resolution No. 2000-20 (AR pp. 00062-00072)
4. Planning Commission Staff Report for Meeting dated July 3, 2001 (AR pp. 00359-00367)
5. Unclassified Use Permit 01-47501 Conditions of Approval (AR pp. 00418-00435)
6. Site Plan of 20-acre and 40-acre parcels (AR p. 00464)
7. Letter from Roger Derda to Andrew Marocco dated August 31, 2001 (AR p. 00886)
8. Memorandum of Understanding dated May 16, 2002 Among City of Banning, Banning Redevelopment Agency, Federal Aviation Administration, and All-American Racing, LLC (AR pp. 00897-00903)
9. Memorandum from Don Foster to Mayor and City Council dated May 23, 2002 (AR pp. 00904-00908)
10. Letter from Andrew Marocco to Vicki Burt dated July 5, 2002 (AR p. 00913)
11. Planning Commission Staff Report for Meeting dated August 6, 2002 (AR pp. 00916-00918)
12. Letter from Federal Aviation Administration to City Manager dated August 2, 2002 (AR pp. 00919-00920)
13. Letter from Roger Derda to Andrew Marocco dated August 12, 2002 (AR pp. 00932-00936)
14. City Council Staff Report for Meeting dated October 22, 2002 (AR pp. 00945-01007)
15. City Council Resolution 2002-111 (AR pp. 01009-01019)
16. E-mail from Roger Derda to Andrew Marocco dated April 7, 2003 (AR p. 01218)
17. City Council Staff Report for Meeting dated April 22, 2003 (AR p. 01231)
18. City Council Resolution No. 2003-34 (AR pp. 01237-01241)
19. City Council Resolution No. 2003-39 (AR pp. 01307-01309)

20. Letter from Andrew Marocco to Roger Derda dated July 14, 2003 (AR p. 01370)
21. Grading Permit No. 2003-07 dated July 23, 2003 (AR p. 01396)
22. Planning Commission Staff Report for Meeting dated August 5, 2003 (AR pp. 01402-01411)
23. Amended Final Conditions of Approval dated October 9, 2003 (AR pp. 01412-01419)
24. City Council Staff Report for Meeting dated October 14, 2003 (AR pp. 01435-01438)
25. Development Agreement 03-1504 (AR pp. 01667-01690)
26. Letter from Andrew Marocco to the Gas Company dated December 12, 2003 (AR p. 01743)
27. Email from Robert Estrada to Vicki Burt regarding acceptance of Barbour Street improvements (AR p. 01768)
28. Letter from Andrew Marocco to Roger Derda dated May21, 2004 (AR p. 01771)
29. Letters regarding Barbour Street improvements and Cost Support Agreement dated June 25, 2004 (AR pp. 01774-01784)
30. Letter from Nicole Suviat Criste to Andrew Marocco dated July 30, 2004 and Letter from Andrew Marocco to Roger Derda dated May 21, 2004 (AR pp. 01786-01787)
31. Letter from Eric Vail to Andrew Marocco dated October 1, 2004 (AR pp. 01793-01800)
32. Letter from Tom Searles to Randy Anstine dated January 21, 2005 (AR p. 01811)
33. Letter from Oscar Orci to Tom Searles dated August 9, 2005 (AR pp. 01820-01823)
34. City Council Staff Report for Meeting dated August 9, 2005 (AR pp. 02010-02017)
35. Grading Permit No. 2005-06 dated September 22, 2005 (AR p. 02188)
36. Master Agreement (AR pp. 02194-02226)
37. Letter from Eric Vail to Tom Searles dated June 2, 2006 (AR pp. 02242-02244)
38. Purchase and Sale Agreement (AR pp. 02255-02277)
39. Letter from Oscar Orci to Leslie MacNair dated October 23, 2006 (AR p. 02290)
40. Letter from Duane Burk from Tom Searles dated February 21, 2007 (AR p. 02297)
41. Letter from Eric Vail to Tom Searles dated March 8, 2007 (AR pp. 02298-02300)
42. Letter from Eric Vail to Tom Searles dated April 16, 2007 (AR p. 02308-02309)
43. Letter from Duane Burk to Tom Searles dated May 17, 2007 (AR pp. 02325-02326)
44. Letter from Randy Anstine to Tom Searles dated June 26, 2007 (AR pp. 02333-02335)
45. Letter from Eric Vail to Tom Searles dated July 27, 2007 (AR pp. 02344-02345)
46. Check from Banning Airport Associates of deposit of funds into escrow (AR pp. 02403-02404)
47. Letter from Julie Biggs to Tom Searles dated September 14, 2007 (AR pp. 02405-02407)
48. Redevelopment Agency Minutes for Meeting dated September 25, 2007 (AR pp. 02422-02426)
49. City Council Resolution 2007-113 (AR pp. 02475-02478)
50. City Council Resolution No. 2007-115 (AR pp. 02479-02482)
51. Letter from Julie Biggs to Andrew Marocco dated November 1, 2007 (AR pp. 02582-02584)
52. Letter from Oscar Orci to Andrew Marocco dated November 27, 2007 (AR pp. 02590-02591)
53. Letter from Oscar Orci to Andrew Marocco dated December 10, 2007 (AR pp. 02593-02594)
54. Letter from Oscar Orci to Andrew Marocco dated January 7, 2008 (AR p. 02645)
55. Letter from Andrew Marocco to Oscar Orci dated January 10, 2008 (AR p. 02647)
56. Planning Commission Resolution 2008-05 (AR pp. 02671-02678)
57. Planning Commission Staff Report for Meeting dated January 28, 2008 (AR pp. 02680-02698)

58. Letter from Andrew Marocco to Oscar Orci dated February 6, 2008 (AR pp. 02700-02701)
59. City Council Resolution 2008-34 (AR pp. 02703-02709)

EXHIBIT "A"

PACKET OF RELEVANT ADMINISTRATIVE RECORD DOCUMENTS

ATTACHMENT 1

THE CODE OF THE CITY OF BANNING, CALIFORNIA

1965

A Codification of the General Ordinances of the City of Banning, California

Originally published by:
Michie Publications Company

Supplement Service Commencing with Ordinance 1280 by

Matthew Bender & Co., Inc.
701 East Water Street
Charlottesville, VA 22902
866-501-5155

LexisNexis™
Municipal Codes

Division II. Administrative Citations.

1-29.01. Applicability.
1-29.02. Enforcement officer--Defined.
1-29.03. Administrative citation.
1-29.04. Amount of fines.
1-29.05. Payment of the fine.
1-29.06. Late payment charges.
1-29.07. Hearing request.
1-29.08. Advance deposit hardship waiver.
1-29.09. Hearing officer.
1-29.10. Hearing procedure.
1-29.11. Hearing officer's decision.
1-29.12. Recovery of administrative citation fines and costs.
1-29.13. Right to judicial review.
1-29.14. Notices.
1-29.15. Procedures.

Division III. Criminal Citations.

1-29.20. Issuance of citations by Code enforcement officer.
1-29.21. Issuance of citations by community services officer.
1-29.22. Procedures.
1-30. Violation of posted "Do Not Enter" notice.
1-31. Authority to cite for anti-scavenging violations.

Article I. General.

Sec. 1-1. How Code designated and cited.

The ordinances embraced in the following chapters and sections shall constitute and be designated "The Code of the City of Banning, California, 1965," and may be so cited. (Ord. No. 1240 § 1(part).)

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances of the city, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the city council or the context clearly requires otherwise:

City. The words "the city" or "this city" shall mean the area within the territorial limits of the City of Banning and such territory outside of the city over which the city has jurisdiction or control by virtue of any constitutional provision or any law.

Code. The words "the Code" or "this Code" shall mean "the Code of the City of Banning, California, 1965."

(2) The grantee has not substantially exercised the rights granted by the Variance within the time allowed upon the grant of the variance or any subsequent extension of time.

(3) That the Variance was obtained by misrepresentation or fraud.

(4) That construction of the improvement authorized pursuant to the Variance had ceased or was suspended for 6 or more consecutive calendar months.

(5) That the improvement authorized by the Variance violates any statute, ordinance, law, or regulation of which the Planning Commission did not have actual knowledge at the time of the grant of the variance.

(6) That the improvement permitted by the Variance is detrimental to the public health, safety, or welfare or constitutes a nuisance.

(7) That the manner in which the variance is being exercised or enjoyed is detrimental to the public health, safety, or welfare or constitutes a nuisance.

(D) Within 40 days following date of conclusion of the hearing, the Planning Commission shall set forth its findings and conclusions in the form of a resolution. Notice of the determination shall thereafter be provided to the applicant and/or owner of the subject property in the manner provided herein for the giving of notice.

(E) The determination of the Planning Commission shall be final unless within 15 days following date of the resolution of the Planning Commission any aggrieved party shall file written notice of appeal with the City Clerk. Any appeal shall thereafter proceed in the manner set forth in Section 9115.6. Upon the provision of notice of the decision of the appeal, the notice shall contain a statement of the provisions of Banning Ordinance Code Section 1-28.1. (Ord. No. 1146, § 1(part).)

ARTICLE 16
CONDITIONAL USE PERMITS*

§ 9116.1: Purpose.
§ 9116.2: Categories/Definitions.
§ 9116.3: Application.

---

* Previous to adoption of Ord. 1147, Article 16 consisted of §§ 9116--9116.14. Prior ordinance history: Ord. No. 733.

§ 9116.4: Project review.
§ 9116.5: Hearings and notice.
§ 9116.6: Findings.
§ 9116.7: Use of property before final decision.
§ 9116.8: Conditional use permit expiration.
§ 9116.9: Modification of conditional use permit.
§ 9116.10: Time extension.
§ 9116.11: Revocation.
§ 9116.12: Conditional use permit to run with land.
§ 9116.13: Appeal.
§ 9116.14: Precedents.
§ 9116.14a: Burden of proof.

Section 9116.1: Purpose.

Conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. At the time of application, a review of the location, design, configuration, and potential impact of the proposed use shall be conducted by comparing the use to established development standards and design guidelines. This review shall determine whether the proposed use should be permitted by weighing the public need for and the benefit to be derived from the use against the impact which it may cause. (Ord. No. 1147, § 1(part).)

Section 9116.2: Categories/Definitions.

For purposes of this article, Conditional Use Permits ("CUP") shall be in two categories; revocable and irrevocable. Revocable permits shall be those CUP's issued for the use of property or buildings for which the Planning Commission makes a finding that any new construction or modification to existing construction. would not prevent establishment of future uses which are "Permitted Uses" in the Zone District in which the CUP is established. Irrevocable permits shall be those CUP's issued for the use of property or buildings for which the Planning Commission makes a finding that any new construction or modification to existing construction would prevent establishment of future uses which are "Permitted Uses" in the Zone District in which the CUP is established.

Anything contained herein to the contrary notwithstanding, the Planning Commission shall not be precluded from revoking any revocable CUP or modifying any irrevocable CUP consistent with Section 9116.11.

In instances where the Planning Commission approves a request for a Conditional Use Permit, the Planning Department shall provide correspondence to the applicant outlining any conditions attached thereto and informing the applicant as to whether the permit has been issued as revocable or irrevocable. (Ord. No. 1147, § 1(part).)

Section 9116.3: Application.

An application for a Conditional Use Permit shall be filed in a manner consistent with the requirements contained in the City's adopted guidelines to be prepared and published by the Planning Department. (Ord. No. 1147, § 1(part).)

Section 9116.4: Project review.

Each Conditional Use Permit application shall be analyzed by the Planning Department to assure that the application is consistent with the intent and purpose of this article. To ensure effective implementation of General Plan policies relating to design guidelines, each application for a Conditional Use Permit shall be reviewed by the Land Development Task Force (LDTF) prior to being scheduled for the Commission's consideration. (Ord. No. 1147, § 1(part).)

Section 9116.5: Hearings and notice.

Upon receipt in proper form of a Conditional Use Permit application, a hearing shall be set and notice of the hearing given in the manner hereinafter provided.

(A) Setting hearings.

(1) There shall be a public hearing before the Planning commission on all applications for the grant of a CUP.

(2) All applications for the granting of a CUP shall be set by the Secretary of the Planning Commission. The date of the hearing shall be not less than ten (10) days nor more than sixty (60) days from the time of filing of a complete application.

(B) Notices.

Notice of time and place of public hearings shall be given in the following manner:

(1) Notice of any public hearing upon an application for grant of a CUP shall be given by at least one (1) publication in a newspaper of general circulation in the City of Banning at least ten (10) days before the date of said hearing.

(2) Notice of public hearing to consider a CUP shall also be given by posting or by mailing a written notice not less than ten (10) days prior to the date of such hearing to the owners or property within a radius of three hundred (300) feet of the exterior boundaries of the property for which the CUP is to be issued save that, within the RA zones, notice shall given to the owners of property within fifteen hundred feet (1500 ft.) of the subject property. Notice shall be

given to and at the last known name and address of such owners as shown upon the current lot books of the County Assessor of the County of Riverside.

(C) Required information in notices.

Not less than the following information shall be given in all notices.

(1) Description of property under consideration.

(2) The nature of the proposal.

(3) Time and place at which public hearing or hearings are to be held.

(D) Investigations.

The Planning Commission shall cause to be made by its own members, or members of its staff, such investigation of facts bearing upon an application set for hearing, including any analysis of precedent cases, as will serve to provide all necessary information to assure action on each case consistent with the purpose of this article.

(E) Hearings may be continued without recourse to public notice.

If, for any reason, testimony on any case set for public hearing cannot be completed on the day set for such hearing, the Commissioners presiding at such public hearing may, before the adjournment or recess thereof, publicly announce the time and place to, and at which, said hearing will be continued and without recourse to the form of public notice as provided for in the first instance. (Ord. No. 1147, § 1(part).)

Section 9116.6: Findings.

Following a hearing, the Commission's decision shall be recorded in writing and shall recite therein the findings upon which such decision is based. The Commission may approve and/or approve as modified a Conditional Use Permit application in whole or in part, with or without conditions, only upon making all of the following findings with respect to such application:

(a) The proposed use is permitted subject to a C.U.P. within the land use district and complies with all of the applicable provisions of the Banning Ordinance Code;

(b) The proposed use will not impair the integrity and character of the land use district in which it is to be located;

00006

(c) The subject site is physically suitable for the type and intensity of land use being proposed;

(d) The proposed use is consistent with the General Plan;

(e) The proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses and/or land uses presently on the subject property;

(f) There are, or will be, adequate provisions for water, sanitatio: and public utilities and services to ensure that the proposed use would not b detrimental to public health and safety;

(g) There will be adequate provisions for public access to serve the subject proposal;

(h) There will not be a harmful effect upon desirable neighborhood characteristics;

(i) There will not be significant harmful effects upon environmental quality and natural resources;

(j) Any negative impacts of the proposed use, as determined by the Planning Commission in its sole discretion, will be fully mitigated; and

(k) The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the city. (Ord. No. 1147, § 1(part).)

Section 9116.7: Use of property before final decision.

No permit shall be issued for any use involved in an application for approval of a Conditional Use Permit until, and unless, the same shall have become final, pursuant to the effective date set forth within the C.U.P. (Ord. No. 1147, § 1(part).)

Section 9116.8: Conditional use permit expiration.

A Conditional Use Permit shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147, § 1(part).)

If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147 § 1(part).)

Section 9116.9: Modification of conditional use permit.

Upon application by the property owner, an approved Conditional Use may be modified, in a manner consistent with the original establishment of the C.U.P. under this Article. Minor modifications to an approved Conditional Use may be approved and conditioned by the Planning Director. A "minor modification" for purposes of this subdivision is a modification which does not involve a change in the external dimensions of the approved use and which does not otherwise adversely impact neighboring uses as determined by the Planning Director. (Ord. No. 1147, § 1(part).)

Section 9116.10: Time extension.

The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. In no instance shall more than three extensions be granted. Upon granting of an extension, the Community Development Director shall ensure that the C.U.P. complies with all current development code provisions. The Community Development Director shall advise the Planning Commission of his/her approvals hereunder by report at the Planning Commission meeting immediately following date of such approval. Any approval granted hereunder shall become final five (5) days following date of such Planning Commission meeting unless modified or rejected by the Planning Commission. (Ord. No. 1147, § 1(part); Ord. No. 1200, § 1.)

Section 9116.11: Revocation.

The commission may revoke or modify a Conditional Use Permit as hereinafter provided. Prior to any modification or revocation of a conditional use permit the Planning Commission shall first hold a public hearing on the matter. Ten days prior to the hearing, notice shall be delivered in writing to the applicant and/or owner of the property for which such Conditional Use Permit was granted. Notice shall be deemed delivered 2 days after being mailed, first class postage paid, to the owner as shown on the current tax rolls of the county of Riverside, and/or the project applicant. (Ord. No. 1147, § 1(part).)

A revocable Conditional Use Permit may be revoked or modified and an irrevocable Conditional Use Permit may be modified by the commission if any one (1) of the following findings can be made:

(a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;

(b) That the Conditional Use Permit was obtained by misrepresentation or fraud;

(c) That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months;

(d) That one or more of the conditions of the Conditional Use Permit have not been met;

(e) That the use is in violation of any statute ordinance, law, or regulation; or,

(f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance. (Ord. No. 1147, § 1(part).)

Section 9116.12: Conditional use permit to run with land.

A Conditional Use Permit granted pursuant to the provisions of this Article shall continue to be valid upon a change of ownership of the site, business, service, use or structure which was the subject of the permit application. (Ord. No. 1147, § 1(part).)

Section 9116.13: Appeal.

(A) Notice of the Planning Commission's decision shall be mailed by certified mail, return receipt requested, to the applicant by the Planning Director within ten (10) days following the date of the meeting at which the decision is rendered. For purposes of this section "date of decision" shall mean the date three (3) days following the date of the mailing by the Planning Director.

(1) The determination of the Planning Commission shall be final unless within fifteen (15) days following date of the decision of the Planning commission any aggrieved party, including any City official, shall file with the City Clerk a written notice of appeal.

(2) Within not to exceed forty (40) days following the filing of a written appeal the City Council shall conduct a duly advertised public hearing on the matter, public notice for which shall be given as provided in Section 9115.3.

(B) City Council to announce findings and decision by resolution.

The City Council shall announce its findings and decision by formal resolution not more than forty days following the hearing, and said resolution shall recite, among other things, the facts and reasons which, in the opinion of the City Council, make the granting or denial of the amendment necessary to carry out the general purpose of this ordinance.

(C) Decision of City Council shall be final.

ATTACHMENT 2

August 16, 2000

REDEVELOPMENT AGENCY MEETING
August 22, 2000

TO: Agency Chairperson and Members of the Agency Board

FROM: Vickie Burt, Economic Development/Redevelopment Manager

SUBJECT: **CRA Resolution No 2000-20, Approval of Agreement to Negotiate Exclusively with All American Racing, LLC**

RECOMMENDATION: That the Community Redevelopment Agency Board adopt CRA Resolution No. 2000-20, approving an Exclusive Right to Negotiate with All American Racing, LLC to develop an auto racing facility.

BACKGROUND: All American Racing, LLC President, Andrew Marocco has requested that the CRA enter into an agreement to negotiate exclusively for a period of 90 days with an option for an additional 90 days under the terms and conditions of an Agreement to Negotiate Exclusively. A copy of that agreement is attached as Exhibit A.

The purpose of the negotiation is to reach agreement on the terms of a Developer Disposition Agreement to build a racing facility that will incorporate property owned by the CRA. The subject property is 20 acres of vacant land located south of the Banning Municipal Airport near Scott Street. A description of the subject property is referenced in the Agreement to Negotiate Exclusively as Exhibit 1.

CRA Ad Hoc committee members, John Hunt and Sue Palmer, have met with Agency staff to evaluate the above referenced recommendation and preliminary information on the proposed project.

FISCAL DATA: There is no fiscal impact based on approval of this exclusive negotiation process.

PREPARED BY:
Vickie Burt
Economic Development/Redevelopment Manager

REVIEWED BY:
Don Foster
Executive Director

29

111

ATTACHMENT 3

CRA RESOLUTION NO. 2000-20

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING APPROVING AN AGREEMENT TO NEGOTIATE EXCLUSIVELY WITH ALL AMERICAN RACING, LLC

WHEREAS, the Community Redevelopment Agency of the City of Banning owns vacant property that is under consideration as a location for development of a facility that will enhance the economic development of the City of Banning; and

WHEREAS, a request has been received from All American Racing, LLC to enter into an Agreement to Negotiate Exclusively for development of a racing facility;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, AS FOLLOWS:

Enter into an Agreement to Negotiate Exclusively per the terms and conditions of said agreement incorporated herein as Exhibit A.

PASSED, APPROVED, AND ADOPTED this 22 day of August, 2000.

William Jenkins, Agency Chairperson

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson, Agency Counsel

00062

ATTEST:

Marie A. Calderon
Secretary

CERTIFICATION:

I, Marie A. Calderon, Secretary of the Community Redevelopment Agency of the City of Banning, do hereby certify that the foregoing CRA Resolution No. 2000-20 was duly adopted by the Community Redevelopment Agency at a regular meeting thereof held on the 22nd day of August, 2000, by the following vote, to wit:

AYES: Boardmembers Hunt, Palmer, Wages, Chairman Jenkins

NOES: None

ABSENT: Boardmember Williams

ABSTAIN: None

Marie A. Calderon, Secretary
Community Redevelopment Agency
City of Banning, California

EXHIBIT A

AGREEMENT TO NEGOTIATE EXCLUSIVELY

THIS AGREEMENT is made as of this 22 day of August, 2000, by and between the Community Redevelopment Agency of the City of Banning, a public body, corporate and politic, created and authorized to transact business pursuant to Part 1 of Division 24 of the Health and Safety Code of the State of California (the "Community Redevelopment Law")(which, together with any successor public body or officer hereinafter designated by or pursuant to law, is hereinafter referred to as the "Agency"), having its office at 99 East Ramsey Street, Banning, CA, and All American Racing, a Limited Liability Company, having its mailing address at P.O. Box 2201 Rialto, California 92377 (hereafter called "Developer").

RECITALS

1. In furtherance of the objectives of the Community Redevelopment Law, the Agency has undertaken a program for the clearance, reconstruction, development and rehabilitation of blighted areas in the City, and is engaged in carrying out a redevelopment project known as the Banning Downtown Redevelopment Project (hereinafter called "Project") pursuant to the Redevelopment Plan for the Project.

2. Developer desires to negotiate a contract ("Disposition and Development Agreement") with the Agency to acquire and develop portions of the Project.

THE AGENCY AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

I. (S 100) Negotiation

A. (S 101) Good Faith Negotiations

The Agency and the Developer agree, for the period set forth below, to negotiate in good faith to prepare a Disposition and Development Agreement to be entered into between the Agency and the Developer concerning certain real property (the "Property") located within the Project.

The Property is shown on the Site Map, Exhibit 1, attached hereto and incorporated herein by this reference (the "Site").

Except as otherwise specifically stated herein, during the term of this Exclusive Right, or any extension thereof, Agency agrees that it shall not negotiate with any other person or entities for development of the Site for the proposed use of an auto raceway. The term "negotiate" as used herein shall be deemed to preclude the Agency from accepting development proposals from persons or entities other than the Developer, or discussing with persons or entities other than the Developer, development plans for the Site as an auto raceway. However, the Agency shall not be precluded from furnishing to other persons or entities unrelated to the Developer information in the possession of the Agency relating to the proposed Redevelopment Plan for the Downtown Project, the implementation of which will be within the Agency's purview to administer. The Agency also may furnish any other information in the possession of the Agency which the Agency would normally furnish to persons requesting information from the Agency concerning its activities, goals, and matters of a similar nature. The Agency agrees that it has deemed the Site to be suitable for purposes of redevelopment and such redevelopment includes plans for the revitalization and reconstruction of the redevelopment project area of the Downtown Project Area of the City of Banning.

B. (S 102) Negotiation Period.

The Agency and Developer establish a negotiating period beginning on execution of this agreement and continuing for 90 consecutive days. It is understood that both the Agency and Developer will use their best efforts to conclude the negotiations and enter into a Disposition and Development Agreement and, therefore, the exclusive negotiating period may be extended by Agency as long as good faith negotiations are continuing. The negotiating period will not be extended more than 90 days beyond the original 90-day period, except as provided in this Agreement for the resolution of Agency concerns regarding the proposed Disposition and Development Agreement and the execution of it by the Agency (Such original 90-day exclusive negotiation period, as extended as provided in this Agreement, may be referred as the "Negotiation Period.")

If, at the expiration of the Negotiation Period, as it may be extended, the Developer has not signed and submitted to the Agency an Disposition and Development Agreement, then this Agreement will terminate unless the Negotiation Period is further

extended by mutual agreement of the parties or is automatically extended as provided in this Agreement.

If, based on the final negotiations with the Agency and an evaluation of proposed terms and conditions, the Developer deems the Disposition and Development Agreement acceptable, Developer will sign and submit the Disposition and Development Agreement to the Agency. If, on the submittal, less than thirty (30) days remain in the then-agreed on negotiating period, this Agreement will automatically be extended to date which is thirty days (30) days after the submittal to enable the Agency (1) to take actions necessary to review and consider the Disposition and Development Agreement, and (2) if approved, to sign the Disposition and Development Agreement.

If the Agency is not willing to sign the Disposition and Development Agreement, and the Agency makes a determination that further negotiations will not lead to a Disposition and Development Agreement, this Agreement will automatically terminate upon the conclusion of the negotiating period.

Agency shall have the right to terminate the negotiation period at any time if Developer does not comply in a timely and diligent fashion with Developer's requirements in this Agreement.

C. (S103) Deposit

No deposit is required for the 90-day negotiation period after execution of this Agreement by Agency. If after the 90-day negotiation period Developer has participated in good faith, the negotiation period may be extended for as set forth herein above. On day 91 the Developer shall deposit with Agency as a non-refundable deposit (the "Deposit") the sum of fifteen-thousand dollars ($15,000) in the form of an unconditional and irrevocable letter of credit or cashier certified check.

In the event Developer complies with the substantive terms of this Agreement and a Disposition and Development Agreement is entered into by Developer and Agency as provided, Agency will return the deposit to Developer within ten (10) days after the execution of the Disposition and Development Agreement.

In the event Developer complies with the substantive terms of this Agreement by negotiating in good faith, but, despite the negotiations, a Disposition and Development Agreement is not entered into between the Agency and Developer within the time periods

described, including any extension, and this Agreement is terminated in the manner provided, the Deposit will be refunded in full to Developer within ten (10) days after the termination of this Agreement.

In the event Developer fails to negotiate in good faith and fails to comply with the substantive terms of this Agreement and a Disposition and Development Agreement is not entered into by Developer and Agency as a result of Developer's failure to negotiate in good faith and otherwise comply with the substantive terms of this Agreement and a Disposition and Development Agreement is not entered into by Developer and Agency as a result of Developer's failure to negotiate in good faith and otherwise comply with the substantive terms of this Agreement, and not due to circumstances beyond the reasonable control of the Developer, with the Agency having been in compliance with this Agreement and having negotiated in good faith, then this Agreement shall terminate in accordance with its terms, and the Agency may retain the entire deposit of fifteen-thousand dollars ($15,000).

The good faith deposit as described is designed to serve the following purposes:

1. Insure that Developer negotiates in good faith with the Agency for the purposes of obtaining a Disposition and Development Agreement and complies with the substantive terms of this Agreement.
2. Insure that Developer shall prepare and submit to the Agency prior to the end of this negotiation period the basic concept plans referred to defined in Section 402 herein.

II. (S200) Consideration

The purchase price or other consideration to be paid by Developer and Agency under the Disposition and Development Agreement will be established by the Developer and Agency as a result of negotiations during the negotiation period. Such purchase price or other consideration will be based upon such factors as market conditions, density of development, costs of development, risks of development, estimated or actual Developer profits, and/or fair market value for the uses permitted to be developed.

III. (S300) Developer

A. (S301) Disclosure and Approval

Developer is required to make full disclosure to the Agency of its principals, officers, stockholders, partners, joint venturers, employees and other associates, and all other pertinent information concerning the Developer and its associates.

Developer's principals, associates, partners, joint venturers, negotiators, development manager, consultants, professionals and directly involved employees are subject to the approval of the Agency. In the event of disapproval, Agency may notify Developer and allow a reasonable time for the association of other qualified participants.

Developer designates Andrew Marocco, President of All American Racing, LLC as the person authorized to negotiate with Agency.

B. (S392) Method of Financing

Upon request, Developer will make available and maintain full disclosure to the Agency of the methods of financing to be used in the development. Such requests for information shall be in writing and must be reasonable in that requests should take into consideration the progress and maturity of the project. All requests for financing information shall be submitted to the Agency upon request, and to the extent information is available. Such financial information shall include:

(a) Financial Statement

(b) Equity

(c) Construction Financing

(d) Long-term Financing

Agency acknowledges that Developer is a privately held entity, and Agency agrees to consider all financial information submitted as confidential and further agrees to refrain from releasing information provided by Developer pursuant to this Agreement unless: (1) Agency counsel determines, after reasonable consultation with the Developer's counsel that the release of the information is required by the California Public Records Act or other applicable statutes or (2) a court orders the release of the information.

IV. (S400) Proposed Development

A. (S401) Development Plan

The development shall include an auto raceway of approximately 60 acres including parking, accessory buildings, grandstands, and landscaping. Agency owned property of approximately 20 acres is the subject of this negotiation.

B. (S402) Development Concept

Design and architecture of the development plan will be developed during the negotiation of the Disposition and Development Agreement and by submission by the Developer to the Agency of basic concept drawings and specifications. Concept plans shall be submitted prior to the end of this negotiation period, and shall be in sufficient detail for the Developer to be in a position to comply with the Scope of Development in connection with the Disposition and Development Agreement. Any and all such documents and plans shall be owned and controlled by the Developer and shall be returned to Developer upon request.

C. (S403) Developer's Studies and Reports

As from time to time requested by the Agency, Developer agrees to make oral progress reports and written reports advising the Agency on all matters and all studies being made. If the negotiations do not result in a Disposition and Development Agreement, Agency may request from Developer copies of all studies and reports made by Developer specifically for this proposed Development.

D. (S404) State Environmental Quality Act and City Fees

The Developer shall supply data and information as necessary to assist in the preparation of any necessary environmental documents, shall pay the fees normally required by the City of developers, including fees for preparation of environmental reports, zone change and similar applications and fees and charges required for the issuance of a building permit.

E. (S405) Cooperation and Additional Information

The Developer agrees to clearly define the opportunities to be provided to present owners of the Property to participate in the development, subject to approval by Developer's lender and to the extent that such participation conforms to and is compatible with the purposes, objectives and design of the project. Nothing in this Agreement shall prohibit the Agency from negotiating with existing property owners and tenants on the

site to provide owner participation benefits including, but not limited to, development opportunities on the site within the Project Area.

V. (S500) Agency's Responsibilities

A. (S501) Redevelopment Project

The Redevelopment Plan for the Banning Downtown Redevelopment Project was adopted on June 12, 1978 by City Council Ordinance No. 709. This Agreement and the Disposition and Development Agreement to be negotiated are subject to the provisions of the Redevelopment Plan.

B. (S502) Agency Assistance and Cooperation

The Agency shall cooperate fully in providing Developer with appropriate information and assistance. Such information may include preliminary estimates for property acquisition of the site; cost estimates for vacation, and realignment or abandonment of public facilities.

C. (S503) Agency Public Hearing

If negotiations culminate in a Disposition and Development Agreement signed by Developer, such an agreement becomes effective only after and if the agreement has been considered and approved by the Agency Board of the City of Banning after public hearing.

D. (S504) Supplemental Information

The Agency reserves the right at any time to make reasonable requests for additional information and data from the Developer, and the Agency particularly reserves the right to obtain further information, data and commitments to ascertain the ability and capacity of Developer to develop the Property expeditiously.

E. (S505) Fees

The Agency shall not be liable for any real estate commission or brokerage fees, which may arise from this transaction.

F. (S506) Hold Harmless

Agency agrees to hold Developer harmless from all costs, expenses, liability or claims of liability (including reasonable attorney's fees) in connection with the Agency's activities upon the Site and performance under this Agreement including any

action by Agency relating to the acquisition of property or the relocation of owners or tenants.

Developer agrees to hold Agency harmless from all costs, expenses, liability or claims of liability (including reasonable attorney's fees) in connection with the Developer's activities upon the Site and performance under this Agreement including any action by Developer related to the acquisition of property or work performed on the Site.

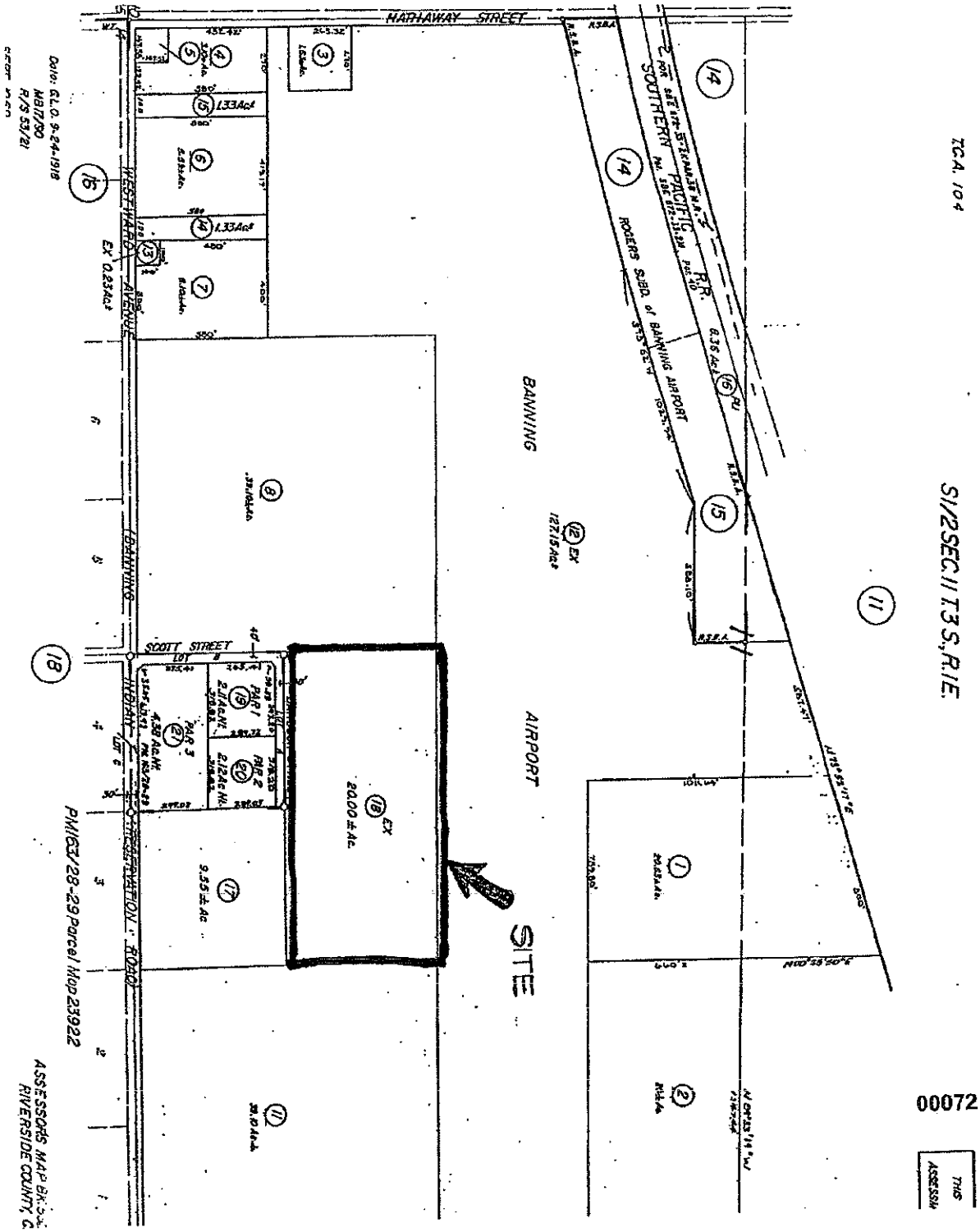
BANNING COMMUNITY
REDEVELOPMENT AGENCY

William Jenkins, Chairperson — Dated 10-15-00

ALL AMERICAN RACING LLC — Dated 10/13/2000

Andrew Marocco, President

AGREEMENT TO NEGOTIATE EXCLUSIVELY
EXHIBIT 1



ATTACHMENT 4

June 28, 2001

Planning Commission Meeting
July 3, 2001

TO: Honorable Chairperson and Planning Commissioners

FROM: Community Development Director **PUBLIC HEARING**

SUBJECT: **UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.**

RECOMMENDATION: The Planning Commission approve Unclassified Use Permit 01-47501 subject to the attached conditions of approval.

RECOMMENDED MOTION: (Planning Commission needs to choose which option - or other options - it desires)

Option (1) would approve the Unclassified Use Permit.

(1) **"I move the Planning Commission approve Unclassified Use Permit 01-47501; A request to establish a professional drag facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue subject to the findings and conditions of approval contained in staff's report dated June 28, 2001".**

Option (2) would continue the Public Hearing pending further consideration of the matter.

(2) **"I move the Planning Commission continue the public hearing regarding Unclassified Use Permit 01-47501 to its August 7, 2001 meeting".**

Option (3) would deny the application.

(3) **"I move the Planning Commission deny the request for approval of Unclassified Use Permit 01-47501 on the following basis:** (Commission will need to make its findings)

FINDINGS: (If the Planning Commission chooses to approve the permit)

(a) The proposed use is permitted subject to an Unclassified Use Permit within the land use district and complies with all of the applicable provisions of the Banning Ordinance Code;

(b) The proposed use would not impair the integrity and character of the land use district in which it is to be located;

(c) The subject site is physically suitable for the type and intensity of land use being proposed;

(d) The proposed use is consistent with the General Plan;

(e) The proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses and/or land uses presently on the subject property;

(f) There are, or will be, adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;

(g) There will be adequate provisions for public access to serve the subject proposal;

(h) There will not be a harmful effect upon desirable neighborhood characteristics;

(i) There will not be significant harmful effects upon environmental quality and natural resources;

(j) The negative impacts of the proposed use are mitigated; and

(k) The proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

(l) The Unclassified Use Permit is a permit that can be subject to revocation.

JUSTIFICATION: The subject land use at the proposed location is appropriate in that the noise it generates is compatible with airport operations and manufacturing zoned properties in proximity to the use. By integrating the recommended conditions of approval into the project approval, the proposed use should not pose any land use problems.

BACKGROUND/ANALYSIS: The Planning Department is in receipt of a request from All American Racing, LLC ("Drag City"), to establish a professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. The project proponent anticipates that drag racing will occur at the site approximately 40 weeks annually.

The proposal comprises the development of two (2) vacant / unimproved parcels totaling approximately 59 acres. The west most parcel (Parcel "1") is located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue and is situated

east of and adjacent to the Deutsch Company's "park". Parcel "1" is approximately 39 acres in size and is "split zoned" in that the north half of the subject parcel is zoned AP-3 (Airport Facilities) while the south half of the subject parcel is zoned AP-5 (Airport Commercial / Industrial). Parcel "2" is located east of and adjacent to Parcel "1"; Parcel "2" is approximately 20 acres in size, is owned by the City and is zoned AP-3.

It should be noted that for the exception of some residential agricultural (RA) zoned properties located south of Charles Street, all of the properties located east of Hathaway Street, north of Charles Street, south of the Freeway and west of City Limits maintain airport zoning designations. Residential structures are prohibited from being located within airport zones and any existing residences are considered legal non-conforming.

The Banning Ordinance Code recognizes that race tracks (and similar land uses – i.e., dragstrips) possess "...characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones..." therefore, the authority for the location and operation of this type of use is subject to the review and issuance of an "Unclassified Use Permit". The Unclassified Use Permit requires public hearings before both the City's Planning Commission and City Council.

Consistent with provisions contained in the City's Code (Article 12 - Unclassified Uses), it is possible to establish race tracks in any zone district in the City excepting the City's residential zone districts (RA, R-1, R-2 and R-3). The regulations for race tracks relating to yard requirements (setbacks) and height requirements are identical to the Zone District(s) in which the land use would be located; in this instance, the City's AP-3 and AP-5 Zone Districts. With respect to off-street parking requirements, the City's Code stipulates that the City Council is responsible for determining the number of required spaces.

The project comprises three (3) phases of development with the majority of the more significant improvements occurring during Phase I. The following is a summary description of the improvements associated with each phase:

PHASE I includes: **1)** the establishment of an approximate 2700 lineal foot asphalt paved drag strip that is located in the northern section of Parcel "1" and which bisects Parcel "2"; **2)** the establishment of a paved pit area, staging area/return road, staging lanes, "burnout" box, shut down area and sand trap; **3)** establishment of a twelve- (12) foot high noise barrier wall to be located approximately 100 feet west of the starting line; **4)** construction of a two-story control tower (875 square feet per floor – total 1,750 square feet) located southwest of the track's "start line"; **5)** the establishment of a portable fuel depot, 150 square foot storage shed and trash enclosure in the northeast corner of Parcel "1"; **6)** landscaped entrance; **7)** the construction of a 625 square foot restroom and 1,125 square foot concession building to be located south of the west most located grandstand; **8)** development of an approximate 2,375 square foot picnic area adjoining the restroom facilities; **9)** the establishment of 1,136 paved on-site parking spaces to be located in the

southwest portion of Parcel "1"; 10) the construction of two (2) spectator stands comprising 19 rows each with a total bench seating capacity of 3,200 (1,600 seats each) to be located parallel and on the south side of the drag strip;

PHASE II includes: 1) the establishment of 1,723 paved on-site parking spaces to be located in the southeast portion of Parcel "1"; 2) construction of a "pedestrian bridge" to be located north of and adjacent to the "staging lanes"; 3) the development of two additional grandstands comprising 1600 seats each (3,200 total); one to be located on the north side of the drag strip in proximity to the "staging lanes", the second grandstand to be located north of and adjacent to the northeast portion of the picnic area; 4) 1,125 square foot concession building and 625 square foot restroom building to be located north of and in proximity to the grandstands; 5) establishment of Musco non-glare lighting.

PHASE III includes: 1) the establishment of two additional grandstands (3,200 seats) on the north side of the drag strip on Parcel 1; 2) development of a "pit area on Parcel 2 north of the drag strip "shut down" area; 3) the establishment of 840 "overflow" paved on-site parking spaces on Parcel 2 to be located south of the drag strip "shut down" area; 4) construction of a 3,000 square foot garage and dyno facility; 5) development of above-ground fuel tanks in northwest corner of property (will replace the portable fuel depot).

For the exception of the placement of the drag strip and shut down area, Phase I development is concentrated on the west most parcel (Parcel "1"); the entrance / ticket booths are located in close proximity to the west property line approximately mid-point on Parcel "1".

The following is an overview of the proposed operation when completely "built-out":

Types of Cars Involved: 1) "Brackets" – a general designation of the typical car run at the track. All are gasoline powered and may run with or without mufflers. When muffled the cars are sometimes called "street legal"; 2) "E.T. Sportsman" - a faster version of Bracket cars; 3) "Bracket Combo" – Brackets and E.T. Sportsman combined; 4) "Nitro Cars" – Nitromethane powered dragsters; 5) "Pro-Mods / Al" – Gasoline or Alcohol / Nitrous-Oxide fuel cars.

Activities / Programs: 1) "Test & Tune" (Muffled cars); 2) "E.T. Sportsman" (Muffled cars); 3) "Drag Fest" (Unmuffled cars – Bracket Combo); 4) "Specialty" (Unmuffled cars – Nitro cars, Pro-Mods/Al, Brackets); 5) "Super Show" (Unmuffled cars – Brackets, E.T. Sportsman, Pro-Mods/Al, Nitro cars, Jet Car).

Schedule of Operations:

1) Test & Tune (80 days)
   300 race cars per event /100 spectators per event
   Friday 4pm-10pm
   Saturday 10am-10pm

2) ET Bracket Racing (30 days)
   300 race cars per event /1000 spectators per event
   Saturday 10am-10pm
   Sunday 12am-5pm

3) Special Events (10 days)
   100 race cars per event /2500 spectators per event
   Saturday 10am-10pm
   Sunday 12am-5pm

4) Super Event / Super Show (1)
   100 race cars per event /10,000 spectators per event
   Saturday 10am-10pm

Seating: A total of six (6) Grandstands (1600 seats each = 9,600 seats total). All Grandstands that will be located on the south side of the drag strip will be handicap accessible. All stands have a solid metal underside and solid backside (which will assist in attenuating noise); once placed, they will extend the full length of the 660-foot operating section of the track.

Off-Street Parking: A total of 3,949 spaces. (Phase I – 1,386; Phase II- 1,723; Phase III-840). 69 handicap spaces are being provided (included in the total 3, 949 spaces).

Landscaping: 6.75 acres (294,000 square feet). Includes Picnic Area, 30-foot landscape strip abutting the entire Westward Avenue street frontage, 50-foot wide landscape strip located south of and adjacent to the drag strip, and a 50-foot wide landscape strip (tapering to 25-feet wide) located north of and adjacent to the drag strip. An approximate 25-foot wide landscape strip is proposed to be located along the Westward Street frontage

Lighting: Non-glare "Musco Lighting" will be established during Phase II development comprising 13 metal halide pole lights ranging in heights of 60 and 70 feet (Refer to additional discussion in this report)

Building Construction: Building construction utilizes decorative block and comprises a total of 6500 square feet (Restrooms – 1,250 square feet; Concession buildings 2,250 square feet and garage / dyno facility – 3,000). (Phase I - 625 square foot restroom and 1,125 square foot concession building – Total 1,750 square feet; Phase II - 625 square foot restroom, 1,125 square foot concession building and 3,000 square foot garage and dyno facility - Total 4,750 square feet).

Restrooms: Two buildings comprising 625 square feet each (total – 1,250 square feet).

Trash: Two trash bins with masonry enclosures shall be located in the northwest corner of Parcel "1". For larger events, portable bins will be brought in and arranged throughout the facility.

Security: Security personnel will comprise off-duty law officers or private security guards from security firms. Security will vary depending on the type of event. The majority of events (96%) are weekly and will only require 1-4 security personnel. Larger events may require up to a maximum of 10 personnel.

Hours of Operation: Varies - primarily Friday, Saturday & Sundays (refer to "Schedule of Operations" section).

Medical: Each event will have one ambulance and a "safety crew". The safety crews can handle anything from driver extrication from vehicles, fires and track maintenance. Additionally, Mercy Medical helicopters are located in close proximity to track events.

Staff identified that the primary planning considerations associated with this proposal would be the potential impacts associated with noise, traffic, light and air. Staff required the project proponent submit an acoustical and traffic study (attached Exhibits "3" & "5") to identify potential adverse impacts associated with these two considerations. Staff relied on the services of outside consultants to review the project proponent's studies and provide their conclusions and recommendations.

Noise:

On March 19, 2001, the project proponent's consultant, Gordon Bricken & Associates / Acoustical & Energy Engineer, prepared a "Revised City Sound Study – City of Banning" for the project proposal (Exhibit "3"). The Planning Department contracted with the County of Riverside, Department of Public Health / Office of Industrial Hygiene to review Mr. Bricken's study, which determined the following (Exhibit "4"):

> "After a thorough review of the proponents written noise report, the City Noise Ordinance and General Plan, and after conducting noise monitoring at an actual Drag City event (held at Banning Airport on April 8, 2001, we conclude the following:
>
> - **The project**, which is located within an industrial zone, **will comply with the City's General Plan Noise Element.**
>
> - Although the City's Noise Ordinance defines the lowest ambient noise level for commercial/industrial zoning, it does not set predetermined noise limits on commercial / industrial projects. Instead, it allows a project-specific noise standard to be developed and incorporated into the project's development agreement.

- A reasonable noise standard can be developed for this project. We **recommend using a 75db(A) 10 minute Leq as the standard for racing events.** We also recommend conditioning the project such that no track activities occur between 10:00 p.m. and 7:00a.m.

- Finally, we recommend conducting a series of post-construction noise monitoring studies to ensure that all the various track operations comply with this standard." (Excerpted from the "Summary" page of the analysis provided by County of Riverside Department of Health Office of Industrial Hygiene – dated June 20, 2001) – (Exhibit "4").

For purposes of further reducing noise related impacts the project will include the establishment of a twelve- (12) foot high wall to be located approximately 100 feet west of the starting line. The wall will extend approximately 125 feet north and south of the centerline of the track.

Importantly, the noise measurements that were acquired from the actual drag race event indicated that the City's noise standards were not exceeded even without the incorporation of any of the sound attenuation devices (i.e., the 12-foot high block wall) identified to be established as part of the development of the proposed project. It can be reasonably assumed that noise levels will be further reduced subsequent to the 12-foot high sound barrier wall being established.

To further ensure that the sound limitations contained in the City's Code are not exceeded, cars that run the track in ten seconds will be sequenced at about 30 second intervals while cars that run faster will be sequenced at greater intervals. It should be noted that 96% of all vehicle "runs" would involve cars equipped with mufflers; muffled cars produce a minimum of 10dba of sound reduction when compared to non-muffled cars.

Traffic:

A traffic study was compiled for the project by the applicant's consultant Katz, Okitsu & Associates (Exhibit "5"); the Public Works Department's consultant Mr. Peter Liu reviewed the study and incorporated his comments and recommendations. The traffic study revealed that the following recommendations be included as components to the development of the project:

- Barbour Street will need to be extended to the vicinity of the project;
- The parking lot layout/access will need to be revised to provide adequate circulation;
- Hathaway Street and Westward Avenue will need to be widened to accommodate a 40 foot wide travel way;
- A traffic monitoring plan, including necessary signage for events, will need to be developed;

- Traffic calming measures will need to be implemented on residential streets such as Barbour Street.

Lighting:

Lighting for the facility will comprise 13 non-glare Musco fixtures comprising metal halide pole lights ranging in heights of 60 and 70 feet. For the exception of a 70-foot high pole light to be established northwest of the staging lanes (in proximity to the pedestrian bridge), the remaining 12 light fixtures are concentrated on the south side of the dragstrip. Six of the light fixtures (70 feet high) are located between the control tower and approximately 250 feet east of the finish line, while the remaining six light fixtures (60 feet high) extend further east in alignment with the terminus of the landscape area depicted on the phasing plan.

Staff's concern with the proposed lighting is the heights of the pole structures. The Zone District in which the lights would be established stipulates a height limitation of 35 feet, with additional height possible subject to the processing of a Conditional Use Permit. While the Unclassified Use Permit allows the discretion to grant the additional height, staff's concern is whether the pole structures would interfere with airport operations and pose safety considerations. Staff has been advised by the Riverside County Airport Land Use Commission (ALUC) that it will need to review the proposed heights of the pole lights to determine if there would be any operational or safety concerns. The requirement to forward this component of the proposal to the ALUC for its consideration has been incorporated into staff's recommended conditions of approval.

Air:

In evaluating any potential negative impacts relating to "air", staff contacted the South Coast Air Quality Management District (SCAQMD) to determine what requirements (if any) would affect the proposed project. SCAQMD informed staff that drag strips are classified as "non-stationary" sources of emissions and are therefore not subject to any air related regulations or requirements.

It is staff's opinion that the proposed land use is appropriate for the location and can coexist with surrounding land use providing it is managed properly and proves not to be disruptive to businesses or residences within the area. In order to ensure compatibility, staff is recommending that the conditions of approval attached hereto as Exhibit "2" be imposed on Unclassified Use Permit 01-47501.

Roger Derda
Community Development Director

Attachments: Exhibit "2": Conditions of Approval

Exhibit "2A": Engineering Department attachment to Engineering Department Condition #A1.
Exhibit "3": "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer dated 3/19/01. (Under Separate Cover)
Exhibit "4": "Community Noise Impact Review of Proposed "Drag City" Race Track prepared by County of Riverside Department of Health / Office of Industrial Hygiene dated 6/20/01. (Under Separate Cover)
Exhibit "5": "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates dated March 6, 2001. (Under Separate Cover)
Exhibit "A": Site Plan / Phasing Plan
Exhibit "B-1": View – Main Entrance & Ticket Booths
Exhibit "B-2": View – Main Gate Entrance / Ticket Booths
Exhibit "B-3": View – Center of Track – Looking back toward Starting Line and Control Tower
Exhibit "B-4": View – Phase II North side of Track Concessions, Restrooms & Dyno Facility
Exhibit "B-5": View – Outside of Track Retaining Wall
Exhibit "B-6": View – Phase #1,2, & 3 / Aerial view of Track Facility looking southwest
Exhibit "B-7": View – Phase #1,2, & 3 / Aerial view of Track Facility looking northwest
Exhibit "B-8": View – Phase #1 & 2 / Control Tower and Track Bridge over Staging Lanes

ATTACHMENT 5

August 7, 2001

City Council Meeting
August 14, 2001

TO: Honorable Mayor and City Council

FROM: Community Development Director

PUBLIC HEARING

SUBJECT: **UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.**

RECOMMENDATION: The City Council approve Unclassified Use Permit 01-47501 subject to the recommended findings and attached conditions of approval.

RECOMMENDED MOTIONS:

(1) **Environmental Documents:**

"The City Council finds that approval of Unclassified Use Permit 01-47501 will not have a significant effect on the environment and therefore adopts a Mitigated Negative Declaration as proposed by staff; the City Council directs staff to file a Notice of Determination in accordance with the City's Environmental Guidelines".

(2) **Unclassified Use Permit:** (options for the City Council to approve, continue, or deny the application):

Option 1 (Approval)

"I move the City Council approve Unclassified Use Permit 01-47501; A request to establish a professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue subject to the findings and conditions of approval contained in staff's report dated August 7, 2001".

Option 2 (Continue)

"I move the City Council continue the public hearing regarding Unclassified Use Permit 01-47501 to its August 28, 2001 meeting".

Option 3 (Denial – City Council will need to make findings)

174

00418

"I move the City Council deny the request for approval of Unclassified Use Permit 01-47501 on the following basis: (Council will need to make its findings)

FINDINGS: (If the City Council chooses to approve the permit)

(a) The proposed use is permitted subject to an Unclassified Use Permit within the land use district and complies with all of the applicable provisions of the Banning Ordinance Code;

(b) The proposed use would not impair the integrity and character of the land use district in which it is to be located;

(c) The subject site is physically suitable for the type and intensity of land use being proposed;

(d) The proposed use is consistent with the General Plan;

(e) The proposed use is compatible in scale, mass, coverage, density, and intensity with all adjacent land uses and/or land uses presently on the subject property;

(f) There are, or will be, adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;

(g) There will be adequate provisions for public access to serve the subject proposal;

(h) There will not be a harmful effect upon desirable neighborhood characteristics;

(i) There will not be significant harmful effects upon environmental quality and natural resources;

(j) The negative impacts of the proposed use are mitigated; and

(k) The proposed location, size, design, and operating characteristics of the proposed use would not be detrimental to the public interests, health, safety, convenience, or welfare of the City.

(l) The Unclassified Use Permit is a permit that can be subject to revocation.

JUSTIFICATION: The subject land use at the proposed location is appropriate in that the noise it generates is compatible with airport operations and manufacturing zoned properties in proximity to the use. By integrating the recommended conditions of approval into the project approval, the proposed use should not pose any land use problems.

BACKGROUND/ANALYSIS: The Planning Department is in receipt of a request from All American Racing, LLC ("Drag City"), to establish a professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. The project proponent anticipates that drag racing will occur at the site approximately 40 weeks annually.

The proposal comprises the development of two (2) vacant / unimproved parcels totaling approximately 59 acres. The west most parcel (Parcel "1") is located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue and is situated east of and adjacent to the Deutsch Company's "park". Parcel "1" is approximately 39 acres in size and is "split zoned" in that the north half of the subject parcel is zoned AP-3 (Airport Facilities) while the south half of the subject parcel is zoned AP-5 (Airport Commercial / Industrial). Parcel "2" is located east of and adjacent to Parcel "1"; Parcel "2" is approximately 20 acres in size, is owned by the City and is zoned AP-3.

It should be noted that for the exception of some residential agricultural (RA) zoned properties located south of Charles Street, all of the properties located east of Hathaway Street, north of Charles Street, south of the Freeway and west of City Limits maintain airport zoning designations. Residential structures are prohibited from being located within airport zones and any existing residences are considered legal non-conforming.

The Banning Ordinance Code recognizes that race tracks (and similar land uses – i.e., dragstrips) possess "...characteristics of such unique and special form as to make impractical their being included automatically in any classes of use as set forth in the various zones..." therefore, the authority for the location and operation of this type of use is subject to the review and issuance of an "Unclassified Use Permit". The Unclassified Use Permit requires public hearings before both the City's Planning Commission and City Council.

Consistent with provisions contained in the City's Code (Article 12 - Unclassified Uses), it is possible to establish race tracks in any zone district in the City excepting the City's residential zone districts (RA, R-1, R-2 and R-3). The regulations for race tracks relating to yard requirements (setbacks) and height requirements are identical to the Zone District(s) in which the land use would be located; in this instance, the City's AP-3 and AP-5 Zone Districts. With respect to off-street parking requirements, the City's Code stipulates that the City Council is responsible for determining the number of required spaces.

The project comprises three (3) phases of development with the majority of the more significant improvements occurring during Phase I. The following is a summary description of the improvements associated with each phase:

PHASE I includes: 1) the establishment of an approximate 2700 lineal foot asphalt paved drag strip that is located in the northern section of Parcel "1" and which bisects Parcel "2"; 2) the establishment of a paved pit area, staging area/return road, staging lanes,

"burnout" box, shut down area and sand trap; 3) establishment of a twelve- (12) foot high noise barrier wall to be located approximately 100 feet west of the starting line; 4) construction of a two-story control tower (875 square feet per floor – total 1,750 square feet) located southwest of the track's "start line"; 5) the establishment of a portable fuel depot, 150 square foot storage shed and trash enclosure in the northeast corner of Parcel "1"; 6) landscaped entrance; 7) the construction of a 625 square foot restroom and 1,125 square foot concession building to be located south of the west most located grandstand; 8) development of an approximate 2,375 square foot picnic area adjoining the restroom facilities; 9) the establishment of 1,136 paved on-site parking spaces to be located in the southwest portion of Parcel "1"; 10) the construction of two (2) spectator stands comprising 19 rows each with a total bench seating capacity of 3,200 (1,600 seats each) to be located parallel and on the south side of the drag strip;

PHASE II includes: 1) the establishment of 1,723 paved on-site parking spaces to be located in the southeast portion of Parcel "1"; 2) construction of a "pedestrian bridge" to be located north of and adjacent to the "staging lanes"; 3) the development of two additional grandstands comprising 1600 seats each (3,200 total); one to be located on the north side of the drag strip in proximity to the "staging lanes", the second grandstand to be located north of and adjacent to the northeast portion of the picnic area; 4) 1,125 square foot concession building and 625 square foot restroom building to be located north of and in proximity to the grandstands; 5) establishment of Musco non-glare lighting.

PHASE III includes: 1) the establishment of two additional grandstands (3,200 seats) on the north side of the drag strip on Parcel 1; 2) development of a "pit area on Parcel 2 north of the drag strip "shut down" area; 3) the establishment of 840 "overflow" paved on-site parking spaces on Parcel 2 to be located south of the drag strip "shut down" area; 4) construction of a 3,000 square foot garage and dyno facility; 5) development of above-ground fuel tanks in northwest corner of property (will replace the portable fuel depot).

For the exception of the placement of the drag strip and shut down area, Phase I development is concentrated on the west most parcel (Parcel "1"); the entrance / ticket booths are located in close proximity to the west property line approximately mid-point on Parcel "1".

The following is an overview of the proposed operation when completely "built-out":

Types of Cars Involved: 1) "Brackets" – a general designation of the typical car run at the track. All are gasoline powered and may run with or without mufflers. When muffled the cars are sometimes called "street legal"; 2) "E.T. Sportsman" - a faster version of Bracket cars; 3) "Bracket Combo" – Brackets and E.T. Sportsman combined; 4) "Nitro Cars" – Nitromethane powered dragsters; 5) "Pro-Mods / Al" – Gasoline or Alcohol / Nitrous-Oxide fuel cars.

Activities / Programs: 1) "Test & Tune" (Muffled cars); 2) "E.T. Sportsman" (Muffled cars); 3) "Drag Fest" (Unmuffled cars – Bracket Combo); 4) "Specialty" (Unmuffled cars –

177

00421

138

Nitro cars, Pro-Mods/Al, Brackets); 5) "Super Show" (Unmuffled cars – Brackets, E.T. Sportsman, Pro-Mods/Al, Nitro cars, Jet Car).

Schedule of Operations:

1) Test & Tune (80 days)
   300 race cars per event /100 spectators per event
   Friday 4pm-10pm
   Saturday 10am-10pm

2) ET Bracket Racing (30 days)
   300 race cars per event /1000 spectators per event
   Saturday 10am-10pm
   Sunday 12am-5pm

3) Special Events (10 days)
   100 race cars per event /2500 spectators per event
   Saturday 10am-10pm
   Sunday 12am-5pm

4) Super Event / Super Show (1)
   100 race cars per event /10,000 spectators per event
   Saturday 10am-10pm

Seating: A total of six (6) Grandstands (1600 seats each = 9,600 seats total). All Grandstands that will be located on the south side of the drag strip will be handicap accessible. All stands have a solid metal underside and solid backside (which will assist in attenuating noise); once placed, they will extend the full length of the 660-foot operating section of the track.

Off-Street Parking: A total of 3,949 spaces. (Phase I – 1,386; Phase II- 1,723; Phase III- 840). 69 handicap spaces are being provided (included in the total 3, 949 spaces).

Landscaping: 6.75 acres (294,000 square feet). Includes Picnic Area, 30-foot landscape strip abutting the entire Westward Avenue street frontage, 50-foot wide landscape strip located south of and adjacent to the drag strip, and a 50-foot wide landscape strip (tapering to 25-feet wide) located north of and adjacent to the drag strip.

Lighting: Non-glare "Musco Lighting" will be established during Phase II development comprising 13 metal halide pole lights ranging in heights of 60 and 70 feet (Refer to additional discussion in this report).

Building Construction: Building construction utilizes decorative block and comprises a total of 6500 square feet (Restrooms – 1,250 square feet; Concession buildings 2,250 square feet and garage / dyno facility – 3,000). (Phase I - 625 square foot restroom and 1,125

square foot concession building – Total 1,750 square feet; Phase II - 625 square foot restroom, 1,125 square foot concession building and 3,000 square foot garage and dyno facility - Total 4,750 square feet).

Restrooms: Two buildings comprising 625 square feet each (total – 1,250 square feet).

Trash: Two trash bins with masonry enclosures shall be located in the northwest corner of Parcel "1". For larger events, portable bins will be brought in and arranged throughout the facility.

Security: Security personnel will comprise off-duty law officers or private security guards from security firms. Security will vary depending on the type of event. The majority of events (96%) are weekly and will only require 1-4 security personnel. Larger events may require up to a maximum of 10 personnel.

Hours of Operation: Varies - primarily Friday, Saturday & Sundays (refer to "Schedule of Operations" section).

Medical: Each event will have one ambulance and a "safety crew". The safety crews can handle anything from driver extrication from vehicles, fires and track maintenance. Additionally, Mercy Medical helicopters are located in close proximity to track events.

Staff identified that the primary planning considerations associated with this proposal would be the potential impacts associated with noise, traffic, light and air. Staff required the project proponent submit an acoustical and traffic study (attached Exhibits "3" & "5") to identify potential adverse impacts associated with these two considerations. Staff relied on the services of outside consultants to review the project proponent's studies and provide their conclusions and recommendations.

Noise:

On March 19, 2001, the project proponent's consultant, Gordon Bricken & Associates / Acoustical & Energy Engineer, prepared a "Revised City Sound Study – City of Banning" for the project proposal (Exhibit "3"). The Planning Department contracted with the County of Riverside, Department of Public Health / Office of Industrial Hygiene to review Mr. Bricken's study, which determined the following (Exhibit "4"):

> "After a thorough review of the proponents written noise report, the City Noise Ordinance and General Plan, and after conducting noise monitoring at an actual Drag City event (held at Banning Airport on April 8, 2001, we conclude the following:
>
> - **The project, which is located within an industrial zone, will comply with the City's General Plan Noise Element.**

179

- Although the City's Noise Ordinance defines the lowest ambient noise level for commercial/industrial zoning, it does not set predetermined noise limits on commercial / industrial projects. Instead, it allows a project-specific noise standard to be developed and incorporated into the project's development agreement.

- A reasonable noise standard can be developed for this project. We **recommend using a 75db(A) 10 minute Leq as the standard for racing events.** We also recommend conditioning the project such that no track activities occur between 10:00 p.m. and 7:00a.m.

- Finally, we recommend conducting a series of post-construction noise monitoring studies to ensure that all the various track operations comply with this standard." (Excerpted from the "Summary" page of the analysis provided by County of Riverside Department of Health Office of Industrial Hygiene – dated June 20, 2001) – (Exhibit "4").

For purposes of further reducing noise related impacts the project will include the establishment of a twelve- (12) foot high wall to be located approximately 100 feet west of the starting line. The wall will extend approximately 125 feet north and south of the centerline of the track.

Importantly, the noise measurements that were acquired from the actual drag race event indicated that the City's noise standards were not exceeded even without the incorporation of any of the sound attenuation devices (i.e., the 12-foot high block wall) identified to be established as part of the development of the proposed project. It can be reasonably assumed that noise levels will be further reduced subsequent to the 12-foot high sound barrier wall being established.

To further ensure that the sound limitations contained in the City's Code are not exceeded, cars that run the track in ten seconds will be sequenced at about 30 second intervals while cars that run faster will be sequenced at greater intervals. It should be noted that 96% of all vehicle "runs" would involve cars equipped with mufflers; muffled cars produce a minimum of 10dba of sound reduction when compared to non-muffled cars.

Traffic:

A traffic study was compiled for the project by the applicant's consultant Katz, Okitsu & Associates (Exhibit "5"); the Public Works Department's consultant Mr. Peter Liu reviewed the study and incorporated his comments and recommendations. The traffic study revealed that the following recommendations be included as components to the development of the project:

- Barbour Street will need to be extended to the vicinity of the project;

- The parking lot layout/access will need to be revised to provide adequate circulation;
- Hathaway Street and Westward Avenue will need to be widened to accommodate a 40 foot wide travel way;
- A traffic monitoring plan, including necessary signage for events, will need to be developed;
- Traffic calming measures will need to be implemented on residential streets such as Barbour Street.

Lighting:

Lighting for the facility will comprise 13 non-glare Musco fixtures comprising metal halide pole lights ranging in heights of 60 and 70 feet. For the exception of a 70-foot high pole light to be established northwest of the staging lanes (in proximity to the pedestrian bridge), the remaining 12 light fixtures are concentrated on the south side of the dragstrip. Six of the light fixtures (70 feet high) are located between the control tower and approximately 250 feet east of the finish line, while the remaining six light fixtures (60 feet high) extend further east in alignment with the terminus of the landscape area depicted on the phasing plan.

Staff's concern with the proposed lighting is the heights of the pole structures. The Zone District in which the lights would be established stipulates a height limitation of 35 feet, with additional height possible subject to the processing of a Conditional Use Permit. While the Unclassified Use Permit allows the discretion to grant the additional height, staff's concern is whether the pole structures would interfere with airport operations and pose safety considerations. Staff has been advised by the Riverside County Airport Land Use Commission (ALUC) that it will need to review the proposed heights of the pole lights to determine if there would be any operational or safety concerns. The requirement to forward this component of the proposal to the ALUC for its consideration has been incorporated into staff's recommended conditions of approval.

Air:

In evaluating any potential negative impacts relating to "air", staff contacted the South Coast Air Quality Management District (SCAQMD) to determine what requirements (if any) would affect the proposed project. SCAQMD informed staff that drag strips are classified as "non-stationary" sources of emissions and are therefore not subject to any air related regulations or requirements.

It is staff's opinion that the proposed land use is appropriate for the location and can coexist with surrounding land use providing it is managed properly and proves not to be disruptive to businesses or residences within the area. In order to ensure compatibility, staff is recommending that the conditions of approval attached hereto as Exhibit "2" be imposed on Unclassified Use Permit 01-47501.

At its meeting held on July 3, 2001, the City's Planning Commission took the following action:

ACTION (RUSSO/ESCANDEL): A motion was moved, seconded and carried that the Planning Commission approve Unclassified Use Permit #01-47501; a request to establish a professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue subject to the findings and conditions of approval contained in staff's report dated June 28, 2001.

(Motion carried, 5-0)

RECOMMENDED BY:

Roger Derda
Community Development Director

REVIEWED BY:

Don Foster
City Manager

Attachments: Exhibit "2": Conditions of Approval
Exhibit "2A": Engineering Department attachment to Engineering Department Condition #A1.
Exhibit "3": "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer dated 3/19/01. (Under Separate Cover)
Exhibit "4": "Community Noise Impact Review of Proposed "Drag City" Race Track prepared by County of Riverside Department of Health / Office of Industrial Hygiene dated 6/20/01. (Under Separate Cover)
Exhibit "5": "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates dated March 6, 2001. (Under Separate Cover)
Exhibit "6": Environmental Checklist & narrative
Exhibit "7": Proposed Mitigated Negative Declaration (Environmental Document)
Exhibit "A": Site Plan / Phasing Plan
Exhibit "B-1": View – Main Entrance & Ticket Booths
Exhibit "B-2": View – Main Gate Entrance / Ticket Booths
Exhibit "B-3": View – Center of Track – Looking back toward Starting Line and Control Tower
Exhibit "B-4": View – Phase II North side of Track Concessions, Restrooms & Dyno Facility
Exhibit "B-5": View – Outside of Track Retaining Wall

192

Exhibit "B-6": View – Phase #1,2, & 3 / Aerial view of Track Facility looking southwest

Exhibit "B-7": View – Phase #1,2, & 3 / Aerial view of Track Facility looking northwest

Exhibit "B-8": View – Phase #1 & 2 / Control Tower and Track Bridge over Staging Lanes

183

00427

144

CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the Planning Commission's approval (expiration date to be July 3, 2002). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

4. The project proponent shall submit application(s) and pay required processing fee(s) for site plan review and design review for each phase of development associated with the project.

5. The maximum height of buildings shall not exceed the maximum allowable height for the zone district(s) in which the project is located.

6. The project proponent shall submit a revised fully dimensioned parking plan depicting the size and location of all standard sized, compact and handicap parking stalls. The number of handicap parking stalls shall be provided consistent with the requirements outlined in the Building Department conditions.

7. A lighting plan for the parking area shall be submitted to the City's Planning Department for review and approval. All outdoor lighting shall be hooded, designed and located such that light and glare shall not reflect onto adjoining properties or public rights-of-way. Outdoor lighting within parking areas shall be installed prior to any evening races occurring; the height of light poles shall be subject to the review and approval of the Airport Land Use Commission (ALUC).

8. For each phase of development the project proponent shall provide the following restroom improvements: Men's restroom – 11 water closets (half of which may be urinals); Women's – 18 water closets (total number for all three phases: Men's – 33; Women's – 54).

9. Prior to construction of any free standing signs or placing any signs that are visible from the public right of way, the project proponent must complete all required Planning Department applications, pay the City's processing fees, and receive approval.

10. Project proponent shall submit detailed landscape and irrigation plans to the City's Planning Department for review and approval. Landscape and irrigation improvements along public right of ways shall be provided in conjunction with off-site improvements required by the City's Engineering Department. Landscape and irrigation improvements not associated with public right of way improvements shall be established in conjunction with each phase of development as outlined in the project proponents' development phasing plan. All landscaping areas shall be maintained in a viable growth condition throughout the life of Unclassified Use Permit 01-47501.

11. Prior to final inspection on any phase of development, the project proponent shall have installed a masonry trash enclosure for the required on-site trash receptacle. Said trash receptacle shall be constructed of solid masonry, enclosed on three sides, 6 feet in height, 8 feet in width, and 5 feet in depth. The location of the trash receptacle and enclosure shall be subject to the review and approval of the Planning Department.

12. All necessary measures to control dust shall be implemented by the developer during construction.

13. Project proponent shall be responsible for mitigating any/all project related noise impacts consistent with the statements, recommendations and conclusions contained in the document dated June 20, 2001 entitled "Community Noise Impact Review of Proposed "Drag City" Race Track that was prepared on behalf of the City of Banning Planning Department by County of Riverside Department of Health / Office of Industrial Hygiene (Exhibit "4") that responds to the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3"). Prior to any drag events occurring on the subject property, the project proponent shall erect a 12-foot high wall approximately 100 feet west of the track's starting line. Said wall shall extend 125 north and south of the centerline of the track.

14. For purposes of sound attenuation, and so as to not exceed the sound limitations contained in the City's Code for the zone district in the which the events will occur, cars shall be muffled to the extent possible and run at the intervals identified in the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3").

15. In the event the City receives noise related complaints from any occupant of a residence within a three mile radius of the project, the project proponent or his successors-in-interest may be required to submit noise monitoring reports as determined by the City's Building and Safety division as part of a code enforcement action. Upon written notice from the City's Building and Safety division requiring such a report, the project proponent or his successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Building and Safety division, unless more time is allowed through written agreement by the Building and Safety division. The noise monitoring report shall be reviewed by the County of Riverside Department of Health / Office of Industrial Hygiene or a qualified acoustical engineer possessing qualifications acceptable to the City's Planning Department. The project proponent or his successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this review prior to commencing the required report.

16. Hours of operation shall coincide with the information provided to the City in the acoustical report prepared for the project and shall conform with any recommendations or conditions identified by the County of Riverside Department of Health / Office of Industrial Hygiene to mitigate noise.

17. The project proponent shall be prohibited from holding events on the second Saturday of June and the second Saturday of December of each calendar year excepting instances where the project proponent is able to obtain written approval in advance from the adjoining Deutsch Company (or their successor-in-interest) stating they have no objections to drag strip related events on the June and December dates identified herein. Written verification of the Deutsch Company's

authorization shall be submitted to the Planning Department a minimum of seven (7) days prior to the aforementioned dates.

18. Project proponent shall mitigate all traffic related impacts associated with implementation of Unclassified Use Permit 01-47501 as identified in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

19. At time of issuance of building permits, the project proponent shall pay all required City mitigation fees in effect at that time, including but not limited to: police, fire, traffic control, general facilities, school, park land, etc.

20. Annual "super events" / "super shows" (defined as up to 100 race cars per event with up to 10,000 spectators per event) shall be subject to the processing of a "special events" application. The project proponent shall submit a completed special events application to the City for its review a minimum of sixty (60) days prior to any proposed "super event" / "super show". The project proponent shall be responsible for fulfilling all conditions of approval attached to said permit in order to conduct such event.

21. In the event the use hereby permitted ceases operation for a period of one (1) year or more, Unclassified Use Permit 01-47501 shall be subject to revocation.

Engineering Department:

Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions:

A. Phase I:

1. Obtain the necessary dedication of right-of-way required to construct the extension of Barbour Street, east of Hathaway Street to the westerly boundary of the project site as depicted on attached Exhibit "2A".

2. Submit Street Improvements Plans for the extension of Barbour Street to the west boundary line of the project site. The plans shall be per the City of Banning standard and shall be prepared by a Registered Civil Engineer.

3. Submit a site plan/grading plan prepared by a Registered Civil Engineer to the City for review and approval, as applicable. All grading shall conform with the Uniform Building Code's (U.B.C.) latest edition and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soils report prepared by a Registered Civil or Geotechnical Engineer, along with the grading plan.

   Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements for storm water runoff during construction, and thereafter during normal

work operations. This includes the plan and installation of the oil/grease separator at the pit area.

4. Submit a Drainage/Hydrology Study and a Hydraulic Analysis for both undeveloped and developed conditions to the City for review and approval. Demonstrate that runoff flows will not impact surrounding properties and that all street flow will drain into the public streets. All of the drainage from the lot shall drain into the public right-of-way or, a Drainage Easement Acceptance letter from the adjacent property owners shall be obtained.

5. The plan check fee for all of the improvement plans shall be paid as per the Fee Schedule established by the City of Banning when the plans are submitted to the City for review and approval.

6. Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: the Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

7. The proposed project must be in compliance with the City's adopted Airport Master Plan.

8. Submit a copy of the Preliminary Title Report.

9. Pay all applicable fees such as water and sewer connection fees.

Prior to the issuance of the Certificate of Occupancy, the Developer shall meet the following conditions:

B. Phase I:

1. Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

2. Construct the necessary infrastructure improvements to provide utility including: 6" sewer lateral to connect to the existing sewer main on Westward Avenue; 8" water line (cement mortar-lined and wrap steel pipe) on Barbour Street from Hathaway Street to the subject property; and an 8" water line on-site (cement mortar-lined and wrap steel pipe) connecting to the existing line on Westward Ave. thereby creating a loop water system.

3. The developer shall repair any existing areas of the offsite improvement that may become damaged during the construction.

4. The developer shall obtain a final certification from their engineer to confirm the said improvement is in compliance with the approved plans.

C. Phase II:

1. Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees.

2. Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. A Public Works permit shall be obtained prior to commencement of any work within the right-of-way, and a Class "A" Contractor's License is requested to construct any improvements within the City's right-of-way.

3. Ensure that Best Management Practices (BMPs) are followed as per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations.

D. Phase III:

1. Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property.

2. Prepare Street Improvement Plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. Plans shall be prepared by a Registered Civil Engineer. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

3. Pay all applicable plan check fees.

Electric Department:

1. Project proponent shall have its project engineer provide electric load calculations to the City's Electric Department for review and approval. The electric load calculations shall indicate the size of service requested and voltage required.

2. Project proponent shall submit a plot plan that depicts the location of the electrical service panel to the City's Electric Department for review and approval.

3. The project proponents plot plan depicting the electrical infrastructure (pull boxes, conduit runs, etc.) shall be subject to the review and approval of the City's Electric Department.

4. Street lighting to be located on Barbour Street and Westward Avenue shall be subject to review and approval by the City's Electric Department.

5. For Phase I development of the project, the project proponent shall be subject to providing electrical utility easements along the west portion of said Phase consistent with the requirements of the City's Electric Department.

6. The project proponent shall pay all costs of material and labor associated with the approved electrical plans and load calculations as determined by the City's Electric Department.

Building Department

1. The proposed concession stands, spectator stands, picnic area, entrance/ticket booths, restrooms and buildings shall be handicap accessible and shall meet the "accessibility requirements" contained in Chapter 11 of the California Building Code.

2. For Phase I development, the project proponent shall provide 24 handicap-parking spaces. For Phase II development the project proponent shall provide 28 handicap parking spaces and for Phase III development the project proponent shall provide 17 handicap parking spaces.

Fire Department:

1. The project proponent shall be responsible for installing six (6) fire hydrants. Two hydrants to be located in proximity to the concession areas must be the City standard James Jones model 3765 or approved equivalent; four hydrants be James Jones Model 3700 or approved equivalent, capable of producing 1500gpm for a 2-hour duration. As a minimum, Phase I development will require the installation of one fire hydrant to be located in the northwest portion of Parcel "1". A plan depicting placement of said fire hydrant(s) shall be submitted to the Fire Department for review and approval. Subsequent placement of the remaining fire hydrants will be required to support each phase of development. All subsequent placement shall be subject to the approval of the Fire Department and Public Works Department.

2. Project proponent shall provide a 20-foot paved access road to the north side of the drag strip with direct access to the vendor facilities and grandstands.

3. For Fire Department emergency access into concession and grand stand areas, the project proponent shall provide minimum 6 foot wide access gates consistent with the Fire Department's requirements.

4. The proposed fueling station to be located in the northwest corner of Parcel "1" shall be UL listed for above ground fuel storage and dispensing, and is subject to the review and approval of the Fire Department. Additionally, the project proponent shall:
    - Provide secondary spill containment
    - Submit a landscape-screening plan to the City's Planning Department for review and approval.

5. Ten (10) gallons of Class A foam concentrate must be kept on the premises for Fire Department use. Prior to the issuance of a Building Permit for Phase I development the project proponent must obtain the Fire Department's approval as to the location and conditions for its storage.

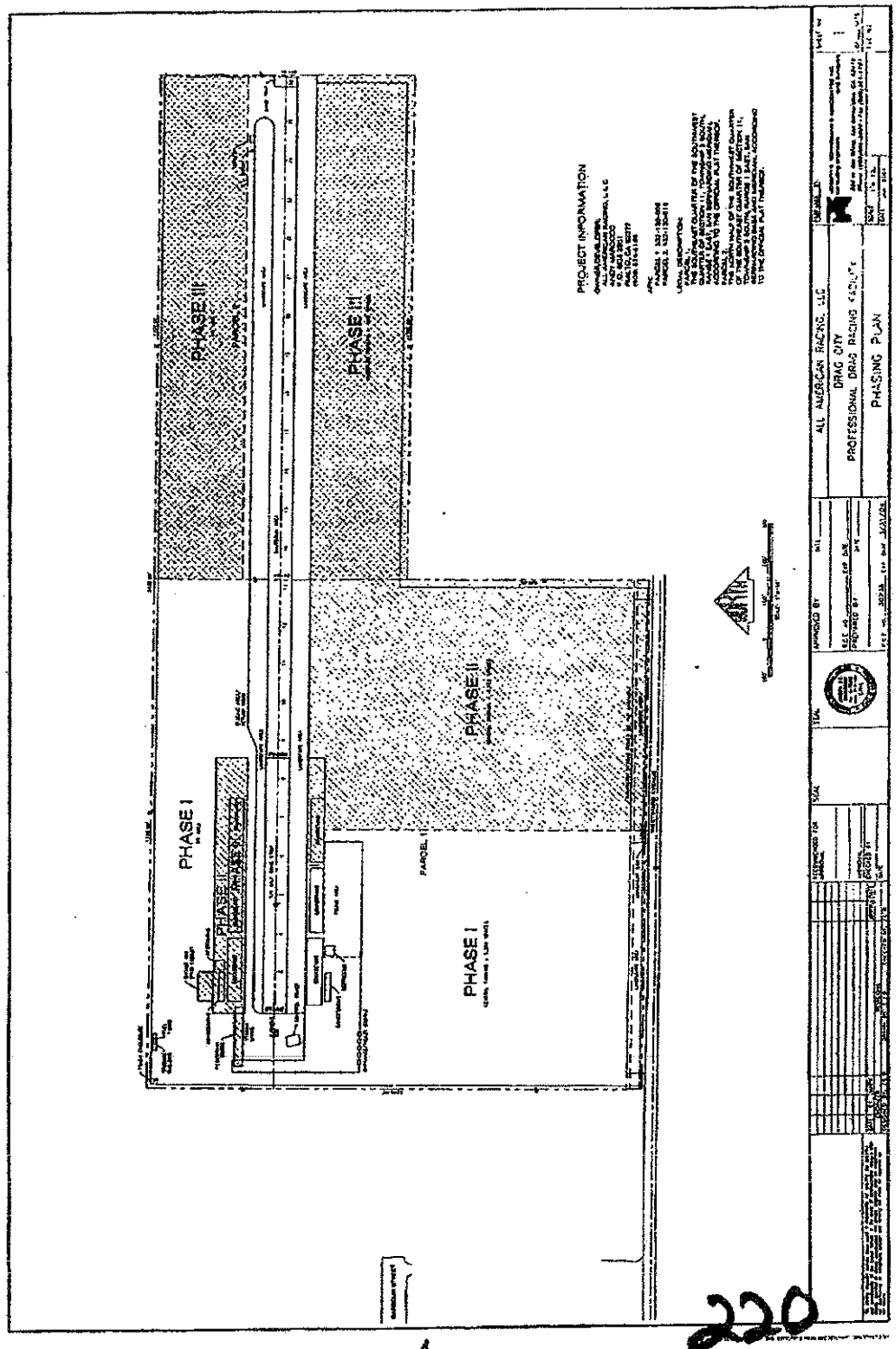
6. The perimeter aisle located adjacent to and parallel to the easterly property line of Parcel "2" (Phase III development), must be a minimum of twenty (20) feet wide.

7. Parking lot design shall be subject to Fire Department Plan Check Review. Turning areas within parking aisles must be designed to accommodate fire engine access.

8. If cooking equipment is proposed to be installed in any building located on-site, automatic fire protection systems will be required for the cooking appliances.

9. If the construction of the proposed garage / dyno facility exceeds 3,000 square feet in area, an automatic fire sprinkler system shall be required.

ATTACHMENT 6



220

EXHIBIT " A "

00464

ATTACHMENT 7

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (909) 922-3128

DEPARTMENT OF
PLANNING
(909) 922-3125

Gave to Vickie 10/17/02

August 31, 2001

Mr. Andy Marocco
C/O All American Racing LLC
PO Box 2201
Rialto, CA 92377

RE: UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.

Dear Mr. Marocco:

At its meeting held on August 14, 2001, the Banning City Council approved the above referenced project subject to the attached conditions of approval.

The City Council has adopted California Code of Civil Procedure Section 1094.6 which defines the time period in which judicial review may be requested for certain final administrative decisions and orders under California Code of Civil Procedure Section 1094.5. Pursuant to California Code of Civil Procedure Section 1094.6(f) the city clerk shall provide notice to any party to a final decision indicating that the time within which judicial review must be sought is governed by California Code of Civil Procedure Section 1094.6.

If you have any questions or need any additional information, I can be reached at (909) 922-3125.

Roger Derda
Community Development Director

Attachment: U.U.P. 01-47501 – Final Conditions of Approval

ATTACHMENT 8

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF BANNING (CITY), THE FEDERAL AVIATION ADMINISTRATION (FAA), THE CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY (AGENCY) AND ALL AMERICAN RACING, LLC (DEVELOPER)

WHEREAS, the City and the Agency have an interest in promoting development in the Redevelopment Project Area of City (the "Project Area") to enhance the economic stability of the City and to provide revenue for the support of City operations, including operation of its airport; and

WHEREAS, 20 acres of vacant property Assessor Parcel Number 532-130-018 (the "Site") is located within the Project Area and is owned by the City under the terms and conditions of a Federal Aviation Grant Contract Number LTFA08-83-C-20122 (the "Grant"); and

WHEREAS, Section 9 of the Special Conditions and Sections 5(a) and (b) of the Assurances of the Grant state that the City shall not dispose of the land being acquired under the Grant by sale, lease or otherwise without the prior approval of the FAA and Section (B)(1) of the Assurances requires that such conditions on transfer of an interest in the Site shall continue indefinitely; and

WHEREAS, All American Racing, LLC (the "Developer") is proposing development of a professional auto racing facility ("Project") within the Project Area; and

WHEREAS, the SITE is a necessary component of the Project in that the Project requires 60 acres of land at a location that mitigates noise impacts to the community. The Developer is able to obtain 40 acres of land from private parties that are in a proper configuration to support the Project. The distribution of public and private land holdings in proximity to the 40 acres is such that only acquisition of the 20 acres of the Site will allow proper development of the Project; and

WHEREAS, the City has 129 acres of vacant land zoned for airport uses, approximately 50 acres of which are owned directly by the City plus an additional 211 acres of vacant land zoned for airport oriented uses; and

WHEREAS, provisions of section 9 of the Special Conditions and sections 5(a) and (b) and 31 of the Assurances of the Grant contemplates FAA approval of the Lease or sale of the Site for non-aviation purposes under the condition that such action will protect, advance, or benefit the public interest in civil aviation ; and

WHEREAS, the City, and the Agency agree that public facilities installed to benefit the Project and revenues derived from the lease or sale of the Site, and other intangible benefits, will accrue to the benefit of the airport as a result of the Project;; and

WHEREAS, the City, the Agency and the Developer desire to establish a public/private agreement for the purpose of effectuating said Project; and

WHEREAS, the City, the Agency, and the Developer (sometimes jointly referred to herein as the "Parties") wish to enter into a binding memorialization of the points of their agreement in this memorandum of understanding ("MOU") pending the preparation and processing of a Development Agreement (the "Agreement") in which shall be fully set forth the benefits and obligations of the parties, each to the other; and

WHEREAS, the Parties do hereby ask for approval by the FAA of the substantial terms of such Agreement as set out in this MOU; and

WHEREAS, the final form of the Agreement shall be subject to all terms and conditions required for approval by the FAA and shall be formally processed as required by the rules and regulations of the FAA.

NOW, THEREFORE, the parties agree on the undertakings and agreements set forth in this MOU:

A. Undertakings and Agreements of the City

The City undertakes and agrees that it shall:

1) Lease (the "Lease") the Site to the Agency on substantially the following terms:

a. The Lease shall be for an initial term of five (5) years. The Lease shall thereafter be subject to renewal on the same terms and conditions for an additional five (5) year term. The Lease shall be written in contemplation of 3 such renewals for a maximum term of twenty (20) years.

b. The rental rate shall be twelve thousand five hundred dollars ($12,500) per year. The rent shall be applied to the operation and improvement of the airport. Or, if the Site is approved by FAA subject to the undertaking set forth below, the rental rate may be applied to the purchase.

c. Any renewal shall be subject to the following procedures for obtaining the approval of the Federal Aviation Administration (the "FAA"):

1. 180 days prior to scheduled date of expiration of the Sublease between the Agency and the Developer for the Site (the "Sublease"), the Developer shall notify the Agency in writing of its intent to renew.

2. Within 30 days following date of receipt of the intent to renew notice from the Redeveloper, the Agency shall notify the City through the City Clerk of its intent to renew under its Lease with the City.

3. The City Council of the City shall within 30 days following the date of City's receipt of notice from the Agency make its findings regarding the continuing status of the Site as required under the Grant.

4. Within 15 days following the date of the findings, City shall deliver the findings to the FAA and the Agency.

5. City finds that use should continue:

If it is the finding of the City that the Site remains in such status regarding the use as to permit the continuance of the Lease, and the FAA does not within 90 days communicate its disagreement with such findings to the City, the Lease shall be deemed to be renewed and the Agency and the City shall execute a memorandum to that effect which shall become an addendum hereto.

6. The FAA shall not fail to approve the renewal of any Lease except upon a finding that within the time specified in the Lease, the Site will be immediately required for aviation uses.

7. If the FAA, contrary to the findings of the City, concludes that the Site has undergone such a change in status as to be inconsistent with the renewal of the Lease, the City shall notify the Agency regarding its intent with respect to an appeal of the FAA's decision.

    a. If the City notifies the Agency in writing of its intent to undertake an appeal, this any sublease into which the Agency may have entered may be renewed by the Agency.
    b. Such renewal shall state that it is for a period of 5 years or the period of any appeal taken by the City against the decision of the FAA, whichever comes first.
    c. This provision shall not be deemed to require the City to undertake any appeal nor shall it operate as a limitation on the discretion of the City with respect to

the manner of prosecution or the continuance of the appeal process if undertaken.

8. City finds that use should not continue:

If it is the finding of the City that the Site has undergone such a change in status as to be inconsistent with the renewal of the Lease, the Lease shall thereby be deemed to terminate on the expiration date.

2. Seek FAA Approval of a modification of the Grant to authorize the sale of the property.

3. The City shall put forth maximum effort as determined by the City in its sole discretion, to obtain a mutually agreeable resolution to the land use of the Site for Project.

B. **Undertakings and Agreements of the Developer**

1) The Developer shall Construct the Project in conformance with the terms and conditions of Unclassified Use Permit 01-47501 and the developer agreement anticipated by this MOU. These terms include, inter alia, the requirement for construction of the extension of Barbour Street, east of Hathaway Street to the western boundary of the Project. Also, installation of curb, gutter, sidewalk, street lighting, and driveway approaches along Westward Avenue, fronting the Project. All of such improvements are deemed too advance the public interest in general aviation through improving the usability of the adjacent municipal airport and assisting development of the surrounding vacant properties.

2) The Developer shall be responsible for the acquisition of all the property within the Project Area for Project exclusive of Site. This requirement may be satisfied through the Developer Agreement, obtaining options, purchase contracts, escrows, etc. The Developer will be responsible for the project design, financing, site preparation, pre-construction demolition, construction, leasing, and management of the Project.

3) The Developer may assign a portion of its rights, duties and responsibilities to a third party prior to the execution of the Development Agreement. The Agency shall have final approval of said third party.

4) The Developer shall commence construction of the Project, within one year from the date of execution of the Development Agreement subject to mutual agreement to extend.

5) Shall enter into a sublease with the Agency (the "Sublease") on substantially the terms set forth above for the Lease. Additionally, Redeveloper shall pay compensation for the use of the Site as follows:

A.. The annual rent (the "Base Rental") shall be twelve thousand five hundred dollars ($12,500) per year.

B. The Rental shall be payable annually in advance beginning with the first day of the term of this Sublease; provided that, any payment of Base Rental received by Agency on or before the 10th day of the first day of the term of this Sublease (and each anniversary thereafter) shall be deemed timely paid.

C. In each year in which the Agency certifies that the Developer has met its bench marks for performance as defined in the Schedule of Performance, the Redeveloper shall be entitled to waiver of the subsequent years Base Rent. Said certification shall be made by the Agency in the exercise of its sole discretion.

C. **Undertakings and Agreements of the Agency:**

1). To enter into the Lease with the City for use of the Site.

2). To enter into the Sublease with the Developer for use of the Site.

3). To enter into a Development Agreement with the Developer setting forth terms and conditions for the development of the Site.

D. **Undertakings and Agreements of the FAA**

1. To immediately approve the Lease of the Site by the City to the Agency under terms substantially consistent with the undertakings and agreements set out in section A above.

a. The FAA agrees that it shall not fail to approve any renewal of the Lease except upon a finding that within the time specified in the Lease, the Site will be immediately required for aviation uses.
b. The FAA agrees that it shall not make the finding that the Site will be immediately required for aviation uses except upon the prior receipt by the City of applications for development of all other vacant lands zoned for aviation uses and such applications have been determined by the City in the exercise of its sole discretion, to be economically viable.

2. To expeditiously process a modification of the Grant to permit the sale of the Site. Such sale may be either by the City to itself, to the Agency or

to the Developer. Any such sale shall be subject to such terms and conditions as may be required by law.

E. Mutual Undertakings and Agreements of the Parties and the FAA

1) This agreement shall have a term of 180 days from date of execution by the City unless extended by mutual agreement of the parties, in writing, prior to such date of expiration.

2) The Parties agree to complete and execute a Development Agreement incorporating the points set forth herein above the term of this Memorandum of Understanding. If such Development Agreement has not been executed within said 180-day period, or within such longer period as shall be mutually agreed on by the parties in writing, this Memorandum of Understanding shall expire and shall not thereafter be deemed to set forth the agreement of the parties.

3) The above recitals are incorporated herein by reference and made a part hereof set forth the agreement of the parties.

4) This MOU is by and between Developer and City, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and Developer.

F. Miscellaneous Provisions

1) **Rules of Construction.** The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

2) If there is more than one signer of this Agreement, their obligations are joint and several.

3) **Entire Agreement, Waivers and Amendments.** This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between the parties respecting this Agreement. All waivers of the provision of this Agreement must be in writing and signed by the appropriate authorities of City or of Developer. All amendments to this Agreement must be in writing signed by the appropriate authorities of City and Developer.

4) **Project as a Private Undertaking.** It is specifically understood by the parties that: (a) the Project is a private development; (b) AGENCY has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements pursuant to the provisions of this Agreement or in connection with any subdivision map approvals; and (c) Developer

shall have the full power and exclusive control of the Property subject to the obligations of Developer set forth in this Agreement.

5) **Incorporation of Recitals.** The Recitals set forth above are part of this Agreement.

6) **Captions.** The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

Dated:

CITY OF BANNING

By: _____
John Hunt, Mayor

CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY

By_____
Jan Wages, Chairperson

ALL AMERICAN RACING, LLC

By_____
Andy Marocco, President

Federal Aviation Administration

By:_____

ATTACHMENT 9

CITY OF BANNING

M E M O R A N D U M

DATE: May 23, 2002

TO: Mayor and City Council

FROM: Don Foster, City Manager

RE: May 28th City Council and CRA Closed Session
Memo from City Attorney John Wilson

C: John Wilson, City Attorney
Vickie Burt, Economic Development/Redevelopment Manager

Attached are two (2) memos from John Wilson regarding a proposed MOU with the Federal Aviation Administration (FAA) and All American Racing (AAR) for the purchase/lease of twenty (20) acres of land at the airport. As you know, AAR is seeking use of the land for the development of a drag racing facility. The memos and MOU will be the subject for discussion in closed session at both the Council and the CRA meetings on May 28th. The memos are identical and must be considered by both the Council and the Agency Board.

If you have any questions, please contact John or myself.

CITY COUNCIL MEETING OF
MAY 28, 2002

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: JOHN WILSON, CITY ATTORNEY
SUBJECT: NEGOTIATIONS WITH FEDERAL AVIATION ADMINISTRATION RE: LEASE/PURCHASE OF LAND
DATE: MAY 21, 2002

Recommendation:

Approve submittal of the attached Memorandum of Understanding (MOU) to the Federal Aviation Administration for consideration.

Background:

The Redevelopment Agency has been in negotiations with All American Racing (AAR) for approximately 18 months. The negotiations have been conducted under the guidance of the CRA Ad Hoc Committee. The negotiations have centered on the terms for use of 20 acres of land owned by the City. AAR wishes to use the land to establish a drag strip. That use would be under sublease from the Redevelopment Agency. The Redevelopment Agency must first lease the land from the City.

The land was purchased by the City with money obtained through a grant from the Federal Aviation Administration. As a condition of the grant, the use of the land is currently limited to aviation uses. The grant does provide a procedure by which the land may be leased or sold for other uses. These uses must be found by the FAA to benefit general aviation.

Justification:

The FAA's determination to allow the land to be used for a drag strip is central to the negotiations between the parties at this time. The FAA has a formal procedure for requesting modification of the terms of the grant. However, that process is perceived to be cumbersome and time consuming. Prior contacts with FAA officials have led to the conclusion that a letter from the City requesting the modification would be appropriate. Based on these considerations, this MOU has been prepared. It lays out the core obligations of the parties. The MOU specifies what action we believe the FAA should take, at a minimum, to facilitate the transaction. If the MOU is approved by the City Council and the Redevelopment Agency, it will be forwarded to the FAA. The MOU will then form the basis for negotiations for the modification. The outcome of these negotiations will impact the agreement between the Agency and AAR. After the negotiations, final documents will be presented for the City for approval.

Fiscal Impact:

The MOU proposes that if the land is leased, those lease payments will benefit the airport. The lease contemplated by the MOU is between the Agency and the City. The lease will be for a possible 20 years. Rent will be twelve thousand five hundred dollars ($12,500) per year. The MOU contemplates an agreement under which the Agency recoups some of these rents from AAR, but not all.

The MOU also contemplates a "purchase" of the 20 acres by the City. What is called a "purchase" is, from the FAA standpoint, a conversion of the land to some other asset of benefit to the airport. For purposes of evaluation of this MOU, the City Council asked to use two hundred and fifty thousand dollars ($250,000) as a working figure for the purchase of the 20 acres As a result of negotiations with the FAA, the "purchase" may actually involve a land swap of equal value. The "purchase" may require the commitment of a specified cash flow to airport operations over a period of time. It may otherwise involve having the offsite improvements that AAR is required to build for its project credited as improvements to the airport and therefore a discount against the purchase price.

Prepared by:

John Wilson
City Attorney

Reviewed by:

Don Foster
City Manager

REDEVELOPMENT AGENCY MEETING OF
MAY 28, 2002

STAFF REPORT

TO: HONORABLE CHAIRPERSON AND MEMBERS OF THE BOARD
FROM: JOHN WILSON, AGENCY COUNSEL
SUBJECT: NEGOTIATIONS WITH FEDERAL AVIATION ADMINISTRATION RE: LEASE/PURCHASE OF LAND
DATE: MAY 21, 2002

Recommendation:

Approve submittal of the attached Memorandum of Understanding (MOU) to the Federal Aviation Administration for consideration.

Background:

The Redevelopment Agency has been in negotiations with All American Racing (AAR) for approximately 18 months. The negotiations have been conducted under the guidance of the CRA Ad Hoc Committee. The negotiations have centered on the terms for use of 20 acres of land owned by the City. AAR wishes to use the land to establish a drag strip. That use would be under sublease from the Redevelopment Agency. The Redevelopment Agency must first lease the land from the City.

The land was purchased by the City with money obtained through a grant from the Federal Aviation Administration. As a condition of the grant, the use of the land is currently limited to aviation uses. The grant does provide a procedure by which the land may be leased or sold for other uses. These uses must be found by the FAA to benefit general aviation.

Justification:

The FAA's determination to allow the land to be used for a drag strip is central to the negotiations between the parties at this time. The FAA has a formal procedure for requesting modification of the terms of the grant. However, that process is perceived to be cumbersome and time consuming. Prior contacts with FAA officials have led to the conclusion that a letter from the City requesting the modification would be appropriate. Based on these considerations, this MOU has been prepared. It lays out the core obligations of the parties. The MOU specifies what action we believe the FAA should take, at a minimum, to facilitate the transaction. If the MOU is approved by the City Council and the Redevelopment Agency, it will be forwarded to the FAA. The MOU will then form the basis for negotiations for the modification. The outcome of these negotiations will impact the agreement between the Agency and AAR. After the negotiations, final documents will be presented for the City for approval.

Fiscal Impact:

The MOU proposes that if the land is leased, those lease payments will benefit the airport. The lease contemplated by the MOU is between the Agency and the City. The lease will be for a possible 20 years. Rent will be twelve thousand five hundred dollars ($12,500) per year. The MOU contemplates an agreement under which the Agency recoups some of these rents from AAR, but not all.

The MOU also contemplates a "purchase" of the 20 acres by the City. What is called a "purchase" is, from the FAA standpoint, a conversion of the land to some other asset of benefit to the airport. For purposes of evaluation of this MOU, the City Council asked to use two hundred and fifty thousand dollars ($250,000) as a working figure for the purchase of the 20 acres As a result of negotiations with the FAA, the "purchase" may actually involve a land swap of equal value. The "purchase" may require the commitment of a specified cash flow to airport operations over a period of time. It may otherwise involve having the offsite improvements that AAR is required to build for its project credited as improvements to the airport and therefore a discount against the purchase price.

Prepared by:

John Wilson
Agency Counsel

Reviewed by:

Don Foster
Agency Director

ATTACHMENT 10

DRAG CITY

THE PLACE TO RACE

RECEIVED
JUL - 5

July 5, 2002

Vickie Burt
City of Banning
99 E. Ramsey Street
PO Box 998
Banning, CA 92220-0998

Dear Vickie,

Due to continued project development and negotiations that have taken longer then expected, All American Racing, LLC would like to request that it's Unclassified Use Permit 01-47501 be extended for another year. Again, we would like to thank you and the City for the continued effort to making this project come to fruition.

Sincerely,

Andrew Marocco
President

cc: Chip Wimer, Graves and King LLP/Attorney at Law

PO BOX 197 • Banning, CA 92220
(909) 874-5198 • Fax (775) 942-6312 • www.Drag-City.com

00913

172

ATTACHMENT 11

August 1, 2002

Planning Commission Meeting
August 6, 2002

TO: Honorable Chairperson and Planning Commissioners

FROM: Community Development Director

STAFF REPORT

SUBJECT: **TIME EXTENSION – UNCLASSIFIED USE PERMIT #01-47501 - A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.**

RECOMMENDATION: The Planning Commission support staff's determination granting an additional year in which to meet the conditions of approval that were attached to the above referenced project.

RECOMMENDED MOTION: None (No action is required unless the Planning Commission disagrees with staff's determination).

JUSTIFICATION: Ordinance No. 1200 contains provisions which allows the Community Development Director to grant preliminary extensions of time within which the terms and conditions imposed upon Conditional Use Permits may be extended an additional twelve (12) months for good cause---providing the Planning Commission concurs (the City's Attorney determined that this provision applies to Unclassified Use Permits as well). The Commission has the authority to accept, modify, or reject the Director's determination.

In the event the Director does not receive notification from a Planning Commissioner that he/she objects to the Director's determination within five (5) days following the date of the Planning commission meeting at which the matter is presented, the Director's determination becomes effective. In the event the Planning Commission disagrees with staff's determination, staff will need to set a date and time for the Commission to consider the matter.

BACKGROUND/ANALYSIS: The Planning Department has received a request for an extension of time for the following Unclassified Use Permit:

> A professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. APN's 532-130-008 & 018 (Approved by the Planning Commission on July 3, 2001 and approved by the City Council at its meeting held on August 14, 2001).

26

00916

If granted, this will be the project proponent's first time extension; the City's code provides for a total of three (3) one-year time-extensions.

Mr. Morocco states in his correspondence (Attached Exhibit "3") that:

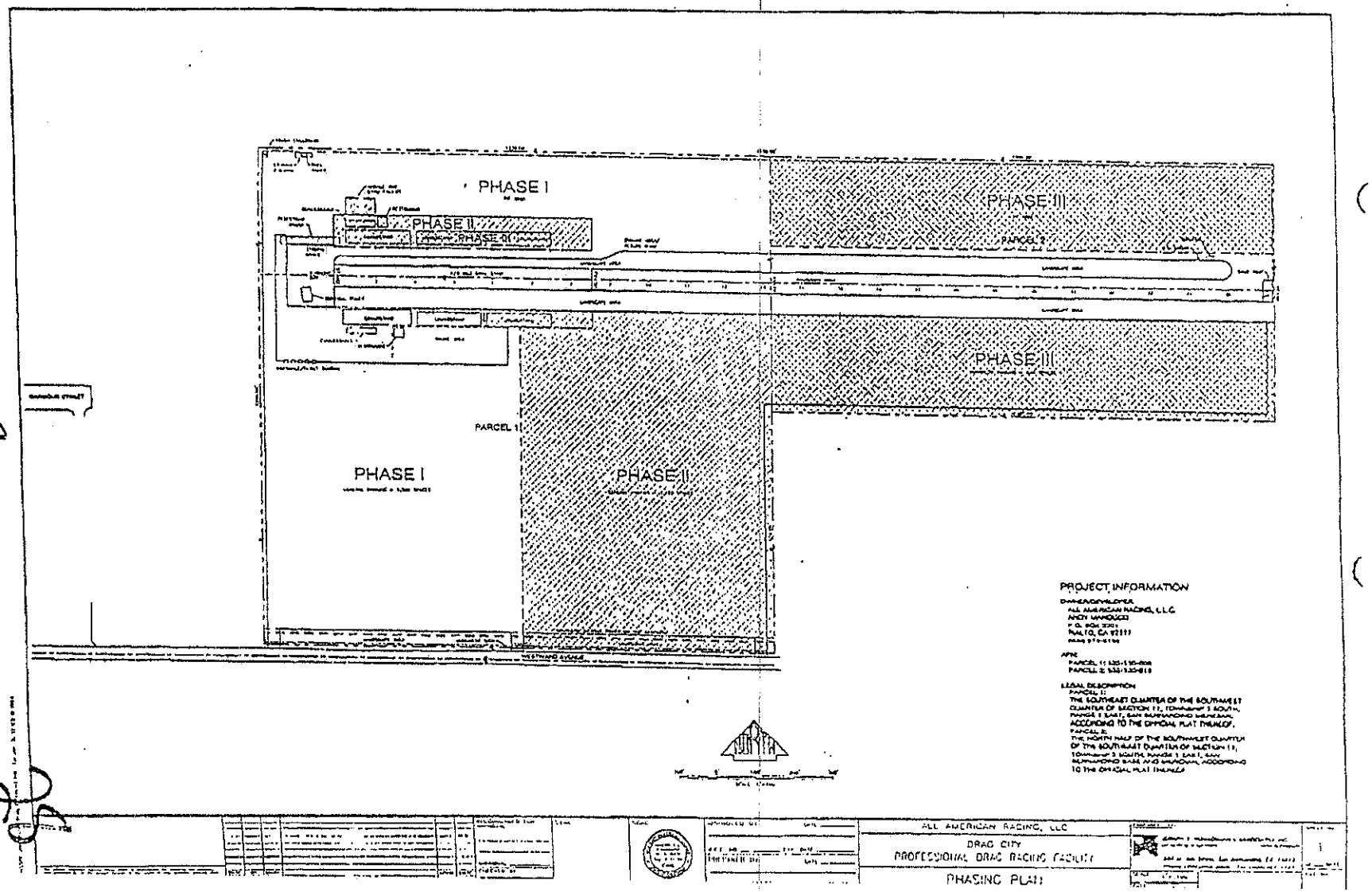
> "...project development and negotiations that have taken longer then expected."

Vicki Burt, the City's Economic Development / Redevelopment Manager, to whom Mr. Marocco directed his correspondence to, verified that there has been substantial due diligence on the part of Mr. Marocco and that she anticipates that development of the drag racing facility should be able to proceed sometime in the near future.

Based upon the project proponent's efforts and progress made to date, it is staff's opinion that the project proponent has presented "good cause" for granting a one- (1) year time extension.

Roger Derda
Community Development Director

Attachments: Exhibit "2" - Site Plan -U.U.P. #01-47501.
Exhibit "3" – 7/5/02 correspondence from project proponent.
Exhibit "4" - Staff report presented to CC at its August 14, 2001 meeting.


PHASE I
PHASE II
PHASE III
PHASE III
PARCEL 2
PARCEL 1
PHASE I
PHASE II
PROJECT INFORMATION
ALL AMERICAN RACING, LLC
DRAG CITY
PROFESSIONAL DRAG RACING FACILITY
PHASING PLAN

ATTACHMENT 12

EXHIBIT E
DEVELOPMENT AGREEMENT

U.S Department of Transportation
Federal Aviation Administration

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

August 2, 2002

Don Foster
City Manager
City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220-0998

Dear Mr. Foster:

Banning Municipal Airport (BNG)
Addendum to Interim Non-Aeronautical Use

This letter is in response to a request by Ms. Vickie Burt for a clearer interpretation of condition 'c' in our letter dated July 31, 2002. Ms. Burt would like the Federal Aviation Administration (FAA) to provide some flexibility for the city of Banning (City) to obtain an extension of the interim-use period beyond the initial five-year term that was just granted to permit the use of 20 acres of airport land for a drag racing facility.

In response to Ms. Burt's request, we provide the following clarification. The auto racing facility that the City and the racing promoter proposed to be built on airport land is envisioned by the parties as a long-term and, possibly, permanent facility. The FAA policy concerning interim use only addresses the temporary use of airport land for non-aeronautical purposes. The policy is not meant to countenance the establishment of permanent non-aeronautical facilities on obligated airport land.

Our previous letter served to convey the FAA's intention to allow time for the City and the racing promoter to seek an alternative course of action that the FAA could approve for the disposition of the 20 acres. As a result, the FAA did not object to the interim use of the 20 acres for up to five years during which time an alternative course of action is to be implemented.

The FAA expects the City to make its best effort to seek a solution within the interim-use period. If, for some unexpected reason outside the control of the City or the promoter, the five-year deadline cannot be met, the FAA may consider the specific circumstances causing the delay. If the City and promoter are making progress towards a permanent solution, the FAA may, based on the merits of the City's good-faith efforts, grant a short-term, interim-use extension during which time the parties will conclude the specific actions needed to bring the land-use matter to a satisfactory conclusion.

As we discussed previously, the City should not expect the FAA to grant successive five-year, interim-use approvals that would allow a non-aeronautical venture to operate at the airport on a permanent basis. The interim-use policy was never intended for such a purpose.

If you have any questions, please call me at (310) 725-3634.

Sincerely,

Tony Garcia
Airports Compliance Specialist

Ellsworth L. Chan, Manager
Safety and Standards Branch

00920

ATTACHMENT 13

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (909) 922-3128

DEPARTMENT OF
PLANNING
(909) 922-3125

August 12, 2002

Mr. Andy Marocco
C/O All American Racing LLC
PO Box 2201
Rialto, CA 92377

RE: TIME EXTENSION - UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.

Dear Mr. Marocco:

At its meeting held on August 6, 2002, the City's Planning Commission was presented with staff's preliminary determination to grant a one-year time extension in which to implement the conditions of approval attached to your above referenced Conditional Use Permit. Consistent with provisions contained in the City's Municipal Code, if the Planning Commission disagreed with staff's preliminary determination, it had five days following staff's determination in which to request the matter be considered by the Planning Commission. The five-day timeframe has lapsed and the Planning Commission did not make such request, this means that your request for a one year time extension has been granted.

Please be advised that the new expiration date for the above referenced Conditional Use Permit is **August 14, 2003.** Attached you will find the Conditions of Approval that were attached to the subject Conditional Use Permit; Condition #1 has been amended to incorporate the change of date into the allowable timeframe to meet the conditions of approval.

If you have any questions regarding this matter, please do not hesitate to contact me, I can be reached at (909) 922-3131.

Sincerely,

Roger Derda
Community Development Director

Attachment: Amended Conditions of Approval

CC: Vickie Burt, Economic Development / Redevelopment Manager

August 1, 2002

Planning Commission Meeting
August 6, 2002

TO: Honorable Chairperson and Planning Commissioners

FROM: Community Development Director **STAFF REPORT**

SUBJECT: **TIME EXTENSION – UNCLASSIFIED USE PERMIT #01-47501 - A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.**

RECOMMENDATION: The Planning Commission support staff's determination granting an additional year in which to meet the conditions of approval that were attached to the above referenced project.

RECOMMENDED MOTION: None (No action is required unless the Planning Commission disagrees with staff's determination).

JUSTIFICATION: Ordinance No. 1200 contains provisions which allows the Community Development Director to grant preliminary extensions of time within which the terms and conditions imposed upon Conditional Use Permits may be extended an additional twelve (12) months for good cause---providing the Planning Commission concurs (the City's Attorney determined that this provision applies to Unclassified Use Permits as well). The Commission has the authority to accept, modify, or reject the Director's determination.

In the event the Director does not receive notification from a Planning Commissioner that he/she objects to the Director's determination within five (5) days following the date of the Planning commission meeting at which the matter is presented, the Director's determination becomes effective. In the event the Planning Commission disagrees with staff's determination, staff will need to set a date and time for the Commission to consider the matter.

BACKGROUND/ANALYSIS: The Planning Department has received a request for an extension of time for the following Unclassified Use Permit:

> A professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. APN's 532-130-008 & 018 (Approved by the Planning Commission on July 3, 2001 and approved by the City Council at its meeting held on August 14, 2001).

If granted, this will be the project proponent's first time extension; the City's code provides for a total of three (3) one-year time-extensions.

Mr. Morocco states in his correspondence (Attached Exhibit "3") that:

> "...project development and negotiations that have taken longer then expected."

Vicki Burt, the City's Economic Development / Redevelopment Manager, to whom Mr. Marocco directed his correspondence to, verified that there has been substantial due diligence on the part of Mr. Marocco and that she anticipates that development of the drag racing facility should be able to proceed sometime in the near future.

Based upon the project proponent's efforts and progress made to date, it is staff's opinion that the project proponent has presented "good cause" for granting a one- (1) year time extension.

Roger Derda
Community Development Director

Attachments: Exhibit "2" - Site Plan -U.U.P. #01-47501.
Exhibit "3" – 7/5/02 correspondence from project proponent.
Exhibit "4" - Staff report presented to CC at its August 14, 2001 meeting.

FINAL CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

NOTE: CONDITIONS HAVE BEEN AMENDED TO REFLECT PC ACTION OF 8/6/02

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval (expiration date to be August 14, 2003). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

Exhibit "2"

ATTACHMENT 14

October 16, 2002

City Council Meeting
October 22, 2002

TO: Honorable Mayor and City Council

FROM: Vickie Burt, Economic Development/Redevelopment Manager

SUBJECT: Resolution No. 2002-111 Consideration of Lease Agreement, License Agreement and Reimbursement Agreement with All American Racing, LLC

RECOMMENDATION: That the City Council adopt Resolution 2002-111 approving a Lease Agreement, License Agreement and Reimbursement Agreement with All American Racing, LLC for the purpose of developing a professional drag racing facility.

JUSTIFICATION: This action is consistent with the mission of the City of Banning Strategies for Economic Development to strengthen and expand the City's overall economic base.

BACKGROUND: On August 14, 2001 the City Council approved Unclassified Use Permit 01-47501 to establish a professional drag racing facility on 60 acres of property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue on properties identified as Assessor Parcel Numbers 532-130-008 and 018.

Assessor Parcel Number 532-130-008 consisting of 40 acres is under private ownership and is the subject of a negotiation between All American Racing, LLC (AAR) and the owner, Photosonics, Inc. Twenty acres of property, Assessor Parcel Number 532-130-018, are the subject of a lease agreement being presented for consideration. This 20-acre parcel was purchased by the City under the terms of a 1983 grant agreement with Department of Transportation Federal Aviation Administration (FAA). The proposed lease between the City and AAR has been drafted in accordance with the terms of the grant and FAA Airport Compliance Requirements that apply to lease agreements.

Resolution No. 2002-111 addresses three agreements related to the subject project:

1. Lease Agreement, Attachment I inclusive of Exhibits "A", "B", "C", "D", and "E", relating to 20-acres of City-owned property to AAR for the purpose of developing a professional drag racing facility per the conditions of Unclassified Use Permit 01-47501.
    - The term of the lease is not to exceed five years.
    - Prior to expiration of the lease term, AAR is to acquire from the City 20-acres of property in accordance with FAA Airport Compliance Requirements.
    - AAR will pay $12,500 as the annual lease amount.

177

00945

187

2. Reimbursement Agreement, Attachment II inclusive of Exhibit "A", "B" and "C" for infrastructure construction required per the conditions of the subject Unclassified Use Permit based on cost of construction. The total reimbursement not to exceed $125,000.

   - The total reimbursement amount not to exceed $125,000. The schedule for reimbursement is defined as-- One-half of the total reimbursable costs not to exceed $62,500 at the time of acceptance by the City of the completion of infrastructure improvements for Phase I as described in Exhibit B of the reimbursement agreement. One-half of the total reimbursable costs not to exceed $62,500 at the time of the City's notification of completion of certain on-site improvements specifically described in Exhibit C of the reimbursement agreement.

3. License Agreement, Attachment III inclusive of Exhibit "A" for the City's use of parking facilities to be constructed by AAR on 40-acres of property Assessor Parcel Number 532-130-008. The License Agreement will be in effect contingent on a lease agreement between the City and AAR pertaining to 20-acres of property Assessor Parcel Number 532-130-018.

Proposed Funding of City costs related to the subject agreements:

1. The City will reimburse $125,000 to All American Racing for offsite infrastructure improvements.

2. The City will request that the City of Banning Redevelopment Agency (CRA) make a payment to principal not to exceed $125,000 on loans outstanding between the City and the CRA. The City will dedicate the amount of the CRA payments to loan principal of reimbursement costs related to the subject project.

3. The City will contribute the annual lease revenue from the lease agreement between the City and AAR to the City of Banning Municipal Airport for operations, maintenance or improvements.

4. The City will pay $12,500 annually to AAR for the lease of parking facilities per the terms of a licensing agreement for such facilities between the City and AAR.

The above referenced proposals have been presented to the City Council Economic Development/Redevelopment Committee and comply with their recommendation to present this proposal to the City Council for their consideration.

Prepared by:
Vickie Burt
Economic Development/Redevelopment Manager

Reviewed by:
Michael J. Brooks
Acting City Manager

178

00946

188

RESOLUTION NO. 2002-111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A LEASE AGREEMENT, LICENSE AGREEMENT AND REIMBURSEMENT AGREEMENT WITH ALL AMERICAN RACING, LLC FOR THE PURPOSE OF DEVELOPING A PROFESSIONAL DRAG RACING FACILITY

WHEREAS, All American Racing, LLC has proposed development of a professional drag racing facility in the City of Banning in the vicinity of Hathaway Street and Westward Avenue Street; and

WHEREAS, development of such a facility is consistent with the mission of the City of Banning Strategies for Economic Development to strengthen and expand the City's overall economic base; and

WHEREAS, The City of Banning owns 20-acres of property that is suitable for inclusion into the develop of the proposed development; and

WHEREAS, construction of infrastructure improvements are required as a condition of development and are a benefit to the public generally; and

WHEREAS, All American Racing, LLC will construct such improvements; and

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

Section I. The Lease Agreement with All American Racing, LLC for 20-acres of land, Assessor Parcel Number 532-130-018, owned by the City for development of a professional drag racing facility described and incorporated herein as Attachment I inclusive of Exhibits "A", "B", "C", "D" and "E" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

Section II. The Reimbursement Agreement for construction of infrastructure improvements described and incorporated herein as Attachment II inclusive of Exhibit "A", "B" and "C" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

Section III. The License Agreement for the City's use of parking facilities to be constructed by AAR on Assessor Parcel Number 532-130-008 described and incorporated herein as Attachment III inclusive of Exhibit "A" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

179

00947

189

Section IV. Said authorization shall expire 60 days following the date thereof if the Agreement has not been executed by either party from the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 22 nd day of October, 2002.

John Hunt, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson, 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. 2002-111, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of October 2002, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

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

180

00948

190

Section IV. Said authorization shall expire 60 days following the date thereof if the Agreement has not been executed by either party from the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 22 nd day of October, 2002.

John Hunt, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson, 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. 2002-111, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of October 2002, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

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

181

00949

191

Attachment I

LEASE AGREEMENT

This Lease ("Lease") is made as of _____(date)_____ by and between The City of Banning, a California municipal corporation ("City"), and All American Racing, a California Limited Liability Company ("Tenant"), jointly referred to herein as the "Parties." In consideration of the rents to be paid under this Lease Agreement ("Lease") and of the promises and agreements contained herein and to be performed hereunder, the parties promise and agree as follows:

ARTICLE I

SITE, TERM, TITLE AND POSSESSION

Section 1.1. Site.

A. City hereby leases to Tenant as Tenant and Tenant hereby leases from City as City, upon the terms described herein, that real property located in the City of Banning, County of Riverside, State of California, described in Exhibit "A" and depicted on Exhibit "B", together with all rights and privileges appurtenances thereto (collectively the "Site").

B. Tenant accepts the Site subject to those existing liens, encumbrances, charges, conditions, covenants, easements, restrictions, rights-of-way and other matters approved by Tenant as provided below.

C. The City purchased the Site in or about 1984 utilizing grant funds received from the Federal Aviation Administration (FAA"). Pursuant to the agreement between the FAA and the City, the FAA retains certain rights in the Site, including the right to approve or disapprove any attempts by the City to sell, lease or otherwise transfer any interest in the Site to a third party. The rights of the FAA are all as set forth in the Department of Transportation Federal Aviation Administration Grant Agreement ("Grant Agreement") attached hereto as Exhibit C.

D. By letters dated July 31, 2002, and August 2, 2002, the FAA has approved the interim use of the Site for the purposes contemplated by the Parties herein. Copies of the letters ("FAA Letters") are attached hereto and marked Exhibits "D" and "E" respectively and by this reference incorporated herein and made a part hereof.

Section 1.2. Term.

A. This Lease shall be for a term of five (5) years ("Term"), beginning on the date

first written above.

Section 1.4. Title.

Fee title to the Site is held by the City subject to the terms of the Grant Agreement.

Section 1.5. Possession.

A. City covenants that City is seized of the Property in fee simple subject to the terms of Grant Agreement and the FAA Letters. Consistent therewith, the City has full right to make this lease and that Tenant shall have quiet and peaceful possession of the Site during the lease term.

B. Any other provision of this Lease notwithstanding, and as a condition precedent to Tenant entering and taking possession of the Property hereunder, Tenant shall show, by evidence satisfactory to City, that it has obtained possession and control of that forty acre parcel of land lying immediately adjacent to the Property, and identified as Assessor's Parcel Numbers 532-130-008 and 532-130-018, for use in conjunction with the Property as set forth in City of Banning Unclassified Use Permit 01-47501. Tenant shall have 90 calendar days following date of approval of this Lease by the Banning City Council within which to present such evidence. If the evidence is not produced within that time, this Lease shall become null and void without further action and neither party shall have any obligations hereunder.

C. At anytime during the Term, Tenant may purchase another parcel of land of equivalent size and proximity to the Banning Municipal Airport and offer it to the City in an exchange of properties. If such exchange is found acceptable to the FAA under the Grant Agreement, the City shall consummate such exchange with the Tenant. At such time as the exchange is completed, this Lease shall terminate and the Tenant's obligation to provide a surety bond under section 4.2(B)(2)(c) below shall cease. Upon such termination the Parties shall have no further obligations hereunder each to the other except as may be otherwise agreed by the Parties in writing.

D. As an alternative to subsection B, the Tenant may, at anytime during the Term request that the City make application to the FAA for the right to purchase FAA's rights under the Grant Agreement.

1. To make such application, Tenant shall present evidence to the City of Tenant's having performed due diligence in an unsuccessful attempt to obtain a parcel of land for purposes of accomplishing an exchange under B above.

2. Upon such presentation by Tenant, and upon City's approval of the evidence, which approval shall not be unreasonably withheld, City shall present such evidence to the FAA.

3. It is understood and agreed that Tenant is seeking the extinction of the FAA's

interest in the Parcel so that Tenant can acquire the parcel from City free of any FAA interest. City hereby agrees to exercise its best efforts and due diligence in assisting Tenant in obtaining a release of the FAA interest.
4.Upon FAA approval of the transaction, Tenant shall pay over to City the full cost, including any administrative costs of the transaction.

3. The City shall take ownership of the Site with simultaneous transfer of the City's interests to the Tenant.

4. At such time as the exchange is completed, this Lease shall terminate and the Tenant's obligation to provide a surety bond under section 4.2(B)(2)(c) below shall cease. Upon such termination the Parties shall have no further obligations hereunder each to the other except as may be otherwise agreed by the Parties in writing.

ARTICLE II

RENT

Section 2.1. Rent.

A. The annual rent (the "Base Rental") shall be TWELVE THOUSAND FIVE HUNDRED DOLLARS ($12,500) per year.

B. The initial Base Rental shall be payable upon City giving written notice to Tenant that Tenant's evidence of acquiring an interest in the forty acre parcel (as set forth in section 1.5(B)) is satisfactory to City. Thereafter the Base Rental shall be payable annually in advance on the anniversary of the first day of the term of this Lease. Any payment of Base Rental received by the City on or before the 10th day of the first day of the term of this Lease (and each anniversary thereafter) shall be deemed timely paid.

Section 2.2. Taxes and Other Governmental Charges.

A. Tenant shall pay, in addition to the Base Rental, during the Term, an amount equal to all taxes, assessments, levies and other governmental charges of every description, whether general, special, ordinary, extraordinary or otherwise (individually "Imposition" and collectively "Impositions") which would be levied on or assessed against the Site, improvements located on the Site, personal property located on or in the Site or an Improvement, the leasehold estate, or any leasehold estate, to the full extent of installments falling due between the date hereof to the end of the Term, whether belonging to or chargeable against City or Tenant as if City was not a public City. All payments of Impositions shall be prorated to the first day of the term of this Lease and to the date of expiration the Term.

B. If during the Term any governmental subdivision or City shall undertake to create an improvement or special assessment district, the proposed boundaries of which include the Site, City and Tenant shall each be entitled to support or oppose the creation of such district or inclusion of the Site therein or both, and to appear in any proceeding relating thereto as their respective interests in the Site or otherwise may appear. Should either party receive any notice or other information relating to the proposed creation of any such district the boundaries of which would include the Site, such party shall promptly notify the other party and deliver to such other party a copy of the notice or information.

Section 2.3. Payment of Rent.

A. The Base Rental and other amounts payable by Tenant to City hereunder shall be paid to City at such address as City may from time to time designate by notice to Tenant. In the event any installment of Base Rental is received by City more than ten (10) days following receipt by Tenant of written notice of delinquency from City, Tenant shall pay interest thereon at the highest rate permitted by law from the due date to the date of payment.

B. This Lease shall be deemed and construed to be an absolute net lease. The obligation of Tenant to pay the Base Rental and all other amounts payable by Tenant to City hereunder when due shall be without abatement, deduction or setoff and, except as otherwise provided herein, Tenant hereby waives all rights now and hereafter conferred by law to quit, terminate or surrender this Lease or the Site, or any part thereof, and to receive any abatement, suspension, deferment or reduction of, or relief from, the rent under section 1932 and subsection 1933(4) of the California Civil Code, any amendment thereof or any law of similar import that may hereafter be enacted.

ARTICLE III

USES OF SITE AND IMPROVEMENTS

Section 3.1. Permitted Uses.

Tenant shall have the right to use and to permit the use of the Site and Improvements hereafter constructed thereon for any lawful purpose permitted by the City of Banning's General Plan, zoning and land use regulations and the adopted Redevelopment Plan for the Site. As used herein "Improvements" means and includes, without limitation, all buildings, paving and other physical structures on the Site, all landscaping, excavations, planting and earth contours placed by human design on the Site, and all fixtures including trade fixtures that cannot be removed without causing structural damage. Tenant may demolish, remove, replace, alter, relocate, reconstruct or add to Improvements as provided in Section 4.1.

Section 3.2. Restrictions, Easements, Zoning Changes and Use Permits.

With City's consent, which will not be unreasonably withheld, and subject to the terms of the Grant Agreement and the FAA Letters, Tenant may enter into agreements restricting use of and granting easements over the Site. City agrees to execute and acknowledge such documentation as may be reasonably necessary and appropriate to establish such easements and restrictions.

ARTICLE IV

IMPROVEMENTS

Section 4.1. Construction.

A. Construction of Improvements. At any time and from time to time during the Term, Tenant may, but is not obligated to construct or otherwise make new Improvements on any part or all of the Site and may, but is not obligated to demolish, remove, replace, alter, relocate, reconstruct or add to any then existing Improvements in whole or in part, and to modify or change the contour or grade, or both, of the land. All salvage shall belong to Tenant.

B. Conditions. Before any work is commenced on the Site and before any building materials have been delivered to the Site by Tenant or under Tenant's authority, Tenant shall comply with all the following conditions:

Deliver to City (i) certificates of insurance evidencing coverage for builder's risk, (ii) evidence of workers' compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against City or the Site and (iii) evidence that Tenant has paid or caused to be paid all premiums for the coverage described above in this sub-paragraph B(3) and any increase in premiums on insurance provided for above and in Article VI sufficient to assure maintenance of all insurance hereunder during the anticipated course of the work. Tenant shall maintain and keep in force and pay all premiums required to maintain and keep in force all insurance above at all times during which such work is in progress.

C. Utility Easements. City grants to Tenant the right to grant to public entities and public utilities, for the purpose of serving the Site, reasonable rights-of-way and easements on, in or over the Site, for poles and conduits for telephone, electricity, water, sanitary sewers and storm sewers and for other utility, municipal and district services; provided, however, that any such reasonable rights-of-way and easements shall be located on, in or over the foregoing parcels in such a manner as to take into account City's reasonable use of its other real property adjacent to any of the foregoing parcels following the completion of the construction of the Improvements.

City shall also grant to Tenant itself reasonable easements and rights-of-way on, in or over the aforementioned parcels in conjunction with the provision of the foregoing services to said parcels.

D. Completion of Construction. Once work is begun, Tenant shall with reasonable diligence prosecute to completion all construction of the Improvements. All work shall be performed in a good and workmanlike manner, shall comply with all applicable governmental permits, laws, ordinances and regulations.

E. City's Nonresponsibility. City's approvals as required by this Section 4.1 shall not make City responsible for the Improvements, with respect to which an approval is given for the construction thereof, and Tenant shall defend, indemnify and hold harmless City, its elected officials, and employees from and against all liability and claims of liability for damage or injury to persons or property or for death of persons arising from or in connection with such work, Improvement(s) or other construction.

Section 4.2. Maintenance, Repairs, Alterations and Reconstruction.

A. Maintenance and Repair. Throughout the Term Tenant shall, at Tenant's sole cost and expense, maintain the Site and all Improvements thereon in good condition and repair and in accordance with all applicable laws, ordinances, orders, rules, regulations and requirements of (i) federal, state, county, municipal and other governmental agencies having or claiming jurisdiction; (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (iii) all insurance companies insuring all or any part of the Site or Improvements or both. Without limiting the generality of the foregoing, Tenant shall perform each and every obligation set forth in clauses (1) through (4) of section 1941.2(a) of the California Civil Code, any amendment thereof or any law of similar import that may hereafter be enacted.

B. Reconstruction. Except as provided below, upon the occurrence of damage or destruction of any improvement(s), Tenant shall promptly and diligently repair, restore and replace as required to maintain the Site or Tenant may elect instead to raze the Improvements damaged or destroyed and return the Site to its condition on the date of this Lease. Tenant shall notify City of its election hereunder within 30 days of date of the damage. This time may be extended by written agreement of the Parties. After date of notice of the election, the Tenant shall have 90 days within which to commence reconstruction of repair or to complete the razing and restoration of the Site. Thereafter, the City may undertake such repair or razing and restoration as it deems appropriate in the exercise of its sole discretion and shall have right to assess the cost thereof against the Tenant.

C. Liens and Clean-up

1) It is expressly agreed herein that any and all improvements will be constructed at the sole

expense of Tenant. Tenant shall keep all of the Site and every part thereof and all buildings and other improvements at any time located thereon free and clear of any mechanic liens, materialmen liens, and other liens for or arising out of or in connection with the work or labor done, services performed, or materials or appliances used or furnished for or in connection with any operations of Lessee.

2) Except as otherwise agreed by the Parties, all equipment, structures and materials installed or erected on the site shall be removed by the Tenant prior to the termination of this Lease and the Tenant shall restore the property to its original condition. Should the Tenant fail to remove all equipment, structures, and materials installed or erected on the site prior to the termination of this Lease as above prescribed, the City shall remove these above described items. The Tenant agrees to reimburse City for any costs incurred by City for the removal and disposal of said item.

3) As security for the performance its obligations under subsection 2 immediately above, the Tenant shall at the time of application for building permits for construction of the first improvements to be constructed on the Site, post a performance bond for coverage in the amount of $100,000. Notwithstanding the amount of this security, the Tenant is liable for all costs incurred by the City in restoring and repairing the Site or in otherwise razing the improvements and restoring the site to the condition it was in on date of this Lease.

C. City - No Obligation to Repair. During the Term, City shall not be required to maintain or make any repairs or replacements of any nature or description whatsoever to the Improvements located on the Site. Tenant hereby expressly waives the right to make repairs at City's expense as provided for in section 1942 of the California Civil Code, any amendment thereof or any law of similar import that may hereafter be enacted.

D. Tenant's Right to Contest. Tenant has the right to contest by appropriate judicial or administrative proceedings, without cost to City, the validity or application of any law that Tenant repair, maintain, alter or replace the Improvements in whole or in part and Tenant shall not be in default for failing to do such work until a sixty (60) days following final determination of Tenant's contest. If City gives notice requesting same to Tenant, Tenant shall furnish City a bond, satisfactory to City in form, amount and insurer, guaranteeing compliance by Tenant with the contested law and defending and indemnifying City against all liability that City may sustain by reason of Tenant's failure or delay in complying with the law. City may, but is not required to, contest any such law independently of Tenant. City may, and on Tenant's notice of request shall, join in Tenant's contest, provided Tenant shall reimburse City for all costs including attorneys' fees incurred by City in complying with such a request of Tenant.

Section 4.3. Ownership of Improvements.

A. During the Term, title to all Improvements constructed or placed on the Site by Tenant are and shall be vested in Tenant. Tenant shall not, however, remove any Improvements from the Site except as permitted herein. The parties agree

for themselves and all persons claiming under them that the Improvements are real property.

B. Save those improvements required to be removed from the Site by the City pursuant to section 4.2(C)(2) above, All Improvements on the Site at the expiration or earlier termination of this Lease shall, except as otherwise proved herein, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person and Tenant shall defend and indemnify City against all liability and loss arising from such claims or from City's exercise of the right conferred by this paragraph.

C. At the expiration or termination of the Lease, provided Tenant is not then in default, Tenant shall have the right to remove any or all trade fixtures, provided all resultant injuries to the Site and remaining Improvements are completely remedied and Tenant complies with City's reasonable requirements respecting the resultant appearance.

D. Upon written request from Tenant, City shall from time to time execute and deliver any instrument that may be required by any equipment supplier, vendor, lessor or lender whereby City waives or releases any rights it may have or acquire with respect to any equipment or trade fixtures Tenant or any sublessee of Tenant may affix to the Site and agreeing that the same do not constitute realty provided such equipment or trade fixtures are attached in such manner to the Site or Improvements that they may be removed without causing structural damage.

Section 4.4. Mechanics' and Other Liens.

A. Tenant shall pay or cause to be paid the total cost and expense of all "works of improvement" as that phrase is defined in the applicable mechanics' lien law in effect when the work begins. No such payment shall be construed as rent.

B. Tenant shall not permit any mechanic's, materialman's, contractor's, subcontractor's or other lien arising from any work of improvement, however it may arise, to stand against the Site or any Improvement thereon. If any such lien shall be filed against the Site or Improvements, Tenant shall cause the same to be discharged within ten (10) days after actual notice of such filing, by payment, deposit or bond. If Tenant shall fail to discharge any such lien, City may, but shall not be obligated to, discharge the same and any amount so paid or deposited by City and all expenses so incurred by City, including reasonable attorneys' fees, shall become immediately due and payable by Tenant to City together with interest at the maximum rate then permitted by law. Tenant may in good faith and at Tenant's own expense contest the validity of any such asserted lien, claim or demand, provided Tenant has furnished the bond required in section 3143 of the California Civil Code, any amendment thereof or any law of similar import hereafter enacted for providing a bond freeing a Site from such a lien claim.

ARTICLE V

ASSIGNMENT, SUBLETTING AND ENCUMBRANCE

Section 5.1. Assignment.

Tenant shall not assign, sell or otherwise transfer (collectively "assign" and the act thereof "assignment") its interest in this Lease or in the estate created hereby, in whole or in part, unless:

A. The proposed assignment is first approved in writing by City;

B. At the time of the requested assignment, there is no existing default on the part of Tenant in the performance or observance of any of the provisions hereof;

C. The assignment is in writing, is duly executed and acknowledged by Tenant and the assignee, is in a form satisfactory to City and provides that assignee assumes and agrees to carry out and perform all of the provisions hereof on the part of Tenant to be carried out and performed; and

D. An executed original of such assignment is delivered to City.

Section 5.2. Encumbrance of Tenant's Interest.

A. Tenant shall have the right at any time during the Term, without being required to obtain City's consent, to mortgage or hypothecate all or any portion(s) of Tenant's leasehold estate created under this Lease, together with any or all Improvements located on the portions of the leasehold estate mortgaged or hypothecated, provided that:

(1) The Leasehold Mortgage (hereinafter defined in section 5.2(B) below) shall be limited to securing of financing of Improvements constructed by Tenant on the Site.

(2) The Leasehold Mortgage and all rights acquired under it shall be subject to each and all of the provisions hereof and to all rights and interests of City except as otherwise provided herein.

(3) Tenant shall give City prior notice of any such Leasehold Mortgage and shall accompany the notice with true copies of the note and Leasehold Mortgage.

B. In the event that Tenant, either pursuant to a mortgage, deed of

trust or other instrument of security (hereafter such a mortgage, deed of trust and other instrument of security shall be referred to as a "Leasehold Mortgage," and a mortgagee, beneficiary under a deed of trust or secured party under such a security instrument shall be referred to as a "Leasehold Mortgagee") encumbers such leasehold estate, the Leasehold Mortgagee shall in no event become personally liable to perform the obligations of Tenant hereunder unless and until such Leasehold Mortgagee becomes the owner of the leasehold estate pursuant to foreclosure, assignment or transfer in lieu of foreclosure or otherwise, and thereafter said Leasehold Mortgagee, its successors or assigns, shall remain liable for such obligations only so long as such Leasehold Mortgagee, its successors or assigns remain the owner of the leasehold estate. If the Leasehold Mortgagee shall become the owner of the leasehold estate, it shall be entitled to all rights and privileges granted to Tenant pursuant to this Article V and shall have the right of assignment of all or any part of the leasehold interest subject to City's approval, which shall not be unreasonably withheld. In the event a Leasehold Mortgagee forecloses or otherwise becomes owner of the leasehold estate, Tenant shall nevertheless remain primarily liable hereunder. Nothing contained herein shall be interpreted so as to prevent the City from exercising its rights against the Tenant or any successor in interest for failure of performance hereunder.

C. The Leasehold Mortgage documents shall provide that any proceeds from fire or extended coverage insurance or other insurance against casualty on the Site and Improvements shall be used for repair or rebuilding of the Improvements or razing of the improvements and restoration of the Site and not to repay all or part of the outstanding Leasehold Mortgage.

D. The Leasehold Mortgage documents shall contain provisions that all notices of default under the note and Leasehold Mortgage must be sent to City and Tenant and that City shall have the right, but not the obligation, to cure any default if Tenant fails to do so. City shall have thirty (30) days in which to cure any default after the time for Tenant to cure it has expired. Tenant shall reimburse City for all costs including attorneys' fees incurred by City in curing a default. Neither City's right to cure any default nor any exercise of such a right shall constitute an assumption of liability under the note or mortgage. If any default is incurable, it shall not be grounds for foreclosure of the Leasehold Mortgage if City, or Tenant in possession of the Site, promptly performs all other provisions of the note and Leasehold Mortgage.

E. On the recording of the Leasehold Mortgage, Tenant shall at its expense cause to be recorded in the office of the County Recorder of Riverside County a written request executed and acknowledged by City for a copy of all notices of default and all notices of sale under the Leasehold Mortgage as provided by the statutes of California. Inclusion in the body of the recorded Leasehold Mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.

F. No permitted Leasehold Mortgage shall cover any interest in any

real property other than interest specifically subjected to mortgage by this Lease. No Leasehold Mortgage permitted by this Lease shall cover more than one indebtedness.

G. On termination of this Lease by City on Tenant's default or on Leasehold Mortgagee's acquisition of the leasehold by foreclosure, City shall enter into a new lease with Leasehold Mortgagee covering the Site covered by the terminated or foreclosed lease if the Leasehold Mortgagee (i) gives notice of request within fifteen (15) days after termination or foreclosure, (ii) pays all costs resulting from default and termination, and (iii) remedies all defaults construed as though the Lease had not been terminated. The new Lease shall be for the remainder of the Term hereof, effective at the date of termination or foreclosure, at the Base Rental and under the provisions hereof.

H. Except as provided in this Section 5.2, Tenant shall in no way encumber or hypothecate in any manner whatsoever Tenant's leasehold estate created by this Lease and/or City's fee title to the Site.

ARTICLE VI

INDEMNITY, CASUALTY AND INSURANCE

Section 6.1. Indemnity.

City shall not be liable and Tenant shall defend, indemnify and hold City, its elected officials, officers and employees harmless from and against all liability and claims of liability from the effective date of this Lease until expiration or termination hereof for damage or injury to persons or property on or about the Site from any cause.

Section 6.2. Casualty.

A. No loss or damage by fire or other casualty resulting in either partial or total destruction of any Improvement which may be constructed or placed on the Site by Tenant shall operate to terminate this Lease or to relieve or discharge Tenant from the payment of Base Rental or other amounts payable to City when they become due and payable or for the performance and fulfillment of any of Tenant's obligations and undertakings herein. "Other casualty" as used herein shall include, without limitation, loss or damage, whether or not insured, resulting from earthquake, causes unknown, uprising and acts of God and the common enemy.

B. If during the Term any Improvements that may be constructed or placed on the Site by Tenant or any trade fixtures shall be damaged or destroyed by fire or other casualty, Tenant shall, with all reasonable diligence, repair, reconstruct, replace or raze the improvements and restore the Site, as provided in Article IV. Any such repair, reconstruction, replacement, or razing and restoration of Site shall be at the sole cost and expense of Tenant and, upon the completion thereof, shall be free

and clear of all liens and encumbrances of any nature whatsoever, including mechanics' and materialmen's liens, except as permitted by Section 5.2. If Tenant either fails to commence such repair, reconstruction or replacement or razing and restoration as provided in Section IV or fails to complete such repair, reconstruction or replacement within one (1) year, or razing and restoration within the time provided in Section IV, City may terminate this Lease and shall have the right to collect all insurance proceeds.

Section 6.3. Fire and Extended Coverage Insurance.

A. Throughout the Term, Tenant shall at its sole cost and expense keep or cause to be kept insured for the mutual benefit of City and Tenant all Improvements located on or appurtenant to the Site against loss or damage by fire and such other risks as are now or hereafter included in an extended coverage endorsement in common use for commercial structures, including vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either City or Tenant from becoming a co-insurer under the provisions of the policies, but in no event shall the amount be less than one hundred per cent (100%) of the then actual cost of razing the improvements and restoring the Site (herein called "full insurable value"). If any dispute whether the amount of insurance complies with the above cannot be resolved by agreement, City may, not more often than once every twenty-four (24) months, request the carrier of the insurance then in force to determine the full insurable value as defined in this provision and the resulting determination shall be conclusive between the parties for the purpose of this paragraph. Tenant may include the holder of any mortgage on the leasehold or on the fee or both as a loss payee.

B. City shall, at Tenant's cost and expense, cooperate fully with Tenant to obtain the largest possible recovery.

Section 6.4. Public Liability Insurance.

Beginning on the first day of term of this Lease and throughout the Term, Tenant shall at its sole cost and expense keep or cause to be kept in force for the mutual benefit of City and Tenant comprehensive broad form general public liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, disuse or condition of the Site, Improvements or adjoining areas or ways, providing protection of at least One Million Dollars ($1,000,000) for bodily injury or death to any one person, at least Three Million Dollars ($3,000,000) for any one accident or occurrence and at least one million Dollars ($l, 000,000) for property damage.

Section 6.5. Builder's Risk Insurance.

Before commencement of any demolition or construction, Tenant shall procure and shall maintain in force until completion and acceptance of the work, "all

risks" builder's risk insurance including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's and construction manager's tools and equipment and property owned by contractor's or subcontractor's employees, with limits of at least One Million Dollars ($1,000,000) per loss for all work on the job site.

Section 6.6. Insurance Policy Form, Content and Insurer.

A. All insurance required by express provisions hereof shall be carried only in responsible insurance companies licensed to do business in California and reasonably acceptable to City and the policies therefor shall be in form reasonably acceptable to City. All such policies shall be nonassessable and shall contain language, to the extent obtainable, to the effect that (i) any loss shall be payable notwithstanding any act or negligence of City that might otherwise result in the forfeiture of the insurance, (ii) the insurer waives the right of subrogation against City and against City's agents and representatives, (iii) policies are primary and noncontributing with any insurance that may be carried by City; and (iv) they cannot be cancelled or materially changed except after thirty (30) days' notice by the insurer to City or City' s designated representative.

B. Tenant shall furnish City with copies of all such policies promptly on receipt of them, or with certificates evidencing the insurance. Before the first day of the term of this Lease, Tenant shall furnish City with binders representing all insurance required by this Lease. At the expiration of the Term, City shall reimburse Tenant pro rata for all prepaid premiums of insurance required to be maintained by Tenant and Tenant shall assign all Tenant's right, title and interest in that insurance to City. Tenant may effect for its own account any insurance not required under this Lease.

Section 6.7. Failure to Maintain Insurance and Proof of Compliance.

A. Tenant shall deliver to City, in the manner required for notices, copies of certificates of all insurance policies required hereunder together with evidence satisfactory to City of payment required for procurement and maintenance of the policy within the following time limits:

(1) For insurance becoming required at a later date, at least five (5) days before the requirement takes effect or as soon thereafter as the requirement, if new, takes effect; and

(2) For any renewal or replacement of a policy already in existence, at least ten (10) days before expiration or termination of the existing policy.

B. If Tenant fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right, at City's

election and on five (5) days' notice, to procure and maintain such insurance. The premiums paid by City shall be treated as added rent due from Tenant, with interest at the maximum rate then permitted by law, to be paid on demand by City. City shall give Tenant prompt notice of the payment of premiums stating the amounts paid and the names of the insurer or insurers.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Tenant's Default.

A. Each of the following events shall constitute an event of default by Tenant and a breach of this Lease:

(1) Tenant's failure or omission to pay any Base Rental or other sum payable hereunder on or before the same is due.

(2) Tenant's failure or omission to observe, keep or perform any of the other terms, agreements, covenants or conditions contained in this Lease to be performed by Tenant.

(3) Tenant's abandonment or surrender of the Site, Improvements or of the leasehold estate.

(4) Tenant's assignment (as such term is defined in Section 5.1) contrary to the provisions hereof.

(5) The subjection of any right or interest of Tenant to attachment, execution or other levy, or to seizure under legal process, if not released within thirty (30) days, provided that the foreclosure of any Leasehold Mortgage permitted by the provisions of this Lease shall not in and of itself be construed as a default within the meaning of this Paragraph A.

(6) The appointment of a receiver to take possession of the Site or the Improvements, or of Tenant's interest in the leasehold estate or of Tenant's operations on the Site for any reason, including but not limited to assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership (i) pursuant to the administration of the estate of any deceased or incompetent majority shareholder of Tenant, or (ii) pursuant to any Leasehold Mortgage permitted by the provisions of this Lease, or (iii) instituted by City, the event of default being not the appointment of a receiver at City's instance but the event justifying the receivership, if any.

(7) An assignment by Tenant for the benefit of creditors or the

filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant a bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant's liabilities; or for reorganization, dissolution or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies and supervisions are dismissed, vacated or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing or other initial event.

(8) Default or delinquency in the payment of any loan secured by a Leasehold Mortgage permitted by this Lease.

Section 7.2. Notice and Right to Cure.

A. As a condition to pursuing any remedy for an alleged default by Tenant, City shall, before pursuing any remedy, give notice of default to Tenant and to all qualifying sublessees and Leasehold Mortgagees whose names and addresses were previously given to City in a notice or notices from Tenant or any qualifying Leasehold Mortgagee stating that the notice was for the purpose of notice under this provision. A qualifying sublessee is a sublessee in possession under an existing Lease which is proper under this Lease. A qualifying Leasehold Mortgagee is a mortgagee under an existing Leasehold Mortgage permitted hereunder. Each notice of default shall specify the alleged event of default and the intended remedy.

B. Each such Leasehold Mortgagee shall have thirty (30) days after service of notice of Tenant's default or breach within which, at Leasehold Mortgagee's election, either:

(1) Subject to the right of the City to at any time pursue its remedies against the Tenant, its successors or assigns, including the Leasehold Mortgagee, for a default hereunder, to make good the default or breach, whether by the payment or expenditure of money or the performance of any other matter required under this Lease, which payment, expenditure or performance City will accept as though made or performed by Tenant, Leasehold Mortgagee being subrogated to Tenant's rights under this Lease upon so doing; or

(2) To commence and diligently pursue to completion foreclosure under the Leasehold Mortgage or other appropriate proceedings in the nature thereof or otherwise acquire Tenant's leasehold estate with diligence, and perform all agreements and conditions of this Lease requiring the payment or expenditure of money by the Tenant until such time as such leasehold estate is so acquired or sold upon foreclosure or other appropriate proceedings in the nature thereof.

C. If the alleged default is nonpayment of Base Rental, Impositions or other sums to be paid by Tenant to City, Tenant shall have ten (10) days after notice is given to cure the default. For the cure of any other default, Tenant shall promptly and

diligently after notice commence curing the default and shall have thirty (30) days after notice is given to complete the cure or in the case of a failure or omission that cannot be cured by the payment of money and cannot be cured within thirty (30) days, such additional time as is reasonably required for the curing of the default. When such additional time is required, the Tenant shall notify City in writing within 10 business days after notice is given of Tenant's proposed time for cure and the reasons why. City Manager or his or her designee shall have ten (10) business days within which to advise Tenant of its acceptance or rejection of such proposed additional time and the reason for any rejection. The Tenant shall have ten (10) days following date of notice from the City Manager or his or her designee of their decision within which to make an appeal to the City Board. The City shall thereafter hold a hearing on the matter either before the body as a whole or before an ad hoc committee. The determination of the City Board or its appointed ad hoc committee regarding the time for cure shall be final.

D. If Tenant shall have failed to cure after expiration of the applicable time for curing a particular default or before the expiration of that time in the event of emergency, City may at its election, but is not obligated to, make any payment required of Tenant under this Lease or under any note or other document pertaining to the financing of Improvements or fixtures on the Site, or perform or comply with any term, agreement or condition imposed on Tenant hereunder or any such note or document, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the highest rate then permitted by law from the date of payment, performance or compliance shall be deemed to be additional Base Rental payable by Tenant on City's demand. No such payment, performance or compliance shall constitute a waiver of default or of any remedy for default or render City liable for any loss or damage resulting from the same.

Section 7.3. City's Remedies.

A. If any default by Tenant continues uncured following notice of default for the period applicable to the default under the provisions of this Lease, City shall have the following remedies in addition to all rights and remedies provided by law or equity to which City may resort cumulatively or in the alternative:

(1) City may at its election terminate this Lease by giving Tenant notice of termination. On the giving of the notice all Tenant's rights in the Site and in all Improvements shall terminate. Promptly after notice of termination Tenant shall surrender and vacate the Site and all Improvements in good condition and City may reenter and take possession of the Site and all remaining Improvements and eject all persons in possession or eject some and not others or eject none. Termination under this subparagraph A(l) shall not relieve Tenant from the payment of any sum then due to City or from any claim for damages previously accrued or then accruing against Tenant.

(2) City may at its election reenter the Site and, without terminating

this Lease, at any time and from time to time relet the Site and Improvements or any parts of them for the account and in the name of Tenant or otherwise. City may at City's election eject all persons or eject some and not others or eject none. City shall apply all rents from reletting as in the provision on assignment of subrents in Paragraph B of this Section 7.3. Any reletting may be for the remainder of the term of the particular Lease in question or for a longer or shorter period. City may execute any leases or Leases made under this provision either in City's name or in Tenant's name and shall be entitled to all rents from the use, operation or occupancy of the Site or Improvements or both. Tenant shall nevertheless pay to City on the due date specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus City's expenses, less the avails of any reletting or attornment. City may do all things reasonably necessary for such reletting, including repairing, remodeling and renovating of the Site or Improvements and Tenant shall reimburse City on demand for all costs incurred by City in connection therewith. If City relets the Site and Improvements or part of them it shall apply any sums received upon such reletting in the following order of priority: (i) to the payment of any indebtedness other than Base Rental due hereunder from Tenant, (ii) to the payment of all costs incurred by City in restoring the Site to good order and repair, or in remodeling, renovating or otherwise preparing the Site for reletting, including completion of construction of improvements required or tenant pursuant to the DDA, (iii) to the payment of all costs (including without limitation any brokerage commissions) incurred by City in reletting the Site, (iv) to the payment of Base Rental due and unpaid hereunder, and (v) the balance, if any, to the payment of future Base Rental as the same may become due hereunder. No act by or on behalf of City under this provision shall constitute a termination of this Lease unless City gives Tenant notice of termination.

(3) City shall have the right to cause a receiver to be appointed in any action against Tenant to take possession of the Site and Improvements and/or to collect the rents or profits derived therefrom. The appointment of such receiver shall not constitute an election on the part of City to terminate this Lease unless a written notice of such intention is given to Tenant.

(4) In addition to all other rights and remedies it may have, City shall have all the rights and remedies of an City under section 1951.2 of the California Civil Code.

B. Tenant assigns to City all Lease rental rates and other sums falling due from sublessees, licensees and concessionaires (herein called "sublessees") during any period in which City has the right under this Lease, whether exercised or not to reenter the Site for Tenant's default and Tenant shall not have any right to such sums during that period. City may at City's election reenter the Site and Improvements with or without process of law, without terminating this Lease, and either or both collect these sums and/or bring action for the recovery of the sums directly from such obligors. City shall receive and collect all Lease rental rates and avails from reletting, applying them in the following order of priority: (i) to the payment of any indebtedness other

than Base Rental due hereunder, (ii) to the payment of all costs incurred by City in restoring the Site and/or Improvements to good order and repair, or in remodeling, renovating or otherwise preparing the Site and/or Improvements for reletting, including completion of construction of improvements required or tenant pursuant to the DDA (iii) to the payment of all costs (including, without limitation, attorneys' fees or brokers' commissions or both) incurred by City in reletting the Site and/or Improvements, (iv) to the payment of Base Rental due and unpaid hereunder, and (v) the balance, if any, to the payment of future Base Rental as the same may become due hereunder, and (vi) to City's uses and purposes. Tenant shall nevertheless pay to City on the due date specified in this Lease the equivalent of all sums required of Tenant under this Lease, plus City's expenses, less avails of the sums assigned and actually collected under this provision.

Section 7.4. City's Default.

City will be in default under this Lease if it fails for thirty (30) days following receipt of written notice from Tenant specifying a default to cure such default, if it is curable, or to institute and diligently pursue reasonable corrective or ameliorative acts for incurable defaults. Tenant may terminate this Lease for City's default after notice to and consent by any Leasehold Mortgagees. In the event of payment by Tenant of any amount to cure a City default hereunder, Tenant's obligation to pay Base Rental shall be abated in the amount of such payment, together with interest accrued thereon from the date of payment at the highest rate allowed by law, which abatement may be effected in the form of a credit against the Base Rental payment or payments next due under this Lease.

Section 7.5. New Lease.

On termination of this Lease due to Tenant's default, City shall enter into a new Lease with the Leasehold Mortgagee under a then existing mortgage permitted by this Lease, as provided in and subject to the conditions of Paragraph G of Section 5.2.

Section 7.6. Waiver and Voluntary Acts.

No waiver of any breach or default shall constitute a waiver of any other breach or default, whether of the same or any other term, agreement or condition. No waiver, benefit, privilege or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel or otherwise. The subsequent acceptance of Base Rental pursuant to this Lease shall not constitute a waiver of any preceding breach or default by Tenant other than default in the payment of the particular rental payment so accepted regardless of City's knowledge of the preceding breach at the time of accepting the rent, nor shall acceptance of Base Rental or any other payment after termination constitute a reinstatement, extension or renewal

of the Lease or revocation of any notice or other act by City.

ARTICLE VIII

EXPIRATION AND TERMINATION

Section 8.1. Surrender of Site and Ownership of Improvements.

A. Except as otherwise expressly provided herein, at the expiration or earlier termination of the Lease Tenant shall surrender possession of the Site to City. Surrender or removal of trade fixtures shall be as directed in Section 4.3. Tenant shall leave the surrendered Site and Improvements in good condition except as provided to the contrary in Section 4.2. All property that Tenant is required to surrender shall become City's property at termination of Lease. All property that Tenant is not required to surrender but that Tenant does abandon shall, at City's election, become City's property at termination.

B. If Tenant fails to surrender the Site and Improvements at the expiration or sooner termination of this Lease, Tenant shall defend and indemnify City from all liability and expense resulting from the delay or failure to surrender, including without limitation claims made by any succeeding lessee founded on or resulting from Tenant's failure to surrender.

Section 8.2. Holding Over.

This Lease shall terminate without further notice at expiration of the term. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Site and Improvements.

ARTICLE IX

GENERAL CONDITIONS AND MISCELLANEOUS PROVISIONS

Section 9.1. Notices.

A. As used in this Lease "notice" includes but is not limited to the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment and other communication required or permitted hereunder. No notice of the exercise of any option or election is required unless the provision giving the election or option expressly requires notice. Unless the provisions of this Lease regarding rent direct otherwise, rent shall be sent in the manner provided for giving notice.

B. All notices shall be in writing and shall be considered given either (i)

when delivered in person to the recipient named as below, or (ii) on the date of delivery shown on the return receipt after deposit in the United States mail in a sealed envelope or other container, either registered or certified mail, return receipt requested, postage and postal charges prepaid, addressed to the party intended as below or (iii) on the date of any e-mail or fax if notice is given on the same date in the form set out at (ii) if such communication bears the indication sent by fax (or e-mail) and mailed, (iv) on the date of delivery shown in the records of the telegraph company after transmission by telegraph to the party addressed as follows:

Notice to City:

The City of Banning
P.O. Box 998
99 E. Ramsey St.
Banning, CA 92220
Attention: City Clerk

Notice to Tenant:

All American Racing, LLC
P. O. Box 197
Banning, CA 92220
Attention: Andy Marocco, President

C. Either party may, by notice given at any time or from time to time, require subsequent notices to be given to another individual person, whether a party or an officer or representative, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

Section 9.2. Interpretation and Construction of Lease.

A. The table of contents of this Lease and the captions of the various articles and sections are for convenience and ease of reference only and do not define, limit, augment or describe the scope, content or intent of this Lease or any part or parts of this Lease.

B. Exhibits A through F, attached hereto and to which references are made in this Lease, are incorporated herein by the respective references to them. References to "this Lease" or "the Lease" include matters incorporated herein by reference.

C. The singular number includes the plural whenever the context so requires.

D. Each party has relied on its own examination of this Lease, the counsel of his own advisors and warranties, representations and agreements in the Lease itself. The failure or refusal of City to inspect the Site or Improvements, or the failure of either party to read the Lease or other documents or to obtain legal or other advice relevant to the transaction constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection or advice.

E. The invalidity or illegality of any provision of this Lease shall not affect the remainder of the Lease.

F. Time is of the essence of each provision of this Lease.

G. All the undertakings of Tenant hereunder shall be deemed and construed to be "conditions' as well as undertakings as though the words specifically expressing or imparting conditions and undertakings were used in each separate instance.

H. This Lease shall be interpreted, construed and enforced in accordance with laws of the State of California.

Section 9.3. Nonmerger of Estates.

If both City's and Tenant's estates in the Site or the Improvements or both become vested in the same owner, this Lease shall nevertheless not be destroyed by the application of the doctrine of merger except at the express election of the owner and the consent of the leasehold Mortgagees under all Leasehold Mortgages existing under the provisions of this Lease.

Section 9.4. Joint and Several Obligations.

If either City or Tenant consists of more than one person, the obligation of all such persons is joint and several.

Section 9.5. Successors.

Subject to the provisions of this Lease on assignment and subletting, each and all the terms, agreements and conditions to this Lease shall be binding on and shall inure to the benefit of the heirs, successors, executors, administrators, assigns and personal representatives of the respective parties.

Section 9.6. Limitation of City's Liability.

The term "City," as used in this Lease, so far as agreements or obligations on the part of City are concerned, shall be limited to mean the City of Banning; and in

the event of any transfer(s), assignment(s) or conveyance(s) of the title such fee, the City herein named (and in case of any subsequent transfer(s), assignment(s) or conveyance(s), the then grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment or conveyance of all liability as respects the performance of any agreements or obligations on the part of City contained in this Lease thereafter to be performed; provided that any funds in the hands of City or the then grantor at the time of such transfer, in which Tenant has an interest, shall be turned over to the grantee in any amount then due and payable to Tenant by City or the then grantor under any provision of this Lease shall be paid to Tenant. It is intended by this provision that the agreements and obligations contained in this Lease on the part of City shall, subject as aforesaid, be binding upon the City, its successors and assigns, only during and in respect of its respective period of leasehold interest under the Lease.

Section 9.7. City's Right of Inspection.

City may, at any reasonable time and from time to time during the Lease Term, enter upon the Site for the purpose of inspecting any Improvements which may be constructed or placed thereon by Tenant and for such other purposes as may be necessary or proper for the reasonable protection of its interest.

Section 9.8. Utilities.

Tenant shall pay all charges for water, electricity, gas, telephone or other communication service, sewers, heat or other utility services furnished defend, and rendered to the Site during the Lease Term and shall indemnify and hold City harmless from any liability for damages on such account.

Section 9.9. Estoppel Certificates.

A. Tenant and City shall, at any time and from time to time during the Lease Term and upon not less than ten (10) days' prior request by the other party, execute, acknowledge and deliver to the requesting party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been any modifications that the same is in full force and effect as modified and stating the modifications). The statement shall also state the dates to which the Base Rental Impositions and any other charges have been paid in advance, that there are no defaults existing or that defaults exist and the nature of such defaults. It is intended that such statement as provided in this Paragraph A may be relied upon by any prospective purchaser, encumbrancer or assignee of the Site or Improvements or both or all or any part or parts of Tenant's or City's interests under this Lease.

B. If a party fails to execute, acknowledge and deliver on request the certified statement described above within the specified time, the party requiring the estoppel certificate shall notify the other party, in writing, that upon the expiration of ten (10) calendar days, the certified statement described above shall constitute acknowledgment to all persons entitled to rely on the statement that this Lease is unmodified and in full force and effect and that the Base Rental, Impositions and other charges have been duly and fully paid to and including the respective due dates immediately preceding the date of the notice of request and shall constitute a waiver, with respect to all persons entitled to rely on the statement, of any defaults that may exist before the date of the notice.

Section 9.10. City's Joinder in Applications.

A. Subject to the provisions of paragraph B of this section, City shall, within ten (10) days after receipt of written request from Tenant:

(1) Execute all releases referred to in Paragraph D of Section 4.3;

(2) Join in all grants for rights-of-way and easements for electric, telephone, gas, water, sewers and such other public utilities and facilities as provided in Paragraph D of Section 4.1; and

(3) Execute all grants and other documents necessary to effectuate dedications of portions of the Site for public use which dedication shall be required by any governmental or other body claiming jurisdiction in connection with Tenant's development of the Site.

B. City may not unreasonably withhold performance under the provisions of Paragraph A of this Section, but if it deems Tenant's request unreasonable it shall so notify Tenant within ten (10) days of receipt of Tenant's notice and in that event the matter shall be subject to arbitration.

C. Tenant shall reimburse City for all costs, including attorneys' fees, incurred by City in complying with this Section.

Section 9.11. Covenants Run With Land.

Subject to Section 5.1, the provisions hereof are and shall be deemed to be covenants running with the land and the reversion and shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto and also the successors and assigns of all subsequent land-lords and Tenants, respectively, hereunder.

Section 9.12 Execution in Counterparts

This Lease or the memorandum of this Lease, or both, may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

Section 9.13. Recordation of Memorandum of Lease.

This Lease shall not be recorded; only a memorandum of this Lease shall be recorded. Tenant shall record or cause such memorandum to be recorded on the date of execution thereof and if Tenant fails to do so, City may record or cause such memorandum to be recorded. The memorandum of Lease shall be in substantially the same form as Exhibit "F" attached hereto.

Section 9.14. Waiver of Relocation Benefits.

BY EXECUTION OF THIS LEASE, LESSEE, ON BEHALF OF ITSELF, ITS SUCCESSORS, ASSIGNS AND SUBLESSEES HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES ANY CLAIM TO ANY AND ALL RELOCATION BENEFITS OR PAYMENTS FROM LESSOR TO WHICH LESSEE MGIHT OTHERWISE BE ENTITLED AT THE TERMINATION OR EXPIRATION OF THIS LEASE, REGARDLESS OF THE METHOD OR MANNER OF SUCH TERMINATION OR EXPIRATION.

Section 9.15. Discrimination.

Lessee herein warrants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through Lessee, that this Lease is made and adopted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, sex, religion, national origin, sexual orientation, condition of disability, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Site herein leased, nor shall Lessee, or any person claiming under or through Lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Tenants, Lessees, sublessees, sub-Tenants, or vendees in the Site herein leased.

IN WITNESS WHEREOF, this Lease has been executed as of the day and year first above written.

CITY:

THE CITY OF BANNING

TENANT:
By. ALL AMERICAN RACING, LLC

EXHIBIT A

LEGAL DESCRIPTION

20-acres of property Assessor Parcel Number 532-130-018

The North half of the Southwest quarter of the Southeast quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Base and Meridian, according to the Official Plat thereof.

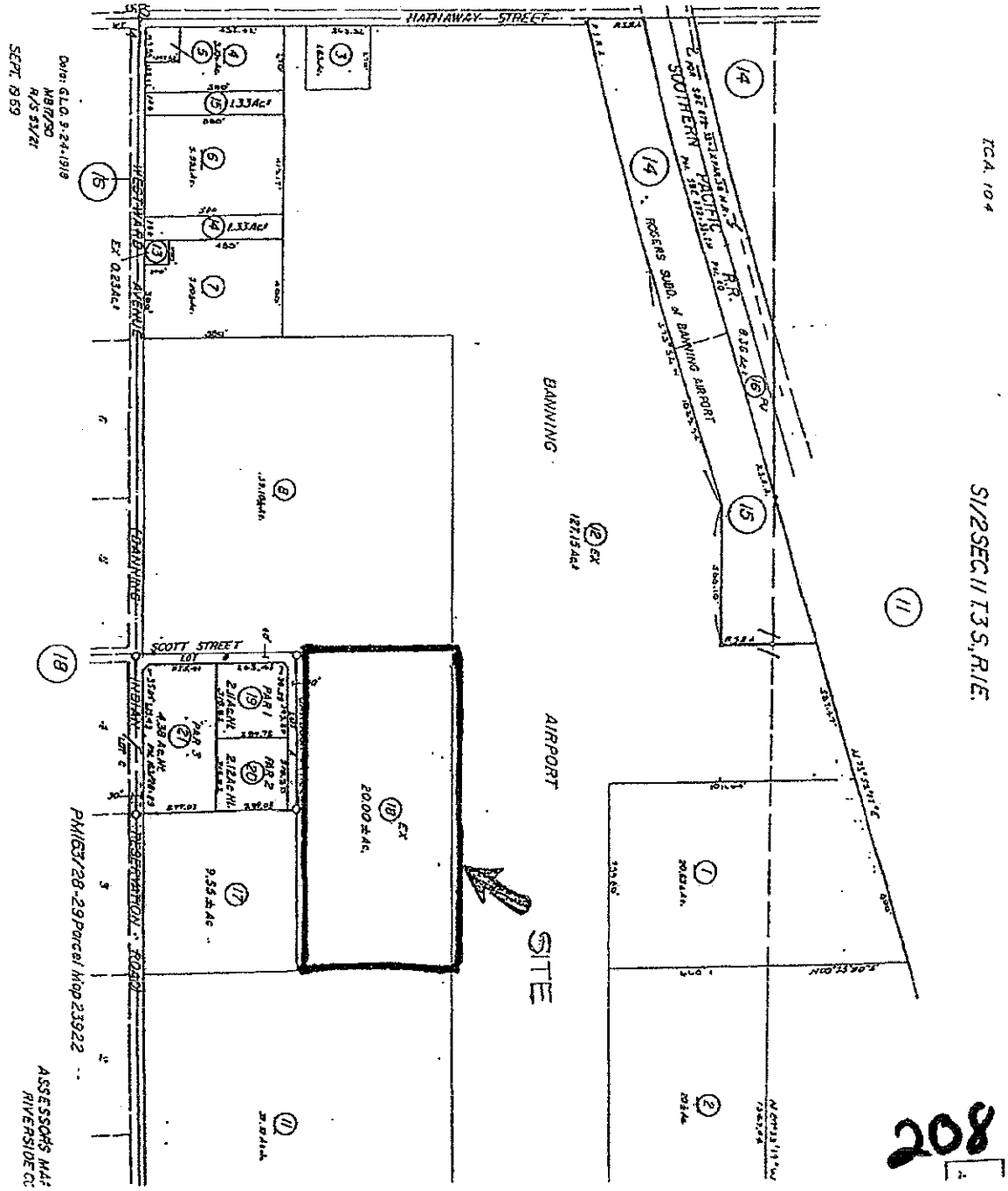
207

00975

217

EXHIBIT B

SITE MAP



208

00976

218

EXHIBIT "C"

Under Separate Cover

Available in the City Clerk's Office for review.

209

00977

219

Left Blank

Intentionally

EXHIBIT D

U.S Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Arizona Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

July 31, 2002

Don Foster
City Manager
City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220-0998

Dear Mr. Foster:

Banning Municipal Airport (BNG)
Interim Non-Aeronautical Use

We are replying to your letter dated July 9, 2002, in which the city of Banning (City) requested approval from the Federal Aviation Administration (FAA) to permit 20 acres of airport land (Assessor Parcel Number 532-130-029) to be used for non-aeronautical purposes for a period of five years. An auto-racing promoter, which owns 40 acres of land adjacent to the airport and the 20-acre tract, requires the 20 additional acres to permit the development and operation of a professional auto racing facility.

The airport has not experienced aeronautical growth, nor does it anticipate any aeronautical growth, so the City believes that the land will not be needed for aeronautical purposes during the interim-use period. In addition, the revenue from the interim use for non-aeronautical purposes will help the airport be more self-sustaining. The City affirms that rental agreement for non-aeronautical use will be based on fair market value, and the proceeds will be used for the operation, maintenance, improvement, and development of the airport.

Based on the City's representations in prior discussions concerning the appropriate use and eventual disposition of the 20 acres, the FAA does not object to the interim use for non-aeronautical purposes for a period of five years contingent on the following conditions:

a) The proceeds from the interim use will be devoted exclusively to airport operations, maintenance, improvement, and development.

b) Approval of interim use does not represent a release from any or all of the airport sponsor's federal obligations.

c) It is understood that the interim use is intended to serve as a temporary arrangement during which the City will have an opportunity to develop an alternate plan, acceptable to the FAA, for the eventual disposition of the 20 acres. It is furthermore understood that long-term, interim use of the 20 acres exceeding five years for the purpose requested is not considered a tenable option, since a non-aeronautical venture with intended permanence on the airport would preclude the 20 acres from ever being used for aeronautical purposes. As a

211

00979

221

consequence, such long-term use could no longer be regarded as interim or temporary.

If you have any questions, please call me at (310) 725-3634

Sincerely,

Original Signed by
Tony Garcia

Tony Garcia
Airports Compliance Specialist

Ellsworth L. Chan, Manager
Safety and Standards Branch

212

00980

222

EXHIBIT E

U.S Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O Box 92007
Los Angeles, CA 90009-2007

August 2, 2002

Don Foster
City Manager
City of Banning
99 E. Ramsey Street
P.O. Box 998
Banning, CA 92220-0998

Dear Mr. Foster:

Banning Municipal Airport (BNG)
Addendum to Interim Non-Aeronautical Use

This letter is in response to a request by Ms. Vickie Burt for a clearer interpretation of condition 'c' in our letter dated July 31, 2002. Ms. Burt would like the Federal Aviation Administration (FAA) to provide some flexibility for the city of Banning (City) to obtain an extension of the interim-use period beyond the initial five-year term that was just granted to permit the use of 20 acres of airport land for a drag racing facility.

In response to Ms. Burt's request, we provide the following clarification. The auto racing facility that the City and the racing promoter proposed to be built on airport land is envisioned by the parties as a long-term and, possibly, permanent facility. The FAA policy concerning interim use only addresses the temporary use of airport land for non-aeronautical purposes. The policy is not meant to countenance the establishment of permanent non-aeronautical facilities on obligated airport land.

Our previous letter served to convey the FAA's intention to allow time for the City and the racing promoter to seek an alternative course of action that the FAA could approve for the disposition of the 20 acres. As a result, the FAA did not object to the interim use of the 20 acres for up to five years during which time an alternative course of action is to be implemented.

The FAA expects the City to make its best effort to seek a solution within the interim-use period. If, for some unexpected reason outside the control of the City or the promoter, the five-year deadline cannot be met, the FAA may consider the specific circumstances causing the delay. If the City and promoter are making progress towards a permanent solution, the FAA may, based on the merits of the City's good-faith efforts, grant a short-term, interim-use extension during which time the parties will conclude the specific actions needed to bring the land-use matter to a satisfactory conclusion.

As we discussed previously, the City should not expect the FAA to grant successive five-year, interim-use approvals that would allow a non-aeronautical venture to operate at the airport on a permanent basis. The interim-use policy was never intended for such a purpose.

213

00981

223

If you have any questions, please call me at (310) 725-3634.

Sincerely,

Tony Garcia
Airports Compliance Specialist

Ellsworth L. Chan, Manager
Safety and Standards Branch

214

00982

224

EXHIBIT F

MEMORANDUM OF LEASE

215

00983

225

Attachment II

REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into this _____day of_____ 2002, by and between the CITY OF BANNING, a municipal corporation (hereinafter called "City") and All American Racing, a California Limited Liability Company hereinafter called "Developer").

WHEREAS, it is necessary that the public street of Barbour Street be extended east of Hathaway Street, and the 8 inch public water line in Barbour Street be extended, and that other improvements be provided all as set forth in the Unclassified Use Permit No. 01-47501 Phase I under the Engineering Department requirements, a copy of which is attached hereto as Exhibit A, and by this reference made a part hereof, (hereinafter "Public Improvements "); and

WHEREAS, the Public Improvements are not for the exclusive use of the Developer but shall serve the public generally; and

WHEREAS, Developer, at its own expense, has agreed to perform all work necessary to construct the Public Improvements; and

WHEREAS, it is the desire of the City that the Public Improvements be constructed as indicated herein so as to provide for the orderly and efficient development of the Public Improvements within the City; and

WHEREAS, work being done and amounts being spent by Developer as indicated herein, will provide benefit for the public generally and not exclusively for Developer's property;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the City and Developer agree as follows:

1. Developer will, at its own expense, furnish all soil reports, engineering, plans, studies, and other necessary or property items to design and engineer the Public Improvements. Further, Developer will, at its own expense, furnish all equipment, labor and materials necessary, and construct and install all of the said Public Improvements, in accordance with plans and specifications approved by the City Engineer of the City, for the Public Improvements. It is acknowledged that the expenses for the project will be the exclusive costs of the Developer.

2. Developer shall construct and install (or cause the construction or installation of) said Public Improvements and shall cooperate with the City Engineer in the construction of the said Public Improvements.

3. The City Engineer and/or other appropriate City official shall inspect the construction of said Public Improvements from time to time and, after any and all deficiencies discovered by said Engineer have been corrected by Developer, the City shall accept said Public Improvements for public use.

4. Indemnification

Developer agrees to indemnify, defend (upon request by City) and save and hold harmless the City of Banning, its agents, officers and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with received by reason of, or in the course of, performing the work necessary for the

installation of the Public Improvements, or its services hereunder, including any workers' compensation suit, liability or expense, arising from or connected with the work performed by or on behalf of Developer by any person pursuant to this Agreement

5. The City shall not be responsible for any accident, loss or damage to said work prior to its acceptance by the City. Developer shall remain responsible for satisfactory workmanship and material for a period of one year from the date of acceptance of the work by the City.

6. The City hereby agrees to reimburse Developer for the Public Improvements provided and installed by Developer as herein agreed, which will be used to and for the benefit of the public generally. The amount of such reimbursement is $125,000.

7. The City shall reimburse Developer pursuant to the following:

A. City shall pay to Developer the sum of sixty-two thousand five hundred dollars ($62,500) within 60 days following acceptance by the City of Phase I off-site improvements as specified in Unclassified Use Permit 01-47501 and as specifically summarized in Exhibit B.

B. City Shall pay to the Developer the sum of sixty-two thousand five hundred dollars ($62,500) within 60 days following date of issuance of certificate of occupancy for the last of the Phase 1 On Site Improvements as shown on Exhibit C.

8. A. This Agreement shall become void and of no further effect and no payment shall be due to Developer under any part of section 7 hereof if work on the Public Improvements pursuant to plans approved by the City Engineer has not been commenced within 24 months following date of this Agreement. Further, no payment will be made for work that has not been accepted by the City consistent with section 3 above, prior to the expiration of 60 months following date hereof.

B. This Agreement shall become void and of no further effect and no payment shall be due to Developer under section 7 (B) if the certificate of occupancy for the On-Site Improvements has not been issued prior to the expiration of 60 months following date hereof. The appropriate City official shall inspect the construction of said On-Site Improvements from time to time and, after any and all deficiencies discovered by said official have been corrected by Developer, the City shall issue the certificate of occupancy.

9. Rights to reimbursement due under this Agreement may be assigned after written notice to the City by the holder of such rights as shown on the records of the City. Such assignment shall apply only to such refunds or reimbursements becoming payable more than 30 days after receipt by the City of the written notice of assignment. The City shall not be required to make any reimbursement payment to more than a single developer or assignee.

10. Accept as otherwise provided herein, this Agreement may only be amended by the written consent of all of the parties to this Agreement at the time of such amendment.

11. Dispute Resolution

(a) If any Party believes any other Party to be in violation of any term or condition of this Agreement, that Party shall give the alleged defaulting Party thirty (30) days ("Cure Period")

which the violation may be satisfactorily cured. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation. Upon expiration of the time allotted for appeal without cure or appeal, the agreement shall be deemed terminated. The agreement may be earlier terminated upon the mutual written agreement of the Parties.

(b) If the matter is not resolved within the Cure Period, the aggrieved Party may appeal the allegation of violation by filing with the City Clerk, within five (5) calendar days following the end of the Cure Period, a notice of appeal to the City Council. The aggrieved Party and the alleged defaulting Party shall be given an opportunity to be heard at a regularly scheduled meeting of the City Council, which need not be a public hearing. If, after such hearing, it is the finding of the City Council that a violation has occurred and is continuing, the defaulting party shall immediately commence the cure of such default. The City Council shall, at such hearing, set the date for completion of the cure. If the defaulting Party has not completed the cure within the time allowed, the aggrieved party may thereafter take such action as is hereinafter permitted as an action on a default.

(c) If, after hearing the testimony and reviewing the evidence presented by the Parties, the full City Council finds by majority vote that there has been no default hereunder, the matter shall be at an end and each Party hereby waives the right to take any further action against any other Party hereto for such alleged breach

(d) Subject to the prior exhaustion of all administrative remedies set forth hereinabove, in addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any violation, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, to recover damages for any default, or to obtain any other remedies consistent with the purposes of this Agreement. The parties may agree to submit the matter to mediation or arbitration.

(e) Notwithstanding any other provisions herein to the contrary, (i) neither Party shall have any liability hereunder for contractual damages, (ii) each Party shall only be entitled to specific performance by the other Party of its obligations under this Agreement, and (iii) each Party shall otherwise be subject only to liability for violation of a statutory or constitutional right of the other Party which exists independent of this Agreement. Any legal action shall be brought in the Superior Court of the County of Riverside, State of California.

12. If any legal action or other proceeding is brought for the enforcement of this Agreement, or to interpret any of the provisions hereof, or of any alleged dispute, breach, default, or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in said action or proceeding, whether or not said action or proceeding goes to final judgment, in addition to any other relief to which it may be entitled, and shall include any post-judgment attorneys' fees incurred, any attorney's fees incurred by the prevailing party on appeal, and by the prevailing party for any post-judgment motion proceedings or hearings, and any and all attorneys' fees incurred in any and all efforts by the prevailing party to collect its judgment.

13. Execution of this Agreement shall be presumed to be made by an individual authorized by his or her respective corporation by resolution of its board of directors and such execution shall constitute a waiver by the party of any lack of such a resolution.

14. Notice

Notices, herein shall be presented in person or by certified or registered U.S. mail, as follows:

To Developer: All American Racing
P.O. Box 197
Banning, Ca. 92220
Attention: Andy Marocco, President

To City: City of Banning
Post Office Box 998
Banning, California 92220
Attention: City Engineer

Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.

15. Except as expressly provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns.

16. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

17. All exhibits attached hereto and referred to herein are hereby incorporated herein as though set forth at length.

18. The parties hereto agree to execute and file and to join in the execution and filing of any and all agreements, consents or other documents reasonably necessary to effect the consummation of the transaction contemplated hereby, as either party hereto may reasonably require.

19. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be in the courts of Riverside County.

20. The section and other headings contained in this Agreement are for reference purposes only and will not affect the interpretation or meaning of this Agreement.

21. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement. The masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tenses, respectively, where the context so requires.

22. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

23. Nothing contained herein shall be construed to require the City to make reimbursement payments from any source of funds other than as set forth in Section 7 hereinabove.

24. The City's obligation hereunder shall terminate upon the expiration of five (5) years following date of execution of this Agreement.

25. Release of News Information

No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of City or his or her designee.

26. Confidentiality of Reports

Developer shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that City designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of City.

27. Right to Audit

City, or any of its duly authorized representatives, shall have access to any books, documents, papers and records of Developer and/or its subcontractors which are pertinent to the specific program hereunder for the purpose of making an audit, an examination, excerpts and transcriptions. All books, records and supporting detail shall be retained for a period of one (1) year after the expiration of the term of this Agreement, or any extension thereof, City may request in writing at least thirty (30) days prior to expiration of this Agreement that information and records prepared, or used by Developer in performing the work under this Agreement be provided to City whereupon Developer shall provide said information to City within thirty (30) days.

28. City Support

City shall provide Developer with any plans, publications, reports, statistics, records or other data or information pertinent to the work to be provided hereunder which are reasonably available to City.

29. Independent Contractor

Developer shall perform the work described herein as an independent contractor and shall not be considered a contractor of City or under City supervision or control. This Agreement is by and between Developer and City, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and Developer.

30. Conflict of Interest

Developer represents, warrants and agrees that it does not presently have, nor will it acquire during the term of this Agreement, any interest direct or indirect, by contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with the City of Banning. Upon execution of this Agreement and during its term, as appropriate, Developer shall upon written request, disclose in writing to City any other contractual or employment arrangement from which it receives compensation. Developer agrees not to accept any employment during the term of this Agreement by any other person, business or corporation which employment will or may likely develop a conflict of interest between the City of Banning's interests and the interests of third parties.

31. Insurance

Without limiting Developer's indemnification of City, Developer shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operation hereunder. Such insurance shall be provided by insurer(s) satisfactory to City and evidence of such programs satisfactory to City shall be delivered to the City Manager or his/her designee within ten (10) days of the effective date of this Agreement.

Minimum Scope of Insurance:

Commercial General Liability and Umbrella Liability Insurance on an occurrence basis, including the tort liability of another assumed in a business contract. Automobile and Umbrella Liability Insurance for any auto, including owned, hired and non-owned autos. Worker's Compensation Insurance as required by the State of California and Employer's Legal Liability, including a waiver of subrogation against the City of Banning. Professional Liability coverage on either a claims made or occurrence basis.

Minimum Limits of Insurance:

General Liability/Umbrella Liability with a limit of not less than $1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the contract project. Automobile Liability (and necessary commercial umbrella liability) Insurance with a limit of not less than $1,000,000.00 each accident. Worker's Compensation (commercial umbrella and/or employers liability) Insurance with a limit of not less than $1,000,000.00 each accident for bodily injury by accident or $1,000,000.00 each employee for bodily injury by disease.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or (b) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions:

Additional Insured Status of City. The City, its officers, officials, employees, and volunteers shall be insureds with respect to either liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant or liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations, excepting professional liability coverage.

Insurance Primary to City Insurance. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Prior Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by Developer or Developer's insurance; except after thirty (30) days prior written notice to the City.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

32. Verification of Coverage

Developer shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Failure on the part of Developer to procure or maintain required insurance shall constitute a material breach of this Agreement upon which City may immediately terminate this Agreement.

33. Compliance with Laws

The parties agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement. Special note is made of the prevailing wage law requirements and the public contacts bid requirements.

34. Non-Discrimination

In the fulfillment of the program established under this Agreement, either as to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other terms of compensation, selection for training, including apprenticeship or participation in the program or the receiving of any benefits under the program, Consultant agrees not to discriminate nor to allow any subcontractor to discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, marital status or physical handicap.

35. Entire Agreement

This Agreement with attachments constitutes the entire understanding and agreement of the parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Consultant by the City and contains all the covenants and agreements with respect to such retention.

///

///

36. No Third Party Beneficiaries

No third party shall be deemed to have any rights hereunder against any of the parties hereto as a result of this Agreement.

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

"DEVELOPER"

By:_____

Name_____

Title_____

"City of Banning"

By:_____

Name_____

Title_____

EXHIBIT A

FINAL CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

NOTE: CONDITIONS HAVE BEEN AMENDED TO REFLECT PC ACTION OF 8/6/02

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval (expiration date to be August 14, 2003). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

4. The project proponent shall submit application(s) and pay required processing fee(s) for site plan review and design review for each phase of development associated with the project.

5. The maximum height of buildings shall not exceed the maximum allowable height for the zone district(s) in which the project is located.

6. The project proponent shall submit a revised fully dimensioned parking plan depicting the size and location of all standard sized, compact and handicap parking stalls. The number of handicap parking stalls shall be provided consistent with the requirements outlined in the Building Department conditions.

7. A lighting plan for the parking area shall be submitted to the City's Planning Department for review and approval. All outdoor lighting shall be hooded, designed and located such that light and glare shall not reflect onto adjoining properties or public rights-of-way. Outdoor lighting within parking areas shall be installed prior to any evening races occurring; the height of light poles shall be subject to the review and approval of the Airport Land Use Commission (ALUC).

8. For each phase of development the project proponent shall provide the following restroom improvements: Men's restroom – 11 water closets (half of which may be urinals); Women's – 18 water closets (total number for all three phases: Men's – 33; Women's – 54).

9. Prior to construction of any free standing signs or placing any signs that are visible from the public right of way, the project proponent must complete all required Planning Department applications, pay the City's processing fees, and receive approval.

10. Project proponent shall submit detailed landscape and irrigation plans to the City's Planning Department for review and approval. Landscape and irrigation improvements along public right of ways shall be provided in conjunction with off-site improvements required by the City's Engineering Department. Landscape and irrigation improvements not associated with public right of way improvements shall be established in conjunction with each phase of development as outlined in the project proponents' development phasing plan. All landscaping areas shall be maintained in a viable growth condition throughout the life of Unclassified Use Permit 01-47501.

11. Prior to final inspection on any phase of development, the project proponent shall have installed a masonry trash enclosure for the required on-site trash receptacle. Said trash receptacle shall be constructed of solid masonry, enclosed on three sides, 6 feet in height, 8 feet in width, and 5 feet in depth. The location of the trash receptacle and enclosure shall be subject to the review and approval of the Planning Department.

12. All necessary measures to control dust shall be implemented by the developer during construction.

13. Project proponent shall be responsible for mitigating any/all project related noise impacts consistent with the statements, recommendations and conclusions contained in the document dated June 20, 2001 entitled "Community Noise Impact Review of Proposed "Drag City" Race Track that was prepared on behalf of the City of Banning Planning Department by County of Riverside Department of Health / Office of Industrial Hygiene (Exhibit "4") that responds to the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3"). Prior to any drag events occurring on the subject property, the project proponent shall erect a 12-foot high wall approximately 100 feet west of the track's starting line. Said wall shall extend 125 north and south of the centerline of the track.

14. For purposes of sound attenuation, and so as to not exceed the sound limitations contained in the City's Code for the zone district in the which the events will occur, cars shall be muffled to the extent possible and run at the intervals identified in the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3").

15. In the event the City receives noise related complaints from any occupant of a residence within a three mile radius of the project, the project proponent or his successors-in-interest may be required to submit noise monitoring reports as determined by the City's Building and Safety division as part of a code enforcement action. Upon written notice from the City's Building and Safety division requiring such a report, the project proponent or his successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Building and Safety division, unless more time is allowed through written agreement by the Building and Safety division. The noise monitoring report shall be reviewed by the County of Riverside Department of Health / Office of Industrial Hygiene or a qualified acoustical engineer possessing qualifications acceptable to the City's Planning Department. The project proponent or his successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this review prior to commencing the required report.

16. Hours of operation shall coincide with the information provided to the City in the acoustical report prepared for the project and shall conform with any recommendations or conditions identified by the County of Riverside Department of Health / Office of Industrial Hygiene to mitigate noise.

17. The project proponent shall be prohibited from holding events on the second Saturday of June and the second Saturday of December of each calendar year excepting instances where the project proponent is able to obtain written approval in advance from the adjoining Deutsch Company (or their successor-in-interest)

stating they have no objections to drag strip related events on the June and December dates identified herein. Written verification of the Deutsch Company's authorization shall be submitted to the Planning Department a minimum of seven (7) days prior to the aforementioned dates.

18. Project proponent shall mitigate all traffic related impacts associated with implementation of Unclassified Use Permit 01-47501 as identified in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

19. At time of issuance of building permits, the project proponent shall pay all required City mitigation fees in effect at that time, including but not limited to: police, fire, traffic control, general facilities, school, park land, etc.

20. Annual "super events" / "super shows" (defined as up to 100 race cars per event with up to 10,000 spectators per event) shall be subject to the processing of a "special events" application. The project proponent shall submit a completed special events application to the City for its review a minimum of sixty (60) days prior to any proposed "super event" / "super show". The project proponent shall be responsible for fulfilling all conditions of approval attached to said permit in order to conduct such event.

21. In the event the use hereby permitted ceases operation for a period of one (1) year or more, Unclassified Use Permit 01-47501 shall be subject to revocation.

Engineering Department:

Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions:

A. Phase I:

1. Obtain the necessary dedication of right-of-way required to construct the extension of Barbour Street, east of Hathaway Street to the westerly boundary of the project site as depicted on attached Exhibit "2A".

2. Submit Street Improvements Plans for the extension of Barbour Street to the west boundary line of the project site. The plans shall be per the City of Banning standard and shall be prepared by a Registered Civil Engineer.

3. Submit a site plan/grading plan prepared by a Registered Civil Engineer to the City for review and approval, as applicable. All grading shall conform with the Uniform Building Code's (U.B.C.) latest edition and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soils report prepared by a Registered Civil or Geotechnical Engineer, along with the grading plan.

Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations. This includes the plan and installation of the oil/grease separator at the pit area.

4. Submit a Drainage/Hydrology Study and a Hydraulic Analysis for both undeveloped and developed conditions to the City for review and approval. Demonstrate that runoff flows will not impact surrounding properties and that all street flow will drain into the public streets. All of the drainage from the lot shall drain into the public right-of-way or, a Drainage Easement Acceptance letter from the adjacent property owners shall be obtained.

5. The plan check fee for all of the improvement plans shall be paid as per the Fee Schedule established by the City of Banning when the plans are submitted to the City for review and approval.

6. Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: the Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

7. The proposed project must be in compliance with the City's adopted Airport Master Plan.

8. Submit a copy of the Preliminary Title Report.

9. Pay all applicable fees such as water and sewer connection fees.

Prior to the issuance of the Certificate of Occupancy, the Developer shall meet the following conditions:

B. Phase I:

1. Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

2. Construct the necessary infrastructure improvements to provide utility including: 6" sewer lateral to connect to the existing sewer main on Westward Avenue; 8" water line (cement mortar-lined and wrap steel pipe) on Barbour Street from Hathaway Street to the subject property; and an 8" water line on-site (cement mortar-lined and wrap steel pipe) connecting to the existing line on Westward Ave. thereby creating a loop water system.

3. The developer shall repair any existing areas of the offsite improvement that may become damaged during the construction.

4. The developer shall obtain a final certification from their engineer to confirm the said improvement is in compliance with the approved plans.

C. Phase II:

1. Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees.

2. Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. A Public Works permit shall be obtained prior to commencement of any work within the right-of-way, and a Class "A" Contractor's License is requested to construct any improvements within the City's right-of-way.

3. Ensure that Best Management Practices (BMPs) are followed as per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations.

D. Phase III:

1. Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property.

2. Prepare Street Improvement Plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. Plans shall be prepared by a Registered Civil Engineer. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

3. Pay all applicable plan check fees.

Electric Department:

1. Project proponent shall have its project engineer provide electric load calculations to the City's Electric Department for review and approval. The electric load calculations shall indicate the size of service requested and voltage required.

2. Project proponent shall submit a plot plan that depicts the location of the electrical service panel to the City's Electric Department for review and approval.

3. The project proponents plot plan depicting the electrical infrastructure (pull boxes, conduit runs, etc.) shall be subject to the review and approval of the City's Electric Department.

4. Street lighting to be located on Barbour Street and Westward Avenue shall be subject to review and approval by the City's Electric Department.

5. For Phase I development of the project, the project proponent shall be subject to providing electrical utility easements along the west portion of said Phase consistent with the requirements of the City's Electric Department.

6. The project proponent shall pay all costs of material and labor associated with the approved electrical plans and load calculations as determined by the City's Electric Department.

Building Department

1. The proposed concession stands, spectator stands, picnic area, entrance/ticket booths, restrooms and buildings shall be handicap accessible and shall meet the "accessibility requirements" contained in Chapter 11 of the California Building Code.

2. For Phase I development, the project proponent shall provide 24 handicap-parking spaces. For Phase II development the project proponent shall provide 28 handicap parking spaces and for Phase III development the project proponent shall provide 17 handicap parking spaces.

Fire Department:

1. The project proponent shall be responsible for installing six (6) fire hydrants. Two hydrants to be located in proximity to the concession areas must be the City standard James Jones model 3765 or approved equivalent; four hydrants be James Jones Model 3700 or approved equivalent, capable of producing 1500gpm for a 2-hour duration. As a minimum, Phase I development will require the installation of one fire hydrant to be located in the northwest portion of Parcel "1". A plan depicting placement of said fire hydrant(s) shall be submitted to the Fire Department for review and approval. Subsequent placement of the remaining fire hydrants will be required to support each phase of development. All subsequent placement shall be subject to the approval of the Fire Department and Public Works Department.

2. Project proponent shall provide a 20-foot paved access road to the north side of the drag strip with direct access to the vendor facilities and grandstands.

3. For Fire Department emergency access into concession and grand stand areas, the project proponent shall provide minimum 6 foot wide access gates consistent with the Fire Department's requirements.

4. The proposed fueling station to be located in the northwest corner of Parcel "1" shall be UL listed for above ground fuel storage and dispensing, and is subject to the review and approval of the Fire Department. Additionally, the project proponent shall:
    - Provide secondary spill containment
    - Submit a landscape-screening plan to the City's Planning Department for review and approval.

5. Ten (10) gallons of Class A foam concentrate must be kept on the premises for Fire Department use. Prior to the issuance of a Building Permit for Phase I development the project proponent must obtain the Fire Department's approval as to the location and conditions for its storage.

6. The perimeter aisle located adjacent to and parallel to the easterly property line of Parcel "2" (Phase III development), must be a minimum of twenty (20) feet wide.

7. Parking lot design shall be subject to Fire Department Plan Check Review. Turning areas within parking aisles must be designed to accommodate fire engine access.

8. If cooking equipment is proposed to be installed in any building located on-site, automatic fire protection systems will be required for the cooking appliances.

9. If the construction of the proposed garage / dyno facility exceeds 3,000 square feet in area, an automatic fire sprinkler system shall be required.

EXHIBIT B

SUMMARY OF PHASE I *OFFSITE* DEVELOPMENT

Professional Auto Racing Facility
Unclassified Use Permit No. 01-47501

1. Extend Barbour Street east of Hathaway Street to the project boundary.

2. Barbour Street extension includes: street lighting for Barbour Street extension, curb, sidewalk, gutter, driveway approaches and handicap ramps.

3. Install an 8" water line on Barbour Street from Hathaway Street to the project boundary.

EXHIBIT C

SUMMARY OF PHASE I *ONSITE* DEVELOPMENT

Professional Auto Racing Facility
Unclassified Use Permit No. 01-47501

1. Asphalt paved drag strip 2700 linear feet
2. Paved pit area, staging lanes, burnout box, return roads, shutdown area and sand trap
3. 12-foot high noise barrier wall in proximity to race start area.
4. Two-story control tower
5. Portable fuel depot, 150 square foot storage building, trash enclosure
6. Entrance/ticket booth
7. 625 square foot restroom and 1125 square foot concession building
8. 2,375 square foot picnic area
9. 1,136 paved onsite parking spaces
10. Two spectator stands to total spectator seating of 3,200

Attachment III

DRAFT 10/16/02 **DRAFT 10/16/02**

LICENSE AGREEMENT

This License Agreement ("License") is entered into by and between the City of Banning, a California municipal corporation ("City"), and All American Racing, a California Limited Liability Company ("Owner"), jointly referred to herein as the "Parties."

RECITALS

A. Owner is the owner, lessor, or party in possession and control of that certain real property (herein, the "Lot") located in the City of Banning consisting of approximately 40 acres of land in close proximity to the Banning Municipal Airport, commonly known as assessor parcel number 532-130-008 depicted on Exhibit A.

B. On or about _____, 2002, the City and Owner entered into a Lease Agreement ("Lease") for the occupation and use by Owner of 20 acres of land owned by City ("Site") that lie immediately adjacent to the Lot. The Lease requires the Owner to annually pay to the City a base rent ("Rent") for the lease of the Site for a period of 5 years.

NOW, THEREFORE, based on the foregoing recitals, City and Owner agree as follows:

COVENANTS

1. Grant of Non-exclusive License for Public Parking Purposes.

Owner hereby agrees to grant to City and City hereby agrees to accept from Owner a non-exclusive license for public parking purposes over and across the parking lot(s) to be constructed and maintained by Owner on the Lot, together with the right of ingress and egress to and from the nearest public street and such parking lot(s) to the driveways to be constructed by Owner on the Lot (collectively, the "License Areas"). The foregoing grant is subject to the following specific limitations:

(a) The grant of the non-exclusive license rights for public parking as provided herein shall become effective as the date the construction of the West Parking lot to be constructed by Owner pursuant to City of Banning Unclassified Use Permit 01-47501 is completed and the Lot is opened for business to the general public. **This Agreement shall become void and of no further effect if the Lot is not completed and opened for business to the general public on or before the expiration of 24 months following date hereof.**

(b) City shall not use or permit to be used the License Areas for purposes which are inconsistent with either or both: (i) the intended primary function of such area as parking for the customers, employees, licensees, and invitees of the Lot, or (ii) the satisfaction of Owner's off-street parking requirements for the Lot. Not by way of limitation of the foregoing, City shall have no right under this License to permit the License Areas to be used for parking of vehicles in excess of the time restrictions established by Owner in accordance with subdivision (e) below, or for a park-and-ride facility or for the satisfaction of off-street parking requirements that apply to other properties in the vicinity of the Lot.

(c) City shall have no right to construct, reconstruct, maintain, demolish, or remove any structures or improvements or to erect any barriers within the License Areas.

(d) Owner shall have the full right to construct, reconstruct, maintain, demolish, or remove structures and improvements, erect barriers, and make other physical changes to the improvements within the License Areas which are consistent with any development permit and other governmental regulations and requirements.

(e) Owner shall have the full right to promulgate and enforce parking restrictions and regulations within the License Area which are consistent with the development permits and applicable governmental regulations and requirements, including, without limitation, closure of parking areas during hours that the Lot is closed, time restrictions, valet parking, charging for parking at times when a charged is otherwise assessed for parking during events on the Lot, designating paring areas where employees are required to park, designation of handicapped spaces, and similar matter.

(f) Owner shall retain full authority to temporarily take parking spaces out of service within the License Areas when Owner reasonably determines that such action is necessary for safety reasons or to effectuate maintenance, repairs, reconstruction, or improvement of the License Areas.

(g) Subject to obtaining any necessary governmental permits and approvals, Owner shall retain full authority at any time and form time to time to restripe or relocate parking stalls within the Licensed Areas and make other physical alterations and improvements, provided that not fewer than the minimum number of parking spaces required to satisfy Owner's obligations for off-street parking for the Lot shall be maintained on a permanent basis in accordance with applicable City ordinances, regulations, rules, and official policies.

2. Term This License and City's rights hereunder shall terminate and become null and void on the termination date of the Lease, the termination date of which is incorporated herein and by this reference made a part hereof. Upon the termination of this License, City agrees to execute in recordable form such documents as may reasonably be required by Owner or the holder of any

security interest in all or any portion of the License Areas to remove the lien or encumbrance of this License.

3. City Payments to Owner. In consideration for Owner's provision of a license to City allowing public use of the License Areas as set forth in this License, City agrees to make periodic payments to Owner in the amounts, at the times, in the manner, and subject to the terms and conditions set forth herein.
   a. The initial payment to Owner shall be made upon the date the West Parking Lot is completed and the Lot is opened for business to the general public. All subsequent payments shall be made annually on the date of the payment of the Base Rental under the Lease.
   b. The amount of each payment by City to Owner shall be equal to the amount of the Rent due under the Lease
   c. It is understood and agreed that the payments required to be made by City to Owner hereunder are intended to correspond in any fiscal year to the benefit provided to City hereunder during such fiscal year by use of the license rights herein granted.

4. Relocation of Licensed Areas. Notwithstanding any other provision in this License to the contrary, and provided that Owner obtains all necessary governmental permits and approvals, Owner shall have the right at any time and from time to time to relocate all or any portion of the License Areas, to another portion of the Lot or the Site, provided that the minimum number of parking spaces subject to this License shall not be reduced below the number specified in Paragraph 1(g) above.
5. Management and Control. Owner shall retain full management and control of the License Areas, subject only to the non-exclusive rights of City and members of the public to utilize parking within the License Areas as set forth herein.
6. City to have No Responsibility for Maintenance or Repair or Liability for Injuries or Damage. City shall nave no obligation for maintenance, repair, replacement, reconstruction, or improvement of all or any portion of the License Areas or any improvements now or hereafter constructed thereon. In addition, City shall have no liability by virtue of its property interest in the License Areas for any personal injuries or death, property damage, or economic loss arising out of any occurrence on or adjacent to the License Areas, and Owner agrees to save, defend, indemnify and hold harmless the City, its officers, elected officials, agents and employees from and against any claims, liabilities, judgments, or losses arising from any such occurrence.
7. Restrictions on Assignment. The license rights granted herein shall be personal to City and shall not be appurtenant to any real property owned by City. City shall not assign its rights hereunder to any person or entity without the express prior written approval of Owner, which approval may be granted, conditioned or withheld on Owner's sole and absolute discretion. It is understood and agreed that City holds its rights under this License for the benefit of the citizens and residents of the City of Banning and persons desiring ingress to and egress from and parking in the License Areas. Subject

to the foregoing restrictions on assignment, this License shall be coupled with an interest, shall not be revocable by Owner (in the absence of material default and failure to cure by City), and shall bind and inure to the benefit of the successors and assigns of City and Owner.

8. Interpretation. The terms of this License 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 he authorship of this License or any other rule of construction which might otherwise apply. The section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this License.

9. Waivers and Amendments. All waivers of the provisions of this License must be in writing and signed by the appropriate authorities of City or Owner, as applicable, and all amendments hereto must be in writing and signed by the appropriate authorities of City and Owner.

10. Cooperation; Execution of Documents. Each party shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out this License in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder. Not by way of limitation of the foregoing, at the request of Owner or any holder of a mortgage or deed of trust with respect to all or any portion of the Lot, City shall timely execute and deliver to Owner or such holder a written statement of City (i) that no default or breach exists (or would exist with the passage of time, or giving notice, or both) by Owner under this License if such be the case, and certifying as to whether or not Owner has at the date of such certification complied with any obligation of Owner hereunder as to which such holder may inquire, and/or (ii) certifying the status of payments made or due hereunder. The form of any estoppel letter or certificate shall be prepared by Owner or the holder of the mortgage or deed of trust and shall be at not cost to City.

11. Attorney's Fees. Except as may be provided elsewhere in this License, if either party to this License is required to initiate or defend litigation with a third party because of a violation of any term or provision of this License, then the party so litigating shall be entitled to reasonable attorney's fees from the other party to this License. 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 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.

IN WITNESS WHEREOF, City and Owner have executed this License as of the dates set forth next to their signatures below.

Date:

CITY:
THE CITY OF BANNING

_____
by: John Hunt, Mayor

OWNER:

By. ALL AMERICAN RACING, LLC

_____
By:

250

532-13
24-27-1

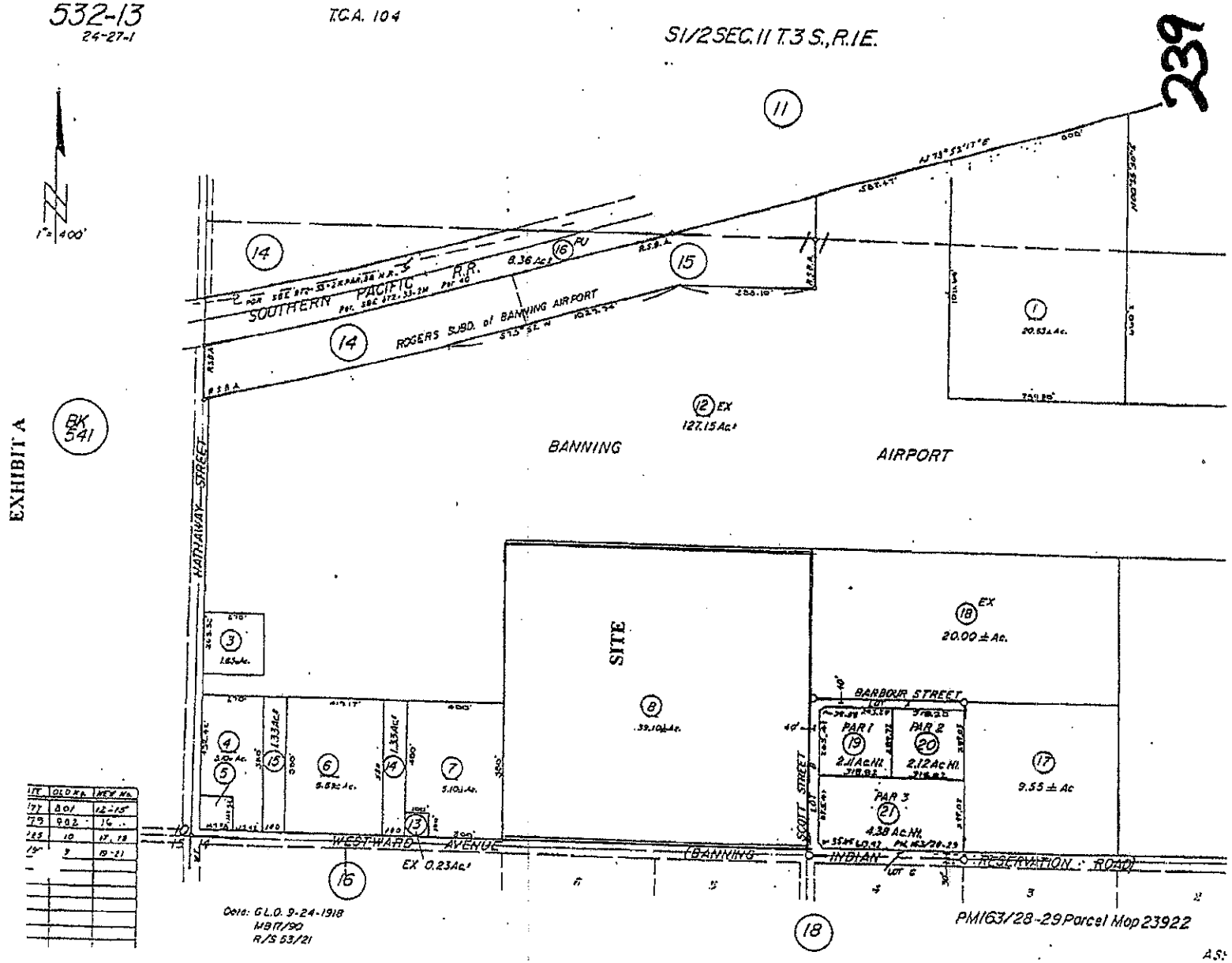
T.C.A. 104

S1/2 SEC. 11 T.3 S., R.1E.

239

01007

EXHIBIT A



ATTACHMENT 15

RESOLUTION NO. 2002-111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A LEASE AGREEMENT, LICENSE AGREEMENT AND REIMBURSEMENT AGREEMENT WITH ALL AMERICAN RACING, LLC FOR THE PURPOSE OF DEVELOPING A PROFESSIONAL DRAG RACING FACILITY

WHEREAS, All American Racing, LLC has proposed development of a professional drag racing facility in the City of Banning in the vicinity of Hathaway Street and Westward Avenue Street; and

WHEREAS, development of such a facility is consistent with the mission of the City of Banning Strategies for Economic Development to strengthen and expand the City's overall economic base; and

WHEREAS, The City of Banning owns 20-acres of property that is suitable for inclusion into the develop of the proposed development; and

WHEREAS, construction of infrastructure improvements are required as a condition of development and are a benefit to the public generally; and

WHEREAS, All American Racing, LLC will construct such improvements; and

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

Section I. The Lease Agreement with All American Racing, LLC for 20-acres of land, Assessor parcel Number 532-130-018, owned by the City for development of a professional drag racing facility described and incorporated herein as Attachment I inclusive of Exhibits "A", "B", "C", "D", "E" and "F" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

Section II. The Reimbursement Agreement for construction of infrastructure improvements described and incorporated herein as Attachment II inclusive of Exhibit "A", "B" and "C" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

Section III. The License Agreement for the City's use of parking facilities to be constructed by AAR on Assessor Parcel Number 532-130-008 described and incorporated herein as Attachment III inclusive of Exhibit "A" is hereby approved and authorization is granted for the Mayor to execute said Agreement.

Section IV. Said authorization shall expire 120 days following the date thereof if the Agreement has not been executed by either party form the date of this resolution.

PASSED, APPROVED AND ADOPTED the 22nd day of October, 2002.

John Hunt, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson, City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2002-111 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of October, 2002 by the following vote, to wit:

AYES:	Councilmembers Jenkins, Mediano, Salas, Wages, Mayor Hunt
NOES:	None
ABSTAIN:	None
ABSENT:	None

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

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE OFFICE OF THE CITY CLERK.
BY
TITLE City Clerk
DATE 11-12-02

REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 16th day of November 2002, by and between the CITY OF BANNING, a municipal corporation (hereinafter called "City") and All American Racing, a California Limited Liability Company hereinafter called "Developer").

WHEREAS, it is necessary that the public street of Barbour Street be extended east of Hathaway Street, and the 8 inch public water line in Barbour Street be extended, and that other improvements be provided all as set forth in the Unclassified Use Permit No. 01-47501 Phase I under the Engineering Department requirements, a copy of which is attached hereto as Exhibit A, and by this reference made a part hereof, (hereinafter "Public Improvements "); and

WHEREAS, the Public Improvements are not for the exclusive use of the Developer but shall serve the public generally; and

WHEREAS, Developer, at its own expense, has agreed to perform all work necessary to construct the Public Improvements; and

WHEREAS, it is the desire of the City that the Public Improvements be constructed as indicated herein so as to provide for the orderly and efficient development of the Public Improvements within the City; and

WHEREAS, work being done and amounts being spent by Developer as indicated herein, will provide benefit for the public generally and not exclusively for Developer's property;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the City and Developer agree as follows:

1. Developer will, at its own expense, furnish all soil reports, engineering, plans, studies, and other necessary or property items to design and engineer the Public Improvements. Further, Developer will, at its own expense, furnish all equipment, labor and materials necessary, and construct and install all of the said Public Improvements, in accordance with plans and specifications approved by the City Engineer of the City, for the Public Improvements. It is acknowledged that the expenses for the project will be the exclusive costs of the Developer.

2. Developer shall construct and install (or cause the construction or installation of) said Public Improvements and shall cooperate with the City Engineer in the construction of the said Public Improvements.

3. The City Engineer and/or other appropriate City official shall inspect the construction of said Public Improvements from time to time and, after any and all

deficiencies discovered by said Engineer have been corrected by Developer, the City shall accept said Public Improvements for public use.

4. Indemnification

Developer agrees to indemnify, defend (upon request by City) and save and hold harmless the City of Banning, its agents, officers and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury or property damage arising from or connected with received by reason of, or in the course of, performing the work necessary for the installation of the Public Improvements, or its services hereunder, including any workers' compensation suit, liability or expense, arising from or connected with the work performed by or on behalf of Developer by any person pursuant to this Agreement

5. The City shall not be responsible for any accident, loss or damage to said work prior to its acceptance by the City. Developer shall remain responsible for satisfactory workmanship and material for a period of one year from the date of acceptance of the work by the City.

6. The City hereby agrees to reimburse Developer for the Public Improvements provided and installed by Developer as herein agreed, which will be used to and for the benefit of the public generally. The amount of such reimbursement is $125,000.

7. The City shall reimburse Developer pursuant to the following:

A. City shall pay to Developer the sum of sixty-two thousand five hundred dollars ($62,500) within 60 days following acceptance by the City of Phase I off-site improvements as specified in Unclassified Use Permit 01-47501 and as specifically summarized in Exhibit B.

B. City Shall pay to the Developer the sum of sixty-two thousand five hundred dollars ($62,500) within 60 days following date of issuance of certificate of occupancy for the last of the Phase 1 On Site Improvements as shown on Exhibit C.

8. A. This Agreement shall become void and of no further effect and no payment shall be due to Developer under any part of section 7 hereof if work on the Public Improvements pursuant to plans approved by the City Engineer has not been commenced within 24 months following date of this Agreement. Further, no payment will be made for work that has not been accepted by the City consistent with section 3 above, prior to the expiration of 60 months following date hereof.

B. This Agreement shall become void and of no further effect and no payment shall be due to Developer under section 7 (B) if the certificate of occupancy for the On-Site Improvements has not been issued prior to the expiration of 60 months following date hereof. The appropriate City

official shall inspect the construction of said On-Site Improvements from time to time and, after any and all deficiencies discovered by said official have been corrected by Developer, the City shall issue the certificate of occupancy.

9. Rights to reimbursement due under this Agreement may be assigned after written notice to the City by the holder of such rights as shown on the records of the City. Such assignment shall apply only to such refunds or reimbursements becoming payable more than 30 days after receipt by the City of the written notice of assignment. The City shall not be required to make any reimbursement payment to more than a single developer or assignee.

10. Accept as otherwise provided herein, this Agreement may only be amended by the written consent of all of the parties to this Agreement at the time of such amendment.

11. Dispute Resolution

(a) If any Party believes any other Party to be in violation of any term or condition of this Agreement, that Party shall give the alleged defaulting Party thirty (30) days ("Cure Period") written notice specifying the nature of the alleged violation and, when appropriate, the manner in which the violation may be satisfactorily cured. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation. Upon expiration of the time allotted for appeal without cure or appeal, the agreement shall be deemed terminated. The agreement may be earlier terminated upon the mutual written agreement of the Parties.

(b) If the matter is not resolved within the Cure Period, the aggrieved Party may appeal the allegation of violation by filing with the City Clerk, within five (5) calendar days following the end of the Cure Period, a notice of appeal to the City Council. The aggrieved Party and the alleged defaulting Party shall be given an opportunity to be heard at a regularly scheduled meeting of the City Council, which need not be a public hearing. If, after such hearing, it is the finding of the City Council that a violation has occurred and is continuing, the defaulting party shall immediately commence the cure of such default. The City Council shall, at such hearing, set the date for completion of the cure. If the defaulting Party has not completed the cure within the time allowed, the aggrieved party may thereafter take such action as is hereinafter permitted as an action on a default.

(c) If, after hearing the testimony and reviewing the evidence presented by the Parties, the full City Council finds by majority vote that there has been no default hereunder, the matter shall be at an end and each Party hereby waives the right to take any further action against any other Party hereto for such alleged breach

(d) Subject to the prior exhaustion of all administrative remedies set forth hereinabove, in addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any violation, to enforce any covenants or agreements herein, to enjoin

any threatened or attempted violation hereof, to recover damages for any default, or to obtain any other remedies consistent with the purposes of this Agreement. The parties may agree to submit the matter to mediation or arbitration.

(e) Notwithstanding any other provisions herein to the contrary, (i) neither Party shall have any liability hereunder for contractual damages, (ii) each Party shall only be entitled to specific performance by the other Party of its obligations under this Agreement, and (iii) each Party shall otherwise be subject only to liability for violation of a statutory or constitutional right of the other Party which exists independent of this Agreement. Any legal action shall be brought in the Superior Court of the County of Riverside, State of California.

12. If any legal action or other proceeding is brought for the enforcement of this Agreement, or to interpret any of the provisions hereof, or of any alleged dispute, breach, default, or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in said action or proceeding, whether or not said action or proceeding goes to final judgment, in addition to any other relief to which it may be entitled, and shall include any post-judgment attorneys' fees incurred, any attorney's fees incurred by the prevailing party on appeal, and by the prevailing party for any post-judgment motion proceedings or hearings, and any and all attorneys' fees incurred in any and all efforts by the prevailing party to collect its judgment.

13. Execution of this Agreement shall be presumed to be made by an individual authorized by his or her respective corporation by resolution of its board of directors and such execution shall constitute a waiver by the party of any lack of such a resolution.

14. Notice

Notices, herein shall be presented in person or by certified or registered U.S. mail, as follows:

To Developer: All American Racing
P.O. Box 197
Banning, Ca. 92220
Attention: Andy Marocco, President

To City: City of Banning
Post Office Box 998
Banning, California 92220
Attention: City Engineer

Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.

15. Except as expressly provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns.

16. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

17. All exhibits attached hereto and referred to herein are hereby incorporated herein as though set forth at length.

18. The parties hereto agree to execute and file and to join in the execution and filing of any and all agreements, consents or other documents reasonably necessary to effect the consummation of the transaction contemplated hereby, as either party hereto may reasonably require.

19. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be in the courts of Riverside County.

20. The section and other headings contained in this Agreement are for reference purposes only and will not affect the interpretation or meaning of this Agreement.

21. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement. The masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tenses, respectively, where the context so requires.

22. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

23. Nothing contained herein shall be construed to require the City to make reimbursement payments from any source of funds other than as set forth in Section 7 hereinabove.

24. The City's obligation hereunder shall terminate upon the expiration of five (5) years following date of execution of this Agreement.

25. Release of News Information

No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of City or his or her designee.

26. Confidentiality of Reports

Developer shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that City designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of City.

27. Right to Audit

City, or any of its duly authorized representatives, shall have access to any books, documents, papers and records of Developer and/or its subcontractors which are pertinent to the specific program hereunder for the purpose of making an audit, an examination, excerpts and transcriptions. All books, records and supporting detail shall be retained for a period of one (1) year after the expiration of the term of this Agreement, or any extension thereof, City may request in writing at least thirty (30) days prior to expiration of this Agreement that information and records prepared, or used by Developer in performing the work under this Agreement be provided to City whereupon Developer shall provide said information to City within thirty (30) days.

28. City Support

City shall provide Developer with any plans, publications, reports, statistics, records or other data or information pertinent to the work to be provided hereunder which are reasonably available to City.

29. Independent Contractor

Developer shall perform the work described herein as an independent contractor and shall not be considered a contractor of City or under City supervision or control. This Agreement is by and between Developer and City, and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, between City and Developer.

30. Conflict of Interest

Developer represents, warrants and agrees that it does not presently have, nor will it acquire during the term of this Agreement, any interest direct or indirect, by contract, employment or otherwise, or as a partner, joint venturer or shareholder (other than as a shareholder holding a one percent (1%) or less interest in publicly traded companies) or affiliate with any business or business entity that has entered into any contract, subcontract or arrangement with the City of Banning. Upon execution of this Agreement and during its term, as appropriate, Developer shall upon written request, disclose in writing to City any other contractual or employment arrangement from which it receives compensation. Developer agrees not to accept any employment during the term of this Agreement by any other person, business or corporation which employment will or may likely develop a conflict of interest between the City of Banning's interests and the interests of third parties.

31. Insurance

Without limiting Developer's indemnification of City, Developer shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering its operation hereunder. Such insurance shall be provided by insurer(s) satisfactory to City and evidence of such programs satisfactory to City shall be delivered to the City Manager or his/her designee within ten (10) days of the effective date of this Agreement.

Minimum Scope of Insurance:

Commercial General Liability and Umbrella Liability Insurance on an occurrence basis, including the tort liability of another assumed in a business contract. Automobile and Umbrella Liability Insurance for any auto, including owned, hired and non-owned autos. Worker's Compensation Insurance as required by the State of California and Employer's Legal Liability, including a waiver of subrogation against the City of Banning. Professional Liability coverage on either a claims made or occurrence basis.

Minimum Limits of Insurance:

General Liability/Umbrella Liability with a limit of not less than $1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the contract project. Automobile Liability (and necessary commercial umbrella liability) Insurance with a limit of not less than $1,000,000.00 each accident. Worker's Compensation (commercial umbrella and/or employers liability) Insurance with a limit of not less than $1,000,000.00 each accident for bodily injury by accident or $1,000,000.00 each employee for bodily injury by disease.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or (b) the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions:

Additional Insured Status of City. The City, its officers, officials, employees, and volunteers shall be insureds with respect to either liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Consultant or liability arising out of work or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations, excepting professional liability coverage.

Insurance Primary to City Insurance. For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Prior Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by Developer or Developer's insurance; except after thirty (30) days prior written notice to the City.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

32. Verification of Coverage

Developer shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

Failure on the part of Developer to procure or maintain required insurance shall constitute a material breach of this Agreement upon which City may immediately terminate this Agreement.

33. Compliance with Laws

The parties agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement. Special note is made of the prevailing wage law requirements and the public contacts bid requirements.

34. Non-Discrimination

In the fulfillment of the program established under this Agreement, either as to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or

termination, rates of pay or other terms of compensation, selection for training, including apprenticeship or participation in the program or the receiving of any benefits under the program, Consultant agrees not to discriminate nor to allow any subcontractor to discriminate on the basis of race, color, creed, religion, national origin, ancestry, sex, marital status or physical handicap.

35. Entire Agreement

This Agreement with attachments constitutes the entire understanding and agreement of the parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Consultant by the City and contains all the covenants and agreements with respect to such retention.

36. No Third Party Beneficiaries

No third party shall be deemed to have any rights hereunder against any of the parties hereto as a result of this Agreement.

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

"DEVELOPER"

By: _____

Name Andy Marocco

Title President

"City of Banning"

By: John Hunt

Name John Hunt

Title Mayor

ATTACHMENT 16

Roger Derda

From: Roger Derda <rderda@ci.banning.ca.us>
To: <mopardragcity@aol.com>
Sent: Monday, April 07, 2003 8:51 AM
Subject: Drag City proposal

Hi Andy – After we met on Thursday of last week I thought there was a considerable amount of confusion on your part regarding the City's concerns relating to your request for the issuance of a grading permit. On this basis, I want to provide you with definitive reasons why the issuance of the grading permit raises issues that weren't previously anticipated (understood and/or considered) by the City. You will recall that when your project was presented to the Planning Commission and City Council you provided certain elevational renderings regarding how the project would look once it was constructed / developed. The renderings depicted 12-foot high block walls that would be utilized for sound attenuation purposes as well as the placement of grandstands, tower etc. Importantly, the photos as well as the narrative description for the noise attenuation measures (the 12-foot high block walls); indicate that all of these elements would be "at grade".

The grading plan you have submitted to the City's Public Works Department indicates that there will be an area in the west most portion of the project that will entail a substantial "cut" (23.95 feet) in order to create a "below grade" area that has been designed to eliminate the need to construct the 12 foot high sound walls and will serve as a "concave" area for placement of grandstands, tower etc. In talking with Dick Whitman, it is my further understanding that this below grade design would help mitigate certain FAA concerns relating to the overall height of the tower and light poles for night racing, and would reduce costs associated with construction attributable to required wind loads. While it is my feeling that this design may enhance the mitigation of noise related factors associated with the project, what is at issue is the fact that the Planning Commission, City Council, and the Public had no idea that certain key improvements associated with the implementation of the project would be significantly below grade. This being the situation, it is my determination that the proposed modification constitutes a significant amendment to the approved site plan. As a result, if you wish to proceed with the modified design, it will be necessary to process an amendment to your approved Unclassified Use Permit. The amendment process will allow the City as well as the public to comment on the changes. I understand that time if of the essence, and on this basis, if it is your desire to proceed with amending your permit, I must receive your written request, accompanying documentation (including amendments to the noise study evidencing that the new design will not create noise impacts not anticipated in the original and approved study) and processing fee as quickly as possible so that I may expedite its processing. I have provided Mr. Whitman with information that will facilitate this process.

I need to emphasize that the ALUC condition remains to be fulfilled (Public Works Condition #6), and that your proposed amended design provides the ALUC an opportunity to evaluate the project PRIOR to the City having to take a subsequent action in amending the subject Unclassified Use Permit. Importantly, please understand that if the ALUC were to communicate to the City that it needed certain conditions to be incorporated into your project and/or it provided input that was contrary to the City's previous approval action, based upon the language contained in said Condition #6, the City would still be obligated to revisit the subject permit and act on the input it receives from the ALUC regardless of which site plan is under consideration (approved or proposed modified).

I wish to stress, that the City is not being arbitrary or capricious in its evaluation of this matter; its

ATTACHMENT 17

CITY COUNCIL AGENDA
REPORTS OF OFFICERS

Date: April 22, 2003

TO: City Council

FROM: Ray Griest, Interim City Manager

SUBJECT: Drag City – Applicant Request To Be On Agenda

RECOMMENDATION: The City Council refer this matter to the Planning Commission for its consideration and recommendation.

JUSTIFICATION: Mr. Marocco has submitted a request to be on the Agenda to discuss his Professional Drag Facility project (Exhibit "A"). Section 9116.9 (Exhibit "B") of the Banning Ordinance Code outlines the procedures to modify Conditional Use Permits/Unclassified Use Permits. The Professional Drag Facility project was issued an Unclassified Use Permit in August 2001. The Developer was granted a one-year extension of the Permit in August 2002. Subsequent to the granting of the extension, the applicant submitted a grading plan to excavate some 240,000 yards of earth at the site of the proposed project. The Community Development Director has determined that this proposed grading plan represents a substantive modification to the original concept approved by the City and therefore the project is subject to reconsideration by the City's Planning Commission and City Council.

BACKGROUND: The Professional Drag Facility project received an Unclassified Use Permit with Final Conditions of Approval in August 2001 (Exhibit "C"). This Permit as issued by the City attaches 57 conditions to the approval. One of these conditions is Engineering Condition #6 which reads as follows:

> "Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions: Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD)."

On Thursday, April 3, 2003, the City Attorney, Community Development Director, Economic Development Manager, Interim City Manager, and Public Works Director met with Mr. Marocco, President, All American Racing, LLC/Mopar Drag City to discuss the Professional Drag Facility project. At this meeting Mr. Marocco stated that he wanted the City to issue the grading permit referenced in the final conditions of approval for his project even though he had not satisfied Condition #6. The justification for this request was based on the assertion by Mr. Marocco that he had talked to the ALUC and that because his project had already been "approved" the Commission had no interest in it. The staff reaction to this comment was that both Mr. Marocco and the ALUC had misinterpreted the action taken by the City. Staff pointed out that the City conditionally approved the project with the understanding that the ALUC would

291

01231

266

ATTACHMENT 18

RESOLUTION NO. 2003-34

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING FINDING SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF BANNING ORDINANCE CODE SECTION 1-27; FINDING THAT A CHANGE IN THE PLANS AND CONDITIONS FOR UNCLASSIFIED USE PERMIT 01-47501 CONSTITUTES A "MINOR MODIFICATION"; AND, GRANTING A GRADING PERMIT PURSUANT TO CONDITIONS SET FORTH HEREIN

I. Recitals:

WHEREAS, Unclassified Use Permit No. 01-47501 (the "UUP")was issued to All American Racing, LLC ("Developer") in August of 2001for the development of a Professional Drag Racing Facility ("Project"); and

WHEREAS, Engineering Department condition number 6 of the UUP reads as follows:

> Prior to issuance of any permits, the Developer shall meet the following Engineering conditions: Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

and,

WHEREAS, at some time prior to April 3, 2003, the Developer requested a modification to Engineering Department condition number 6 such that Developer would be allowed to receive a grading permit prior to complying with the requirement to submit plans to ALUC; and

WHEREAS, at some time prior to April 3, 2003, the Developer submitted a grading plan and requested that the City of Banning ("City") approve the grading plan and issue a permit to grade the Project site. The grading plan identified the movement of approximately 240,000 cubic yards of earth off the site of the proposed Project. This was an error and the submittal was amended to show that all movement of earth is within the site; and

WHEREAS, the determination was made by staff that the request for modification of Engineering Department condition number 6 and the grading plan requirement for the movement of 240,000 cubic yards of earth are modifications to the UUP and such modifications are not minor modifications as used in Banning Ordinance Code section 9116.9; and

WHEREAS, on April 3, 2003, the question was presented to the City Manager for his consideration in substantial compliance with the provisions of Banning Ordinance Code section 1-27; and

WHEREAS, the City Manager heard the matter and reached the decision to support the determination of staff that the proposed changes were modifications to the UUP and that such proposed changes were not minor modifications.; and

WHEREAS, in substantial compliance with the provisions of Banning Ordinance Code. section 1-27 the matter has been forwarded to the City Council for its determination.

II. NOW, THEREFORE, the City Council of the City of Banning hereby resolves as follows:

A. The City Council hereby finds that each of the recitals set forth above is true.

B. Based on a review of the record in the matter and on the testimony set forth before the City Council at its regular meeting of April 22, 2003, and at its special meeting of April 26, 2003, it is hereby found that:

1. the grading plan requiring the movement of approximately 240,000 cubic yards of earth is a minor modification to that plan for the Project which was originally presented to the City Council and upon which the City Council based its approval and grant of the UUP.
2. The modification of Engineering Department condition number 6 of the UUP to allow the issuance of a grading permit prior to Developer's submission of all necessary documents to ALUC and AQMD is a minor modification of the UUP when the grading permit is issued subject to appropriate conditions. The appropriate conditions for the issuance of the grading permit are as follows:

   a. The grading permit is issued for the racetrack of the Project. Pursuant to the issuance of the permit, the Developer may grade and pave the drag racing facility. Developer shall not conduct any activity of any type, including testing of the racetrack surface, upon the graded racetrack prior to fulfillment by Developer of the requirements for commencement of operation of the Project. Those conditions are set forth in the Lease Agreement executed by and between Developer as Tenant and the City on or about November 26, 2002 (hereinafter "Lease Agreement"), and in the conditions of approval of the UUP.
   b. Within 10 working days following the effective date of this resolution the Developer shall submit for signature by the Mayor an agreement ("Agreement") setting forth the following:
      1. That to the extent permitted by law, the developer shall save, hold harmless and defend, the City of Banning, the City Council and the officers and employees of the City in any action or claim of whatever type and on whatever grounds arising from the action of the City Council in approving these modifications to the conditions of the UUP.

2. That within 10 days of effective date of this resolution, the Developer shall have made an initial good faith submission of all necessary documents for review and approval by ALUC, and AQMD, pursuant to Engineering Department condition number 6 of the conditions of approval of the UUP.
3. That, if ALUC or the AQMD shall require a modification, whether major or minor, affecting the grading completed by Developer pursuant to the permit issued hereunder, or any element of the Project, said modification shall be submitted to the City of Banning Planning Commission for review and advisement. The advisory of the Planning Commission shall be submitted to the City Council for acceptance, rejection, or acceptance as amended by the City Council. If such modifications are accepted or accepted with amendments, Developer shall immediately, and in good faith, undertake to make such modifications and shall diligently pursue the work of such modification until completed to the satisfaction of the City.
4. That if for any reason Developer is (a) unable or unwilling to complete the Project after commencement of the grading contemplated under paragraph 1(a) immediately above, or (b) unwilling or unable to make modification to the grading or other elements of the Project as may be required pursuant to paragraph 3 immediately above, Developer shall restore the portion of the Project site graded hereunder and owned by the City to its condition prior to commencement of grading.
    i. Developer's obligation to restore the Project site pursuant to (a) immediately above shall arise and be enforceable without further action by the City upon the date of any default by Developer under the Lease Agreement. This remedy is separate from and in addition to any right or remedy the City may have in the Lease Agreement.
    ii. Developer's obligation to restore the Project site pursuant to (b) immediately above shall arise and be enforceable without further action by the City on the date that is 30 days following date upon which the Developer receives notice from the City Council of the requirement to make modifications contemplated by paragraph 3 immediately above.
    iii. The dates for compliance set forth above may be modified upon the written agreement of the City and the Developer.

c. Within 10 working days following the effective date of this resolution the Developer shall file with the City Manager or his designee a surety guaranteeing payment to the City of a sum for damages incurred by the City as a result of Developer's breach of the covenants of the agreement. For purposes of emphasis and not of limitation, reference is made to the covenant to defend the City, its officers and employees,

and to the covenant to restore the graded portion of the Project site per paragraph 4 above. Said surety shall be in the amount of not less than one hundred and fifty thousand dollars ($150,000) principle sum. The amount of the surety is not a limit on the amount of damages for which the Developer is liable to City upon the occurrence of a breach. Developer shall be liable to City to the full extent of the damages incurred by City as the result of such breach.

d. Upon presentation of the fully executed Agreement and the bond, payment of all applicable fees, and fulfillment of all applicable conditions of the Lease Agreement, Reimbursement Agreement, and conditions regularly required by the City for issuance of a similar grading permit and consistent with the conditions otherwise set forth herein, the Developer shall be entitled to receipt of a grading permit.

C. If prior to commencement of grading hereunder the Developer shall fail to meet any condition set forth in this resolution or fail to fulfill the requirements for the issuance of the grading permit within the times set forth herein, the matter is hereby referred to the City Manager for commencement of action under section 11, "Dispute Resolution," of the Reimbursement Agreement executed by and between the City and the Developer on or about November 11, 2003. A breach hereunder shall not constitute a breach under the Reimbursement Agreement unless independently determined to be such breach.

PASSED, APPROVED, AND ADOPTED this 26th day of April, 2003.

Arthur L. Welch, Mayor

Approved as to Form
And Legal Content

John F. Wilson, City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE OFFICE OF THE CITY CLERK.

BY Marie A. Calderon
TITLE City Clerk
DATE 7-11-05

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-34 was duly adopted by the City Council of the City of Banning, California, at a special meeting thereof held on the 26th day of April, 2003 by the following vote, to wit:

AYES:	Councilmembers Machisic, Palmer, Salas, Mayor Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

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

ATTACHMENT 19

RESOLUTION NO. 2003-39

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING SECTION 1.5(B) OF THE LEASE AGREEMENT WITH ALL AMERICAN RACING, LLC EXTENDING THE TERM FOR PERFORMANCE

WHEREAS, On October 22, 2002, the Banning City Council adopted Resolution No. 2002-111, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A LEASE AGREEMENT, LICENSE AGREEMENT AND REIMBURSEMENT AGREEMENT WITH ALL AMERICAN RACING, LLC FOR THE PURPOSE OF DEVELOPING A PROFESSIONAL DRAG RACING FACILITY; and

WHEREAS, section 1.5(B) of the Lease Agreement states that:

B. Any other provision of this Lease notwithstanding, and as a condition precedent to Tenant entering and taking possession of the Property hereunder, Tenant shall show, by evidence satisfactory to City, that it has obtained possession and control of that forty acre parcel of land lying immediately adjacent to the Property, and identified as Assessor's Parcel Numbers 532-130-008 and 532-130-018, for use in conjunction with the Property as set forth in City of Banning Unclassified Use Permit 01-47501. Tenant shall have 90 calendar days following date of approval of this Lease by the Banning City Council within which to present such evidence. If the evidence is not produced within that time, this Lease shall become null and void without further action and neither party shall have any obligations hereunder.;

and

WHEREAS, the Lease Agreement became effective on November 26, 2002, and thereafter became void according to its terms on February 24, 2003; and

WHEREAS, on April 26, 2003, the City Council adopted Resolution No. NO. 2003-34 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING FINDING SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF BANNING ORDINANCE CODE SECTION 1-27; FINDING THAT A CHANGE IN THE PLANS AND CONDITIONS FOR UNCLASSIFIED USE PERMIT 01-47501 CONSTITUTES A "MINOR MODIFICATION"; AND, GRANTING A GRADING PERMIT PURSUANT TO CONDITIONS SET FORTH HEREIN pursuant to which the project proponent was authorized to proceed with the grading for the development subject to the condition set forth at section II(B)(2)(D) of that resolution requiring that developer have fulfilled all applicable conditions of the Lease Agreement prior to issuance of the grading permit; and

WHEREAS, developer has submitted a request that time for acquisition of the 40 acres required by the Lease Agreement be extended to August 6, 2003 and the City Council finds the grounds for the request to be persuasive.

01307

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING HEREBY RESOLVES AS FOLLOWS:

Section 1.

A. The City Council hereby re-adopts and approves the Lease Agreement previously adopted under Resolution No. 2002-111, with the following amendment.

B. Section 1.5 (B) of the Lease Agreement is hereby amended to grant the Tenant to August 6, 2003, within which to obtain possession and control of the 40 acres of land described in that section.

C. Except as specifically amended by this resolution the Lease Agreement is re-adopted on the same terms and conditions as originally set forth and shall be in effect as though it had continued without interruption from the date of its first adoption.

Section 2.

PASSED, APPROVED, AND ADOPTED this 13th day of May, 2003.

Arthur L. Welch, Mayor

John F. Wilson, City Attorney

ATTEST:

Marie A. Calderon, City Clerk

///

///

///

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-39 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of May, 2003 by the following vote, to wit:

AYES:	Councilmembers Hanna, Palmer, Salas, Mayor Welch
NOES:	None
ABSTAIN:	None
ABSENT:	Councilmember Machisic

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

ATTACHMENT 20

MOPAR. DRAG CITY

RECEIVED
JUL 15 2003
BY: Planning

July 14, 2003

Roger Derda
Planning Department Manager
99 E. Ramsey Street
Banning, CA 92220

Re: Unclassified Use Permit

Dear Roger:

It has come to our attention that our Unclassified Use Permit will soon expire. Although we had hoped to be further along in the process we have still continued to make every effort to move this project in a positive and forward manner. We recently have come to understanding that our grading plan check has been satisfactory completed and that we will be obtaining that permit shortly and other plans are being submitted for review shortly.

Therefore I would like to request that our Unclassified Use Permit be extended.

Thank You,

Andy Marocco
President, All American Racing, LLC/Mopar Drag City

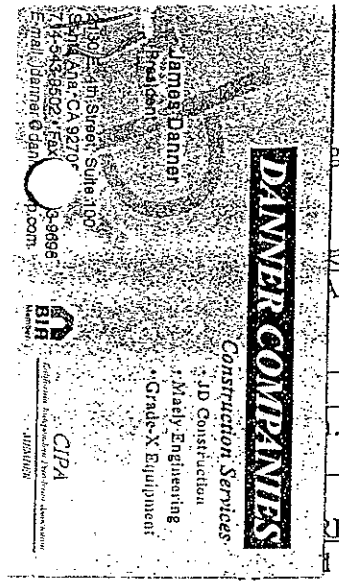
▸ PO BOX 197 • BANNING, CA 92220
▸ Phone 909 874-5198 • Fax 775 942-6312 • MoparDragCity.com

EXHIBIT " 3A "

01370

278

ATTACHMENT 21



GRADING PERMIT

g Code, Chapter 70

Permit No. 2003-07
Issue Date: 7-23-03
Expiration Date: _____

RAG CITY" J & D EQUIPMENT INC.

Address: _____

Name	Address	Phone
_____	_____	_____
_____	_____	_____
.: _____	_____	_____
_____	_____	_____

RED TO OBTAIN GRADING PERMIT:	Received	Checked
l Grading Plan (Land Development Section will check and approve issuance of Grading Permit)	✓	✓

ITEMS REQUIRED FOR PUBLIC WORKS TO SIGN OFF BUILDING PERMIT RELATED TO THIS GRADING PERMIT

1.	Letter of Certification by Civil Engineer/ Architect that pads have been graded in conformance with this Grading Permit	_____	_____
2.	Compaction Report by Soils Engineer (Partial certification is acceptable and enough to have building permit signed off by Public Works.)	_____	_____

ITEMS REQUIRED FOR COMPLETION OF GRADING PERMIT:

1.	Final soils report on entire site	_____	_____
2.	Certification of final grading of entire site by Civil Engineer	_____	_____
3.	Final Grading Plan (As-Graded)	_____	_____

Basis of fee: Cut: / Fill: 480,553 CU YDS

By: _____
Paul Toor, Public Works Director
Date: _____

Fee :$ 2342.00

_____
Contractor Owner Developer

_____
Signature of Permittee

COPIES: FILE
PERMITTEE

01396

280

ATTACHMENT 22

PLANNING COMMISSION AGENDA
STAFF REPORT

Date: August 5, 2003

TO: Planning Commission

FROM: Roger Derda, Community Development Director

SUBJECT: **Time Extension – Unclassified Use Permit #01-47501 - A professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. Apn's 532-130-008 & 018.**

RECOMMENDATION: The Planning Commission support staff's determination granting an additional year in which to meet the conditions of approval that were attached to the above referenced project.

RECOMMENDED MOTION: None (No action is required unless the Planning Commission disagrees with staff's determination).

JUSTIFICATION: City Ordinance No. 1200 contains provisions which allows the Community Development Director to grant preliminary extensions of time within which the terms and conditions imposed upon Conditional Use Permits may be extended an additional twelve (12) months for good cause--providing the Planning Commission concurs (the City's Attorney determined that this provision applies to Unclassified Use Permits as well). The Commission has the authority to accept, modify, or reject the Director's determination.

In the event the Director does not receive notification from a Planning Commissioner that he/she objects to the Director's determination within five (5) days following the date of the Planning commission meeting at which the matter is presented, the Director's determination becomes effective. In the event the Planning Commission disagrees with staff's determination, staff will need to set a date and time for the Commission to consider the matter.

BACKGROUND/ANALYSIS: The Planning Department has received a request for an extension of time for the following Unclassified Use Permit:

> A professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. APN's

532-130-008 & 018 (Approved by the Planning Commission on July 3, 2001 and approved by the City Council at its meeting held on August 14, 2001).

If granted, this will be the project proponent's second time extension; the City's code provides for a total of three (3) one-year time-extensions.

The applicant, Mr. Marocco states in his correspondence (attached Exhibit "3") that:

> "...we were issued our grading and offsite improvement permits on July 24, 2003. Which means that we now have a green light to begin construction."
>
> "Now that all this has transpired we are moving full steam ahead and according to my contractor our February 2004 target date for completion should be right on schedule."

Based upon the project proponent's efforts and progress made to date, it is staff's opinion that the project proponent has demonstrated due diligence and presented "good cause" for granting an additional one- (1) year time extension. If approved, the time-frames for implementing the conditions of approval attached to the subject permit would be valid until August 14, 2004 (unless an additional time extension was requested and approved).

Roger Derda, AICP
Community Development Director

Attachments: Exhibit "2" - Site Plan -U.U.P. #01-47501.
Exhibit "3" – Applicant's 7/29/03 correspondence
Exhibit "3A" – Applicant's 7/14/03 correspondence
Exhibit "4" - Staff report presented to CC at its August 14, 2001 meeting (without exhibits).

FINAL CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

NOTE: CONDITIONS HAVE BEEN AMENDED TO REFLECT PC ACTION OF 8/5/03

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval (expiration date to be August 14, 2004). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

4. The project proponent shall submit application(s) and pay required processing fee(s) for site plan review and design review for each phase of development associated with the project.

5. The maximum height of buildings shall not exceed the maximum allowable height for the zone district(s) in which the project is located.

6. The project proponent shall submit a revised fully dimensioned parking plan depicting the size and location of all standard sized, compact and handicap parking stalls. The number of handicap parking stalls shall be provided consistent with the requirements outlined in the Building Department conditions.

7. A lighting plan for the parking area shall be submitted to the City's Planning Department for review and approval. All outdoor lighting shall be hooded, designed and located such that light and glare shall not reflect onto adjoining properties or public rights-of-way. Outdoor lighting within parking areas shall be installed prior to any evening races occurring; the height of light poles shall be subject to the review and approval of the Airport Land Use Commission (ALUC).

8. For each phase of development the project proponent shall provide the following restroom improvements: Men's restroom – 11 water closets (half of which may be urinals); Women's – 18 water closets (total number for all three phases: Men's – 33; Women's – 54).

9. Prior to construction of any free standing signs or placing any signs that are visible from the public right of way, the project proponent must complete all required Planning Department applications, pay the City's processing fees, and receive approval.

10. Project proponent shall submit detailed landscape and irrigation plans to the City's Planning Department for review and approval. Landscape and irrigation improvements along public right of ways shall be provided in conjunction with off-site improvements required by the City's Engineering Department. Landscape and irrigation improvements not associated with public right of way improvements shall be established in conjunction with each phase of development as outlined in the project proponents' development phasing plan. All landscaping areas shall be maintained in a viable growth condition throughout the life of Unclassified Use Permit 01-47501.

11. Prior to final inspection on any phase of development, the project proponent shall have installed a masonry trash enclosure for the required on-site trash receptacle. Said trash receptacle shall be constructed of solid masonry, enclosed on three sides, 6 feet in height, 8 feet in width, and 5 feet in depth. The location of the trash receptacle and enclosure shall be subject to the review and approval of the Planning Department.

12. All necessary measures to control dust shall be implemented by the developer during construction.

13. Project proponent shall be responsible for mitigating any/all project related noise impacts consistent with the statements, recommendations and conclusions contained in the document dated June 20, 2001 entitled "Community Noise Impact Review of Proposed "Drag City" Race Track that was prepared on behalf of the City of Banning Planning Department by County of Riverside Department of Health / Office of Industrial Hygiene (Exhibit "4") that responds to the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3"). Prior to any drag events occurring on the subject property, the project proponent shall erect a 12-foot high wall approximately 100 feet west of the track's starting line. Said wall shall extend 125 north and south of the centerline of the track.

14. For purposes of sound attenuation, and so as to not exceed the sound limitations contained in the City's Code for the zone district in the which the events will occur, cars shall be muffled to the extent possible and run at the intervals identified in the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3").

15. In the event the City receives noise related complaints from any occupant of a residence within a three mile radius of the project, the project proponent or his successors-in-interest may be required to submit noise monitoring reports as determined by the City's Building and Safety division as part of a code enforcement action. Upon written notice from the City's Building and Safety division requiring such a report, the project proponent or his successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Building and Safety division, unless more time is allowed through written agreement by the Building and Safety division. The noise monitoring report shall be reviewed by the County of Riverside Department of Health / Office of Industrial Hygiene or a qualified acoustical engineer possessing qualifications acceptable to the City's Planning Department. The project proponent or his successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this review prior to commencing the required report.

16. Hours of operation shall coincide with the information provided to the City in the acoustical report prepared for the project and shall conform with any recommendations or conditions identified by the County of Riverside Department of Health / Office of Industrial Hygiene to mitigate noise.

17. The project proponent shall be prohibited from holding events on the second Saturday of June and the second Saturday of December of each calendar year excepting instances where the project proponent is able to obtain written approval in advance from the adjoining Deutsch Company (or their successor-in-interest)

stating they have no objections to drag strip related events on the June and December dates identified herein. Written verification of the Deutsch Company's authorization shall be submitted to the Planning Department a minimum of seven (7) days prior to the aforementioned dates.

18. Project proponent shall mitigate all traffic related impacts associated with implementation of Unclassified Use Permit 01-47501 as identified in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

19. At time of issuance of building permits, the project proponent shall pay all required City mitigation fees in effect at that time, including but not limited to: police, fire, traffic control, general facilities, school, park land, etc.

20. Annual "super events" / "super shows" (defined as up to 100 race cars per event with up to 10,000 spectators per event) shall be subject to the processing of a "special events" application. The project proponent shall submit a completed special events application to the City for its review a minimum of sixty (60) days prior to any proposed "super event" / "super show". The project proponent shall be responsible for fulfilling all conditions of approval attached to said permit in order to conduct such event.

21. In the event the use hereby permitted ceases operation for a period of one (1) year or more, Unclassified Use Permit 01-47501 shall be subject to revocation.

Engineering Department:

Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions:

A. Phase I:

1. Obtain the necessary dedication of right-of-way required to construct the extension of Barbour Street, east of Hathaway Street to the westerly boundary of the project site as depicted on attached Exhibit "2A".

2. Submit Street Improvements Plans for the extension of Barbour Street to the west boundary line of the project site. The plans shall be per the City of Banning standard and shall be prepared by a Registered Civil Engineer.

3. Submit a site plan/grading plan prepared by a Registered Civil Engineer to the City for review and approval, as applicable. All grading shall conform with the Uniform Building Code's (U.B.C.) latest edition and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soils report prepared by a Registered Civil or Geotechnical Engineer, along with the grading plan.

Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations. This includes the plan and installation of the oil/grease separator at the pit area.

4. Submit a Drainage/Hydrology Study and a Hydraulic Analysis for both undeveloped and developed conditions to the City for review and approval. Demonstrate that runoff flows will not impact surrounding properties and that all street flow will drain into the public streets. All of the drainage from the lot shall drain into the public right-of-way or, a Drainage Easement Acceptance letter from the adjacent property owners shall be obtained.

5. The plan check fee for all of the improvement plans shall be paid as per the Fee Schedule established by the City of Banning when the plans are submitted to the City for review and approval.

6. Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: the Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

7. The proposed project must be in compliance with the City's adopted Airport Master Plan.

8. Submit a copy of the Preliminary Title Report.

9. Pay all applicable fees such as water and sewer connection fees.

Prior to the issuance of the Certificate of Occupancy, the Developer shall meet the following conditions:

B. Phase I:

1. Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

2. Construct the necessary infrastructure improvements to provide utility including: 6" sewer lateral to connect to the existing sewer main on Westward Avenue; 8" water line (cement mortar-lined and wrap steel pipe) on Barbour Street from Hathaway Street to the subject property; and an 8" water line on-site (cement mortar-lined and wrap steel pipe) connecting to the existing line on Westward Ave. thereby creating a loop water system.

3. The developer shall repair any existing areas of the offsite improvement that may become damaged during the construction.

4. The developer shall obtain a final certification from their engineer to confirm the said improvement is in compliance with the approved plans.

C. Phase II:

1. Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees.

2. Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. A Public Works permit shall be obtained prior to commencement of any work within the right-of-way, and a Class "A" Contractor's License is requested to construct any improvements within the City's right-of-way.

3. Ensure that Best Management Practices (BMPs) are followed as per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations.

D. Phase III:

1. Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property.

2. Prepare Street Improvement Plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. Plans shall be prepared by a Registered Civil Engineer. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

3. Pay all applicable plan check fees.

Electric Department:

1. Project proponent shall have its project engineer provide electric load calculations to the City's Electric Department for review and approval. The electric load calculations shall indicate the size of service requested and voltage required.

2. Project proponent shall submit a plot plan that depicts the location of the electrical service panel to the City's Electric Department for review and approval.

3. The project proponents plot plan depicting the electrical infrastructure (pull boxes, conduit runs, etc.) shall be subject to the review and approval of the City's Electric Department.

4. Street lighting to be located on Barbour Street and Westward Avenue shall be subject to review and approval by the City's Electric Department.

5. For Phase I development of the project, the project proponent shall be subject to providing electrical utility easements along the west portion of said Phase consistent with the requirements of the City's Electric Department.

6. The project proponent shall pay all costs of material and labor associated with the approved electrical plans and load calculations as determined by the City's Electric Department.

Building Department

1. The proposed concession stands, spectator stands, picnic area, entrance/ticket booths, restrooms and buildings shall be handicap accessible and shall meet the "accessibility requirements" contained in Chapter 11 of the California Building Code.

2. For Phase I development, the project proponent shall provide 24 handicap-parking spaces. For Phase II development the project proponent shall provide 28 handicap parking spaces and for Phase III development the project proponent shall provide 17 handicap parking spaces.

Fire Department:

1. The project proponent shall be responsible for installing six (6) fire hydrants. Two hydrants to be located in proximity to the concession areas must be the City standard James Jones model 3765 or approved equivalent; four hydrants be James Jones Model 3700 or approved equivalent, capable of producing 1500gpm for a 2-hour duration. As a minimum, Phase I development will require the installation of one fire hydrant to be located in the northwest portion of Parcel "1". A plan depicting placement of said fire hydrant(s) shall be submitted to the Fire Department for review and approval. Subsequent placement of the remaining fire hydrants will be required to support each phase of development. All subsequent placement shall be subject to the approval of the Fire Department and Public Works Department.

2. Project proponent shall provide a 20-foot paved access road to the north side of the drag strip with direct access to the vendor facilities and grandstands.

3. For Fire Department emergency access into concession and grand stand areas, the project proponent shall provide minimum 6 foot wide access gates consistent with the Fire Department's requirements.

4. The proposed fueling station to be located in the northwest corner of Parcel "1" shall be UL listed for above ground fuel storage and dispensing, and is subject to the review and approval of the Fire Department. Additionally, the project proponent shall:
   - Provide secondary spill containment
   - Submit a landscape-screening plan to the City's Planning Department for review and approval.

5. Ten (10) gallons of Class A foam concentrate must be kept on the premises for Fire Department use. Prior to the issuance of a Building Permit for Phase I development the project proponent must obtain the Fire Department's approval as to the location and conditions for its storage.

6. The perimeter aisle located adjacent to and parallel to the easterly property line of Parcel "2" (Phase III development), must be a minimum of twenty (20) feet wide.

7. Parking lot design shall be subject to Fire Department Plan Check Review. Turning areas within parking aisles must be designed to accommodate fire engine access.

8. If cooking equipment is proposed to be installed in any building located on-site, automatic fire protection systems will be required for the cooking appliances.

9. If the construction of the proposed garage / dyno facility exceeds 3,000 square feet in area, an automatic fire sprinkler system shall be required.

ATTACHMENT 23

FINAL CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

NOTE: CONDITIONS HAVE BEEN AMENDED TO REFLECT PC ACTION OF 8/5/03

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval (expiration date to be August 14, 2004). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

4. The project proponent shall submit application(s) and pay required processing fee(s) for site plan review and design review for each phase of development associated with the project.

5. The maximum height of buildings shall not exceed the maximum allowable height for the zone district(s) in which the project is located.

6. The project proponent shall submit a revised fully dimensioned parking plan depicting the size and location of all standard sized, compact and handicap parking stalls. The number of handicap parking stalls shall be provided consistent with the requirements outlined in the Building Department conditions.

7. A lighting plan for the parking area shall be submitted to the City's Planning Department for review and approval. All outdoor lighting shall be hooded, designed and located such that light and glare shall not reflect onto adjoining properties or public rights-of-way. Outdoor lighting within parking areas shall be installed prior to any evening races occurring; the height of light poles shall be subject to the review and approval of the Airport Land Use Commission (ALUC).

8. For each phase of development the project proponent shall provide the following restroom improvements: Men's restroom – 11 water closets (half of which may be urinals); Women's – 18 water closets (total number for all three phases: Men's – 33; Women's – 54).

9. Prior to construction of any free standing signs or placing any signs that are visible from the public right of way, the project proponent must complete all required Planning Department applications, pay the City's processing fees, and receive approval.

10. Project proponent shall submit detailed landscape and irrigation plans to the City's Planning Department for review and approval. Landscape and irrigation improvements along public right of ways shall be provided in conjunction with off-site improvements required by the City's Engineering Department. Landscape and irrigation improvements not associated with public right of way improvements shall be established in conjunction with each phase of development as outlined in the project proponents' development phasing plan. All landscaping areas shall be maintained in a viable growth condition throughout the life of Unclassified Use Permit 01-47501.

11. Prior to final inspection on any phase of development, the project proponent shall have installed a masonry trash enclosure for the required on-site trash receptacle. Said trash receptacle shall be constructed of solid masonry, enclosed on three sides, 6 feet in height, 8 feet in width, and 5 feet in depth. The location of the trash receptacle and enclosure shall be subject to the review and approval of the Planning Department.

12. All necessary measures to control dust shall be implemented by the developer during construction.

13. Project proponent shall be responsible for mitigating any/all project related noise impacts consistent with the statements, recommendations and conclusions contained in the document dated June 20, 2001 entitled "Community Noise Impact Review of Proposed "Drag City" Race Track that was prepared on behalf of the City of Banning Planning Department by County of Riverside Department of Health / Office of Industrial Hygiene (Exhibit "4") that responds to the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3"). Prior to any drag events occurring on the subject property, the project proponent shall erect a 12-foot high wall approximately 100 feet west of the track's starting line. Said wall shall extend 125 north and south of the centerline of the track.

14. For purposes of sound attenuation, and so as to not exceed the sound limitations contained in the City's Code for the zone district in the which the events will occur, cars shall be mufflled to the extent possible and run at the intervals identified in the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3").

15. In the event the City receives noise related complaints from any occupant of a residence within a three mile radius of the project, the project proponent or his successors-in-interest may be required to submit noise monitoring reports as determined by the City's Building and Safety division as part of a code enforcement action. Upon written notice from the City's Building and Safety division requiring such a report, the project proponent or his successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Building and Safety division, unless more time is allowed through written agreement by the Building and Safety division. The noise monitoring report shall be reviewed by the County of Riverside Department of Health / Office of Industrial Hygiene or a qualified acoustical engineer possessing qualifications acceptable to the City's Planning Department. The project proponent or his successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this review prior to commencing the required report.

16. Hours of operation shall coincide with the information provided to the City in the acoustical report prepared for the project and shall conform with any recommendations or conditions identified by the County of Riverside Department of Health / Office of Industrial Hygiene to mitigate noise.

17. The project proponent shall be prohibited from holding events on the second Saturday of June and the second Saturday of December of each calendar year excepting instances where the project proponent is able to obtain written approval in advance from the adjoining Deutsch Company (or their successor-in-interest)

stating they have no objections to drag strip related events on the June and December dates identified herein. Written verification of the Deutsch Company's authorization shall be submitted to the Planning Department a minimum of seven (7) days prior to the aforementioned dates.

18. Project proponent shall mitigate all traffic related impacts associated with implementation of Unclassified Use Permit 01-47501 as identified in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

19. At time of issuance of building permits, the project proponent shall pay all required City mitigation fees in effect at that time, including but not limited to: police, fire, traffic control, general facilities, school, park land, etc.

20. Annual "super events" / "super shows" (defined as up to 100 race cars per event with up to 10,000 spectators per event) shall be subject to the processing of a "special events" application. The project proponent shall submit a completed special events application to the City for its review a minimum of sixty (60) days prior to any proposed "super event" / "super show". The project proponent shall be responsible for fulfilling all conditions of approval attached to said permit in order to conduct such event.

21. In the event the use hereby permitted ceases operation for a period of one (1) year or more, Unclassified Use Permit 01-47501 shall be subject to revocation.

Engineering Department:

Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions:

A. Phase I:

1. Obtain the necessary dedication of right-of-way required to construct the extension of Barbour Street, east of Hathaway Street to the westerly boundary of the project site as depicted on attached Exhibit "2A".

2. Submit Street Improvements Plans for the extension of Barbour Street to the west boundary line of the project site. The plans shall be per the City of Banning standard and shall be prepared by a Registered Civil Engineer.

3. Submit a site plan/grading plan prepared by a Registered Civil Engineer to the City for review and approval, as applicable. All grading shall conform with the Uniform Building Code's (U.B.C.) latest edition and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soils report prepared by a Registered Civil or Geotechnical Engineer, along with the grading plan.

Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations. This includes the plan and installation of the oil/grease separator at the pit area.

4. Submit a Drainage/Hydrology Study and a Hydraulic Analysis for both undeveloped and developed conditions to the City for review and approval. Demonstrate that runoff flows will not impact surrounding properties and that all street flow will drain into the public streets. All of the drainage from the lot shall drain into the public right-of-way or, a Drainage Easement Acceptance letter from the adjacent property owners shall be obtained.

5. The plan check fee for all of the improvement plans shall be paid as per the Fee Schedule established by the City of Banning when the plans are submitted to the City for review and approval.

6. Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: the Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

7. The proposed project must be in compliance with the City's adopted Airport Master Plan.

8. Submit a copy of the Preliminary Title Report.

9. Pay all applicable fees such as water and sewer connection fees.

Prior to the issuance of the Certificate of Occupancy, the Developer shall meet the following conditions:

B. Phase I:

1. Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

2. Construct the necessary infrastructure improvements to provide utility including: 6" sewer lateral to connect to the existing sewer main on Westward Avenue; 8" water line (cement mortar-lined and wrap steel pipe) on Barbour Street from Hathaway Street to the subject property; and an 8" water line on-site (cement mortar-lined and wrap steel pipe) connecting to the existing line on Westward Ave. thereby creating a loop water system.

3. The developer shall repair any existing areas of the offsite improvement that may become damaged during the construction.

4. The developer shall obtain a final certification from their engineer to confirm the said improvement is in compliance with the approved plans.

C. Phase II:

1. Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees.

2. Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. A Public Works permit shall be obtained prior to commencement of any work within the right-of-way, and a Class "A" Contractor's License is requested to construct any improvements within the City's right-of-way.

3. Ensure that Best Management Practices (BMPs) are followed as per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations.

D. Phase III:

1. Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property.

2. Prepare Street Improvement Plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. Plans shall be prepared by a Registered Civil Engineer. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

3. Pay all applicable plan check fees.

Electric Department:

1. Project proponent shall have its project engineer provide electric load calculations to the City's Electric Department for review and approval. The electric load calculations shall indicate the size of service requested and voltage required.

2. Project proponent shall submit a plot plan that depicts the location of the electrical service panel to the City's Electric Department for review and approval.

3. The project proponents plot plan depicting the electrical infrastructure (pull boxes, conduit runs, etc.) shall be subject to the review and approval of the City's Electric Department.

4. Street lighting to be located on Barbour Street and Westward Avenue shall be subject to review and approval by the City's Electric Department.

5. For Phase I development of the project, the project proponent shall be subject to providing electrical utility easements along the west portion of said Phase consistent with the requirements of the City's Electric Department.

6. The project proponent shall pay all costs of material and labor associated with the approved electrical plans and load calculations as determined by the City's Electric Department.

Building Department

1. The proposed concession stands, spectator stands, picnic area, entrance/ticket booths, restrooms and buildings shall be handicap accessible and shall meet the "accessibility requirements" contained in Chapter 11 of the California Building Code.

2. For Phase I development, the project proponent shall provide 24 handicap-parking spaces. For Phase II development the project proponent shall provide 28 handicap parking spaces and for Phase III development the project proponent shall provide 17 handicap parking spaces.

Fire Department:

1. The project proponent shall be responsible for installing six (6) fire hydrants. Two hydrants to be located in proximity to the concession areas must be the City standard James Jones model 3765 or approved equivalent; four hydrants be James Jones Model 3700 or approved equivalent, capable of producing 1500gpm for a 2-hour duration. As a minimum, Phase I development will require the installation of one fire hydrant to be located in the northwest portion of Parcel "1". A plan depicting placement of said fire hydrant(s) shall be submitted to the Fire Department for review and approval. Subsequent placement of the remaining fire hydrants will be required to support each phase of development. All subsequent placement shall be subject to the approval of the Fire Department and Public Works Department.

2. Project proponent shall provide a 20-foot paved access road to the north side of the drag strip with direct access to the vendor facilities and grandstands.

3. For Fire Department emergency access into concession and grand stand areas, the project proponent shall provide minimum 6 foot wide access gates consistent with the Fire Department's requirements.

4. The proposed fueling station to be located in the northwest corner of Parcel "1" shall be UL listed for above ground fuel storage and dispensing, and is subject to the review and approval of the Fire Department. Additionally, the project proponent shall:
   - Provide secondary spill containment
   - Submit a landscape-screening plan to the City's Planning Department for review and approval.

5. Ten (10) gallons of Class A foam concentrate must be kept on the premises for Fire Department use. Prior to the issuance of a Building Permit for Phase I development the project proponent must obtain the Fire Department's approval as to the location and conditions for its storage.

6. The perimeter aisle located adjacent to and parallel to the easterly property line of Parcel "2" (Phase III development), must be a minimum of twenty (20) feet wide.

7. Parking lot design shall be subject to Fire Department Plan Check Review. Turning areas within parking aisles must be designed to accommodate fire engine access.

8. If cooking equipment is proposed to be installed in any building located on-site, automatic fire protection systems will be required for the cooking appliances.

9. If the construction of the proposed garage / dyno facility exceeds 3,000 square feet in area, an automatic fire sprinkler system shall be required.

ATTACHMENT 24

CITY COUNCIL AGENDA
PUBLIC HEARINGS

Date: **October 14, 2003**

TO: **City Council**

FROM: **Roger Derda, Community Development Director**

SUBJECT: **Ordinance No. 1308 / Development Agreement #03-1504 - A proposed Development Agreement by and between All American Racing LLC and the City of Banning regarding the development of a professional drag racing facility on property generally located approximately 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue. AP#'s 532-130-008 & 018.**

RECOMMENDATION: The City Council adopt Ordinance No.1308 / Development Agreement #03-1504.

Options for the City Council's consideration (approval / continue / denial):

Option 1: (Approval)

Mayor asks City Clerk to read the title of Ordinance No.1308:

"I move the City Council adopt Ordinance No. 1308 / Development Agreement #03-1504: An Ordinance of the City Council of the City of Banning adopting the Development Agreement between the City of Banning and All American Racing LLC.

Motion: I move to waive further reading of Ordinance No. 1308. (Requires majority vote of Council).

Motion: I move that Ordinance No. 1308 pass its first reading. (A minimum of three (3) votes required).

Option 2: (Continue)

"I move the City Council continue the public hearing relating to Ordinance No. 1308 / Development Agreement #03-1504 to its October 28, 2003 meeting".

272

01435

302

Option 3: (Denial)

"I move the City Council deny Ordinance No. 1308 / Development Agreement #03-1504".

JUSTIFICATION: The City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both the City and Developer in the development process. In this instance, entering into a Development Agreement provides certain assurances to the applicant of the development project that he/she may proceed with the project in accordance with existing City policies, rules and regulations. This consideration is important to the applicant in the context of being able to control and forecast costs associated with the development of his/her project.

BACKGROUND/ANALYSIS: At its meeting held on August 28, 2001 the City Council approved Unclassified Use Permit 01-47501, a request from All American Racing, LLC ("Drag City"), to establish a professional drag racing facility on properties comprising approximately 60 acres generally located 1300 feet east of the northeast corner of Hathaway Street and Westward Avenue subject to various findings and conditions. It is anticipated that drag racing will occur at the site approximately 40 weeks annually. At the present time All American Racing has been issued a grading permit from the City and a permit for street improvement plans along Barbour Street.

For purposes of providing the City Council with background information and a greater understanding related to the development of the subject raceway project, staff is attaching a copy of the report that was presented to the Council at its August 28, 2001 meeting (Exhibit "2").

In brief, the project comprises three (3) phases of development with the majority of the more significant improvements occurring during Phase I. Because of the tremendous costs involved with the development of the subject project the applicant is seeking certain assurances by means of entering into a development agreement with the City. In summary, the Development Agreement is intended to accomplish the following:

- Provide certainty for the development of the project in order to control resources and development costs (during the time frame a Development Agreement is in effect, any new fees that might be adopted by the City, could not be made applicable to the development project);
- Ensure adequate public facilities at the time of development;
- Ensure development in accordance with the City's Capital Improvement Plans;

- To realize extraordinary and significant supplemental benefits in addition to those available through the City's existing regulatory process.

The term of the Development Agreement (DA) shall extend for a period concurrent with the Unclassified Use Permit (#01-47501) following its effective date unless the Agreement is earlier terminated or its term modified in a manner provided in the DA. Additionally, development of the property and the Design and Construction Standards and Specifications will be implemented consistent with the conditions of approval and supporting exhibits associated with the approval of the subject Unclassified Use Permit. For informational purposes, the City's "Development Agreement" provisions are contained in Chapter 22A of the Banning Ordinance Code (pages 256.1 through 256.4c). It should be noted that in addition to outlining the "purpose" for such agreements, the provisions require a "periodic review" for determining "good faith" compliance with the terms of the adopted agreement.

At its meeting held on October 7, 2003 the City's Planning Commission took the following action relating to the subject Development Agreement:

> **ACTION (BLACKFORD / BARSH): A motion was moved, seconded and carried that the Planning Commission adopt Resolution No. 2003-03 / Development Agreement #03-1504: A Resolution of the Planning Commission of the City of Banning recommending that the City Council adopt the Development Agreement between the City of Banning and All American Racing LLC.**
>
> **(Motion carried 3 -2; Escandel and Paparian voted "no")**

STRATEGIC PLAN INTEGRATION: Approval of this recommendation is consistent with the City Council strategic plan objective to enhance economic development opportunities through attraction of new business development.

FISCAL DATA: No direct cost to the City will result from adopting the Development Agreement.

RECOMMENDED BY:

Roger Derda, AICP
Community Development Director

APPROVED BY:

Randy Anstine
City Manager

Vickie Burt
Economic Development / Redevelopment Manager

274

01437

304

Exhibit - City Council Ordinance No.1308 (includes DA as attachment – Exhibit "1")
Exhibit - PC Resolution No. 2003-03 (without Exhibit "1" (DA) – same as attachment Exhibit "1" with Ordinance No. 1308)
Exhibit "1" – 8/14/01 staff report to CC regarding UUP #01-47501 (without attachments)

275

01438

ATTACHMENT 25

MAR 3 2004

RECORDING REQUIRED BY AND
WHEN RECORDED RETURN TO:

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

This document is recorded at the request of the City of Banning Pursuant to Govt. Code Section 6103. No fee shall be charged therefor.

DOC # 2004-0086353
02/05/2004 08:00A Fee:NC
Page 1 of 73
Recorded in Official Records
County of Riverside
Gary L. Orso
Assessor, County Clerk & Recorder

M	S	U	PAGE	SIZE	DA	PCOR	NOCOR	SMF	MISC.
	1		73						
								✓	
A	R	L			COPY	LONG	REFUND	NCHG	EXAM

DEVELOPMENT AGREEMENT
BETWEEN CITY OF BANNING
AND
ALL AMERICAN RACING, LLC

M
VG

(See following pages)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

01667

DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BANNING AND ALL AMERICAN RACING, LLC

This DEVELOPMENT AGREEMENT ("Agreement") is entered into between THE CITY OF Banning, a municipal corporation ("City") and All American Racing, LLC ("Developer").

1. RECITALS. The Agreement is entered into with reference to the following facts:

1.1 Code Authorization. City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and Developer in the development process. City enters into the Agreement pursuant to the provisions of the Government Code, the Banning Ordinance Code, Chapter 22A and applicable City policies. The parties acknowledge:

(1) This Agreement is intended to assure adequate public facilities at the time of development.

(2) This Agreement is intended to assure development in accordance with City's Capital Improvement Plans.

(3) This Agreement is intended to provide certainty in the development approval process, use(s), density, and intensity of property.

(4) This Agreement will allow City to realize extraordinary and significant supplemental benefits in addition to those available through the existing regulatory process.

1.2 Developer. Developer has a legal or equitable interest in the real property located in City of Banning, County of Riverside, California, described on Exhibit "A" attached hereto ("Property"). The Property consists of approximately 60 (sixty) acres.

1.3 Interest of Developer. Developer hereby represents that it has an equitable and legal interest in the Property and is authorized to enter into this Agreement.

1.4 Planning Commission - Council Hearings. On October 7, 2003, the Planning Commission of the City ("Planning Commission"), after giving notice pursuant to Government Code Sections 65090 and 65091, held a public hearing to consider the Owner's application for this Agreement. The Planning Commission thereafter adopted Planning Commission Resolution No. 2003-03 on October 7, 2003 recommending the project to the City Council. On October 14, 2003 the Council of the City of Banning ("Council"), after providing notice as required by law, held a public hearing to consider the Owner's application for the Agreement.

1.5 Council Findings. The Council finds that this Agreement is consistent with the General Plan as well as all other applicable ordinances, plans, policies and regulations of the City.

1.6 City Ordinance. On October 28, 2003 the Council adopted Ordinance No. 1308 approving this Agreement. The adopted ordinance becomes effective on November 12, 2003.

2. DEFINITIONS.

2.1 "Developer" means the person, persons, or entity having a legal or equitable interest in the Property and includes the "Developer's" successors in interest.

2.2 "Property" is the real property described in Exhibit "A."

2.3 "Project" is the development of the property as set forth in Exhibits "A, B, C, D, & E" which include the following:

Exhibit Designation	Description
A	Property Legal Description
B	Unclassified Use Permit 00-47501 and Conditions of Approval
C	Lease Agreement
D	License Agreement
E	FAA Letters dated 7-31-02 and 8-2-02

All of the above listed Exhibits are hereby incorporated in this Agreement and made a part hereof.

4. GENERAL PROVISIONS.

4.1 Property Subject to the Agreement. Until released pursuant to the provisions of Section 9.3 below, no property shall be released from this Agreement until "Developer" has fully performed its obligations arising out of the Agreement.

4.2 Duration of Agreement. The term of the Agreement shall commence on, and the effective date of the Agreement shall be, the effective date of City Ordinance No. 1308 as set forth in Section 1.6 above and the term shall extend for a period concurrent

with Unclassified Use Permit (UUP) 00-47501(term of the agreement) following the effective date unless the Agreement is earlier terminated or its term modified in the manner provided in this Agreement.

4.3 Assignment. Owner shall have the right to transfer or assign the Property, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement provided, however, the rights of Owner under this Agreement may not be transferred or assigned unless the written consent of the City is first obtained and any transfer or assignment of the rights under this Agreement shall include in writing the assumption of the duties, obligations and liabilities arising from this Agreement if the City grants written consent to transfer the rights. Such transfer or assignment does not relieve Owner of any duty, obligation or liability to City unless by the prior written consent of the City.

During the term of this Agreement, any approved assignee or transferee of the rights under this Agreement shall observe and perform all of the duties and obligations of Developer contained in this Agreement as such duties and obligations pertain to the portion of the Property transferred or assigned. Any and all approved successors and assignees of Owner shall have all of the same rights, benefits, duties, obligations and liabilities of Developer under this Agreement. Upon assignment or transfer of the rights of Developer under this Agreement, the obligations of Owner and the transferee or assignee shall be joint and several.

4.4 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled by the mutual consent of the parties but only in the same manner as its adoption by an ordinance as set forth in Government Code Section 65868 and Banning Ordinance Code, Chapter 22A. The term "Agreement" or "Development Agreement" shall include any amendment properly approved and executed.

4.5 Enforcement. Notwithstanding Government Code Section 65865.4, this Agreement is enforceable by any party to the Agreement in any manner provided by law. The remedies provided in Section 8.4 of this Agreement shall not include and City shall not be liable for any action in damages or any costs or attorney's fees resulting from any dispute, controversy, action or inaction, or any legal proceeding arising out of this Agreement.

4.6 Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of the Developer or their contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Project and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. Developer agrees to pay all costs for the defense of the City and its officers, agents, employees, consultants, special counsel and representatives regarding any action for

damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with the Project or any claims arising out of this Agreement. This hold harmless Agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this paragraph or due by reason of the terms of, or effects, arising from this Agreement regardless of whether or not the City prepared, supplied or approved this Agreement, plans or specifications, or both, for the Project. The Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due to personal or property rights by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

4.7 Binding Effect of Agreement. To the extent not otherwise provided in Section 4.3 of this Agreement, the burdens of the Agreement bind and the benefits of the Agreement inure to the parties' successors in interest.

4.8 Relationship of the Parties. The contractual relationship between City and Developer arising out of the Agreement is one of independent developer and City. Developer is not hereby made an agent of the City. Further, this Agreement does not create any third party beneficiary rights.

4.9 Notices. All notices, demands and correspondence required or permitted by the Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:	City of Banning P.O. Box 998 Banning, CA 92220 Att: City Attorney
If to Owner:	All American Racing, LLC P.O. Box 197 Banning, CA 92220

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

5. DEVELOPMENT OF THE PROPERTY.

5.1 Rules, Regulations and Policies. The rules, regulations and official policies governing the permitted use(s) of the Property, with respect to and only with

respect to the permitted uses, density, and intensity of use of the Property shall be those rules, regulations and policies applicable to the Property as of the effective date of this Agreement, and those standards and conditions as set forth in UUP 00-47501 and Lease Agreement Exhibits B through C hereof.

5.2 In connection with this Agreement, and pursuant to the requirements of California Environmental Quality Act (CEQA), the City has prepared a Negative Declaration, and certified that this document is adequate, that it satisfies the requirements of CEQA, the CEQA Guidelines and applicable local ordinances and regulations, and that it fully and adequately analyzes the scope and impact of this Agreement.

5.3 Permitted Use, Density and Intensity of Use; Rate and Amount of Growth. This Agreement shall vest with respect to the subject Property only the permitted use(s) of land, density and intensity of use set forth in Exhibit E hereto, and consistent with all other requirements as set forth in Exhibits B through D.

The right to regulate the rate and amount of growth is not abrogated by the City. The City hereby retains the police power to provide for change in regulations, ordinances, policies and plans relating to moratoria, building permit allocations, timing and sequencing of development and the financing and provision of adequate public facilities at the time of development. No vested rights as to any requirements in this subparagraph either as to existing or future regulations, ordinances, policies and plans are hereby conferred.

5.4 Design and Construction Standards and Specifications. The design and construction standards and specifications for buildings and structures in the Project shall be subject to applicable design standards and guidelines in effect at the time that any development approval shall be sought for the Project or any unit or structure contained within the Project. They shall also be subject to the restrictions set forth in Exhibits B through E hereof. Specific reference is made to the Conditions of Approval included in Exhibit D and such conditions shall be controlling over any other design and construction standard in conflict therewith.

5.5 Reservations and Dedications of Land for Public Purposes. Minimum reservations and dedications of land for public purposes shall be as set forth in Exhibit "E" incorporated herein.

5.6 Future Discretionary Approvals. This Agreement shall except as provided herein not prevent the City when considering requests for discretionary approvals subsequent to the effective date of this Agreement, from applying new rules, regulations, and policies which are applicable to the Property, including but not limited to, changes in the general plans, specific plan, community plan, subdivision and/or building regulations, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent applications for land use entitlements based on such existing or new rules, regulations and/or policies, provided however, that such new rules, regulations, and official policies are of general application to all development within the City and are not

imposed solely with respect to the subject property. In addition, this Agreement shall not prevent the City from exercising its police power to protect the health, safety and welfare of the public. This police power, exercised in accordance with Section 5.14 of this Agreement, is paramount to any rights or obligations created or existing between the parties.

5.7 Processing Fees. All fees and charges intended to cover City costs associated with processing development of the Property, including but not limited to fees and charges for applications, processing, inspections, plan review, plan processing and/or environmental review, which are existing or may be revised or adopted during the term of this Agreement, shall apply to the development of the Property.

5.8 Additional Fees. Anything contained herein to the contrary notwithstanding, no fees adopted by the City, and which become applicable to development projects at the discretion of the City, subsequent to the effective date of this Agreement shall apply to the Project.

This section shall not be construed to limit the authority of City to charge normal and customary application, processing, and permit fees for land use approvals, building permits, and other similar permits and entitlements which fees are designed to reimburse City's expenses attributable to such application, processing and permitting and are in force and effect on a City-wide basis at such time as said approvals, permits, or entitlements are granted by the City. This section does not act as a limit on the amount of any fee that is applicable to the Project hereunder.

5.9 Moratoriums. Moratoriums enacted by the City for the public health, safety and welfare which are imposed on the Property or Project shall toll the time periods set forth in this Agreement.

5.10 City to Receive Construction Contract Documents. Developer shall furnish City, upon written request, copies of any public facilities construction contracts and supporting documents relating to the Project.

5.11 Conditions of any Discretionary Approval to the Property. The requirements imposed as conditions of any discretionary approval received through the City's existing regulatory process shall be governed by the term of those approvals except to the extent this Agreement modifies such conditions, but in no event shall such conditions be affected by the termination, cancellation, rescission, revocation, default of expiration of this Agreement. Specific reference is made to the California Environmental Quality Act ("CEQA") and nothing contained herein shall be construed as abrogating any of the City's obligations for environmental review of the Project under CEQA, or, from requiring Developer to provide such environmental mitigation as may be required for the Project.

6. DEVELOPMENT PROGRAM.

6.1 Extraordinary and Significant Benefits.

(1) Notwithstanding any provision of this Agreement, or of law, to the contrary and as partial consideration for the parties entering into this Agreement, the parties agree that Developer is obligated to provide to the City the following enumerated extraordinary and significant benefits:

(a) To develop the Project in compliance with plans, specifications and conditions as stated in UUP 00-47501 pursuant to the design and construction standards set forth in Exhibit B and the other exhibits incorporated herein.

6.2 Public Improvements, Facilities and Services. Developer agrees to provide the following public improvements, facilities and services required for the development of the Property, as set forth in the conditions of approval for UUP 00-47501.

7. ANNUAL REVIEW

This Agreement shall be subject to automatic annual review.

Consistent with the provision of Banning Ordinance Code, Chapter 22A, Developer, or its successor in interest shall annually on
the date hereof, submit a report documenting its good faith compliance with this Agreement. Such review shall thereafter be processed as required by Banning Ordinance Code section 22A-7, including a notice public hearing before the Planning Commission.

7.1 Review Letter. If Developer is found to be in compliance with the Agreement after annual review, City shall, upon written request by Owner issue a Review Letter to Developer (the "Letter") stating that based upon information known or made known to the City Council, the City Planning Commission and/or the City Planning Director, the Agreement remains in effect and Owner is not in default. Owner may record the Letter in the Official Records of the County of Riverside.

8. DEFAULT.

8.1 Events of Default. Developer is in default under this Agreement upon the happening of one or more of the following events or conditions:

(a) If a warranty, representation or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made.

(b) A finding and determination made by the City following a periodic review under the procedure provided for in Government Code S 65865.1 that upon the basis of substantial evidence the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement, UUP 00-47501 or any other agreement existing between Developer and City

(c) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

8.2 Procedure upon Default.

(a) Upon the occurrence of default, City shall give Developer (the "defaulting party") thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City may terminate or amend this Agreement in accordance with the procedure adopted by the City. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default.

(b) City does not waive any claim of defect in performance by Developer, if on periodic review the City does not propose to modify or terminate this Agreement.

(c) Non-performance shall not be excused because of a failure of a third person.

(d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall be held as required by Government Code section 65868 or its successor statute. Developer is required to provide the extraordinary and significant benefits specified in Section 6.(1)a, regardless of any such termination.

(e) Adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the Developer.

(f) All other remedies at law or in equity which are not consistent with the provisions of this Agreement or are available to the parties to pursue in the event there is a breach.

8.3 Damages. In no event shall Developer be entitled to any contractual damages against City. Developer's remedies are limited to damages for violation of any statutory or constitutional right which Developer may have prior to and independent of this Agreement. Owner is otherwise limited to an action for specific performance of any obligations of City specifically set forth herein.

8.4 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Riverside, State of California, or in the Federal District Court in the Central District of California.

8.5 Arbitration Procedures. Prior to commencement of any legal or equitable action hereunder, if an alleged breach of this Agreement is not resolved in writing within thirty (30) days of the receipt of the Notice of Non-Breach, or if a dispute among the parties shall arise and not be resolved to the satisfaction of the concerned parties within a reasonable period of time (not to exceed 30 days), the matter shall be submitted to arbitration, upon the request of either Party. The party requesting the arbitration shall present a list of 5 arbitrators from a recognized arbitration\mediation organization to the other party. The parties shall thereafter have ten days within which to meet and select an arbitrator from the list. Failing to agree on an arbitrator, each party shall take turns striking arbitrators from the list until one arbitrator remains. The parties agree that such arbitration shall be conducted pursuant to the American Arbitration Association's Commercial Arbitration Rules. The provisions of California Code of Civil Procedure section 1283.05 are deemed incorporated therein. Each party shall bear one-half the initial outlay for the arbitration fee. If the arbitration or legal action is brought because of a breach of this Agreement, The prevailing party shall be entitled to reasonable attorneys' fees and costs of action.

9. ENCUMBRANCES AND RELEASES ON PROPERTY.

9.1 Discretion to Encumber. This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvement.

9.2 Entitlement to Written Notice of Default. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Developer of the performance of Developer's obligations under the Agreement which has not been cured within thirty (30) days following the date of default.

9.3 Releases. City agrees that upon written request of Developer and payment of all fees and performance of the requirements and conditions required of Owner by this Agreement to the Property, or any portion thereof, City may execute and deliver to Owner appropriate release(s) or further obligation imposed by this Agreement in form and substance acceptable to the Riverside County Recorder or as may otherwise be necessary to effect the release.

10. MISCELLANOUS PROVISIONS.

10.1 Rules of Construction. The singular includes the plural, the masculine gender includes the feminine, "shall" is mandatory "may" is permissive.

If there is more than one signer of this Agreement, their obligations are joint and several.

10.2 Entire Agreement, Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between the parties respecting this Agreement. All waivers of the provision of this Agreement must be in writing and signed by the appropriate authorities of City or of Developer. All amendments to this Agreement must be in writing signed by the appropriate authorities of City and Developer, in a form suitable for recording in the Official Records of Riverside County, California. Within ten (10) days following the effective date of this Agreement, a copy of this Agreement shall be recorded in the Official Records of Riverside County, California. Upon the completion of performance of this Agreement or its revocation or termination signed by the appropriate agents of Developer and City shall be recorded in the Official Records of Riverside County, California.

10.3 Project as a Private Undertaking. It is specifically understood by the Parties that:

(a) the Project is a private development,
(b) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals, and
(c) Developer shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

10.4 Incorporation of Recitals. The Recitals set forth in Section I of this Agreement are part of this Agreement.

10.5 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

10.6 Consent. Where the consent or approval of a party is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.

10.7 Covenant of Cooperation. The parties shall cooperate with, deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

10.8 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Riverside County, California, within ten (10) days following the effective date of this Agreement.

IN WITNESS THEREOF, this Agreement has been executed by the City of Banning, acting by and through its Mayor, pursuant to Ordinance No. 1308 authorizing such execution, and by the Developer.

Dated: 11-26-03

THE CITY OF BANNING

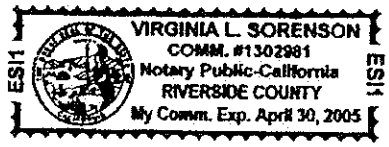
Arthur L. Welch, Mayor

ALL AMERICAN RACING, LLC

Andy Moracco, President

STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE, SS

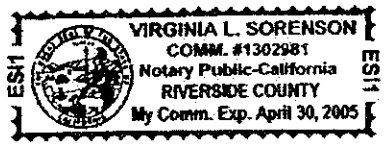
On November 26, 2003, before me, Virginia L. Sorenson, a Notary Public in and for said County and State, personally appeared ANDY MORACCO, known to me, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Virginia L. Sorenson, Notary Public

STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE, SS

On November 26, 2003, before me, Virginia L. Sorenson, a Notary Public in and for said County and State, personally appeared ARTHUR L. WELCH, known to me, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Virginia L. Sorenson, Notary Public

EXHIBIT A
DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION

20 Acres of property Assessor Parcel Number 532-130-018

The North half of the Southwest quarter of the Southeast quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Base and Meridian, according to the Official Plat thereof.

40 Acres of property Assessor Parcel Number 532-130-008

The Southeast quarter of the southwest quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Meridian, according to the official plat thereof.

EXHIBIT B
DEVELOPMENT AGREEMENT

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (909) 922-3128

DEPARTMENT OF
PLANNING
(909) 922-3125

August 31, 2001

Mr. Andy Marocco
C/O All American Racing LLC
PO Box 2201
Rialto, CA 92377

RE: UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.

Dear Mr. Marocco:

At its meeting held on August 14, 2001, the Banning City Council approved the above referenced project subject to the attached conditions of approval.

The City Council has adopted California Code of Civil Procedure Section 1094.6 which defines the time period in which judicial review may be requested for certain final administrative decisions and orders under California Code of Civil Procedure Section 1094.5. Pursuant to California Code of Civil Procedure Section 1094.6(f) the city clerk shall provide notice to any party to a final decision indicating that the time within which judicial review must be sought is governed by California Code of Civil Procedure Section 1094.6.

If you have any questions or need any additional information, I can be reached at (909) 922-3125.

Roger Derda
Community Development Director

Attachment: U.U.P. 01-47501 – Final Conditions of Approval

FINAL CONDITIONS OF APPROVAL
UNCLASSIFIED USE PERMIT NO. 01-47501
PROFESSIONAL DRAG FACILITY
APN'S 532-130-008 & 018

NOTE: CONDITIONS HAVE BEEN AMENDED TO REFLECT PC ACTION OF 8/6/02

Planning Department:

1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.

   If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval (expiration date to be August 14, 2003). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.

2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code.

2. Development and Phasing of all on-site and off-site improvements associated with implementation of Unclassified Use Permit 01-47501 shall be accomplished in substantial conformance with Exhibits "A" and "B-1 through B-8", on file in the City's Planning Department; excepting, the parking layout shall be redesigned to conform with the recommendations contained in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

3. The completion of each phase of development shall be subject to the City conducting a final inspection and providing the project proponent with a written notice of completion. Prior to the project proponent conducting any drag events on the subject property, the project proponent shall complete all Phase I improvements identified in staff's June 28, 2001 report (Exhibit "1") and receive a written notice from the City evidencing their completion.

4. The project proponent shall submit application(s) and pay required processing fee(s) for site plan review and design review for each phase of development associated with the project.

5. The maximum height of buildings shall not exceed the maximum allowable height for the zone district(s) in which the project is located.

6. The project proponent shall submit a revised fully dimensioned parking plan depicting the size and location of all standard sized, compact and handicap parking stalls. The number of handicap parking stalls shall be provided consistent with the requirements outlined in the Building Department conditions.

7. A lighting plan for the parking area shall be submitted to the City's Planning Department for review and approval. All outdoor lighting shall be hooded, designed and located such that light and glare shall not reflect onto adjoining properties or public rights-of-way. Outdoor lighting within parking areas shall be installed prior to any evening races occurring; the height of light poles shall be subject to the review and approval of the Airport Land Use Commission (ALUC).

8. For each phase of development the project proponent shall provide the following restroom improvements: Men's restroom – 11 water closets (half of which may be urinals); Women's – 18 water closets (total number for all three phases: Men's – 33; Women's – 54).

9. Prior to construction of any free standing signs or placing any signs that are visible from the public right of way, the project proponent must complete all required Planning Department applications, pay the City's processing fees, and receive approval.

10. Project proponent shall submit detailed landscape and irrigation plans to the City's Planning Department for review and approval. Landscape and irrigation improvements along public right of ways shall be provided in conjunction with off-site improvements required by the City's Engineering Department. Landscape and irrigation improvements not associated with public right of way improvements shall be established in conjunction with each phase of development as outlined in the project proponents' development phasing plan. All landscaping areas shall be maintained in a viable growth condition throughout the life of Unclassified Use Permit 01-47501.

11. Prior to final inspection on any phase of development, the project proponent shall have installed a masonry trash enclosure for the required on-site trash receptacle. Said trash receptacle shall be constructed of solid masonry, enclosed on three sides, 6 feet in height, 8 feet in width, and 5 feet in depth. The location of the trash receptacle and enclosure shall be subject to the review and approval of the Planning Department.

12. All necessary measures to control dust shall be implemented by the developer during construction.

13. Project proponent shall be responsible for mitigating any/all project related noise impacts consistent with the statements, recommendations and conclusions contained in the document dated June 20, 2001 entitled "Community Noise Impact Review of Proposed "Drag City" Race Track that was prepared on behalf of the City of Banning Planning Department by County of Riverside Department of Health / Office of Industrial Hygiene (Exhibit "4") that responds to the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3"). Prior to any drag events occurring on the subject property, the project proponent shall erect a 12-foot high wall approximately 100 feet west of the track's starting line. Said wall shall extend 125 north and south of the centerline of the track.

14. For purposes of sound attenuation, and so as to not exceed the sound limitations contained in the City's Code for the zone district in the which the events will occur, cars shall be muffled to the extent possible and run at the intervals identified in the March 19, 2001 "Revised City Sound Study – City of Banning" prepared by Gordon Bricken & Associates / Acoustical & Energy Engineer (Exhibit "3").

15. In the event the City receives noise related complaints from any occupant of a residence within a three mile radius of the project, the project proponent or his successors-in-interest may be required to submit noise monitoring reports as determined by the City's Building and Safety division as part of a code enforcement action. Upon written notice from the City's Building and Safety division requiring such a report, the project proponent or his successor-in-interest shall prepare and submit an approved report within thirty (30) calendar days to the Building and Safety division, unless more time is allowed through written agreement by the Building and Safety division. The noise monitoring report shall be reviewed by the County of Riverside Department of Health / Office of Industrial Hygiene or a qualified acoustical engineer possessing qualifications acceptable to the City's Planning Department. The project proponent or his successor-in-interest shall be required to place on deposit sufficient funds to cover the costs of this review prior to commencing the required report.

16. Hours of operation shall coincide with the information provided to the City in the acoustical report prepared for the project and shall conform with any recommendations or conditions identified by the County of Riverside Department of Health / Office of Industrial Hygiene to mitigate noise.

17. The project proponent shall be prohibited from holding events on the second Saturday of June and the second Saturday of December of each calendar year excepting instances where the project proponent is able to obtain written approval in advance from the adjoining Deutsch Company (or their successor-in-interest)

stating they have no objections to drag strip related events on the June and December dates identified herein. Written verification of the Deutsch Company's authorization shall be submitted to the Planning Department a minimum of seven (7) days prior to the aforementioned dates.

18. Project proponent shall mitigate all traffic related impacts associated with implementation of Unclassified Use Permit 01-47501 as identified in the March 6, 2001 "Traffic Report for the Proposed Banning Drag Strip / City of Banning, California" prepared by Katz, Okitsu & Associates (Exhibit "5").

19. At time of issuance of building permits, the project proponent shall pay all required City mitigation fees in effect at that time, including but not limited to: police, fire, traffic control, general facilities, school, park land, etc.

20. Annual "super events" / "super shows" (defined as up to 100 race cars per event with up to 10,000 spectators per event) shall be subject to the processing of a "special events" application. The project proponent shall submit a completed special events application to the City for its review a minimum of sixty (60) days prior to any proposed "super event" / "super show". The project proponent shall be responsible for fulfilling all conditions of approval attached to said permit in order to conduct such event.

21. In the event the use hereby permitted ceases operation for a period of one (1) year or more, Unclassified Use Permit 01-47501 shall be subject to revocation.

Engineering Department:

Prior to the issuance of any permits, the Developer shall meet the following Engineering conditions:

A. Phase I:

1. Obtain the necessary dedication of right-of-way required to construct the extension of Barbour Street, east of Hathaway Street to the westerly boundary of the project site as depicted on attached Exhibit "2A".

2. Submit Street Improvements Plans for the extension of Barbour Street to the west boundary line of the project site. The plans shall be per the City of Banning standard and shall be prepared by a Registered Civil Engineer.

3. Submit a site plan/grading plan prepared by a Registered Civil Engineer to the City for review and approval, as applicable. All grading shall conform with the Uniform Building Code's (U.B.C.) latest edition and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soils report prepared by a Registered Civil or Geotechnical Engineer, along with the grading plan.

Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations. This includes the plan and installation of the oil/grease separator at the pit area.

4. Submit a Drainage/Hydrology Study and a Hydraulic Analysis for both undeveloped and developed conditions to the City for review and approval. Demonstrate that runoff flows will not impact surrounding properties and that all street flow will drain into the public streets. All of the drainage from the lot shall drain into the public right-of-way or, a Drainage Easement Acceptance letter from the adjacent property owners shall be obtained.

5. The plan check fee for all of the improvement plans shall be paid as per the Fee Schedule established by the City of Banning when the plans are submitted to the City for review and approval.

6. Submit all necessary plans, permit applications and documents for review and approval from affected agencies including but not limited to: the Airport Land Use Commission (ALUC) and Air Quality Management District (AQMD).

7. The proposed project must be in compliance with the City's adopted Airport Master Plan.

8. Submit a copy of the Preliminary Title Report.

9. Pay all applicable fees such as water and sewer connection fees.

Prior to the issuance of the Certificate of Occupancy, the Developer shall meet the following conditions:

B. Phase I:

1. Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

2. Construct the necessary infrastructure improvements to provide utility including: 6" sewer lateral to connect to the existing sewer main on Westward Avenue; 8" water line (cement mortar-lined and wrap steel pipe) on Barbour Street from Hathaway Street to the subject property; and an 8" water line on-site (cement mortar-lined and wrap steel pipe) connecting to the existing line on Westward Ave. thereby creating a loop water system.

3. The developer shall repair any existing areas of the offsite improvement that may become damaged during the construction.

4. The developer shall obtain a final certification from their engineer to confirm the said improvement is in compliance with the approved plans.

C. Phase II:

1. Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees.

2. Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. A Public Works permit shall be obtained prior to commencement of any work within the right-of-way, and a Class "A" Contractor's License is requested to construct any improvements within the City's right-of-way.

3. Ensure that Best Management Practices (BMPs) are followed as per NPDES requirements for storm water runoff during construction, and thereafter during normal work operations.

D. Phase III:

1. Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property.

2. Prepare Street Improvement Plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. Plans shall be prepared by a Registered Civil Engineer. A Public Works permit shall be obtained prior to commencement of any work within the public right-of-way. The contractor that works within the public right-of-way, shall submit proof of a Class "A" Contractor's License, liability insurance, as well as a City Business License.

3. Pay all applicable plan check fees.

Electric Department:

1. Project proponent shall have its project engineer provide electric load calculations to the City's Electric Department for review and approval. The electric load calculations shall indicate the size of service requested and voltage required.

2. Project proponent shall submit a plot plan that depicts the location of the electrical service panel to the City's Electric Department for review and approval.

3. The project proponents plot plan depicting the electrical infrastructure (pull boxes, conduit runs, etc.) shall be subject to the review and approval of the City's Electric Department.

4. Street lighting to be located on Barbour Street and Westward Avenue shall be subject to review and approval by the City's Electric Department.

5. For Phase I development of the project, the project proponent shall be subject to providing electrical utility easements along the west portion of said Phase consistent with the requirements of the City's Electric Department.

6. The project proponent shall pay all costs of material and labor associated with the approved electrical plans and load calculations as determined by the City's Electric Department.

Building Department

1. The proposed concession stands, spectator stands, picnic area, entrance/ticket booths, restrooms and buildings shall be handicap accessible and shall meet the "accessibility requirements" contained in Chapter 11 of the California Building Code.

2. For Phase I development, the project proponent shall provide 24 handicap-parking spaces. For Phase II development the project proponent shall provide 28 handicap parking spaces and for Phase III development the project proponent shall provide 17 handicap parking spaces.

Fire Department:

1. The project proponent shall be responsible for installing six (6) fire hydrants. Two hydrants to be located in proximity to the concession areas must be the City standard James Jones model 3765 or approved equivalent; four hydrants be James Jones Model 3700 or approved equivalent, capable of producing 1500gpm for a 2-hour duration. As a minimum, Phase I development will require the installation of one fire hydrant to be located in the northwest portion of Parcel "1". A plan depicting placement of said fire hydrant(s) shall be submitted to the Fire Department for review and approval. Subsequent placement of the remaining fire hydrants will be required to support each phase of development. All subsequent placement shall be subject to the approval of the Fire Department and Public Works Department.

2. Project proponent shall provide a 20-foot paved access road to the north side of the drag strip with direct access to the vendor facilities and grandstands.

3. For Fire Department emergency access into concession and grand stand areas, the project proponent shall provide minimum 6 foot wide access gates consistent with the Fire Department's requirements.

4. The proposed fueling station to be located in the northwest corner of Parcel "1" shall be UL listed for above ground fuel storage and dispensing, and is subject to the review and approval of the Fire Department. Additionally, the project proponent shall:
    - Provide secondary spill containment
    - Submit a landscape-screening plan to the City's Planning Department for review and approval.

5. Ten (10) gallons of Class A foam concentrate must be kept on the premises for Fire Department use. Prior to the issuance of a Building Permit for Phase I development the project proponent must obtain the Fire Department's approval as to the location and conditions for its storage.

6. The perimeter aisle located adjacent to and parallel to the easterly property line of Parcel "2" (Phase III development), must be a minimum of twenty (20) feet wide.

7. Parking lot design shall be subject to Fire Department Plan Check Review. Turning areas within parking aisles must be designed to accommodate fire engine access.

8. If cooking equipment is proposed to be installed in any building located on-site, automatic fire protection systems will be required for the cooking appliances.

9. If the construction of the proposed garage / dyno facility exceeds 3,000 square feet in area, an automatic fire sprinkler system shall be required.

ATTACHMENT 26

MOPAR DRAG CITY

December 12, 2003

The Gas Company
155 South "G" Street
San Bernardino, CA 92410-3317

To whom it may concern,

We have started offsite improvements on Barbour Street in the City of Banning for our highly anticipated project known as Drag City.

However, in order for these improvements to continue we understand that the gas line on that street will need to be relocated. Therefore we are asking to have the service temporarily turned off and capped where the pavement ends on Barbour Street and at the Deutch Company's "park area" meter where the existing line extends to.

Once this is completed we would ask that these lines be abandoned and relocated. The main incoming line could be placed in a common utility trench approximately 50 feet north and extended to our property line approximately 400 feet east of its present location. While the lateral line to the Deutsch "park area" would be close to its present location, however a little deeper below the existing surface.

Time is of the essence for this project to stay on schedule and would ask you for help in expediting this matter. We gratefully appreciate the cooperation.

Sincerely,

Andy Marocco, President
All American Racing, LLC/ Mopar Drag City

▶ PO BOX 197 • BANNING, CA 92220
▶ Phone 909 874-5198 • Fax 775 942-6312 • MoparDragCity.com

01743

332

ATTACHMENT 27

4/16/04

Kahono Oei

From: Robert Estrada
Sent: Friday, April 16, 2004 1:00 PM
To: Vickie Burt
Cc: Kahono Oei; Robert Estrada
Subject: Mopar Drag City completion of the street and water improvements

As of today April 16, 2004 the street and water improvements constructed by Matich Corporation have been inspected and a final walk through has been completed. The street and water improvements meet the City of Banning's Standard Specifications and have been constructed per the approved street and water improvement plans. The City of Banning accepts the work completed by the Matich Corporation for the Mopar Drag City facility. Should you have any questions please feel free to call me.

Outgoing mail is certified Virus Free.
Checked by AVG anti-virus system (http://www.grisoft.com).
Version: 6.0.584 / Virus Database: 366 - Release Date: 4/19/04

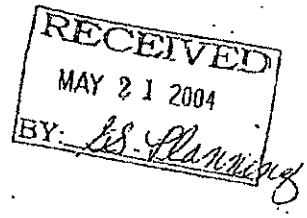
Incoming mail is certified Virus Free.
Checked by AVG anti-virus system (http://www.grisoft.com).
Version: 6.0.659 / Virus Database: 423 - Release Date: 4/15/2004

2/4

ATTACHMENT 28



May 21, 2004



Roger Derda
Planning Department Manager
99 E. Ramsey Street
Banning, CA 92220

Re: Unclassified Use Permit No. 01-47501

Dear Roger:

It has come to our attention that our Unclassified Use Permit No. 01-47501 will expire on August 14, 2004.

As of May 2004, the first step in construction was completed with "Offsite Improvements" that included a newly extended and paved street that brought the public right of way to the drag strip property, which also serves as our Main Entrance. With the new street entrance came the installation and connection of new water, gas and electric lines, as well as streetlights, sidewalks, curbing, gutters and handicap ramps.

Although we already have our grading permit, we have decided to hold off on all onsite work until our building permits are issued. This saves us the additional cost of daily watering of the project's 60 acres and additional cost of renting and moving equipment in and out. From our standpoint it is much more feasible to do it all at once.

However, onsite activity should commence shortly, since we are in the process of submitting the final building plans to the Planning Department. We do not expect the review to take more than 30-60 days. As a vote of confidence, the City Manager, assured me that he will do what he can to have this review expedited as quickly as possible.

Once the building permits are issued, the Drag City racing facility construction itself will take approximately 5 months to complete and is slated to open in February 2005, when the new drag racing season begins.

Therefore based on all this positive and forward progress, I would like to request that our Unclassified Use Permit No. 01-47501 be extended.

Thank You,

Andy Marocco
President, All American Racing, LLC/Mopar Drag City

▶ PO BOX 197 • BANNING, CA 92220
▶ Phone 909 874-5198 • Fax 775 942-6312 • MoparDragCity.com

01771

ATTACHMENT 29

April 26, 2004

Vickie Burt
Economic Development/
Redevelopment Manager
99 E. Ramsey Street
Banning, CA 92220

RE: OFFSITE PHASE 1 REIMBURSEMENT

Dear Ms. Burt:

As you are aware, the City of Banning and All American Racing, LLC (AAR) entered into a Reimbursement Agreement in November, 2002 in which the City agreed to reimburse AAR for a portion of the cost of the off-site improvements installed by AAR as part of the drag strip project.

The Reimbursement Agreement states:

7. The City shall reimburse Developer pursuant to the following:

A. City shall pay to Developer the sum of sixty-two thousand, five hundred dollars ($62,500) within 60 days following acceptance by the City of Phase I offsite improvements as specified in Unclassified Use Permit 01-47501 and as specifically summarized in Exhibit B.

Exhibit B to the Reimbursement Agreement states:

SUMMARY OF PHASE I *OFFSITE* DEVELOPMENT

1. Extend Barbour Street east of Hathaway Street to the project boundary.

2. Barbour Street extension includes: street lighting for Barbour Street extension, curb, sidewalk, gutter, driveway approaches and handicap ramps.

3. Install an 8" water line on Barbour Street from Hathaway Street to the project boundary.

Moreover, AAR submitted street improvement plans for the Barbour Street extension to the City for the review. The plans did not contain any reference to landscaping or irrigation. The City approved the plans and the extension project was constructed pursuant to the approved plans. On April 16, 2004, the City accepted the work performed by AAR's contractor on the Barbour Street extension project.

We have reviewed the entire contents of Unclassified Use Permit No. 01-47501 as well as the Conditions of Approval and we find nothing that requires AAR to have installed landscaping and irrigation along the public right of ways during Phase I of the project. Had that been the agreement, the City (who prepared the agreement) could have easily included that specific requirement. While AAR has every intention of landscaping the public approaches to the track,

we do not believe the landscaping and irrigation must be installed as a prerequisite to the City's obligation to reimburse AAR for the public improvements.

Please accept this correspondence as AAR's request for reimbursement from the City in the amount of $62,500 pursuant to the terms of the Reimbursement Agreement.

Thank you for your prompt attention to this matter.

Sincerely,

Andy Marocco
President, All American Racing, LLC/ Mopar Drag City

CITY of BANNING
ESTABLISHED 1913
99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (909) 922-3171 • Fax (909) 922-3174 • E-mail: vburt@earthlink.net
Economic Development/Redevelopment Department

August 19, 2003

Mr. Ed Bonadiman
Bonadiman & Associates, Inc.
588 W. Sixth Street
San Beranrdino, CA 92410

RE: Drag City Project City of Banning

Enclosed is information regarding electrical plan design for the extension of Barbour Street. Also included is a drawing representing the existing fire hydrant on Barbour Street and distances to edge of pavement.

It is my expectation that this provides you with the information needed to complete the street improvement plans for Barbour Street including water and firehydrant improvements on the existing Barbour Street from Hathaway east.

If I can provide additional information, please contact me at (909) 922-3171.

Sincerely;

Vickie Burt
Economic Development/Redevelopment Manager

01776

340

CITY of BANNING
ESTABLISHED 1913
99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (909) 922-3171 • Fax (909) 922-3174 • E-mail: vburt@earthlink.net
Economic Development/Redevelopment Department

December 4, 2003

Mr. Andy Morocco
All American Racing
P.O. Box 197
Banning, CA 92220

RE: Landscaping in Barbour Street Extension Right-of-Way

Dear Andy:

In reference to the landscaping requirement along the Barbour Street extension, this project component must be completed prior to the acceptance of the Barbour Street improvements. The reimbursement agreement section 7 (A) states:

> City shall pay to Developer the sum of sixty-two thousand five hundred dollars ($62,500) within 60 days following acceptance by the City of Phase I off-site improvements as specified in Unclassified Use Permit 01-47501 and as specifically summarized in Exhibit B.

The project developer is responsible for installation of the landscaping. The City is responsible for long-term maintenance of the landscaping. A plan drawn by a landscape architect or civil engineer will be required prior to installation of the landscaping. When the plan has been prepared, submit three copies to the Planning Department. No application form or fee is required.

The landscaping, with supporting irrigation, shall include street trees spaced a minimum of 30 feet apart, 24 gallon box size preferred; low-maintenance drought tolerant ground cover; and screening plant material along the chainlink fence on the south side. Crepe Myrtle trees are common in the City; are slow growing; and require very little maintenance. Other types of slow growing low-maintenance tress would also be considered. Screening material could consist of shrubs such as boxwood or vines such as jasmine. The City would consider alternative plant material.

01777

It is the intent of this letter to clarify the landscaping requirement with the Barbour Street improvements. If additional information is helpful, please call.

Sincerely;

Vickie Burt
Economic Development/Redevelopment Manager

C: Robert Matich, Matich Corporation
Kahono Oei, City of Banning
Roger Derda, City of Banning

MATICH CORPORATION
Contractors License Number 149783 A
P.O. Box 50,000 San Bernardino, CA 92412
909 825-9100 Fax 909 825-1780

REVISED PROPOSAL

Company: All American Racing
P.O. Box 197
Banning, Ca 92228

Re: Banning Drag Strip

Item No.	Description	Quantity	Unit	Unit Price	Total
1	Clearing Vegetation	1	LS	$5,970.00	$5,970.00
2	Rough Grading	1	LS	$25,000.00	$25,000.00
3	SWPPP for Offsite Improvements Only	1	LS	$2,500.00	$2,500.00
4	Water Line Improvements	1	LS	$84,000.00	$84,000.00
5	Subgrade Prep	35,000	SF	$0.25	$8,750.00
6	8" Curb & Gutter	885	LF	$20.00	$17,700.00
7	Cross Gutter & Spandrel	270	SF	$13.00	$3,510.00
8	Access Ramp	3	EA	$2,000.00	$6,000.00
9	Aggregate Base	1,000	TON	$17.00	$17,000.00
10	0.25' AC Paving	600	TON	$46.00	$27,600.00
11	Sidewalk	5,000	SF	$3.00	$15,000.00
12	Commercial Driveway Approach	1	EA	$1,200.00	$1,200.00
13	Street Lighting Improvements	1	LS	$16,000.00	$16,000.00
				TOTAL	$230,230.00

NOTES:

Work to be per Bonadiman & Associates Plans as approved by City of Banning on December 5, 2003
50 % payment due 30 calendar days after completion of work, including any extras
Balance is to be paid in full within 90 calendar days of completion of work.
Excludes engineering, construction staking, testing, permits, inspection fees, and bond.
This proposal does not include SWPPP requirements for onsite grading permit
Excludes hazardous material removal / disposal.
Matich is not responsible for damage to unmarked underground utilities.
Excess material to be spread on Photo-Sonics property at east end of project
This proposal excludes any landscape or irrigation improvements
This proposal is bid as a package lump sum agreement
This proposal is based on one move in, additional move ins will be billed at $3,500.00.
This proposal does not include the cost of bonds.

MATICH CORPORATION
Contractor
Robert M. Matich
Robert M. Matich Vice President
Date 12/5/03

ALL AMERICAN RACING, LLC
Owner/Developer
Andy Marocco
Date 12/5/2003

01779

COST SUPPORT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 2nd day of June, 2004, by and between the City of BANNING COMMUNITY REDEVELOPMENT AGENCY, a California public agency, corporation (hereinafter called "Agency"), and All AMERICAN RACING, LLC. a corporation (hereinafter called "Developer").

WHEREAS, the Developer has constructed the extension of Barbour Street improvements to support phase I development of the All American Raceway Project as depicted in Exhibit "B" ; and

WHEREAS, it is necessary that landscaping be installed in the public right-of-way along the extension of Barbour Street pursuant to Planning Condition 9 of Unclassified Use Permit (UUP 01-4"01), set forth in Exhibit "A" (hereinafter "Landscaping"); and

WHEREAS, the cost of said Landscape Improvements are estimated to be in the not to exceed amount of $25,000; and

WHEREAS, the Landscaping is located within a Redevelopment Project Area; and

WHEREAS, Landscaping is not for the exclusive use of the Developer but shall serve the public generally; and

WHEREAS, the Developer incurred unscheduled costs in the approximate amount of $22,000 for work to relocate water and gas lines in conjunction with the construction of the Barbour Street extension; and

WHEREAS, after examination of appropriate documentation it is hereby determined that the Developer is unable to complete the installation of the Landscaping within the time required by the UUP and it is the finding of the Community Redevelopment Agency Board that such failure is due in part to incurrence of the unscheduled costs; and

WHEREAS, Community Redevelopment Agency Board finds that it is desirable for the Agency to assist the Developer in recouping the unscheduled costs of the Barbour Street extension so as to facilitate the orderly and efficient development of the public right-of-way within the Redevelopment Project Area.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Agency, and Developer agree as follows:

A. All recitals set forth above are hereby agreed to be true and correct.

B. Agency Responsibility:

1. The Agency hereby agrees to advance to the Developer the not-to-exceed sum of twenty-five thousand dollars $25,000; ("Reimbursement"), as reimbursement of the unscheduled costs for the extension of Barbour Street.
2. Developer shall not take direct receipt of any part of the Reimbursement. The Agency shall apply the Reimbursement to construct and install the Landscaping. Any proceeds remaining after payment of all costs of the Landscaping shall remain the property of the Agency.

C. Developer Responsibility:

1. Developer hereby agrees to waive and forego all claim and right it may have against the Agency and the City of Banning for recovery of any of the unscheduled costs described hereinabove.

2. Developer agrees to indemnify, defend (upon request by Agency), save and hold harmless Agency, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages arising from or connected with Agency's performance hereunder, including any liability or expense, arising from or connected with the services performed by or on behalf of Agency by any person pursuant to this Agreement.

3. Developer hereby acknowledges and agrees that this Agreement does not modify or otherwise change any other agreement, of whatever type, presently existing between the Agency and the Developer and that all Developer's its obligations under such agreements continue in effect.

D. Dispute Resolution

1. If any Party believes any other Party to be in violation of any term or condition of this Agreement, that Party shall give the alleged defaulting Party thirty (30) days ("Cure Period") written notice specifying the nature of the alleged violation and, when appropriate, the manner in which the violation may be satisfactorily cured. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation. Upon expiration of the time allotted for appeal without cure or appeal, the agreement shall be deemed terminated. The agreement may be earlier terminated upon the mutual written agreement of the Parties.

2. If the matter is not resolved within the Cure Period, the aggrieved Party may appeal the allegation of violation by filing with the City Clerk, within five (5) calendar days following the end of the Cure Period, a notice of appeal to the Agency Board. The aggrieved Party and the alleged defaulting Party shall be given an opportunity to be heard at a regularly scheduled meeting of the Agency Board, which need not be a public hearing. If, after such hearing, it is the finding of the Agency Board that a violation has occurred and is continuing, the defaulting party shall immediately commence the cure of such default. The Agency Board shall, at such hearing, set the date for completion of the cure. If the defaulting Party has not completed the cure within the time allowed, the aggrieved party may thereafter take such action as is hereinafter permitted as an action on a default.

3. If, after hearing the testimony and reviewing the evidence presented by the Parties, the full Agency Board finds by majority vote that there has been no default hereunder, the matter shall be at an end and each Party hereby waives the right to take any further action against any other Party hereto for such alleged breach.

4. Subject to the prior exhaustion of all administrative remedies set forth hereinabove, in addition to any other rights or remedies, any Party may institute legal action to cure, correct or remedy any violation, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation

hereof, to recover damages for any default, or to obtain any other remedies consistent with the purposes of this Agreement. The parties may agree to submit the matter to mediation or arbitration.

5. Notwithstanding any other provisions herein to the contrary, [illegible] remedies against the Agency shall be limited to the requirement of specific performance of its obligations hereunder, [illegible] as to the Developer, in addition to all other remedies, in the case of a finding of breach by the Developer, all sums expended by Agency pursuant to this Agreement prior to such finding shall become a debt of the Developer and shall be immediately due and owing.

6. Any legal action commenced hereunder shall be brought in the Superior Court of the County of Riverside, State of California.

E. If any legal action or other proceeding is brought for the enforcement of this Agreement, or to interpret any of the provisions hereof, or of any alleged dispute, breach, default, or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in said action or proceeding, whether or not said action or proceeding goes to final judgment, in addition to any other relief to which it may be entitled, and shall include any post-judgment attorneys' fees incurred, any attorney's fees incurred by the prevailing party on appeal, and by the prevailing party for any post-judgment motion proceedings or hearings, and any and all attorneys' fees incurred in any and all efforts by the prevailing party to collect its judgment.

F. Execution of this Agreement shall be presumed to be made by an individual authorized by his or her respective corporation by resolution of its board of directors and such execution shall constitute a waiver by the party of any lack of such a resolution.

G. Notice

Notices herein shall be presented in person or by certified or registered U.S. mail, as follows:

To Developer: All American Racing, LLC
P.O. Box 998
Banning, CA 92220
Attention: Andy Marcoot, President

To Agency: City of Banning
Redevelopment Agency
Post Office Box 998
Banning, California 92220
Attention: Executive Director

Nothing in this paragraph shall be construed to prevent the giving of notice by personal service.

H. Except as expressly provided herein to the contrary, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns.

I. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement.

J. All exhibits attached hereto and referred to herein are hereby incorporated herein as though set forth at length.

K. The parties hereto agree to execute and file and to join in the execution and filing of any and all agreements, consents or other documents reasonably necessary to effect the consummation of the transaction contemplated hereby, as either party hereto may reasonably require.

L. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be in the courts of Riverside County.

M. The section and other headings contained in this Agreement are for reference purposes only and will not affect the interpretation or meaning of this Agreement.

N. The agreements contained herein shall not be construed in favor of or against either party but shall be construed as if all parties prepared this Agreement. The masculine and neuter genders, the singular number and the present tense shall be deemed to include the feminine gender, the plural number and past and future tenses, respectively, where the context so requires.

O. In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

P. The Agency's obligation hereunder shall terminate upon the expiration of five (5) years following date of execution of this Agreement.

Q. Release of News Information

No news release, including photographs, public announcements or confirmation of same, of any part of the subject matter of this Agreement or any phase of any program hereunder shall be made without prior written approval of Agency or his or her designee.

R. Confidentiality of Reports

Developer shall keep confidential all reports, information and data received, prepared or assembled pursuant to performance hereunder and that Agency designates as confidential. Such information shall not be made available to any person, firm, corporation or entity without the prior written consent of Agency.

S. Developer Support

Developer shall provide Agency with any plans, publications, reports, statistics, records or other data or information pertinent to the work to be provided hereunder which are reasonably available to Developer.

T. Compliance with Laws

The Agency and Developer agree to be bound by applicable federal, state and local laws, regulations and directives as they pertain to the performance of this Agreement. Special note is made of the prevailing wage law requirements and the public contracts bid requirements.

U. Entire Agreement

This Agreement with attachments constitutes the entire understanding and agreement of the parties. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto and contains all the covenants and agreements applicable between the City of Banning, the Agency and the Developer respecting the matters addressed herein.

V. No Third Party Beneficiaries

No third party shall be deemed to have any rights hereunder against any of the parties hereto as a result of this Agreement.

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

City of Banning
Community Redevelopment Agency

Randy Anstine, Executive Director

All American Racing, LLC

Andy Maycock, President

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson, Agency Counsel

CERTIFIED TO BE A TRUE AND CORRECT
COPY OF THE ORIGINAL DOCUMENT ON
FILE IN THE OFFICE OF THE CITY CLERK

BY Marie A. Calderon
TITLE City Clerk
DATE 7-11-05

01784

ATTACHMENT 30

File Copy

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (909) 922-3128

Accepted
De Sanctis/Papanian
4-1 (Escandell)

DEPARTMENT OF
PLANNING
(909) 922-3125

July 30, 2004

Mr. Andy Marocco
Mopar Drag City
P. O. Box 197
Banning CA 92220

RE: Extension of Time, Unclassified Use Permit No. 01-47501

Dear Mr. Marocco:

In response to your request of May 21, 2004, this letter will serve as notification of the Director's determination to extend the above-referenced Unclassified Use Permit for a period of one year, to August 14, 2005. The basis for the extension being granted includes:

1. The project has proceeded and generally completed extensive off-site improvements, including roadway and utility connections for the property.
2. The preparation of building plans is under way.
3. The development issues associated with this site are considerable, and may therefore require more time to resolve than a typical development project.

The Zoning Ordinance allows a Director's decision for up to three extensions for Unclassified Use Permits. This represents the second such extension applied to this project. One more extension may be considered in 2005.

Sincerely,

Nicole Sauviat Criste
Interim Community Development Director

CC: Randy Anstine, City Manager
City Attorney
Planning Commission members

MOPAR. DRAG CITY

May 21, 2004

RECEIVED
MAY 21 2004
BY: CS-Planning

Roger Derda
Planning Department Manager
99 E. Ramsey Street
Banning, CA 92220

Re: Unclassified Use Permit No. 01-47501

Dear Roger:

It has come to our attention that our Unclassified Use Permit No. 01-47501 will expire on August 14, 2004.

As of May 2004, the first step in construction was completed with "Offsite Improvements" that included a newly extended and paved street that brought the public right of way to the drag strip property, which also serves as our Main Entrance. With the new street entrance came the installation and connection of new water, gas and electric lines, as well as streetlights, sidewalks, curbing, gutters and handicap ramps.

Although we already have our grading permit, we have decided to hold off on all onsite work until our building permits are issued. This saves us the additional cost of daily watering of the project's 60 acres and additional cost of renting and moving equipment in and out. From our standpoint it is much more feasible to do it all at once.

However, onsite activity should commence shortly, since we are in the process of submitting the final building plans to the Planning Department. We do not expect the review to take more than 30-60 days. As a vote of confidence, the City Manager, assured me that he will do what he can to have this review expedited as quickly as possible.

Once the building permits are issued, the Drag City racing facility construction itself will take approximately 5 months to complete and is slated to open in February 2005, when the new drag racing season begins.

Therefore based on all this positive and forward progress, I would like to request that our Unclassified Use Permit No. 01-47501 be extended.

Thank You,

Andy Marocco
President, All American Racing, LLC/Mopar Drag City

▸ PO BOX 197 • BANNING, CA 92220
▸ Phone 909 874-5198 • Fax 775 942-6312 • MoparDragCity.com

01787

351

ATTACHMENT 31

LAW OFFICES
BURKE, WILLIAMS & SORENSEN, LLP
3403 TENTH STREET, SUITE 300
RIVERSIDE, CALIFORNIA 92501-3629
Tel: (951) 788-0100
Fax: (951) 788-5785
www.bwslaw.com

LOS ANGELES OFFICE
611 WEST SIXTH STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-3102
Tel: (213) 236-0600
Fax: (213) 236-2700

ORANGE COUNTY OFFICE
18101 VON KARMAN AVENUE, SUITE 1050
IRVINE, CALIFORNIA 92612-1009
Tel: (949) 863-3363
Fax: (949) 863-3350

SAN DIEGO OFFICE
402 WEST BROADWAY, SUITE 810
SAN DIEGO, CALIFORNIA 92101-3553
Tel: (619) 615-6672
Fax: (619) 615-6673
cvail@bwslaw.com

SAN JOSE OFFICE
96 NORTH THIRD STREET, SUITE 620
SAN JOSE, CALIFORNIA 95112-5572
Tel: (408) 299-0422
Fax: (408) 299-0429

VENTURA COUNTY OFFICE
2310 EAST PONDEROSA DRIVE, SUITE 25
CAMARILLO, CALIFORNIA 93010-4747
Tel: (805) 987-3468
Fax: (805) 482-9834

OUR FILE NO
04710-0012

October 1, 2004

Andy Marocco, President
All American Racing, LLC
P.O. Box 197
Banning, California 92220

Re: FAA Land Release Process and Lease Obligations

Dear Mr. Marocco:

You will remember that the firm of Burke, Williams and Sorensen, LLP currently serves as City Attorney for the City of Banning and as General Counsel for its Redevelopment Agency. In that capacity, and at the request of the Randy Anstine, Banning's City Manager, we have been asked to provide this letter to All American Racing, LLC ("AAR") to discuss the manner in which AAR and the City may initiate and undertake the formal process required by the Federal Aviation Administration ("FAA") to sell the twenty (20) acre City parcel now leased by AAR ("Site").

Certainly, moving through the FAA's Land Release Process needs to be a collaborative and cooperative process between the City and AAR. Initiation of this process by the City would be a significant step not only for the City as an entity, but also for the Community-at-large. As part of this process, the City will be required to publicly declare that the Site is no longer necessary for airport related uses and that it should be sold to a private developer (AAR) for private purposes (the Raceway). In order to justify this action to the FAA and Community-at-large, the City will need your cooperation in the form of providing information sufficient to demonstrate that AAR is in compliance with its ongoing obligations under the Lease and that AAR has the ability and capacity to acquire the Site and carryout the project.

The purpose of this letter is, therefore, two fold. First, this letter will review key continuing obligations of AAR under the Lease and highlight areas where the City needs your assistance to demonstrate AAR's ongoing compliance. Second, this letter will review the position of the FAA with regard to the interim use of the site and the Land Release process and discuss how the process is to be initiated.

Ongoing Lease Obligations

As you know, on or about November 26, 2002, the City entered into a Lease Agreement ("Lease") with AAR regarding the Site located adjacent to the Banning Municipal Airport. AAR's rights under the Lease extend for a term of five (5) years commencing November 26, 2002 and expiring on November 25, 2007, unless earlier terminated. The Lease imposes several continuing obligations on AAR.

The Lease required AAR to "show by evidence satisfactory to City, that it has obtained possession and control of that forty acre parcel of land lying immediately adjacent to" the Site (the "Photo-Sonic Property") permitting AAR to use the properties in conjunction with and in accordance with the Unclassified Use Permit No. 01-47501 ("UUP"). The Lease allowed AAR ninety (90) days from approval of the Lease to present this evidence to the City or the Lease became null and void. [*See Lease Section 1.5(B)*]. It appears from the City's records that AAR was given numerous extensions of this deadline, that the City never notified AAR that the lease was null and void, and that the City eventually accepted a Purchase Agreement for the Photo-Sonic Property as initially satisfying this condition.

This Purchase Agreement, however, has expired of its own terms. It appears from a review of City records and discussion with City Staff that to date the City has not been supplied with any other information confirming that AAR's rights under the Purchase Agreement have been renewed or that AAR has otherwise secured long term rights to the Photo-Sonic Property. Certainly AAR's ability to own, possess, and control the Photo-Sonic Property is fundamental to the success of the project. It is imperative that before the parties initiate the FAA Land Release Process that AAR demonstrate that is has secured legal rights adequate to undertake and operate the project.

Although the Lease does not require the Project to be completed within a specific period of time, it does provide that once work has begun "Tenant shall with reasonable diligence prosecute all construction of the Improvements." The term "Improvements" is defined in the Lease to include not only buildings and structures, but such things as excavations and earth contours placed by human design. [*See Lease Section 4.1(A) & (D)*]. Based on inspection of the Site and discussion with City Staff, it is clear that AAR has undertaken clearing and grubbing work and what appears to be preliminary grading or other excavation activities on the Site. As such, AAR's obligation to prosecute the construction of the Improvements with reasonable diligence has been invoked. Therefore, it is in the best interests of the parties that AAR provide the City with information demonstrating its ability to proceed with such construction with reasonable diligence.

The Lease requires AAR to obtain and maintain in effect for the duration of the Lease, Public Liability Insurance and Fire and Extended Coverage Insurance. AAR is obligated to provide evidence to the City that it has obtained and paid for these policies "at least ten (10) days before expiration or termination of the existing policy." [*See Lease Sections 1.2(A), 2.1(A) & (B), 6.3, 6.4, and 6.7(A)(2)*]. It appears from City records that AAR initially provided evidence of insurance. It is not clear whether the required insurance policies are still in effect. Again, it is in the interest of both parties that AAR provide current information to the City demonstrating that all required insurance policies are in effect.

Based on the foregoing, and in the spirit of cooperation, the City requests that AAR assemble information and documents sufficient to satisfy the following:

1. Provide evidence that AAR has secured title to the Photo-Sonic Property or has otherwise secured the right to possess the Site together with the right to make and operate all of the improvements called for under the project. In the best case, this evidence may take the form of a grant deed and closing statement for the Photo-Sonic Property or a Long Term Ground Lease for the Site with a minimum term of fifty (50) years.

2. Provide a schedule of performance for the project demonstrating that AAR has the ability to prosecute the Project to completion with reasonable diligence. This evidence should include a detailed schedule of construction with appropriate major mile stones tied to specific dates or specific period of time and should in the best case be supported by one or more executed construction contracts for the work.

3. Provide evidence to the City that the required insurance policies are being maintained and will be maintained through the period required to complete the FAA Land Release Process.

Issues Raised by the FAA's Letters

The Sections of the Lease discussing the "Site" and "Possession" reference the fact that the FAA retains certain rights in the Site. The Department of Transportation Federal Aviation Administration Grant Agreement ("Grant Agreement") was attached as an exhibit to the Lease as were the FAA's letters dated July 31, 2002 and August 2, 2002 ("FAA Letters"). In June of 2004, the FAA delivered another letter to the parties indicating that the FAA had, based on supplemental information provided to it by the parties about the project, concluded that use of the Site for the project was not an interim use. This clarification by the FAA places in question

the ability of the parties to proceed with use of the Site for the contemplated purpose under the existing Lease.

As is discussed below in more detail, the FAA has determined that even the temporary use of the Site for the proposed drag strip is inconsistent with the intent of the assurances made by the City in the Grant Agreement. As a result, the parties have three (3) options: (i) terminate the Lease Agreement and their mutual relationship with regard to the Site and Project; (ii) agree that some other type of temporary use acceptable to the FAA may be made of the Site for the remainder of the Lease Term; or (iii) undertake the FAA Land Release process and have the City sell the Site to AAR for fair market value.

This letter assumes, for purposes of discussion, that the parties will elect to proceed with option (iii), however, the transmission of this letter is not meant to, and should not be construed to, prevent a free discussion among the parties of the other options. With this in mind, we turn to a discussion of the FAA's position.

The Lease recites that the FAA approved the interim use of the Site for the purposes contemplated by the parties and incorporates the Letters by reference. [*See Lease Sections 1.1(C) & (D), 3.1, 3.2, Lease Exhibits C, D & E*]. However, to construe this allusion in the Lease to acceptance of the project by the FAA would be incorrect. The FAA raised concerns with the nature of the project from the beginning. Documents in the City's project file indicate that the parties initially discussed a lease of the Site for a period of twenty (20) years, but that this was changed to a term of five (5) years based on input from the FAA. The initial FAA letter dated July 31, 2002 stated that: "The FAA does not object to the interim use for non-aeronautical purposes for a period of five years contingent on the following conditions . . ." The letter states three conditions one of which is the following:

> It is understood that the interim use is intended to serve as a temporary arrangement during which the City will have an opportunity to develop an alternative plan, acceptable to the FAA, for the eventual disposition of the 20 acres. It is furthermore understood that long-term, interim use of the 20 acres exceeding five years for the purpose requested is not considered a tenable option, since a non-aeronautical venture with intended permanence on the airport would preclude the 20 acres from ever being used for aeronautical purposes. As a consequence, such long-term use could no longer be recorded as interim or temporary.

In response to this letter, the City asked for the FAA to provide "some flexibility" for the City "to provide an extension of the interim-use period beyond the initial five-year term." By

letter dated August 2, 2002, the FAA responded that the auto racing facility envisioned by the parties was a long-term and, possibly permanent facility. The parties were informed that the FAA's interim use policy addresses "temporary use" and is "not meant to countenance the establishment of permanent non-aeronautical facilities on obligated airport land." The FAA emphasized that:

> As we discussed previously, the City should not expect the FAA to grant successive five-year, interim-use approvals that would allow a non-aeronautical venture to operate at the airport on a permanent basis. The interim-use policy was never intended for such purposes.

This letter provided only limited flexibility for an extension in instances where the parties had used their best efforts to seek a solution within the interim-period but an unexpected occurrence outside the control of the City and AAR did not permit the five-year deadline to be met. This extension provision was envisioned only as a "short-term" solution.

Both the July and August, 2002 FAA letter were attached to the Lease and referenced as support for the proposition that the FAA approved of the interim use. Since the Lease incorporated the FAA Letters by reference and attached the Grant Agreement, the rights conveyed under the Lease are framed and limited by these documents. In other words, the Lease conveys no more of a right to use the Site than would be permitted by the FAA.

This complexity of this situation was compounded when on June 28, 2004, the FAA provided a letter to the City and AAR rescinding its prior permission to temporarily use the Site for a drag strip. In rescinding its prior permission, the FAA cited insufficient justification for the interim use based on subsequently acquired information from the parties. The stated that "[t]the proposed use of dedicated airport facilities for non-acronautical purposes does not comply with the federal obligations that the City pledged to uphold" and that such use "contravenes the contractual obligations upon which federal aid rests." The FAA continued in the letter:

> The City proposal does not meet the FAA's temporary use requirements. We do not consider the City's drag strip proposal to represent a temporary use of the airport. On the contrary, the drag strip will result in a permanent change in airport land use.
>
> . . .
>
> A change in use of the land would demonstrate that it is no longer needed for airport development purposes. In accordance with US

> Code 47107(c)(2)(B), which implements Assurance 31, *Disposal of Land*, an airport sponsor must dispose of land acquired under a grant for airport development purposes when the land is no longer needed for airport purposes.
>
> . . .
>
> If the City wishes to go forward with the construction of a drag strip on airport land, the City will have to simultaneously take action to dispose of the land.

In its June 2004 letter, the FAA very clearly informs the City that if the drag strip project continues, the City will be in violation of its Grant Agreement and that it the FAA will be required to inform Congress. Furthermore, the FAA goes so far as to conclude that:

> If the City determines that the proposed drag strip serves the interests of the City, we shall conclude that airport land used for the drag strip will undergo a permanent change in use and, therefore, will no longer be needed for airport purposes. Hence, the City will proceed promptly, in accordance with Assurance 31, to obtain FAA approval to dispose of the property in accordance with federal requirements.

After the execution of the Lease, the parties took several actions (including, but not limited to entering into a Development Agreement, a Reimbursement Agreement, and extending the life of the UUP) which, taken together, demonstrate support for the project. Based on this, it appears consistent with past direction that the parties proceed promptly to obtain FAA approval to dispose of the Site. However, given the significant nature of this undertaking, the City will be best able to support this effort if the parties proceed on the basis of demonstrated ability to perform.

FAA Land Release Process.

This process is set forth in the regulations promulgated by the FAA. In order to assist the parties we have prepared a Process Description and Flow Chart illustrating the various steps in the process. You will note that the process is quite involved, and requires the assembly and preparation of a significant amount of information and documentation. The parties will need to work cooperatively and collaboratively to complete the process. We hope that your contacts with the FAA will help the process move smoothly and expeditiously.

A key aspect of the process is the preparation of a Release Request Package. As you will see from the Description and Flow Chart there are specific steps to complete. The first step will be for the parties to develop a Release Proposal and discuss it with the FAA. The next step will be to prepare the full Release Request Package. Integral to the Package will be an appraisal of the Site. The City will procure the necessary appraisal of the Site as a sign of good faith and as part of its best efforts to engage in and cooperate with AAR in the disposal process.

Course of Action

Based on the foregoing discussion, the parties should proceed in the following manner:

1. AAR Demonstrate Satisfaction of Ongoing Obligations. As the first step in the process, AAR will demonstrate to the City that it is in compliance with all of the ongoing obligations under the Lease as discussed above. ***Some of this information will be esstential for the preparation of the Releaser Request Package. The release process cannot be initiated without this information.***

2. AAR's Formal Request for Land Release. The Lease requires AAR to provide the City with a formal written request that the City initiate the FAA Land Release Process [*Lease Section 1.5(D)*]. Pursuant to the Lease, this request must include the following: (i) an affirmative request by AAR that City undertake the FAAI Land Release Process; and (ii) an affirmative pledge by AAR that it will purchase the Site at a price equal to the Site's fair market value at its highest and best use as established by a independent and licensed appraiser. Also, the Lease requires that this request must be accompanied by evidence that AAR performed due diligence in an unsuccessful attempt to obtain a parcel of land for purpose of exchange as contemplated under Lease Section 1.5.(C). ***This information will be esstential for the preparation of the Releaser Request Package. The release process cannot be initiated without this information.***

3. AAR Demonstrate Financial Ability to Perform. AAR needs to demonstrate its financial capacity to: (i) acquire the Site at its fair market value; and (ii) undertake and carry out the project. ***This information will be esstential for the preparation of the Releaser Request Package. The release process cannot be initiated without this information.***

4. City Initiate Appraisal of Site. As a demonstration of good faith, the City has initiated an appraisal of the Site for use in the Land Release Process.

5. AAR Provide Information Necessary for FAA Application. The City and AAR should work cooperatively to prepare a preliminary release proposal for discussion with FAA staff. Thereafter the parties will need to work to prepare the formal Release Request Package. Integral to this Package will be an agreement entered into by and between the City and AAR under which AAR makes a legally binding commitment to purchase the Site from the City at its fair market value.

We look forward to working with you and your legal counsel throughout this process. Please direct all information and submittals to the attention of Randy Anstine, City Manager at the City of Banning 99 East Ramsey, Banning, California 92220 with a copy to Eric S. Vail, Esq. at 3403 10th Street, Suite 300, Riverside, CA 92501

Should you have any questions, please fee free to contact the undersigned at 951-788-0100.

Sincerely,

BURKE, WILLIAMS & SORENSEN, LLP

Eric S. Vail

Eric S. Vail

cc. Randy Anstine, City Manager
Julie H. Biggs, City Attorney

ATTACHMENT 32

SEARLES COMPANY, LLC
2030 Main Street, Suite 1300
Irvine, CA 92614
949-552-5949, *fax* 949-552-5577
twsearles@cox.net

CONFIDENTIAL

Via Email and Facsimile

January 21, 2005

Mr. Randy Anstine
City Manager
City of Banning
99 East Ramsey Street
Banning, California 92220

Re: Drag City and surrounding land

Dear Randy,

We are in the process of acquiring the land necessary to construct Mopar Drag City, provide for current and anticipated parking requirements, and develop an adjacent master planned business park. To date, we have entered into escrow to purchase the 40 acre Photosonics site. We have pursued and will continue to pursue the purchase of the 40 acre site owned by Mr. Werner Scharff on the east side of the City's 20 acre site. We intend to purchase the 20 acres to the south of the City's site, land to the south of Westward and the 58 acres to the north of the airport.

By assembling this land, we intend to:

- Build a first class drag racing facility capable of hosting testing and racing events from recreational enthusiasts to the top level racers capable of the highest speeds.
- Plan and develop facilities to accommodate "horizontal" convention type shows, i.e. RV Shows, car shows, requiring large areas for exhibits and visitor parking
- Plan and develop a master planned commercial business park.
- Cooperate and partner with the City in developing an "Airport Master Plan" incorporating our intended uses and potential Airport uses to maximize the economic potential for both.

We intend to diligently pursue this land assemblage using all commercially reasonable means available to us, including, if necessary, paying more than the fair market value of the property.

However, we may encounter an opportunistic landowner or simply a landowner who chooses not to sell at all. In that case, we are requesting the non-monetary assistance of the city to exercise their eminent domain option to help acquire this land. Certain landowners, such as John Kiel, have found it to be advantageous to have the city acquire the land in order to enjoy the benefits of a 1033 tax deferred exchange status. We will fully cooperate with any such exchange and its requirements.

Thank you for your consideration of this request. We are committed to prudently moving forward with our development plans by assembling the necessary land first and then starting the improvements immediately, specifically the track facilities. We look forward to your continued cooperation and a long and prosperous relationship.

Sincerely,

Thomas W. Searles

01811

362

ATTACHMENT 33

CITY OF BANNING

P.O. BOX 998
PHONE (951) 922-3125
FAX (951) 922-3128

August 9, 2005

DEPARTMENT OF
PLANNING
(951) 922-3125

Mr. Thomas W. Searles, Principal
1600 Dove Street, Suite 210
Newport Beach, CA 92660

SUBJECT: Unclassified Use Permit Number 01-47501

Dear Mr. Searles:

Thank you for the letter requesting an extension of the above-referenced Unclassified Use Permit for the proposed drag racing facility.

As you are aware, at the meeting of August 9, 2005, the City Council and Agency Board approved the "Agreement For Assignment and Assumption of Multiple Agreements" substituting Banning Airport Associations, LLC (BAA) for All American Racing, LLC (AAR). As a result of this assignment and in concert with the Zoning Code requirements, this letter will serve as notification of the determination to extend the above-referenced Unclassified Use Permit for a period of one year, to August 14, 2006. The basis for the extension being granted includes:

1. Through its principal, Tom Searles, BAA has indicated its desire to carry the project forward in an integrated fashion with other airport oriented development.
2. BAA has purchased the old Photo-Sonic property (a primary parcel necessary for the drag facility).
3. The development issues associated with his site are considerable, and may therefore require more time to resolve than a typical development project.

The Zoning Ordinance allows up to three extensions for this Unclassified use Permit. This extension represents the third such extension applied to this project.

Should you have questions or would like additional information, please do not hesitate to contact me at (951) 922-3131, or via e-mail at oorci@ci.banning.ca.us.

Sincerely,

Oscar W. Orci
Community Development Director

OO:OO

CC: Randy Anstine, City Manager
Andy Marocco, Mopar Drag City

CITY COUNCIL/RDA AGENDA
CONSENT ITEM

Date: August 9, 2005

TO: **Honorable Mayor, Councilmembers, Agency Chairman, Boardmembers, City Manager and Executive Director**

FROM: **Eric S. Vail, Assistant City Attorney**

SUBJECT: **Assignment and Assumption of Agreements with All American Racing regarding Drag City Project**

RECOMMENDATION:

Staff respectfully requests that the City Council and Agency Board approve the "Agreement For Assignment and Assumption of Multiple Agreements" substituting Banning Airport Associations, LLC for All American Racing, LLC.

BACKGROUND:

Beginning in early 2002 through June of 2004, the Redevelopment Agency and the City entered into a number of agreements with All American Racing ("AAR") regarding the development of a drag racing facility on property located to the south of the Banning Municipal Airport. The agreements create mutual rights and obligations on behalf of the parties regarding the facility. Below is a summary of agreements (collectively referred to as the "Agreements") currently outstanding between AAR and the City and Agency:

1. An undated Memorandum of Understanding entered into about 2002 pertaining to the Project.

2. A Lease dated November 26, 2002, under which the City leased a City owned twenty acre parcel of real property to AAR for five years for the purpose of the Project.

3. A License Agreement dated November 26, 2002, under which AAR granted City a license over parking spaces developed as part of the Project.

4. A Reimbursement Agreement dated November 26, 2002, pertaining to the extension of Barbour Street.

5. A Development Agreement dated November 26, 2003, pertaining to the Project and entered into pursuant to Government Code § 65864 et seq.

6. A Cost Support Agreement dated June 25, 2004, pertaining to the extension of Barbour Street.

Although to date AAR has not been successful in developing the proposed drag racing facility, the Agreements impose no express time deadlines for performance by AAR and the Agreements remain legally binding upon the parties.

City staff has been informed that AAR's interest in the project has been purchased by Banning Airport Associates, LLC ("BAA") an unrelated private development firm. Through its principal, Tom Searles, BAA has indicated its desire to carry the project forward in an integrated fashion with other airport oriented development. BBA has purchased the old Photo-Sonic property (a primary parcel necessary for the drag facility).

Based on AAR's inability to perform, the broader perspective of BAA, and the fact that BAA has actually invested money in the area, as evidenced by its purchase of the Photo-Sonic property, staff recommends the assignment of all of AAR's rights and obligations under the Agreements to BAA.

The proposed Assignment and Assumption Agreement will result in BAA becoming the sole party with whom the City and Agency will deal concerning the drag facility and in AAR waiving and releasing any claims and actions against the City.

There is no anticipated fiscal impact to the City or Agency as a result of approving the Assignment and Assumption Agreement.

ATTACHMENT 34

STAFF REPORT

Date: August 9, 2005

TO: Honorable Mayor, Councilmembers, Agency Chairman, Boardmembers, City Manager and Executive Director

FROM: Eric S. Vail, Assistant City Attorney

SUBJECT: Assignment and Assumption of Agreements with All American Racing regarding Drag City Project

RECOMMENDATION:

Staff respectfully requests that the City Council and Agency Board approve the "Agreement For Assignment and Assumption of Multiple Agreements" substituting Banning Airport Associations, LLC for All American Racing, LLC.

BACKGROUND:

Beginning in early 2002 through June of 2004, the Redevelopment Agency and the City entered into a number of agreements with All American Racing ("AAR") regarding the development of a drag racing facility on property located to the south of the Banning Municipal Airport. The agreements create mutual rights and obligations on behalf of the parties regarding the facility. Below is a summary of agreements (collectively referred to as the "Agreements") currently outstanding between AAR and the City and Agency:

1. An undated Memorandum of Understanding entered into about 2002 pertaining to the Project.

2. A Lease dated November 26, 2002, under which the City leased a City owned twenty acre parcel of real property to AAR for five years for the purpose of the Project.

3. A License Agreement dated November 26, 2002, under which AAR granted City a license over parking spaces developed as part of the Project.

4. A Reimbursement Agreement dated November 26, 2002, pertaining to the extension of Barbour Street.

19

02010

369

5. A Development Agreement dated November 26, 2003, pertaining to the Project and entered into pursuant to Government Code § 65864 et seq.

6. A Cost Support Agreement dated June 25, 2004, pertaining to the extension of Barbour Street.

Although to date AAR has not been successful in developing the proposed drag racing facility, the Agreements impose no express time deadlines for performance by AAR and the Agreements remain legally binding upon the parties.

City staff has been informed that AAR's interest in the project has been purchased by Banning Airport Associates, LLC ("BAA") an unrelated private development firm. Through its principal, Tom Searles, BAA has indicated its desire to carry the project forward in an integrated fashion with other airport oriented development. BBA has purchased the old Photo-Sonic property (a primary parcel necessary for the drag facility).

Based on AAR's inability to perform, the broader perspective of BAA, and the fact that BAA has actually invested money in the area, as evidenced by its purchase of the Photo-Sonic property, staff recommends the assignment of all of AAR's rights and obligations under the Agreements to BAA.

The proposed Assignment and Assumption Agreement will result in BAA becoming the sole party with whom the City and Agency will deal concerning the drag facility and in AAR waiving and releasing any claims and actions against the City.

There is no anticipated fiscal impact to the City or Agency as a result of approving the Assignment and Assumption Agreement.

20

02011

370

AGREEMENT FOR ASSIGNMENT AND ASSUMPTION OF MULTIPLE AGREEMENTS

by and between

the

CITY OF BANNING

and

BANNING REDEVELOPMENT AGENCY

and

ALL AMERICAN RACING, LLC

and

BANNING AIRPORT ASSOCIATES, LLC

August 9, 2005

AGREEMENT FOR ASSIGNMENT AND ASSUMPTION OF MULTIPLE AGREEMENTS

This Agreement for Assignment and Assumption of Multiple Agreements ("Assignment Agreement"), effective date of which is referenced on the cover page, is hereby entered into by and between the CITY OF BANNING, a California general law city and municipal corporation ("City"), BANNING REDEVELOPMENT AGENCY, a public body corporate and politic ("Agency"), ALL AMERICAN RACING, LLC, a California limited liability company ("AAR" and/or "Assignor"), and BANNING AIRPORT ASSOCIATES, LLC, a California limited liability company ("BAA" and/or "Assignor") as follows:

RECITALS

A. City and Agency have entered into a series of related agreements with AAR pertaining to the development of a state of the art drag racing facility ("Project") within the City of Banning. These agreements are described as follows:

1. An undated Memorandum of Understanding entered into by and between the City, Agency, and AAR on or about 2002 pertaining to the Project ("MOU"). A true and correct copy of the MOU is attached hereto and incorporated herein by reference as Attachment "A";

2. A Lease dated November 26, 2002, between the City and AAR under which the City leased a City owned twenty acre parcel of real property to AAR for five years for the purpose of the Project ("Lease"). A true and correct copy of the Lease, Memorandum of Lease and Resolution 2003-39 are attached hereto and incorporated herein by reference as Attachment "B";

3. A License Agreement dated November 26, 2002, between the City and AAR under which AAR granted City a license over parking spaces developed as part of the Project ("License"). A true and correct copy of the License is attached hereto and incorporated herein by reference as Attachment "C";

4. A Reimbursement Agreement dated November 26, 2002, between the Agency and AAR pertaining to the extension of Barbour Street ("Reimbursement Agreement"). A true and correct copy of the Reimbursement Agreement is attached hereto and incorporated herein by reference as Attachment "D";

5. A Development Agreement dated November 26, 2003, between the City and AAR pertaining to the Project and entered into pursuant to Government Code § 65864 et seq ("Development Agreement"). The term of the Development Agreement is currently set to expire, unless extended, on August 14, 2005. A true and correct copy of the Development Agreement, Resolution 2003-34 and Agreement Pursuant to City of

Banning Resolution No. 2003-34 are attached hereto and incorporated herein by reference as Attachment "E"; and,

6. A Cost Support Agreement dated June 25, 2004, between the Agency and AAR pertaining to the extension of Barbour Street ("Cost Support Agreement"). A true and correct copy of the Cost Support Agreement is attached hereto and incorporated herein by reference as Attachment "F."

For the purposes of this Assignment Agreement, the MOU, Lease, License Agreement, Reimbursement Agreement, Development Agreement, and Cost Support Agreement shall collectively be referred to as the "Project Related Agreements."

B. AAR obtained and the City approved Unclassified Use Permit No. 01-47501 ("UUP") together with a Mitigated Negative Declaration ("MND") pertaining to the Project. For the purpose of this Assignment Agreement, the UUP and the MND shall be collectively referred to as the "Project Approvals." As of the Effective Date of this Assignment Agreement, the Project has not been constructed or completed, although certain preparatory work has commenced. The Project Approvals are set to expire, unless continued, on August 14, 2005. A true and correct copy of the Project Approvals is maintained by the Planning Department for the City of Banning located at 99 East Ramsey Street, Banning, California 92220.

C. AAR now desires to assign its position in the Project Related Agreements and Project Approvals to BAA and BAA desires to assume AAR's position in the Collective Agreement and Project Approvals. City and Agency desire to facilitate and cooperate with the desired assignment and assumption. Furthermore, in consideration of the assignment and assumption City, Agency, and AAR desire to mutually waive and release any claims they may have against the other party arising from the Project Related Agreements.

D. The parties now desire to reflect such assignment and assumption of the Project Related Agreements and Project Approvals as provided herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this Assignment Agreement as follows:

1. **Assignment and Assumption**. AAR hereby assigns all of its rights, interests and obligations in and under the Project Related Agreements and Project Approvals to BAA. In consideration of this assignment, BAA agrees to and does hereby assume all of AAR's rights, interests and obligations in and under the Agreement. City and Agency hereby consent to the assignment and assumption.

2. **Mutual Release of Claims**. Without waiving, releasing or discharging any of the rights, interests, or obligations assigned by AAR to, and assumed by, BAA, City and Agency do hereby release AAR and its officers, directors, employees and agents from any claim, cause of action, or remedy that City and Agency may have against AAR or its officers, directors, employees and agents arising out of, or in any way related to AAR's breach, failure to perform,

or other default of any of AAR's obligations under the Project Related Agreements. Furthermore, City and Agency release AAR from any further duty or obligation to perform any of the terms or conditions or obligations of the Project Related Agreements. In consideration of this release, AAR hereby releases City, Agency, and their respective officials, officers, employees and agents from any claims that AAR may have against City, Agency and their respective officials, officers, employees and agents arising from, or in any way related to, City's or Agency's breach, failure to perform, or other default of any of City's or Agency's obligations under the Project Related Agreements. Furthermore, AAR releases City and Agency from any further duty or obligation to perform any of the terms or conditions or obligations of the Project Related Agreements. Notwithstanding the foregoing, these mutual releases shall not relieve or release BAA or City or Agency from any duty or obligation imposed upon them under the Project Related Agreements or Project Approvals and such shall remain fully enforceable by and between them.

3. **General Provisions.**

3.1 **Remainder Unchanged.** Except as specifically modified in this Assignment Agreement, the Project Related Agreements and Project Approvals remain in full force and effect and binding upon the parties.

3.2 **Integration.** This Assignment Agreement consists of pages 1 through 5 inclusive, and Attachment "A" through "F" which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the transaction discussed in this Assignment Agreement.

3.3 **Effective Date.** This Assignment Agreement shall not become effective until the date it has been formally approved by the City Council of City, the Governing Board of Agency, and executed by the appropriate representatives of City, Agency, AAR, and BAA.

3.4 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Assignment Agreement.

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

CITY:

THE CITY OF BANNING

By:_____
John Machisic, Mayor

ATTEST:

_____
Marie Calderon
City Clerk

APPROVED AS TO FORM

By:_____
Julie H. Biggs, City Attorney
Eric S. Vail, Assistant City Attorney

AGENCY:

BANNING COMMUNITY REDEVELOPMENT AGENCY

By:_____
Art Welch, Chairman

ATTEST:

_____
Marie Calderon
Secretary

APPROVED AS TO FORM

By:_____
Julie H. Biggs, General Counsel
Eric S. Vail, Assistant General Counsel

AAR:

ALL AMERICAN RACING

By:_____
Andy Marocco
President

By:_____
Ron Marocco
Vice President

BAA:

BANNING AIRPORT ASSOCIATES, LLC

Thomas W. Searles
Member

John R. Saunders
Member

ATTACHMENT 35

GRADING PERMIT

Grading Permit
Uniform Building Code, Chapter 70

Permit No. 2005-06
Issue Date: 9-22-05
Expiration Date: _____

Project: DRAG CITY BANNING AIRPORT ASSOC.
Location/Street Address: _____

	Name	Address	Phone
Owner:	SEARLES COMPANY	1000 DOVE STREET STE 210	(949) 798-0270
Contractor:			
Civil Engr./Arch.:			
Soils Engineer:			

ITEMS REQUIRED TO OBTAIN GRADING PERMIT:	Received	Checked
1. Approved Grading Plan (Land Development Section will check and approve issuance of Grading Permit)	✓	✓

ITEMS REQUIRED FOR PUBLIC WORKS TO SIGN OFF BUILDING PERMIT RELATED TO THIS GRADING PERMIT		
1. Letter of Certification by Civil Engineer/ Architect that pads have been graded in conformance with this Grading Permit		
2. Compaction Report by Soils Engineer (Partial certification is acceptable and enough to have building permit signed off by Public Works.)		

ITEMS REQUIRED FOR COMPLETION OF GRADING PERMIT:		
1. Final soils report on entire site		
2. Certification of final grading of entire site by Civil Engineer		
3. Final Grading Plan (As-Graded)		

Basis of fee: Cut:
Fill:

By: _____
Paul Toor, Public Works Director
Date: 9-22-05

Fee :$ 0

X _____
Contractor Owner Developer

X _____
Signature of Permittee

COPIES: FILE
PERMITTEE

02188

ATTACHMENT 36

ORIGINAL

MASTER AGREEMENT

by and between

the

CITY OF BANNING

and

BANNING COMMUNITY REDEVELOPMENT AGENCY

and

BANNING AIRPORT ASSOCIATES, LLC

Dated: December 13, 2005

02194

TABLE OF CONTENTS

Page No.

1. DISPOSITION OF PREVIOUS AGREEMENTS 7
   1.1 Termination of Project Related Agreements 7
   1.2 Continued Validity of Existing Project Entitlements 8
2. PURCHASE OF CITY PARCEL 8
   2.1 Intent and Authorization to Sell Property 8
   2.2 Terms and Conditions of Purchase 8
   2.3 License Agreement 9
3. SITE ASSEMBLY SERVICES FOR RACEWAY PROJECT 9
   3.1 Provision of Site Assembly Services 9
   3.2 Conditions Precedent to Site Assembly Services 10
      3.2.1 BAA's Efforts to Acquire Raceway Parcel 10
      3.2.2 Opening of Escrow for City Parcel 10
      3.2.3 Reasonable Progress on Raceway Project 10
   3.3 Site Assembly Services 10
4. SITE ASSEMBLY SERVICES FOR BUSINESS PARK PROJECT 10
   4.1 Provision of Site Assembly Services 10
   4.2 Conditions Precedent to Site Assembly Services 11
      4.2.1 BAA's Efforts to Acquire Business Park Properties 11
      4.2.2 Business Park Specific Plan 11
      4.2.3 Construction of Raceway Project 11
   4.3 Site Assembly Services 11
5. GENERAL SITE ASSEMBLY SERVICES 11
   5.1 Owner Participation Process 11
   5.2 Agency Acquisition 12
   5.3 Review of Physical Conditions of Site 12
   5.4 Acquisition Costs and Deposits 13
      5.4.1 Deposits Generally 13
      5.4.2 Administrative Deposit 13
      5.4.3 Acquisition Deposit 14
   5.5 Conveyance of Acquired Parcels 14
   5.6 Limitations 14

6. MASTER DEVELOPER PROCESS 15
6.1 Commencement of Process. 15
7. LIMITATION OF AGREEMENT 15
7.1 No Vested Rights. 15
7.2 BAA to Comply with All City Requirements. 15
7.3 Sunset of Rights and Obligations. 15
8. INDEMNITY 16
8.1 General Indemnity. 16
8.2 Hazardous Substances Indemnity. 16
9. ASSIGNMENTS AND TRANSFERS 17
9.1 Assignment. 17
9.2 Transfer to Government Agency. 17
10. DEFAULT AND REMEDIES 17
10.1 Default 17
10.2 No Waiver. 18
10.3 Specific Performance. 18
10.4 Legal Actions. 18
10.4.1 Jurisdiction and Venue. 18
10.4.2 Applicable Law. 18
10.4.3 Attorney's Fees. 18
10.5 Rights and Remedies are Cumulative. 18
10.6 Termination by City and Agency 18
10.7 Termination by BAA. 19
11. GENERAL PROVISIONS 19
11.1 No Excuse for Changes in Economic Conditions. 19
11.2 Forced Delays; Extension of Times. 19
11.3 Tax Consequences. 20
11.4 Non-liability of Agency Officials and Employees 21
11.5 Conflicts of Interest 21
11.6 Warranty Against Payment of Consideration for Agreement. 21
11.7 No Third Party Beneficiaries. 21
11.8 Integration. 21
11.9 Recitals and Definitions. 21

11.10 Titles and Captions. 21
11.11 Interpretation. 21
11.12 Severability. 22
11.13 Amendments to Agreement. 22
11.14 Administration. 22
11.15 Communications Between the Parties. 22
11.16 Ceremonies. 23
11.17 Computation of Time. 23
11.18 Authority. 23
11.19 Counterpart Originals. 23
11.20 Effective Date of Agreement. 23

MASTER AGREEMENT

This Master Agreement ("Agreement"), the effective date of which is referenced on the cover page, is hereby entered into by and between the **CITY OF BANNING**, a California general law city and municipal corporation ("**City**"), the **BANNING COMMUNITY REDEVELOPMENT AGENCY** ("**Agency**") and **BANNING AIRPORT ASSOCIATES, LLC**, a California limited liability company ("**BAA**") as follows:

RECITALS

A. BAA is the owner of certain real property more particularly described in this Agreement as the "Raceway Parcel" upon which BAA intends to develop a state of the art drag racing facility and ancillary uses as more particularly described in this Agreement as the "Raceway Project." The Raceway Project was previously being developed by All American Racing, LLC ("AAR"). BAA has acquired all of AAR's rights and interests in the Raceway Project.

B. On or about August 9, 2005, the City, Agency and BAA approved an agreement entitled "Assignment and Assumption of Multiple Agreements" under which all of the rights and obligations of BAA's predecessor in interest to the Raceway Project, AAR were assigned to and assumed by BAA. These agreements are described as follows:

1. An undated Memorandum of Understanding entered into by and between the City, Agency, and AAR on or about 2002 pertaining to the Project ("MOU");

2. A Lease dated November 26, 2002, between the City and AAR under which the City leased a City owned twenty acre parcel of real property to AAR for five years for the purpose of the Project ("Lease");

3. A License Agreement dated November 26, 2002, between the City and AAR under which AAR granted the City a license over parking spaces developed as part of the Project ("License Agreement");

4. A Reimbursement Agreement dated November 26, 2002, between the Agency and AAR pertaining to the extension of Barbour Street ("Reimbursement Agreement"); and

5. A Cost Support Agreement dated June 25, 2004, between the Agency and AAR pertaining to the extension of Barbour Street ("Cost Support Agreement").

For the purposes of this Agreement, the MOU, Lease, License Agreement, Reimbursement Agreement, and Cost Support Agreement shall collectively be referred to as the "Project Related Agreements."

C. BAA is currently the holder of a City approved Unclassified Use Permit No. 01-47501 ("UUP") together with a Mitigated Negative Declaration ("MND") pertaining to the Raceway Project. BAA is also the assignee of a Development Agreement dated November 26, 2003, between the City and AAR pertaining to the Raceway Project and entered into pursuant to Government Code § 65864 *et seq.* ("Development Agreement").

D. The City is the owner of certain real property more particularly described in this Agreement as the "City Parcel." The City acquired the City Parcel under a Federal Aviation Grant Contract No. LTFA08-83-C-20122 with the Federal Aviation Administration ("FAA") and the City Parcel remains encumbered by various "assurances" in favor of the FAA, including but not limited to a restriction that the land be used for airport related uses and that the property may not be disposed of by sale or lease or otherwise without the prior approval of the FAA. The City parcel is also currently subject to the Lease, described above, that was recently assumed by BAA and originally entered into by the City and AAR. The Lease provides BAA with certain rights and obligations related to development of a portion of the Raceway Project on the City Parcel. City and BAA acknowledge that the Lease provides an inadequate basis for development of the Raceway Project.

E. In addition to development of the Raceway Project, BAA also intends to explore and if feasible pursue the development of a business park ("Business Park Project") on properties owned or to be acquired by BAA located within the environs of the Banning Municipal Airport.

F. The Raceway Project and the Business Park Project are located within the boundaries of the Agency's Merged Downtown and Midway Redevelopment Projects. The Agency is primarily responsible for administration and implementation of the Redevelopment Plan for these Project Areas and charged with eradicating the conditions causing blight therein.

G. The intent of this Agreement is to resolve and clarify the disposition of the Project Related Agreements, to vest BAA with new rights to the City Parcel superseding those created in the Lease, and to discuss the circumstances under which the Agency may provide Site Assembly Services to BAA regarding the Raceway Project and the Business Park Project.

DEFINITIONS

"Acquisition Costs" shall mean the actual costs, expenses, and charges that are reasonably necessary to incur in order for the Agency to accomplish the acquisition of the parcels identified in Section 3 and/or Section 4 of this Agreement. The Acquisition Costs may include, but are not limited to, the purchase price of the parcel(s) which will not be less than the fair market value of the parcel as established in an Agency certified appraisal, the cost of such appraisal and updates thereto, closing costs, escrow fees, recording fees, the cost of preliminary title reports and updates thereto, the premium for a CLTA or ALTA policy of title insurance for each parcel in the nominal amount of its purchase price, the cost of any necessary studies and inspections, including Phase I and Phase II ESAs (as defined below), all attorneys fees incurred by the Agency, all real estate services and/or consultant fees incurred by the Agency, all recording fees, transfer taxes, and any other cost, expense, or charge related to the acquisition of the such parcel(s).

"Action" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

"Agency" shall mean the Banning Community Redevelopment Agency, a public body organized and existing and exercising those governmental functions and powers, as authorized under the Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*) of the State of California. The term "Agency" shall also include any assignee of, or successor to, the rights and responsibilities of the Agency under this Agreement.

"BAA" shall mean Banning Airport Associates, LLC, a California limited liability company, maintaining its principal corporate offices in Newport Beach, California, as specified in Section 11.15 [Communications Between the Parties]. The term "BAA" shall, to the extent such is expressly permitted under this Agreement, include any assignee of, or successor to, the rights and responsibilities of BAA under this Agreement.

"*Best Efforts*" shall describe the quality of efforts and actions to be undertaken by BAA to satisfy its affirmative obligation to attempt to acquire a parcel pursuant to the Agreement. Such efforts and actions shall, at a minimum include, but not be limited to: (i) contact of the record owner of the property, or the owner's authorized representative, by reasonable means during normal business hours to express BAA's desire to purchase the property; (ii) tendering at least one written offer to acquire the parcel for an amount equal to the appraised fair market value of the property at its highest and best use based on an appraisal prepared by a California licensed appraiser holding an "MAI" designation; (iii) engaging in meaningful and good faith negotiations with a willing owner; (iv) expeditiously responding to reasonable questions, requests for information, and counter-offers tendered to the owner or its representatives; and (v) taking such other actions reasonably necessary to attempt to acquire the property.

"*Business Park Project*" shall mean the development of several parcels in the vicinity of the Banning Municipal Airport for airport, business, and light industrial related uses as provided for in a specific plan integrating the street layout, streetscapes, landscape elements, and building design and architectural features for the development.

"*Business Park Properties*" shall mean those parcels of real property, consisting of approximately thirty-three (33) acres located in the vicinity of the Banning Municipal Airport within the City of Banning, County of Riverside, California and commonly known as Assessor's Parcel Nos. 532-180-032, 532-180-033, 532-180-043, 532-180-044, 532-180-045, 532-180-046, 532-130-017, 532-130-019, 532-130-020, and 532-130-021 a diagram of which is attached hereto and incorporated herein as Attachment "A".

"City" shall mean the City of Banning, a municipal corporation formed and existing under the laws of the State of California. The term "City" shall also include any assignee of, or successor to, its rights, powers, and responsibilities.

"*City Parcel*" shall mean that parcel of real property, consisting of approximately twenty (20) acres located adjacent to the Banning Municipal Airport within the City of Banning, County of Riverside, California and commonly known as Assessor's Parcel No. 532-130-018 a diagram of which is attached hereto and incorporated herein as Attachment "A".

"Default" shall mean the failure of a party to perform any material action or covenant required by and within the time periods provided herein following notice and opportunity to cure, as set forth in Section 10.1 [Default] of this Agreement.

"Development Costs" shall mean all the costs and expenses which must necessarily be incurred in the design, development, construction and completion of the Raceway Project and/or the Business Park Project, including but not limited to: predevelopment costs; BAA's overhead and related costs; costs of acquiring the Site; design and engineering costs; development costs; construction costs; fees payable to accountants, appraisers, architects, attorneys, biologists, construction managers, engineers, geologists, hydrologists, inspectors, planners, testing facilities, and other consultants; impact, development, park, school and other fees and charges imposed by governmental entities as a condition approval on the Raceway Project and/or Business Park Project; costs for obtaining permits and approvals; taxes; assessments; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility related charges; costs relating to financing including principal, interest, points, fees and other lender charges; escrow fees and closing costs; recording fees; court costs; costs relating to insurance; costs relating to title insurance; costs relating to bonds; and all other costs and expenses of BAA related to the performance of this Agreement.

"Development Fees" shall mean those fees, charges, and exactions imposed by the City upon the development of the Raceway Project and/or the Business Park Project, including, but not limited to, application fees, processing fees, development fees, impact fees, mitigation fees, park fees, storm drain fees, sewer fees, and other related charges.

"Effective Date" shall mean the date the Agreement has been formally approved and executed by all of the parties.

"*Eminent Domain Law*" shall mean the California Eminent Domain Law commencing with § 1230.010 and continuing through § 1273.050 of the California Code of Civil Procedure together with such opinions of the California Attorney General and such decisions of the California Courts, U.S. District Courts for districts located within California, the 9th Circuit Court of Appeals and the United States Supreme Court as are germane.

"Environmental Review" shall mean the investigation and analysis of the identified project's impacts on the environment as may be required under the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, *et seq.*, and the project's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species, or habitat therefore, as may be required by the Multi-Species Habitat Conservation Plan adopted by City (Banning Municipal Code §§ 33-1 through 33-5), or as may otherwise be required under the California Endangered Species Act ("CESA"), Fish and Game Code § 2050, *et seq.*, and/or the U.S. Endangered Species Act ("USESA"), 16 U.S.C. § 1531, *et seq.*, or other applicable California or federal law or regulation.

"Existing Project Entitlements" shall mean Unclassified Use Permit No. 01-47501 ("UUP") together with the Mitigated Negative Declaration ("MND") and the Development Agreement dated November 26, 2003, between the City and AAR pertaining to the Raceway Project.

"Hazardous Substances" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§ 655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") § 25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C.§ 25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. § 25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. § 25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. § 25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. § 25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. § 25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code § 13000, *et seq.*, all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos, and lead.

"Litigation Expenses" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a party in good faith in the investigation, prosecution or defense of an Action or to cure a Default of another party, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or

expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

"Local Regulations" shall mean all the provisions of the City's General Plan, the City's Municipal Code (including but not limited to, all zoning, development, subdivision, and building standards, regulations, and procedures, and all uniform codes incorporated therein), any applicable specific plan, the conditions of any applicable map being processed or having been approved under the Subdivision Map Act (Government Code § 66410, *et seq.*), any mitigation measures imposed as a result of Environmental Review for the project, and any design standards or guidelines adopted by the City, all as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified.

"Phase I ESA" shall mean a "Phase I Environmental Site Assessment" performed and prepared in accordance with, and at a minimum conforming with, the standards set forth in ASTM Standard 1527-97 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

"Phase II ESA" shall mean a "Phase II Environmental Site Assessment" performed and prepared in accordance with, and at a minimum conforming with, the standards set forth in ASTM Standard E 1903-97 "Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process."

"Project Approvals" shall mean any discretionary permit, approval, determination, and/or entitlement required by the City and pertaining to the design, development, construction, and installation of the Raceway Project, including, but not limited to, General Plan amendments, Specific Plan, zone changes, zone variances, conditional use permits, site development plans, change plans, grading permits, building permits, actions under the Subdivision Map Act, encroachment permits, business licenses and other such approvals as may be required under the Banning Municipal Code, the Redevelopment Plan, and all other applicable ordinances, codes, policies, and procedures approved by the Agency and/or City and effective as of the Effective Date of the Agreement.

"Project Area" shall mean that portion of the City that is subject to, and the boundaries of which are specifically described in, the Redevelopment Plan for the City commonly known as the Merged Downtown and Midway Project Areas.

"***Project Related Agreements***" shall mean the MOU, Lease, License Agreement, Reimbursement Agreement, and Cost Support Agreement as defined in the Recitals to this Agreement and more particularly set forth in the agreement entitled "Assignment and Assumption of Multiple Agreements" dated August 9, 2005 by and between BAA, AAR, the City and Agency.

"Public Improvements" shall mean those public works, facilities, and other improvements that have been required or otherwise imposed by the City as mitigation measures on the Project during CEQA/CESA Review or as conditions of approval in the Project Approvals. Public Improvements include, without limitation, streets, street lights, traffic signals, curbs, gutters, sidewalks, parkway landscaping, irrigation systems, storm drains, sewers, and

other public works, facilities, and improvements related to the Project that are to be dedicated to the City by BAA.

"***Raceway Extension Parcels***" shall mean those parcels of real property consisting of approximately sixty (60) acres located adjacent or in close proximity to the Banning Municipal Airport within the City of Banning, County of Riverside, California and commonly known as Assessor's Parcel No. 532-130-011, 532-130-017, 532-130-019, 532-130-020, 532-130-021, a diagram of which is attached hereto and incorporated herein as Attachment "A".

"***Raceway Parcel***" shall mean that parcel of real property consisting of approximately 40 acres located adjacent to the Banning Municipal Airport within the City of Banning, County of Riverside, California and commonly known as Assessor's Parcel Nos. 532-130-008 a diagram of which is attached hereto and incorporated herein as Attachment "A".

"***Raceway Project***" shall mean the development and construction of a professional drag racing facility on the Raceway Parcel and City Parcel, including the installation of a drag strip of at least 2,300 linear feet, paved pit area, staging lanes, burnout box, return roads, shutdown area and sand tract, a two story control tower, luxury boxes and premium seating area, entrance gates and ticket booths, a concession building, a picnic area, paved onsite parking spaces, spectator stands accommodating up to 5,000 persons, together with adequate restrooms, storage, trans enclosures and other ancillary structures. If there is any discrepancy between the Raceway Project described herein and the project described and permitted in the Existing Project Entitlement, the later description shall control unless and until such time as BAA obtains such subsequent Project Approvals or amendments to the Existing Project Entitlement, as may be required to develop and construct the more expansive scope of the Raceway Project.

"***Redevelopment Law***" shall mean the California Community Redevelopment Law commencing with § 33000 and continuing through § 33855 of the California Health and Safety Code together with such opinions of the California Attorney General and such decisions of the California Courts, U.S. District Courts for districts located within California, the 9th Circuit Court of Appeals, and the United States Supreme Court as are germane.

"Redevelopment Plan" shall mean that plan of redevelopment for the Merged Downtown and Midway Project Areas that was adopted by the Agency and City pursuant to the California Community Redevelopment Law, by Ordinance No. 1280 on February 26, 2002, and as may be from time to time amended hereafter.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the promises made and recited herein, the parties do hereby enter into this Master Agreement as follows:

1. DISPOSITION OF PREVIOUS AGREEMENTS

1.1 **Termination of Project Related Agreements**. The parties mutually agree that the Project Related Agreements, including the MOU, Lease, License Agreement, Reimbursement Agreement, and Cost Support Agreement, as defined herein, are as of the Effective Date of this

Agreement hereby terminated and shall no longer be enforceable by or against the parties and that all rights and obligations the parties had under the Project Related Agreements are superseded by the rights and obligations created under this Agreement.

1.2 **Continued Validity of Existing Project Entitlements**. The parties mutually agree that notwithstanding Section 1.1 [Termination of Project Related Agreement] the Existing Project Entitlements continue to be in force and binding against the parties according to the terms and conditions of such entitlements and are not superseded by this Agreement.

2. PURCHASE OF CITY PARCEL.

2.1 **Intent and Authorization to Sell Property**. The parties agree that in consideration of the termination of the Lease, City and BAA will, within a reasonable time subsequent to the Effective Date of this Agreement, enter into a purchase and sale agreement ("Purchase Agreement") under which City will agree to sell and BAA will agree to purchase the City Parcel on the terms and conditions set forth in Section 2.2 [Terms and Conditions of Purchase] of this Agreement and such other customary and necessary provisions as the parties agree should be included in the Purchase Agreement. The City Council hereby approves the sale of the City Parcel to BAA on the terms and conditions set forth in this Agreement and authorizes and directs the City Manager to implement this sale by preparing, reviewing, approving and executing the Purchase Agreement. The City Manger shall have authority to negotiate with BAA to resolve remaining issues incidental to the sale (such as timing and amount of deposits, identity of escrow agent, length of escrow, License Agreement, etc.), provided that none of the terms and conditions set forth in this Agreement shall be materially changed without prior Council approval.

2.2 **Terms and Conditions of Purchase**. The Purchase Agreement shall contain the following terms and conditions:

2.2.1 City shall have no obligation to close escrow and convey title or any other rights or interest in the City Parcel to BAA unless and until: (i) the FAA has approved City's "release proposal," as provided for under Federal law, regulations, and FAA policies, authorizing release of the City Parcel from the FAA encumbrances and airport use and authorizing conveyance to BAA; and (ii) the FAA's Airports Division Manager, or his/her authorized designee, has executed the "instrument of release," as required under Federal law, regulations, and FAA policies, releasing the FAA's encumbrances on the City Parcel. The parties shall use their best efforts to obtain FAA approval expeditiously.

2.2.2 City shall sell and BAA shall purchase the City Parcel in AS IS / WHERE IS condition with no representation and warranties from the City concerning the physical condition of the property or the suitability of the property for its intended purpose and other limitations as deemed appropriate by the City Manager.

2.2.3 Escrow shall be for a period of at least sixty (60) days and may be for a longer period of time as determined necessary by the City Manager and BAA to satisfy the conditions set forth in Section 2.2.1.

2.2.4 During escrow, BAA shall enjoy the right to enter onto the City Parcel for the purpose of performing such tests, surveys and studies (including invasive tests, such as borings and soil testing) as BAA may require to satisfy its due diligence regarding acquisition of the City Parcel.

2.2.5 The City shall sell and BAA shall purchase the City Parcel for an amount equal to the appraised fair market value of the City Parcel at its highest and best use as determined by a California licensed real estate appraiser approved by the City Manager and holding an "MAI" designation ("Purchase Price").

2.2.6 The purchase and sale shall be subject to such terms and conditions as are standard and customary or commercial reasonable under the circumstances. The parties agree to enter into such supplemental agreements, including escrow instructions, as the City may determine to be necessary to consummate the purchase and sale.

2.2.7 Within fifteen (15) days after the opening of escrow, BAA shall make a good faith deposit into escrow of an amount equal to a certain percentage of the Purchase Price. This amount shall be negotiated with the City Manager as part of the Purchase Agreement, but the amount shall not be less than five percent (5%) nor more than twenty-five (25%) of the Purchase Price.

2.3 **License Agreement**. During escrow, BAA shall have the option of entering into a License Agreement with City to enter onto the City Parcel for the purpose of conducting clearing and grubbing, mass grading operations related to development of the Raceway Project, and construction of the safety road – if expressly pre-approved by the FAA, or if constructed at BAA's sole risk of loss – but shall not permit construction of any footings, foundations, or other structures of a permanent or temporary nature. The form of the License Agreement shall be negotiated with BAA and prepared, reviewed, approved and signed by the City Manager. City shall have no obligation to execute and record the License Agreement unless and until the following conditions are satisfied; (i) the FAA reviews and approves the scope and content of the License Agreement, specifically the construction of the safety road or BAA's proceeding with the construction at its sole risk of loss; and (ii) BAA deposits the full amount of the Purchase Price into escrow, and agrees that in the event that BAA cancels the escrow or the FAA fails to approve release of the property then either: (i) fifty percent (50%) of the Purchase Price on deposit shall become a non-refundable deposit and liquidated damages payable to City; or (ii) BAA shall, at its sole cost and expense, return the City Parcel to the condition it was in prior to BAA's entry onto the City Parcel, excepting disturbances to the property resulting from tests, surveys and studies (including invasive tests, such as borings and soil testing) or from clearing and grubbing activities.

3. SITE ASSEMBLY SERVICES FOR RACEWAY PROJECT.

3.1 **Provision of Site Assembly Services**. Full development of the Raceway Project into a nationally competitive drag racing facility requires the extension of the proposed drag strip beyond its currently permitted length of 2,300 linear feet to an ultimate length of 4,000 ± linear feet. Such extension cannot be accomplished without acquisition of the Raceway Extension Parcels. Therefore, provided BAA has fully satisfied the conditions precedent stated in Section

3.2 [Conditions Precedent to Site Assembly Services] of this Agreement, the Agency agrees to provide BAA with site assembly and acquisition services as provided in Section 5.0 [General Site Assembly Services] of this Agreement.

3.2 **Conditions Precedent to Site Assembly Services.** The Agency's obligation to provide BAA with Site Assembly Services for the Raceway Extension Parcels is subject to the satisfaction of the following conditions precedent:

3.2.1 **BAA's Efforts to Acquire Raceway Parcel.** BAA shall diligently proceed in good faith with, and use its Best Efforts as defined in this Agreement to, acquire fee title to the Raceway Extension Parcels. BAA shall take all steps reasonably necessary to undertake and exhaust its Best Efforts within sixty (60) days from and after Effective Date of this Agreement. In the event BAA is unable to acquire title to such parcels despite the exhaustion of its Best Efforts in good faith during this period, then BAA may tender a written notice on Agency requesting Site Assembly Services for the Raceway Extension Parcel.

3.2.2 **Opening of Escrow for City Parcel.** BAA shall have entered into a Purchase Agreement with the City, executed by the City Manager, and performed all other actions required under Section 2 [Purchase of City Parcel] for the parties to open an escrow for the sale of the City Parcel.

3.2.3 **Reasonable Progress on Raceway Project.** BAA shall demonstrate that it has made reasonable progress on the Raceway Project. For the purposes of this Agreement, BAA shall be deemed to have made reasonable progress on the Raceway Project at such time as:

(a) BAA has commenced and thereafter diligently and continuously carries out, the mass grading required for the Raceway Project on both the Raceway Parcel and the City Parcel; and

(b) BAA has applied for an amendment to the UUP and Development Agreement and related Environmental Review as may be necessary to expand the scope of the Raceway Project to include extension of the drag strip and ancillary facilities onto the Raceway Extension Parcel.

3.3 **Site Assembly Services.** The Site Assembly Services to be provided by the Agency to BAA under this Agreement are described in Section 5.0 [General Site Assembly Services]. It is understood and agreed by the parties that any such services provided by the Agency are for the purpose of ameliorating conditions causing physical and economic blight within the Project Areas, including, but not limited to, lack of adequate public infrastructure.

4. SITE ASSEMBLY SERVICES FOR BUSINESS PARK PROJECT.

4.1 **Provision of Site Assembly Services.** Development of the Business Park Project requires assembly of approximately thirty-three (33) acres in order to ensure that a sufficient area within the environs of the Banning Municipal Airport is devoted to compatible airport oriented, business, and light industrial uses. Such assemblage cannot be accomplished without acquisition of the Business Park Properties. Therefore, provided BAA has fully satisfied the conditions

precedent stated in Section 4.2 [Conditions Precedent to Site Assembly Services] of this Agreement, the Agency agrees to provide BAA with site assembly and acquisition services as provided in Section 5.0 [General Site Assembly Services] of this Agreement.

4.2 **Conditions Precedent to Site Assembly Services.** The Agency's obligation to provide BAA with Site Assembly Service for the Business Park Properties is subject to the satisfaction of the following conditions precedent:

4.2.1 **BAA's Efforts to Acquire Business Park Properties.** BAA shall diligently proceed in good faith with, and use its Best Efforts as defined in this Agreement, to acquire fee title to the Business Park Properties. BAA shall take all steps reasonably necessary to undertake and exhaust its Best Efforts within ninety (90) days from and after Effective Date of this Agreement. In the event BAA is unable to acquire title to one or more of these parcels despite the exhaustion of its Best Efforts in good faith during this period, then BAA may tender a written notice to Agency requesting Site Assembly Services for such Business Park Properties as have not been acquired by BAA.

4.2.2 **Business Park Specific Plan**. BAA shall have developed and filed an application for approval and Environmental Review of a Business Park Specific Plan that is consistent with the City's Airport Master Plan (or draft or conceptual Airport Master Plan is the final plan has yet to be completed), General Plan and Redevelopment Plan and which encompasses Business Park Properties and such other properties as BAA may own in the area.

4.2.3 **Construction of Raceway Project**. BAA shall demonstrate that it has made, commenced and is diligently pursuing to completion construction of the Raceway Project. For the purposes of this Agreement, BAA shall be deemed to have initiated construction of the Raceway Project at such time as:

(a) BAA has completed the mass grading required for the Raceway Project; and

(b) BAA has poured the footings and foundations for the buildings and structures required on the Raceway Parcel and BAA has begun to erect the structural members necessary for support of such buildings and structures.

4.3 **Site Assembly Services**. The Site Assembly Services to be provided with regard to the Business Park Properties by the Agency to BAA under this Agreement are described in Section 5.0 [General Site Assembly Services]. It is understood and agreed by the parties that any such services provided by the Agency are for the purpose of ameliorating conditions causing physical and economic blight within the Project Areas, including, but not limited to, lack of adequate public infrastructure.

5. GENERAL SITE ASSEMBLY SERVICES

5.1 **Owner Participation Process**. BAA acknowledges that as a necessary precondition of providing other Site Assembly Services, Agency must commence and complete the owner participation process required under its Redevelopment Plan for the particular subject parcel(s) (i.e. the Raceway Extension Parcels and/or Business Park Properties respectively) in a

manner consistent with the Redevelopment Law. As such, Agency agrees that upon satisfaction of Section 3.2 [Conditions Precedent] for the Raceway Extension Parcels or Section 4.2 [Conditions Precedent] for the Business Park Properties the Agency will initiate and diligently pursue to completion the required owner participation process for the particular subject parcel(s). It is anticipated that the owner participation process for the Raceway Extension Parcels shall be conducted separately and potentially at a different time than for the Business Park Properties. Nothing in this Agreement shall act to limit the ability of the Agency to initiate and pursue any required owner participation process at such earlier time as the Agency, in its sole and absolute discretion, may deem appropriate.

5.2 **Agency Acquisition.** The Agency shall use reasonable efforts in good faith to acquire the subject parcel(s) (i.e. the Raceway Extension Parcels and/or Business Park Properties respectively) through a voluntary negotiated purchase and sale of such parcel(s). The Agency shall commence its efforts by first preparing and tendering upon the owners of record of the subject parcel(s), a written offer to purchase the subject parcel complying with Government Code § 7267.2, for an amount not less than the fair market value of the parcel at its highest and best use as established by an Agency approved appraisal. If after the passage of a reasonable period of time, as determined by the Agency, from the tender of the offer to purchase the owner(s) has refused to enter into a contract for the purchase and sale of the parcel with the Agency on the terms offered by, or agreeable to, the Agency, the matter shall be expeditiously referred to the governing board of the Agency to consider, in its sole and absolute discretion, whether the Agency should, in compliance with the Redevelopment Law and Eminent Domain Law, exercise its power of eminent domain. If Agency elects to proceed with one or more eminent domain actions, Agency shall, at all times be vested with complete control and decision making authority over any and all negotiations, actions, and/or proceedings, undertaken under this Section. Agency shall be represented in such acquisitions and/or legal actions by the Office of the City Attorney or such other legal counsel as the Agency Board may select from time to time. The Agency's obligation to consummate any transaction and/or to acquire possession or title to the Raceway Extension Parcels shall be subject to BAA's deposit and payment of the Acquisition Costs as provided in Section 5.4 [Acquisition Costs and Deposits] and Agency's approval of the physical conditions of the Raceway Extension Parcel as provided in Section 5.3 [Review of Physical Conditions of Parcel] of this Agreement..

5.3 **Review of Physical Conditions of Site.** The Agency shall have no obligation to acquire possession of or title to any subject parcel(s) unless and until it approves the physical condition of such parcel(s). Toward this end, BAA shall, at its sole cost and expense, pay for the full cost of a Phase I ESA for each subject parcel to be acquired by the Agency. The consultant conducting the Phase I ESA shall be retained under contract by the Agency, and shall, with reasonable diligence, investigate the physical condition of the subject parcel(s) and deliver it to the Agency and BAA for review. Approval of the physical conditions of the property by the Agency shall be governed by the following provisions:

(a) In the event the Phase I ESA indicates, as determined by the Agency, the presence of one or more Hazardous Substances in, on, under, or immediately adjacent to the subject parcel(s) at or above actionable levels, then the Agency, in its sole discretion, may elect to terminate its rights and obligations to acquire the subject parcel(s).

(b) In the event the Agency has not elected to terminate its obligations to acquire the subject parcel(s) within sixty (60) days of the issuance of the Phase I ESA, then BAA shall, at its sole cost and expense, pay for a Phase II ESA of the subject parcel(s) to be performed by Agency's consultant.

(c) In the event the Phase II ESA concludes that one or more Hazardous Substances is present in, on, under, or immediately adjacent to the subject parcel(s) at or above actionable levels, then the Agency may terminate its obligation to acquire the subject parcel(s) or, at the Agency's sole election, such acquisition may be stayed pending BAA's completion of any remedial investigation (H.&S.C. § 25322.2), feasibility study (H.&S.C. § 25314) or similar remediation plan required by the local enforcement agency having jurisdiction over the remediation of such substance(s) and the completion of any remediation required under any order by such entity.

(d) The parties shall share all environmental site assessments, reports, studies, investigations, orders, and similar documents generated or obtained under this Section 5.3.

5.4 **Acquisition Costs and Deposits.** All Acquisition Costs necessarily incurred by the Agency in pursuing Site Assembly Services for each subject parcel shall be paid for, and advanced by, BAA by way of deposit and draw as provided herein:

5.4.1 Deposits Generally. From time to time, BAA shall be required to deposit certain amounts with the Agency as described below which the Agency shall place into one or more interest bearing accounts (collectively the "Deposit Accounts"). The Deposit Accounts shall each be subject to the general rules set forth in this Section. At any time after BAA has tendered a notice to Agency requesting Site Assembly Services as provided in this Agreement, Agency may make written demand upon BAA for specified funds to be placed into a Deposit Account. At such times as Agency determines, in its reasonable discretion, that the account balance, including accrued interest, is insufficient to cover current or reasonably anticipated future costs to be paid from the account it may request that BAA deposit additional funds as specified by Agency. Agency may withdraw funds and accrued interest from the Deposit Accounts, without prior notice to, or approval of, BAA in such amounts as necessary to pay costs incurred or to satisfy a liability for any cost or expense. Any unexpended and uncommitted balance in the Deposit Accounts (including accrued, unused interest) remaining after this Agreement is terminated or expires shall be returned to BAA after all of BAA's obligations hereunder have been satisfied. Agency shall furnish to BAA, within thirty (30) days after written request by BAA, an accounting of all deposits, accrued interest, and withdrawals from the Deposit Accounts, including a description (in reasonable detail) of the costs and expenses paid by the Agency during the period being reported. BAA shall have the right to review all applicable records during the Agency's normal business hours. BAA shall also have the right to make copies of such records, at BAA's expense, for off-site review.

5.4.2 Administrative Deposit. In order to off-set Agency's costs of administering and implementing this Agreement, within thirty (30) days from and after the Effective Date of this Agreement, BAA shall deposit Twenty Thousand Dollars ($20,000.00)

(the "Administrative Deposit") with Agency. BAA agrees that Agency may withdraw and use funds and accrued interest from the Administrative Deposit for the following purposes: (i) to pay consulting, drafting, legal and other reasonable expenses incurred by the Agency in preparing this Agreement and any implementing agreements or instruments; (ii) to retain such consultants, attorneys, and appraisers as the Agency determines to be reasonably required to assist it in the administration and implementation of this Agreement; and (iii) such other reasonable and necessary expenses the Agency is required to incur to carry-out this agreement.

5.4.3 Acquisition Deposit. BAA shall be responsible for paying One Hundred Percent (100%) of the Acquisition Costs for each of the subject parcel(s) acquired or to be acquired by Agency under this Agreement. Prior to the Agency being obligated to commence its Site Assembly Services for a specific parcel, BAA shall deposit with Agency, in the manner provided in Section 5.4.1 [Deposits Generally] a sum equal to the full appraised fair market value of the parcel at its highest and best use, as approved by the Executive Director, plus an additional Twenty-five Thousand Dollars and no/cents ($25,000.00) for each parcel. If the governing board of the Agency adopts a resolution of necessity for one or more subject parcel(s), subject to Section 5.2 [Agency Acquisition], Agency shall not be obligated to file a complaint-in-eminent domain unless and until BAA has deposited the amount established by Agency to be the probable amount of compensation for such parcel, plus an additional sum of Twenty Five Thousand Dollars ($25,000.00). BAA shall receive credit for any deposit of Acquisition Costs for the subject parcel previously made; to the extent they have not been legitimately expended. BAA shall make such subsequent deposits of Acquisition Costs with Agency as Agency determines are necessary to pursue the eminent action, acquire the property, or to settle or pay the judgment in an eminent domain case, including, but not limited to, any award of just compensation, interest, severance damages, loss of goodwill, Litigation Expenses, or other Acquisition Cost, within fifteen (15) days of the Agency's written demand therefor. BAA agrees that Agency may withdraw and use funds from the Acquisition Deposit for the payment of Acquisitions Costs and such other reasonable and necessary expenses the Agency is required to incur as provided herein.

5.5 **Conveyance of Acquired Parcels**. BAA shall acquire from Agency, and the Agency shall convey to BAA, any and all parcels acquired by the Agency in the course of providing Site Assembly Services pursuant to the provisions of this Agreement. BAA and Agency shall enter into such further agreement(s) as the Agency determines to be necessary to facilitate or implement the conveyance of such acquired parcel(s), at such time as the Agency determines to be appropriate prior to the Agency's acquisition of title to any such parcel(s). The Agency shall have no obligation to acquire title to any parcel or to convey any such parcel to BAA unless and until BAA has fully paid the Acquisition Costs incurred by the Agency for such parcel(s). The parties acknowledge that the Redevelopment Law requires that any parcels so conveyed by the Agency to BAA be transferred subject to the covenants and restrictions required and/or permitted under Health & Safety Code § 33435, § 33436, § 33437, § 33437.5, and § 33439. In order to satisfy this legal obligation, Agency may require entering into a disposition and development agreement or similar instrument as a condition of the disposition of the parcel(s) to BAA.

5.6 **Limitations**. Nothing in this Agreement shall be construed to be a commitment of any specific Agency funds, revenues, or monies to acquire any parcel or parcels comprising

the Raceway Extension Parcel or Business Park Properties. Nothing in this Agreement shall be construed to be a binding commitment by the governing board of the Agency to exercise its power of eminent domain with regard to any particular parcel or parcels comprising the Raceway Extension Parcel or Business Park Properties. In no event shall the Agency exercise its power of eminent domain unless and until the governing board of the Agency has duly considered the evidence before it and determined, in its sole discretion, that as to each subject parcel to be acquired, each of the findings required under Code of Civil Procedure § 1240.030 and § 1245.230 can be made and the requirements of the Redevelopment Law have been satisfied and that based on these findings the governing board has determined to adopt a resolution of necessity after a duly noticed public hearing, and compliance with the provisions of the Eminent Domain Law.

6. MASTER DEVELOPER PROCESS

6.1 **Commencement of Process**. Upon BAA's satisfaction of all conditions precedent provided for in Section 3 and 4 of this Agreement, Agency will conduct an owner participation process within the environs of the Banning Municipal Airport toward selection of one or more master developers to participate in revitalization and redevelopment of the area in a manner consistent with the City General Plan, Airport Master Plan, Redevelopment Plan and compatible with any Business Park or other specific plans approved within this area.

7. LIMITATION OF AGREEMENT

7.1 **No Vested Rights**. This agreement does not and shall not be construed to vest BAA with any right or entitlement to construct, building, or operate either the Raceway Project or the Business Park Project. This agreement is not and shall not be construed to be a development agreement within the meaning of Government Code § 65864 *et seq.*, or other permit, approval, or entitlement regarding the Raceway Project or Business Park Project.

7.2 **BAA to Comply with All City Requirements**. This Agreement does not exempt BAA from any City or State law, ordinance, police or procedure regarding development of either of the projects described in this Agreement. Toward that end, BAA shall remain responsible for complying with al Local Regulations, and for obtaining such Environmental Review and Project Approvals as may be required by the City for the Raceway Project and Business Park Project, including the payment of all Development Fees and installation of all required Public Improvements. In addition, nothing in this Agreement binds the City or Agency to be responsible for any Development Codes related to the projects and BAA shall retain sole responsibility therefor.

7.3 **Sunset of Rights and Obligations**. Those rights and obligations of the parties under this Agreement that remain outstanding and unexercised rights as of the Sunset Date, as defined herein, shall expire and be of no further force and effect except as expressly provided herein to the contrary. The parties may mutually agree to extend the Sunset Date by written agreement executed and approved by the authorized representatives of both parties. Notwithstanding the foregoing, this Section shall not act to terminate or otherwise impair or effect rights and obligations of the parties that have been commenced and for which performance will be completed within a specific period of time agreed upon by the parties, and residual rights

(such as indemnity) that, by the terms of the provisions, remain effective after the expiration or termination of this Agreement. For purposes of this Agreement, the "Sunset Date" shall be a date three (3) years from and after the Effective Date of this Agreement, provided, however, that if such date is a Saturday, Sunday or Holiday of the City, then the Sunset Date shall be the first regular business date thereafter.

8. INDEMNITY

8.1 **General Indemnity**. Except as to the sole negligence, active negligence or willful misconduct of the City or Agency, BAA expressly agrees to, and shall, indemnify, defend, release, and hold the Agency, the City, and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and Costs and Expenses which arises out of, or are in any way related to, any act or omission of BAA, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the construction, use, or operation of the Raceway Project or Business Park Project, notwithstanding that the Agency and/or City may have benefited there from, or any challenge to this Agreement, or acquisition of the Raceway Extension Parcel and/or Business Park Properties. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of BAA's officers, directors, employees, agents and contractors. The Parties expressly agree that any payment, or Costs and Expenses the Agency and/or City incurs or makes to, or on behalf of, an injured employee under the Agency's self administered workers' compensation, is included as a loss or Costs and Expenses for the purpose of this Section. The Agency and City shall not be responsible for any acts, errors or omissions of any person or entity except the Agency and the City and their respective officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of BAA under this Section shall survive the expiration or early termination of the Agreement.

8.2 **Hazardous Substances Indemnity**. BAA expressly agrees to indemnify, defend, and hold the Agency, the City and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, encumbrance, and Costs and Expenses that, foreseeably or unforeseeably, directly or indirectly, arises from, or is in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from any property owned or acquired by BAA of any Hazardous Substances by BAA or its officers, directors, employees, agents, and contractors. For the purposes of this Section, "Costs and Expenses" include, but are not limited to, the cost of any necessary, ordered, adjudicated, or otherwise required remediation or removal of Hazardous Substances, any cost of repair of improvements on the Site or surrounding property necessitated by or related to the remediation or removal of Hazardous Substances, the cost of any tests, samples, studies, investigations, or other preparation reasonably undertaken in preparation or furtherance of remediation or removal of Hazardous Substances, and the cost of preparing plans for the remediation or removal of Hazardous Substances. Notwithstanding the foregoing, BAA expressly agrees to, at its sole expense, and with legal counsel of the Agency's choice, defend the Agency, the City and their respective officials, officers, employees, agents, and contractors in any Action in which the Agency, the City or their respective officials, officers, employees, agents, and contractors become or may become involved as a result of the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the Site

of any Hazardous Substances by BAA or its officers, directors, partners, employees, agents, and contractors. BAA's obligations under this Section shall survive the Termination of this Agreement.

9. ASSIGNMENTS AND TRANSFERS

9.1 **Assignment**. BAA shall be permitted to assign its rights under this Agreement provided that BAA: (a) notifies the City and Agency of such intent to enter into such transaction thirty (30) days prior to its consummation and closing; (b) the assignee expressly assumes BAA's obligations under this Agreement; and (c) the Assignment meets the following requirements: (i) the Assignment is to a validly organized and existing business entity which is a corporate affiliate or subsidiary of BAA, of which BAA is a general partner, or of which BAA is the majority shareholder (meaning owning at least 51% of the outstanding stock entitled to voting rights in the business entity); (ii) the Assignment is to an entity that expressly assumes the obligations of BAA under this Agreement in a writing satisfactory to the Agency; (iii) BAA remains fully responsible for the performance and liable for the obligations of BAA under this Agreement; and (iv) the assignee is financially capable of performing the duties and discharging the obligations it is assuming. BAA shall promptly notify the Agency in writing of any and all changes whatsoever in the identity of the persons in control of BAA and the degree thereof.

9.2 **Transfer to Government Agency**. Until the expiration of the all of the obligations under this Agreement, BAA shall not sell or transfer the fee interest in the Raceway Property or Business Park Properties to any governmental or non-governmental tax exempt entity that would result in the parcel becoming exempt from the payment of real property taxes. The foregoing restrictions shall not apply to any of the following:

9.2.1 The conveyance or dedication of any part of a parcel to the City or the Agency or other appropriate governmental agency for street, utility, or other public purposes consistent with City standards;

9.2.2 A conveyance of less than a fee interest (e.g., a leasehold estate or easement rights); or

9.2.3 A conveyance resulting from an eminent domain action or an acquisition under threat of eminent domain.

10. DEFAULT AND REMEDIES

10.1 **Default**. Either party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a Default of this Agreement. In the event of a Default, the injured party shall give written "Notice of Default" to the defaulting party, specifying the Default. Delay in giving such notice shall not constitute a waiver of the Default. If the defaulting party fails to cure the Default within thirty (30) days after receipt of a notice specifying the Default, or, if the Default is of a nature that cannot be cured within thirty (30) days, the defaulting party fails to commence to cure the Default within said thirty (30) days and thereafter diligently prosecute such cure to completion, then the defaulting party shall be liable to the injured party for any and all damages caused by such Default, unless otherwise provided for by this Agreement.

10.2 No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

10.3 Specific Performance. If a Default under this Agreement is not fully cured by the defaulting party as provided in Section 10.1 [Default], the non-defaulting party may, at its option, thereafter commence an action for specific performance of the terms of this Agreement.

10.4 Legal Actions. In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

10.4.1 **Jurisdiction and Venue.** Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, Central Branch, Civil Division, or, if appropriate, in the United States District Court for the Central District of California, Eastern Division. BAA specifically waives any rights provided to it pursuant to California Code of Civil Procedure § 394 and any federal statute or rule of similar effect.

10.4.2 **Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

10.4.3 **Attorney's Fees.** In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined herein) in the Action shall be entitled to recover its Litigation Expenses (as defined herein) from the other party in addition to whatever relief to which the prevailing party may be entitled. For purposes of this section, "Litigation Expenses" includes all Costs and Expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action. For the purposes of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a)(4) of the California Code of Civil Procedure.

10.5 Rights and Remedies are Cumulative. The rights and remedies of the parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another party.

10.6 Termination by City and Agency. The City and Agency may terminate this Agreement upon the occurrence of any of the following events:

10.6.1 BAA fails to acquire title to the City Parcel within three hundred and sixty five (365) days from and after the Effective Date of this Agreement, unless such failure to acquire is the proximate result of actions beyond the reasonable control of BAA.

10.6.2 BAA fails to commence construction of the Raceway Project within ninety (90) days from and after BAA's acquisition of title to the City Parcel, or thereafter fails to

diligently pursue completion of construction of the Raceway Project within two (2) years from and after BAA's acquisition of title to the City Parcel.

10.6.3 BAA (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein in violation of this Agreement;

10.6.4 BAA (or any successor in interest) becoming insolvent or BAA (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the Agency and/or the City, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of BAA's property and/or the Site;

10.6.5 BAA is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 10.1 [Default] hereof.

If, after the occurrence of any of the above-entitled events, the Agency elects, in its sole discretion, to terminate this Agreement, then all rights of BAA and any person or entity claiming by or through BAA arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of BAA to indemnify or reimburse the Agency or the City shall continue in full force and effect and the Agency shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

10.7 **Termination by BAA**. In the event that BAA is not in default under this Agreement and the Agency is otherwise in default and which is not cured within the time set forth in Section 10.1 [Default] hereof, and any such failure is not cured within the applicable time period after written demand by BAA, then this Agreement may, at the option of BAA, be terminated by written notice thereof to the Agency. From the date of the written notice of termination of this Agreement by BAA to the Agency and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that BAA may pursue any remedies it has hereunder.

11. GENERAL PROVISIONS

11.1 **No Excuse for Changes in Economic Conditions**. BAA agrees that foreseeable or unforeseeable future changes in economic or market conditions may make performance of its obligations and covenants under this Agreement impracticable, difficult or economically infeasible. However, BAA expressly assumes the risk of foreseeable and unforeseeable future changes in economic and general market conditions and expressly agrees that such changes shall not excuse or delay the strict performance of BAA's obligations and covenants hereunder. Without limiting the generality of the foregoing, BAA agrees that future foreseeable or unforeseeable changes in economic and market conditions shall not operate to relieve BAA of it's (or its successors) obligation to abide by the terms, conditions, and Covenants of this Agreement.

11.2 **Forced Delays; Extension of Times**. Notwithstanding the times stated in this Agreement for the performance of obligations by parties, including but not limited to the Schedule of Performance, a party shall not be deemed to be in Default due to its inability to timely perform an obligation as required under this Agreement where the inability to perform, or

the delay in performance is directly caused by any of the following: (i) actions challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; (ii) inability to secure necessary labor materials or tools for the Project due to national, state, or local shortages, strikes, lockouts, or freight embargoes; (iii) delays of any contractor, sub-contractor or supplier beyond the reasonable control of Participant and not caused by any act or omission of Participant; (iv) withdrawal of financing for the Project that is beyond the reasonable control of Participant and not caused by any act or omission of Participant; (v) war or insurrection; (vi) civil disturbances, such as riots and looting; (vii) acts of terrorism and other acts of a public enemy; (viii) acts of God, including, but not limited to, floods, famine, earthquakes, fires, abnormally dangerous or damaging weather conditions; (ix) epidemics, quarantine restrictions, or other nation, state, or local mass medical emergencies; (x) any national, state, or local state of emergency declared by a duly authorized public official; (xi) casualties resulting from any of the foregoing; (xii) any delays resulting from the unreasonable delay or failure of a governmental agency or entity, including the City, to perform any act or to issue any permit or approval necessary for the Project where such delay or failure is beyond the reasonable control of the Participant and not caused by any act or omission of the Participant; and (xiii) any other causes beyond the reasonable control or arising without the fault of the party claiming an extension of time to perform. In the event of the occurrence of any such event that directly affects the performance of an obligation under this Agreement, the time to perform such obligation shall be extended by the period of the enforced delay, but not to exceed ninety (90) days without the concurrence of the parties. The period of forced delay shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within twenty (20) days of the commencement of the cause.

11.3 **Tax Consequences**.

11.3.1 BAA understands and acknowledges that it may experience adverse federal, state, and/or local tax consequences resulting from or related to the performance of this Agreement. BAA acknowledges and agrees that the Agency and City are in no manner responsible or liable for any of BAA's federal, state, or local tax liabilities arising out of, or in any way related to, this Agreement.

11.3.2 BAA acknowledges that performance of this Agreement may create a taxable possessory interest in real or personal property and that BAA will be responsible for the payment of any and all tax upon such possessory interest. BAA expressly agrees that by inclusion of this Section in the Agreement, the Agency has satisfied all of its obligations under Revenue and Taxation Code § 107.6. BAA hereby waives, releases and holds the Agency and City harmless from any right to damages which may now or in the future accrue to BAA against the Agency or City under Revenue and Taxation Code § 107.6 or such comparable section of the United States Internal Revenue Code in any way relating to this Agreement.

11.3.3 BAA acknowledges that neither the Agency, the City, nor any elected official, officer, employee, agent, or consultant thereof has provided BAA with any tax, legal, accounting, or other advice or opinions, or made any representations or warranties, concerning the tax consequences, legal effect, financial effect, or other effects that performance of the Agreement may have on BAA.

11.3.4 BAA acknowledges that it has been represented in this transaction by BAA's own independent advisors, including, but not limited to, attorneys, accountants, and/or financial consultants. BAA represents and warrants that it is entering into this Agreement based solely upon its own independent investigation, conducted with due diligence, of the facts and possible effects of this Agreement on BAA.

11.4 **Non-liability of Agency Officials and Employees**. No board member, official, consultant, attorney, or employee of the City or Agency shall be personally liable to BAA, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the City or Agency or for any amount which may become due to BAA or to its successor, or on any obligations arising under this Agreement.

11.5 **Conflicts of Interest**. No board member, official, consultant, attorney, or employee of the City or Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

11.6 **Warranty Against Payment of Consideration for Agreement**. BAA represents and 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, other than payments to attorneys or consultants retained by BAA to assist it in the negotiation of this Agreement, excepting however, any contributions which this Agreement requires BAA to make to the Project.

11.7 **No Third Party Beneficiaries**. This Agreement is for the sole and exclusive benefit of the City, the Agency, and BAA. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties obligations under this Agreement.

11.8 **Integration**. This Agreement consists of pages 1 through 25, inclusive, and Attachment "A," attached hereto and incorporated herein by this reference, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

11.9 **Recitals and Definitions**. The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions of this Agreement.

11.10 **Titles and Captions**. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of its terms. References to section numbers are to sections in this Agreement unless expressly stated otherwise.

11.11 **Interpretation**. The Agency and BAA acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction, which provides the ambiguities in a document, shall be construed against the drafter of that document and shall have no application to the

interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

11.12 **Severability**. Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

11.13 **Amendments to Agreement**. Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the Agency and BAA.

11.14 **Administration**. This Agreement shall be administered for the City by its City Manager and or his or her designee and by the Agency by its Agency's Executive Director, or his or her designee. The City and Agency shall maintain authority of this Agreement through the City Manager and Executive Director (or their respective designees). The City Manger and Executive Director shall have the authority to issue interpretations and to make minor amendments to this Agreement on behalf of the City and Agency. All other changes, modifications, and amendments shall require the prior approval of the City Council and Agency's Board.

11.15 **Communications Between the Parties**. Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid.

If notice is to be made to City and Agency:

City of Banning and Banning Community Redevelopment Agency
Attn: City Manger / Executive Director
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3128

With a Copy To:

City of Banning
Attn: City Attorney
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3128

And

Burke, Williams & Sorensen, LLP
Attn: Banning City Attorney
3403 Tenth Street, Suite 300
Riverside, California 92501
Facsimile transmission may be made to: (951) 788-5785

If notice is to be made to BAA:

Banning Airport Associates, LLC
Attn: Tom Searles
1600 Dove Street, Suite 210
Newport Beach, California 92660
Facsimile transmission may be made to: (949) 798-0272

11.16 **Ceremonies**. To ensure proper protocol and recognition of the City Council and Agency Board, BAA shall cooperate with the City and Agency staff in the organization of any project-related groundbreakings, grand openings or any such inaugural events/ceremonies sponsored by BAA celebrating the development, which is the subject of this Agreement.

11.17 **Computation of Time**. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time.

11.18 **Authority**. The individuals executing this Agreement on behalf of BAA and the instruments referenced on behalf of BAA represent and warrant that they have the legal power, right and actual authority to bind BAA to the terms and conditions hereof and thereof.

11.19 **Counterpart Originals**. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

11.20 **Effective Date of Agreement**. This Agreement shall not become effective until the date it has been formally approved by the City Council and the Agency's Board and executed by the appropriate authorities of the City, Agency and BAA.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

THE CITY OF BANNING

By: _____
John Machisic, Mayor

ATTEST:

_____
Marie Calderon
City Clerk

APPROVED AS TO FORM

By: _____
Julie Hayward Biggs, City Attorney
Eric S. Vail, Assistant City Attorney

AGENCY:

BANNING COMMUNITY REDEVELOPMENT AGENCY

By: _____
Arthur Welch, Chairperson

ATTEST:

_____
Marie Calderon
Agency Secretary

APPROVED AS TO FORM

By: _____
Julie Hayward Biggs, Agency Counsel
Eric S. Vail, Assistant Agency Counsel

BAA:

BANNING AIRPORT ASSOCIATES, LLC

Thomas W. Searles
Member

John R. Saunders
Member

ATTACHMENT "A"

(Diagrams)

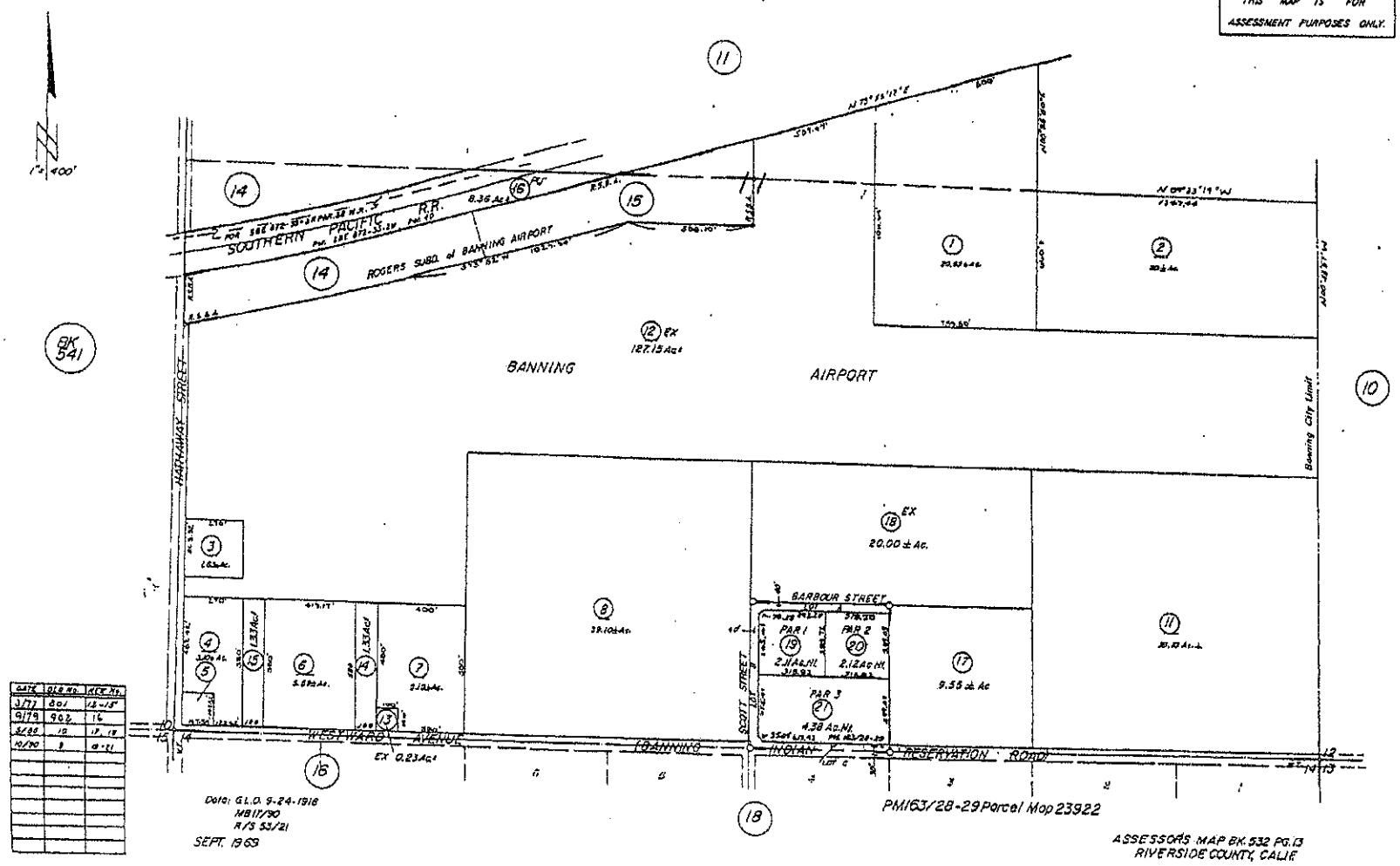
532-13
24-27-1

T.C.A. 104

S1/2 SEC. 11 T.3 S., R.1E.

THIS MAP IS FOR ASSESSMENT PURPOSES ONLY.

02224



DATE	BLK NO.	PCL NO.
3/71	001	12-15
9/79	902	16
5/80	10	17, 18
10/90	8	10-11

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCEL MAY NOT COMPLY WITH LOCAL LOT-SPLIT OR BUILDING SITE ORDINANCES.

POR. N 14 T.3S., R.1E
CITY OF BANNING

T.R.A. 001-004
001-000

532 - 18
24-21

02225

1" = 400'

WESTWARD AVE

CHARLES ST

HATHAWAY ST

SCOTT ST

PORTER ST

543 09

543 10

SEP 0 3 1997

MB 8/44 WAVERLY TRACT
PM 36/63-64 PARCEL MAP 76-07
PM 142/7-8 PARCEL MAP 20878
PM 172/16-17 PARCEL MAP 24908
PM 174/64-65 " " 24908

ASSESSOR'S MAP BK. 532 PG. 18
Riverside County, Calif.

Aug 1997

CITY OF BANNING

M E M O R A N D U M

DATE: February 7, 2006

TO: Marie Calderon - City Clerk

FROM: April Calhoun - Development Technician

RE: Banning Airport Associates LLC Agreement

Marie,

We finally received the signatures for this agreement. Please return to me once completed.

Returned to April 2-7-06 mm
Original to Marie 2-7-06

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

02226

412

ATTACHMENT 37

BURKE, WILLIAMS & SORENSEN, LLP

3403 Tenth Street - Suite 300
Riverside, California 92501-3629
voice 951.788.0100 - fax 951.788.5785
www.bwslaw.com

Our File No:
04730-0012
evail@bwslaw.com

June 2, 2006

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Site Assembly Services Under Master Agreement with BAA

Dear Tom:

As you know, on or about December 13, 2005, the Banning Community Redevelopment Agency ("Agency") and Banning Airport Associates, LLC ("BAA") entered into a Master Agreement under which the Agency agreed to provide BAA with certain Site Assembly Services in consideration of BAA taking certain affirmative steps with regard to the Raceway Project and Business Park Project. As you also know, at its meeting on May 30, 2006, the Agency Board approved moving forward with Site Assembly Services for the Raceway Extension Parcels and the Business Park Properties in compliance with the Master Agreement.[1]

Based on direction from the Agency Board, my office has reviewed the terms of the Master Agreement with Agency Staff and Richard Tillberg of Urban Futures (the Agency's redevelopment consultant) and discussed a strategy to implement the Board's decision. This letter will memorialize the telephone conversation on May 31, 2006 between you, City Manager Randy Anstine, Interim Redevelopment Director Henry Hesling, and Assistant Agency Council Eric Vail with regard to this strategy.

Site Assembly Services are described in Section 5 of the Master Agreement and generally consist of three phases: (i) the owner participation process; (ii) voluntary property acquisition process; and (iii) consideration of the use of eminent domain. At this stage it is only appropriate to discuss phases (i) and (ii) as the Agency Board has not yet considered the use of eminent domain in support of this project. The Agency's provision of Site Assembly Services is subject to BAA's prior satisfaction of the conditions set forth in Sections 3.2 and 4.2 of the Master Agreement. We note that while BAA has satisfied the "best efforts" requirements in Sections 3.2.1 and 4.2.1, it has not yet satisfied the requirements of Sections 3.2.2 [Opening of Escrow on City Parcel], 3.2.3 [Reasonable Progress on Raceway Project], 4.2.2 [Business Park Specific Plan] and 4.2.3 [Construction of Raceway Project]. Under the Agreement, the Agency

[1] Terms in initial capitals in this letter shall have their defined meaning under the Master Agreement dated December 13, 2005.

would not have any obligation to provide Site Assembly Services to BAA unless and until BAA fully satisfied these requirements.

However, in the spirit of cooperation and good faith, and in the interest of adding momentum to your project, Agency Staff is willing to implement the direction of the Agency Board as provided below. Please note that nothing in this letter waives any of Agency's rights under the Master Agreement, excuses any default under the Master Agreement, or otherwise amends or modifies any of the terms or provisions of the Master Agreement.

1. Statements of Interest. The first step in the owner participation process is to prepare and issue Statements of Interest to the record owners of the Raceway Extension Parcels and the Business Park Properties. Before the Agency will proceed to issue Statements of Interest to property owners, BAA must complete the following items:

a. Escrow. BAA must fully execute the Purchase Agreement for the City Parcel and escrow must be opened.

b. Grading. BAA must commence grading operations on the Raceway Parcel, and proceed diligently thereafter without extended interruption.

c. Administrative Deposit. BAA must deposit fifty thousand dollars and no cents ($50,000.00) with the Agency to be used by the Agency to pay for costs incurred in implementing and administering the Site Assembly Services. Such costs may include, but are not limited to, fees and costs of appraisers, attorneys, and other professional consultants retained by the Agency to carry out or assist with this work.

d. Specific Plan Consultant. BAA must hire an appropriate professional consultant to prepare the Business Park Specific Plan, and provide Agency with evidence of such retainer.

2. Completing the Owner Participation Process. Before the Agency will complete the Owner Participation Process, in addition to the items stated in "1" above, BAA must complete the following items:

a. File UUP Amendment. BAA must file with the City a complete application to amend the UUP and Development Agreement and related Environmental Review as may be necessary to expand the scope of the Raceway Project to include extension of the drag strip and ancillary facilities onto the Raceway Extension Parcel as required under Section 3.2.3(b) of the Master Agreement.

b. File Specific Plan. BAA must file with the City a complete application for the Business Park Specific Plan as required under Section 4.2.2 of the Master Agreement.

3. Offers to Property Owners. Before the Agency will proceed to issue any acquisition offers or otherwise engage in any negotiations with owners or agents of the Raceway Extension Parcels or Business Park Properties, in addition to the items stated in "1" and "2" above, BAA must complete the following items:

a. Complete Grading. BAA must have completed grading on the Raceway Parcel and City Parcel.

b. Refresh Administrative Deposit. BAA must have replenished the Administrative Deposit if so directed by the Executive Director.

c. Acquisition Deposits. BAA must have made an Acquisition Deposit for each property for which an offer will be made by the Agency. The deposit shall meet the requirements Section 5.4.3 of the Master Agreement.

Agency Staff is currently working with its consultant handling the FAA Release of the City Parcel to develop an anticipated timeline for FAA action.

Should you have any questions, please feel free to contact Henry Hesling at (951) 922-3152 or Eric Vail at (951) 788-0100. We look forward to continued cooperation among the parties and to working through these items in an expeditious manner.

Best regards,

BURKE, WILLIAMS & SORENSEN, LLP

for Eric Vail

Eric S. Vail

RIV #4624-4149-6833 v1

ATTACHMENT 38

PURCHASE AND SALE AGREEMENT WITH JOINT ESCROW INSTRUCTIONS

by and between

CITY OF BANNING

and

BANNING AIRPORT ASSOCIATES, LLP

PURCHASE AND SALE AGREEMENT
WITH JOINT ESCROW INSTRUCTIONS

This Purchase and Sale Agreement with Joint Escrow Instructions ("Agreement") is entered into as of JULY 25, 2006, by and between the CITY OF BANNING, a California municipal corporation (the "Seller") and the BANNING AIRPORT ASSOCIATES, LLC, a limited liability company (the "Purchaser").

RECITALS

Seller is the owner of the Real Property, as defined in full below.

A. Seller desires to sell the Real Property to Purchaser and Purchaser desires to purchase the Real Property from Seller on the terms and conditions set forth in this Agreement.

B. The parties acknowledge Purchaser desires to purchase the Real Property at fair market value based on the appraisal of an appraiser qualified and licensed by the State of California.

C. The Real Property is located adjacent to the Banning Municipal Airport and has been encumbered by a Grant Agreement between the Seller and the Federal Aviation Administration.

D. The release by the Federal Aviation Administration of encumbrances enumerated in the Grant Agreement is a condition precedent to the sale of the Real Property.

DEFINITIONS

In addition to terms defined elsewhere in this Agreement, as used in this Agreement the following terms have the following definitions:

"Absolute Termination Right" shall mean the right to terminate this Agreement for if Purchaser's tests, surveys, and studies show that the Real Property is not suitable for Purchaser's uses and Seller cannot or will not cure the defects in the physical condition of the Real Property.

"Action" shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

"Approved Exceptions" shall mean each exception shown in the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that affects title to the Real Property or that violates any law, rule, or regulation reflected therein and is approved by Purchaser within 30 days following the receipt of the Preliminary Report and, if applicable, the

survey referred to in Section 4.3 [ALTA Policy Option] and any amendments or updates of the Preliminary Report or the survey.

"Base FAA Costs" shall mean the City's estimated costs associated with obtaining Federal Aviation Administration release of government encumbrances on the Real Property, a sum of fifty thousand dollars ($50,000).

"Base Fair Market Value" shall mean the fair market value of the Real Property based on the August 31, 2005, appraisal of the Real Property by Bradford L. Adams, MAI, a sum of six hundred fifty-five thousand dollars ($655,000).

"Base Purchase Price" shall mean the total of the Base Fair Market Value and the Base FAA Costs, a sum of seven hundred five thousand dollars ($705,000).

"City" shall mean the City of Banning, a municipal corporation formed and existing under the laws of the State of California. The term "City" shall also include any assignee of, or successor to, its rights, powers, and responsibilities.

"Close of Escrow" shall mean the conveyance of the Real Property to Purchaser and the closing of this transaction.

"Costs and Expenses" shall mean court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys' fees, consultants' fees, witnesses' fees (both lay and expert), travel expenses, deposition and transcript costs, costs of preparing notices, claims, and demands, investigation costs, and any other cost or expense reasonably and necessarily incurred by the party.

"Cure Notice" shall mean Sellers written notice to Purchaser that Seller will remove or cure some or all of the objectionable Exceptions, at Seller's cost and expense, on or prior to the Close of Escrow.

"Deemed Approved Exceptions" shall mean any lien of property taxes not yet due or such minor easements and matters of record as will not detract from the use of the Real Property for the purpose contemplated by Purchaser.

"Deposit" shall mean the deposit required to be made by Purchaser pursuant to Section 2.2.1 of this Agreement.

"Effective Date" shall mean the date on which the Seller and Purchaser have both approved and executed this Agreement, as detailed in Section 29 [Effective Date] of this Agreement.

"Environmental Review" shall mean the investigation and analysis of this Agreement's impacts on the environment as may be required under the California Environmental Quality Act ("CEQA"), Public Resources Code §21000, *et seq.*, and/or the Western Riverside County Multi-Species Habitat Conservation Plan (adopted by the Seller as Ordinance No. 1304), or of the Agreement's impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species as may be required by the California Endangered

Species Act ("CESA"), Fish and Game Code §2050, *et seq.*, and/or the U.S. Endangered Species Act ("USESA"), 16 U.S.C. §1531, *et seq.*, or other applicable California or federal law or regulation.

"Escrow" shall mean the account in which and the time period during which the Escrow Agent maintains possession, custody, or control of the Purchaser's deposit and any legal documents appurtenant to this Agreement.

"Escrow Agent" shall mean the agent designated by the parties to hold and administer the joint escrow required under this Agreement. This agent shall be chosen by the Purchaser but shall be approved by the Seller, who shall not withhold approval unreasonably.

"Exception" shall mean any title exceptions and any encroachment, overlap, or boundary line dispute, or any other matter that affects title to the Real Property or that violates any law, rule, or regulation reflected in the Preliminary Title Report.

"Feasibility Period" shall mean that period beginning with the start of Escrow and continuing for 60 days thereafter.

"Final Purchase Price" shall mean an amount equal to the Base Purchase Price plus any increase in the fair market value of the Real Property based on a second appraisal of the Real Property by Bradford L. Adams, MAI, prior to the Close of Escrow, but in no event shall the amount be less than the Base Purchase Price.

"Hazardous Substances" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C.S. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C.§25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. §25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos, and lead.

"***Hazardous Substance Laws***" shall mean all federal, state, or local laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority, as referred to in the definition of "Hazardous Substances" above.

"***Informational Documents***" shall mean any plans, surveys, analyses, studies, reports, and other documents and agreements pertaining to the physical, geological, or environmental condition of the Real Property, or that will affect or be binding with respect to the Real Property beyond the Close of Escrow, that are owned by or are in the possession or under the control of Seller.

"***Inspection***" shall mean any test, survey or study (including invasive tests, such as borings and soil testing) as Purchaser may require to satisfy its due diligence regarding acquisition of the Real Property.

"***Local Regulations***" shall mean all the provisions of the City's General Plan, the City's Municipal Code (including but not limited to, all zoning, development, and building standards, regulations, policies and procedures, and all uniform codes incorporated therein), any applicable specific plan, the conditions of any applicable map approved under the Subdivision Map Act (Government Code §66410, *et seq.*), and any mitigation measures imposed as a result of Environmental Review for the Project, all as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified.

"***Property Conditions***" shall mean all of the physical and economic conditions affecting the Property and its use, including, but not limited to, the physical configuration of the Property, any trees, stumps, brush, or other vegetation on the Property, the condition of its soils, the presence or impact of any geologic or hydrologic features and faults, the nature of its lateral and subjacent support, the presence of Hazardous Substances, waste, garbage, rubbish, or refuse on, in, under, or adjacent to the Property, the location of the Property within any flood plain or high risk fire area, the location of public utilities and public improvements on, in, under, or over the Property, the presence, soundness, and habitability of any structures, fixtures, appurtenances, or improvements on or in the Property, the existence of any faults or defects (whether known or unknown, patent or latent), the economic and legal suitability of the Property for the intended use, all market conditions that may affect development and use of the Property, and all Actions, orders, and judgments affecting the Property.

"Real Property" shall mean that *real* property located in the City of Banning, County of Riverside, State of California, commonly known as Assessor's Parcel No. 532-130-018, and more particularly described in attached Exhibit "A," together with any improvements thereon and appurtenances thereto, if any.

"Seller's Knowledge" shall mean the actual knowledge of Seller, without duty of inquiry or investigation into the matter so qualified, and shall not be construed to refer to the knowledge of any other agent or employee or principal of Seller.

"Title Company" shall mean a title company of Purchaser's choosing and reasonably acceptable to Seller.

"Title Policy" shall mean a standard coverage owner's policy of title insurance.

NOW, THEREFORE, in consideration of these recitals and definitions and other valuable consideration, the Purchaser and Seller agree as follows:

1. **AGREEMENT TO SELL AND PURCHASE.** Seller agrees to sell and Purchaser agrees to purchase the Real Property on and subject to the terms and conditions contained in this Agreement.

2. **PURCHASE PRICE AND PAYMENT.**

2.1 **Base Purchase Price**. The Base Purchase Price for the Real Property is $705,000, as defined above.

2.2 **Deposits.**

2.2.1 Within fifteen (15) days following the opening of the Escrow (as defined in Section 3 [Escrow]), Purchaser shall deposit into Escrow the deposit amount equal to or greater than the sum of one hundred percent (100%) of the Base FAA Costs plus twenty-five percent (25%) of the Base Fair Market Value.

2.2.2 In the event that the Purchaser seeks a License Agreement pursuant to Section 6 [License Agreement], the Purchaser shall be required to make an additional deposit as required by Section 6.3 [Form of License Agreement].

2.2.3 Upon the Close of Escrow (as described in Section 8.4 [Timing of Close]), the Deposit, the additional deposit required by Section 6.3 [Form of License Agreement] if Purchaser elects to enter into the License Agreement, and any interest earned on the Deposit and additional deposit are to be applied to the purchase of the Real Property.

2.3 **Final Purchase Price Adjustment**. Immediately preceding the Close of Escrow, the Seller shall cause a new appraisal of the Real Property to be made by the person on whose appraisal the Purchase Price is based. If that person is not able to provide timely an appraisal, the Seller will choose a new appraiser reasonably acceptable to Purchaser. Upon receiving this new appraisal, the Seller and Purchaser will adjust the total price to be paid for the

Real Property to reflect the Final Purchase Price. The Final Purchase Price shall be payable in cash or immediately available funds on the Close of Escrow.

3. ESCROW.

3.1 **Opening of Escrow.** An Escrow is to be opened to consummate the sale of the Real Property at the office of the Escrow Agent. The Escrow is to be opened within ten (10) days after the execution of this Agreement by both parties. A signed counterpart of this Agreement is to be delivered to the Escrow Agent and will serve as escrow instructions, subject to the provisions of the Escrow Agent's standard conditions for acceptance of escrow, but only to the extent that the standard conditions impose no additional obligations or liabilities on the parties, and further subject to the terms and conditions in this Agreement, the latter to control in the case of conflict.

3.2 **Term of Escrow.** Escrow shall be for a period of at least ninety (90) days, which period may be extended or reduced as determined necessary by and agreed upon in writing by the City Manager and BAA.

3.3 **Escrow Agent.** The Escrow Agent shall be selected by the Purchaser but shall be reasonably acceptable to the Seller, which acceptance shall not be withheld unreasonably. If the Escrow Agent proposed by Purchaser is unacceptable to Seller, Purchaser and Seller shall choose another company or individual, in their sole discretion, to serve in that capacity. The Escrow Agent is hereby empowered to act under this Agreement, and upon indicating its acceptance of this Agreement in writing, delivered to the Seller and the Purchaser at the time Escrow is opened, shall carry out its duties as Escrow Agent hereunder.

3.4 **Authority of Agent.** Escrow Agent is authorized to and shall carry out the following:

3.4.1 Pay and charge the Seller for any fees, charges, and costs payable under this Agreement. Pay any monetary encumbrances, delinquent property taxes and assessments, and prorated current property taxes and assessments against the Real Property from the Purchase Price. Before such payments are made, Escrow Agent shall notify the Seller and Purchaser of the fees, charges, and costs necessary to clear title and close the escrow and calculate the amount to be paid and each party's proportionate share.

3.4.2 Make disbursements of the Purchase Price, deposit, or other funds to the appropriate parties and deliver the deed and all documents appurtenant to this Agreement to the parties entitled thereto when the conditions of this Escrow have been fulfilled by the Seller and the Purchaser.

3.4.3 Record the deed, and prepare and record or file, as appropriate, any other documents, statements, or instruments delivered through this escrow, or that are necessary to consummate the transaction or proper to vest title to the Property in Purchaser.

3.4.4 The liability of Escrow Agent under this Agreement is limited to performance of the obligations imposed under this Agreement.

3.4.5 Seller and Purchaser shall promptly prepare, execute and deliver to the Escrow Agent such additional Escrow instructions consistent with the terms and conditions of this Agreement as shall be reasonably necessary.

3.4.6 In the event of a conflict between the Escrow instructions and the Agreement, the terms of the Agreement shall control. Any amendment of the Escrow instructions or supplements thereto shall be in writing and signed by both Seller and Purchaser. At the time of the amendment, Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment.

4. TITLE.

4.1 **Preliminary Report**. Promptly following the opening of the Escrow, Escrow Agent shall cause the Title Company to issue to Purchaser (with a copy to Seller) a preliminary report (the "Preliminary Report") for a CLTA, or at Purchaser's election, an ALTA, Owner's Policy of Title Insurance for the Real Property, together with copies of all documents relating to title exceptions referred to in the Preliminary Report. Purchaser shall approve or disapprove each Exception within thirty (30) days following the receipt of the Preliminary Report and, if applicable, the survey referred to in Section 4.3 [ALTA Policy Option] and any amendments or updates of the Preliminary Report or the survey. However, Purchaser will not have the right to object and will accept title subject to the Deemed Approved Exceptions. Purchaser's failure to give written notice of objection within the thirty (30) day period shall be deemed to be an approval of the Exceptions. Seller has no obligation to cure or correct any Exception objected to by Purchaser. However, no later than thirty (30) days after receipt of Purchaser's objections, if any, Seller may elect by giving a Cure Notice to remove or cure some or all of such objectionable Exceptions, at Seller's cost and expense, on or prior to the Close of Escrow. If Seller fails to timely give a Cure Notice, or if Seller gives a Cure Notice stating that it will remove or cure less than all of such objectionable Exceptions, then on or prior to ten (10) days following Purchaser's receipt of the Cure Notice, or if Seller fails to timely give a Cure Notice, then on or prior to ten (10) days following the last date on which Seller could timely have given a Cure Notice, Purchaser may elect to terminate this Agreement or waive its objections by giving written notice to Seller. Purchaser's failure to give such notice on or prior to the expiration of the foregoing time periods will be deemed to constitute Purchaser's election to terminate this Agreement. If Purchaser waives its objection as to any Exception, then such Exception will be considered to be a Deemed Approved Exception. If Purchaser terminates this Agreement as provided in this Section, the Deposit together with all interest is to be returned to Purchaser, and Seller and Purchaser will be released from all further liability and obligation under this Agreement, except for those liabilities and obligations which have accrued prior to the date of termination. Upon any such termination, Seller and Purchaser will each pay one-half of the amount of any Escrow cancellation fees.

4.2 **FAA Encumbrances**. The parties acknowledge that the FAA encumbrances on the Real Property may appear as a title exception in the CLTA or ALTA Owner's Policy. Purchaser is aware that Seller is in the process of applying to the FAA for release of these encumbrances. Seller will provide to Purchaser a copy of documents related to these encumbrances. The Seller and Purchaser agree that these encumbrances are deemed to be Exceptions but that, notwithstanding the generally-applicable objection and cure requirements of

Section 4.1 [Preliminary Report], any and all FAA encumbrances on the Real Property will not be subject to the Purchaser's right to object and/or the Seller's obligation to cure. The release of those encumbrances, if any, is treated as a condition of sale under Section 7 [Conditions to the Close of Escrow].

4.3 **ALTA Policy Option**. In connection with the issuance of the Preliminary Report, and if Purchaser elects to obtain an ALTA Owner's Policy, Purchaser shall obtain, at Purchaser's cost and expense, an ALTA survey reasonably satisfactory to Purchaser, prepared and expressly certified to Purchaser and the Title Company by a licensed surveyor or civil engineer. If Purchaser makes such an election, then (i) Purchaser shall make such election in a timely manner so as not to interfere with or delay the Close of Escrow, and (ii) Purchaser shall obtain in a timely manner and pay all additional costs of obtaining the ALTA Owner's Title Policy, including without limitation, any survey cost and/or inspections, provided no delay in the Close of Escrow occurs. If Purchaser is unable to obtain the ALTA Owner's Title Policy by the Close of Escrow, Purchaser shall nonetheless proceed with the closing provided Purchaser receives a CLTA Owner's Policy of Title Insurance as required by this Agreement.

5. INSPECTIONS/FEASIBILITY PERIOD.

5.1 **Physical Condition**. The Real Property is an undeveloped, vacant parcel that has been partially cleared and grubbed.

5.2 **Right of Entry**. During the Feasibility Period, Purchaser shall enjoy the right to enter onto the Real Property for the purpose of performing at its cost any Inspections.

5.3 **Absolute Termination Right**. At any time during the Feasibility Period, Purchaser may exercise the Absolute Termination Right. The Absolute Termination Right must be exercised by the giving of written notice by Purchaser to Seller on or before the expiration of the Feasibility Period.

5.3.1 If Purchaser terminates this Agreement as provided in this Section, a portion of the Deposit together with all interest is to be returned to Purchaser, and Seller and Purchaser will be released from all further liability and obligation under this Agreement, except for those liabilities and obligations which have accrued prior to the date of termination.

5.3.1.1 The portion of the Deposit which shall be returned to Purchaser shall be that amount representing ten percent (10%) of the Base Fair Market Value plus all interest earned, if any, on the full amount of the Deposit.

5.3.1.2 The portion of the Deposit which shall become property of the Seller shall be that amount provided for by Section 10 [Liquidated Damages] of this Agreement, the Base FAA Costs plus fifteen percent (15%) of the Base Fair Market Value.

5.3.2 Upon any such termination, Purchaser will pay the amount of any Escrow cancellation fees. At the conclusion of the Feasibility Period, the Purchaser must have either terminated this Agreement or affirmatively accepted the Real Property as suitable for its

uses. Any failure by the Purchaser to affirmatively terminate or accept the Real Property will result in a deemed acceptance of the Real Property.

5.4 **Access to and Work on Real Property**. Access to the Real Property during the Feasibility Period shall be given to Purchaser at all times during normal business hours and at all other times upon three (3) days' prior notice to Seller. For the purposes of this Section 5.4 the term "Purchaser" shall mean and include Purchaser's employees, agents, consultants, contractors and other authorized representatives. Purchaser acknowledges that Seller may elect to have a representative of Seller present during any such entry. In connection with any such entry, Purchaser: (i) shall cause all work to be performed with due care; (ii) shall not permit any hazardous condition caused by Purchaser's Inspection to remain on the Property; (iii) shall repair any damage to the Real Property caused by Purchaser; (iv) shall procure (or cause all contractors or consultants performing work to procure) general liability and property damage insurance in an amount not less than one million dollars ($1,000,000) and otherwise in a form reasonably approved by Seller and naming Seller as an additional insured, (and Seller's municipal officers, officers and employees as additional insureds if the same can be added at no additional expense to the insuring party), evidence of which shall be delivered to Seller prior to Purchaser's first entry; (v) shall obtain all required governmental approvals for all work performed; and (vi) may not perform any invasive testing on the Real Property without Seller's prior written consent, which consent shall not be unreasonably withheld. Purchaser agrees to indemnify and defend Seller against and hold Seller harmless from all liabilities, suits, claims, losses, costs and expenses, including, without limitation, court costs and reasonably attorneys' fees and costs, and damages sustained by or asserted against Seller or the Real Property, including, without limitation, physical damage, physical injury to Seller's employees or agents or contractors and any mechanics' and materialmen's liens, caused as a result of Purchaser's access to the Real Property or the Inspections conducted by Purchaser The foregoing indemnity shall survive the Close of Escrow or the earlier termination of this Agreement.

5.5 **Informational Documents**. Within ten (10) days following the Effective Date, Seller agrees to give to Purchaser copies of any Informational Documents, it being agreed that Seller makes no representation or warranty of any kind whatsoever regarding such Informational Documents, including, without limitation, the accuracy or completeness thereof. Within the same time period, Seller agrees to give to Purchaser true and complete copies of all documents and agreements that will affect or be binding with respect to the Real Property beyond the Close of Escrow.

5.6 **Purchaser's Reports**. Purchaser agrees that it will provide Seller with copies of all reports and studies resulting from the Inspection, if any. Such reports and studies will be provided at no cost to Seller and for informational purposes only, it being agreed that Purchaser makes no representation or warranty of any kind whatsoever regarding such reports and studies, including, without limitation, the accuracy or completeness thereof.

6. LICENSE AGREEMENT.

6.1 **Purpose of License**. Following acceptance of the condition of the Real Property pursuant to Section 5.3 [Absolute Termination Right], Purchaser shall have the option of entering into a License Agreement with Seller to enter onto the Real Property for the purpose

of conducting clearing and grubbing, mass grading operations, and construction of a safety road (which such road construction must be either (a) expressly pre-approved by the FAA, or (b) constructed at Purchaser's sole risk of loss), but shall not permit construction of any footings, foundations, or other structures of a permanent or temporary nature. As a condition of approval of the License Agreement, Purchaser shall be required to provide adequate security for the costs of removal of improvements and repair of the Real Property to Seller in the form of a bond by an "admitted surety insurer," as that term is defined in Code of Civil Procedure § 995.120(a), or a letter of credit drawn on a national or state bank or lending institution. The amount of this security shall be adequate to cover the estimated costs (based on the estimate of an engineer selected by Seller and reasonably acceptable to Purchaser) of the removal of the safety road and the restoration of the Real Property.

6.2 Risk of Loss. Regardless of FAA pre-approval of construction of a safety road or City regulation of any clearing, grubbing, or mass grading operations, any such work will be performed at Purchaser's sole risk of loss. If this Agreement is Terminated by either party, the Purchaser will receive no compensation for work performed. In addition, Purchaser must, at its own cost, remove any improvements and restore the Real Property to the condition in which it was found at the time the parties entered into this Agreement, including replacement of any and all dirt and gravel necessary to return the Real Property to grade.

6.3 Form of License Agreement. The form of the License Agreement shall be negotiated with Purchaser and prepared, reviewed, approved and signed by the Seller's City Manager, but shall require the Purchaser to deposit with the Escrow Agent an amount equal to the difference between the Deposit and one hundred percent (100%) of the Base Purchase Price. Seller shall have no obligation to execute and record the License Agreement unless and until the following conditions are satisfied; (i) the FAA reviews and approves the scope and content of the License Agreement, specifically the construction of the safety road or Purchaser's proceeding with the construction at its sole risk of loss; and (ii) Purchaser deposits the full amount of the Purchase Price into escrow.

6.4 Liquidated Damages. If the License Agreement is entered into by the Purchaser and the Seller and thereafter the Purchaser cancels the Escrow or the FAA fails to approve release of the property and Purchaser must remove improvements and repair the Real Property within ninety (90) days of the cancellation or failure to approve release. During this time, the security provided for in Section 6.1 [Purpose of License] and the Deposit plus the additional deposit required by Section 2.2.2 shall be held by the Escrow Agent. If Purchaser fails to remove improvements and repair the Real Property within ninety (90) days, then Seller shall be entitled to (i) use the security provided for by Section 6.1 [Purpose of License] to remove improvements and restore the Real Property, (ii) receive liquidated damages in the amount of the Base FAA Costs plus fifty percent (50%) of the Base Fair Market Value as provided in Section 10 [Liquidated Damages] of this Agreement; and (iii) obtain an estimate from an engineer of Seller's choosing but reasonably acceptable to Purchaser and, if the estimate exceeds the value of the security, receive additional amounts from the Deposit and the additional deposit to pay for any portion of the estimate not covered by the security.

7. CONDITIONS TO THE CLOSE OF ESCROW.

7.1 **Conditions to Purchaser's Obligation**. Purchaser's obligation to close escrow under this Agreement and to complete the purchase of the Real Property is subject to the satisfaction, or express written waiver by Purchaser, of the following conditions:

7.1.1 Seller's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow;

7.1.2 Seller's performance of all obligations to be performed by Seller under this Agreement;

7.1.3 Federal Aviation Administration ("FAA") approval of the Seller's "release proposal" for the Real Property, as provided for under Federal law, regulations, and FAA policies, authorizing release of the Real Property from FAA encumbrances and airport use restrictions and authorizing conveyance to Purchaser;

7.1.4 Execution of the "instrument of release" by the FAA's Airports Division Manager, or his/her authorized designee, as required under Federal law, regulations, and FAA policies, releasing FAA encumbrances on the Real Property; and

7.1.5 The Title Company (as described in Section 4.1 [Preliminary Report]) being prepared to issue the Title Policy on the Close of Escrow, subject only to the Approved Exceptions (as described in Section 4.1 [Preliminary Report]).

7.2 **Conditions to Seller's Obligation**. Seller's obligation to close escrow under this Agreement and to complete the purchase and sale of the Real Property is subject to the satisfaction, or express written waiver by Seller, of the following matters:

7.2.1 Purchaser's representations and warranties in this Agreement being correct as of the date of this Agreement and as of the Close of Escrow;

7.2.2 Purchaser's performance of all obligations to be performed by Purchaser under this Agreement; and

7.2.3 FAA approval of the Seller's "release proposal" for the Real Property, as provided for under Federal law, regulations, and FAA policies, authorizing release of the Real Property from FAA encumbrances and airport use restrictions and authorizing conveyance to Purchaser.

7.2.4 Execution of the "instrument of release" by the FAA's Airports Division Manager, or his/her authorized designee, as required under Federal law, regulations, and FAA policies, releasing FAA encumbrances on the Real Property.

8. CLOSE OF ESCROW.

8.1 **Title Policy**. Simultaneously with the Close of Escrow, Escrow Agent is to cause the Title Company to issue a CLTA, or if elected by Purchaser, an ALTA, Owner's

Policy of Title Insurance (the "Title Policy") in the amount of the Purchase Price, subject only to the following matters ("Approved Exceptions"):

8.1.1 A lien for real property taxes, bonds, and assessments not then due; and

8.1.2 Exceptions approved by Purchaser in accordance with Section 4 [Title] and the Deemed Approved Exceptions.

8.2 **Seller's Duties**. Seller is to deposit with Escrow Agent on or prior to the Close of Escrow the following:

8.2.1 A grant deed executed and acknowledged by Seller conveying to Purchaser good and marketable fee simple title to the Real Property in the form attached hereto as Exhibit "B" (the "Deed");

8.2.2 All Informational Documents relevant to the Real Property;

8.2.3 Seller's affidavit of nonforeign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended ("FIRPTA Affidavit");

8.2.4 Seller's affidavit as contemplated by the Revenue and Taxation Code §§ 18805 and 26131 ("Withholding Affidavit"); and

8.3 **Purchaser's Duties**. Purchaser is to deposit with Escrow Agent, on or prior to the Close of Escrow, an amount which when combined with the Deposit and all interest earned thereon equals the Purchase Price, plus an amount equal to the closing and other costs payable by Purchaser hereunder.

8.4 **Timing of Close**. The Close of Escrow shall occur thirty (30) days following the occurrence of both of the following:

8.4.1 Conclusion of the Feasibility Period and affirmative acceptance or deemed acceptance of the physical condition of the Real Property.

8.4.2 FAA approval of the Seller's release proposal, execution of all release documents, and release of encumbrances on the Real Property.

8.5 **Escrow Agent's Responsibilities at Close**. On the date of the Close of Escrow, Escrow Agent is to close Escrow as follows:

8.5.1 Record the Deed (marked for return to Purchaser) with the Riverside County Recorder (which will be deemed to be delivered to Purchaser);

8.5.2 Cause the Title Policy to be issued;

8.5.3 Prorate taxes, assessments, fees, and other charges as provided in Section 8.6 [Prorations];

8.5.4 Disburse to Seller the Purchase Price less prorated amounts and charges to be paid by or on behalf of Seller;

8.5.5 Charge Purchaser for those costs and expenses to be paid by Purchaser pursuant to this Agreement and disburse any net funds remaining after the preceding disbursements to Purchaser;

8.5.6 Prepare and deliver to both Purchaser and Seller one signed copy of Escrow Agent's closing statement showing all receipts and disbursements of the Escrow;

8.5.7 Deliver to Purchaser one fully executed counterpart of the FIRPTA Affidavit and the Withholding Affidavit; and

8.5.8 Deliver to Purchaser all Informational Documents.

If Escrow Agent is unable to simultaneously perform all of the instructions set forth above, Escrow Agent is to notify Purchaser and Seller and retain all funds and documents pending receipt of further instructions jointly issued by Purchaser and Seller.

8.6 **Prorations**. Escrow Agent is to prorate the following costs at the Close of Escrow:

8.6.1 Seller is to pay

8.6.1.1 all governmental conveyance fees and taxes due upon transfer of the Real Property; and

8.6.1.2 one-half (1/2) of the escrow fee charged by Escrow Agent.

8.6.2 Purchaser is to pay

8.6.2.1 the recording charges, if any, in connection with recordation of the Deed;

8.6.2.2 all charges in connection with issuance of the Title Policy, but not including the cost, if any, associated with the Seller's removal or curing of any objectionable Exception as provided in Section 4.A; and

8.6.2.3 one-half (1/2) of the escrow fee charged by Escrow Agent.

8.7 **Property Taxes**. Real property taxes are not to be prorated between Seller and Purchaser at the Close of Escrow and Seller is to pay all property taxes then due and payable.

9. **POSSESSION**. On the Close of Escrow, Seller will deliver the Real Property to Purchaser free from all claims to possession by any and all third parties.

10. LIQUIDATED DAMAGES.

IF PURCHASER FAILS TO COMPLETE THE PURCHASE AND SALE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER; HOWEVER, AND NOTWITHSTANDING AND IN ADDITION TO THE SPECIFIC DAMAGES PROVIDED FOR BY SECTIONS 5.3 [ABSOLUTE TERMINATION RIGHT] AND 6 [LICENSE AGREEMENT] (AND SPECIFICALLY 6.2 [RISK OF LOSS]), BY INITIALING THIS SECTION PURCHASER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY PURCHASER HEREUNDER,

10.1 IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES;

10.2 AN AMOUNT EQUAL TO THAT PROVIDED BY SECTION 5.3.1.b OF THIS AGREEMENT IF THE PARTIES DO NOT ENTER INTO A LICENSE AGREEMENT FOR THE PURCHASER TO ENTER THE REAL PROPERTY FOR THE PURPOSE OF MAKING IMPROVEMENTS ON THE PROPERTY, OR AN AMOUNT EQUAL TO THAT PROVIDED FOR BY SECTION 6.4 OF THIS AGREEMENT IF THE PARTIES DO ENTER INTO SUCH A LICENSE AGREEMENT, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER;

10.3 THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER WILL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER;

10.4 SELLER WILL BE ENTITLED TO THAT AMOUNT ON ACCOUNT OF THE LOSS OF ITS BARGAIN AS LIQUIDATED DAMAGES; AND

10.5 PAYMENT OF THAT AMOUNT TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

Seller's Initials: _____ Purchaser's Initials: _____

11. REPRESENTATIONS AND WARRANTIES; INDEMNITIES; "AS-IS" SALE.

11.1 **Seller's Representations and Warranties.** Despite anything to the contrary in this Agreement, Seller warrants and represents as of the Effective Date that:

11.1.1 This Agreement and the performance of Seller's obligations under it and all documents executed by Seller that are to be delivered to Buyer at the Close of Escrow shall be duly authorized, executed, and delivered by the Seller and are, or at the Close of Escrow shall be, legal, valid, and binding obligations of Seller, and do not, and on the Close of Escrow shall not, violate any provision of any agreement or judicial order to which Seller is a party or to

10. LIQUIDATED DAMAGES.

IF PURCHASER FAILS TO COMPLETE THE PURCHASE AND SALE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT, SELLER SHALL BE RELEASED FROM ITS OBLIGATIONS HEREUNDER; HOWEVER, AND NOTWITHSTANDING AND IN ADDITION TO THE SPECIFIC DAMAGES PROVIDED FOR BY SECTIONS 5.3 [ABSOLUTE TERMINATION RIGHT] AND 6 [LICENSE AGREEMENT] (AND SPECIFICALLY 6.2 [RISK OF LOSS]), BY INITIALING THIS SECTION PURCHASER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY PURCHASER HEREUNDER,

10.1 IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES;

10.2 AN AMOUNT EQUAL TO THAT PROVIDED BY SECTION 5.3.1.b OF THIS AGREEMENT IF THE PARTIES DO NOT ENTER INTO A LICENSE AGREEMENT FOR THE PURCHASER TO ENTER THE REAL PROPERTY FOR THE PURPOSE OF MAKING IMPROVEMENTS ON THE PROPERTY, OR AN AMOUNT EQUAL TO THAT PROVIDED FOR BY SECTION 6.4 OF THIS AGREEMENT IF THE PARTIES DO ENTER INTO SUCH A LICENSE AGREEMENT, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER;

10.3 THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER WILL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER;

10.4 SELLER WILL BE ENTITLED TO THAT AMOUNT ON ACCOUNT OF THE LOSS OF ITS BARGAIN AS LIQUIDATED DAMAGES; AND

10.5 PAYMENT OF THAT AMOUNT TO SELLER AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

Seller's Initials: _____ Purchaser's Initials: B.

11. REPRESENTATIONS AND WARRANTIES; INDEMNITIES; "AS-IS" SALE.

11.1 Seller's Representations and Warranties. Despite anything to the contrary in this Agreement, Seller warrants and represents as of the Effective Date that:

11.1.1 This Agreement and the performance of Seller's obligations under it and all documents executed by Seller that are to be delivered to Buyer at the Close of Escrow shall be duly authorized, executed, and delivered by the Seller and are, or at the Close of Escrow shall be, legal, valid, and binding obligations of Seller, and do not, and on the Close of Escrow shall not, violate any provision of any agreement or judicial order to which Seller is a party or to

which Seller or the Real Property is subject. No consent of any party, other than the FAA as explained in Section 7 [Conditions to the Close of Escrow] of this Agreement, is required for Seller to enter into or to perform Seller's obligations under this Agreement, except as has already been obtained, or, in the case of the FAA, may be obtained as a condition to this Agreement. Seller is a municipal corporation organized, validly existing, and in good standing under the laws of the State of California.

11.1.2 To Seller's knowledge, Seller has received no written notice of any currently outstanding violations of any federal, state, county, or municipal law, ordinance, order, regulation, or requirement, including but not limited to any Hazardous Substance Laws, affecting the Real Property.

11.1.3 To Seller's knowledge, Seller has not received any written notice of any existing or threatened litigation or arbitration involving the Real Property.

11.1.4 To Seller's knowledge, the Informational Documents constitute all books, records, documents, agreements, contracts, reports, and other materials related to the Property that are in Seller's knowledge, and are true, correct, and complete copies of what they purport to be.

11.1.5 To Seller's knowledge, Seller has received no written notice of any presently pending or contemplated special assessments or proceedings to condemn or demolish the Real Property or any part of it, or any proceedings to declare the Real Property or any part of it a nuisance.

11.2 **Purchaser's Representations and Warranties**. Despite anything to the contrary in this Agreement, Purchaser hereby warrants and represents that, as of the Effective Date, this Agreement and the performance of Purchaser's obligations under it and all the documents executed by Purchaser that are to be delivered to Seller at the Closing of Escrow are, or on the Closing of Escrow shall be, duly authorized, executed, and delivered by Purchaser and are, or at the Closing of Escrow shall be, legal, valid, and binding obligations of Purchaser, and do not, and on the Closing of Escrow shall not, violate any provisions of any agreement or judicial order to which Purchaser is a party or to which Purchaser or the Real Property is subject. No consent or any partner, shareholder, creditor, investor, judicial or administrative body, government agency, or other party is required for Purchaser to enter into or to perform Purchaser's obligations under this Agreement, except as has already been obtained.

11.3 **"As Is, Where Is" Sale**. Subject to the approval or waiver of any Exceptions in Section 4 [Title] of this Agreement, the closing conditions in Section 7 [Conditions] of this Agreement, and as a material inducement to Seller's execution and delivery of this Agreement and performance of its duties under this Agreement: EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, BUYER HAS AGREED TO ACCEPT POSSESSION OF THE REAL PROPERTY ON THE CLOSING OF ESCROW ON AN "AS IS" BASIS. SELLER AND BUYER AGREE THAT THE REAL PROPERTY SHALL BE SOLD "AS IS WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND , EXCEPT AS SET FORTH IN SECTION 11.1 [SELLER'S REPRESENTATIONS AND WARRANTIES] OF THIS AGREEMENT,

SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AND SELLER DISCLAIMS AND RENOUNCES ANY SUCH REPRESENTATION OR WARRANTY.

11.4 Effective as of the Close of Escrow, Purchaser waives, releases, acquits and forever discharges Seller and its officers, members, employees, agents, attorneys, and any other person acting on behalf of Seller, from and against any and all claims, actions, causes of action, demands, rights, damages, costs, expenses or compensation whatsoever (including without limitation attorneys', fees and costs), direct or indirect, known or unknown, foreseeable or unforeseeable, which Purchaser now has or which may arise in the future on account of or in any way relating to or connected with any laws, rules or regulations of any governmental entities or instrumentalities applicable to the Real Property, the value, condition, status, or quality of the Real Property, and the presence in or on the Real Property, or any improvements or appurtenances on the Real Property, or under the surface of the Real Property, of underground storage tanks, asbestos-containing materials, transformers or other equipment containing polychlorinated biphenyls, or any Hazardous Substances. Purchaser agrees to protect, defend, indemnify and hold Seller and its officers, members, employees, agents, attorneys, and any other person acting on behalf of Seller, and their respective heirs, successors and assigns, free and harmless from and against any and all losses, actual or consequential damages whether foreseeable or not, punitive damages, fines, penalties, liabilities, costs (including costs of clean-up or other remediation and required studies), interest, attorney's fees (including such fees and expenses incurred in enforcing this indemnity), suits, causes of action, legal or administrative proceedings, demands, or claims (including, without limitation, claims for personal injury) made, threatened or asserted by any person, party or governmental entity or agency by reason of or in any way connected with the presence in or on the Real Property, or any improvement or appurtenance thereon, or under the surface of the Real Property, of any Hazardous Substance. By initialing below, Purchaser acknowledges that it is aware of, has read, has had explained to it by its attorneys, and understands and expressly waives any and all rights it has or may have under the provisions of California Civil Code § 1542, which reads as follows:

11.5 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Purchaser's Initials: BJS

12. **SELLER'S COVENANT.** Commencing with the execution of this Agreement and until the Close of Escrow, Seller will not permit any liens, encumbrances, or easements to be placed on the Real Property, other than the FAA encumbrances and the Approved Exceptions, nor will Seller enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Real Property that would be binding on Purchaser or the Real Property after the Close of Escrow, without the prior written consent of Purchaser which will not be unreasonably withheld.

13. AUTHORITY OF PARTIES.

13.1 Seller's Authority. Seller represents and warrants that this Agreement:

13.1.1 has been duly authorized, executed, and delivered by Seller;

13.1.2 is the valid and binding obligation of Seller in accordance with its terms;

13.1.3 does not violate the provisions of any agreement or instrument, or any judgment, order or decree, to which Seller is a party or by which Seller or the Real Property are bound.

13.2 Purchaser's Authority. Purchaser represents and warrants that this Agreement:

13.2.1 has been duly authorized, executed, and delivered by Purchaser;

13.2.2 is the valid and binding obligation of Purchaser in accordance with its terms; and

13.2.3 does not violate the provisions of any agreement or instrument, or any judgment, order or decree, to which Purchaser is a party or by which Purchaser is bound.

13.3 Warranties of Authority. Each party warrants and represents to the other that the persons executing this Agreement on its behalf are authorized to do so, and on execution of this Agreement, this Agreement shall be its valid and binding obligation, enforceable against it in accordance with its terms.

14. RISK OF LOSS.

14.1 Risk of Loss for the Real Property. If before the Close of Escrow any damage or destruction of the unimproved Real Property, or any unimproved portion of it, shall have occurred that results in a loss of ten thousand dollars ($10,000) or less, then at the Close of Escrow Seller must give Purchaser a credit against the Final Purchase Price for the entire amount of the loss. If such damage or destruction results in an loss of more than ten thousand dollars ($10,000), then within thirty (30) days after determination of the amount of loss Seller shall elect either (a) to give Purchaser a credit against the Final Purchase Price for the entire amount of the loss or (b) to terminate this Agreement. Despite any such damage or destruction, the Purchase Price for the Real Property shall not be reduced except by the credits referred to above. If any damage to or destruction of the Property occurs, the Close of Escrow may be extended until the amount of the loss is determined and Seller has made any election permitted under this Section.

14.2 Risk of Loss for Improvements Under License. If Purchaser elects to proceed pursuant to Section 6 [License Agreement] and makes any improvements to the Real Property, Purchaser shall bear sole risk of loss for those improvements, as provided in Section 6.2 [Risk of Loss] of this Agreement.

15. **BROKERS.** Seller represents that no real estate broker is required for the purchase and sale of the Real Property and Seller shall have no responsibility to pay any broker's fees in connection with the sale and leasing of the Real Property. Purchaser shall be solely responsible for payment of a real estate commission to any broker to the extent that Purchaser relies on a broker in the completion of this Agreement. Except as provided in the preceding sentence, each party warrants and represents to the other that no other broker, agent or finder has been retained or consulted by it in connection with this transaction.

16. **ASSIGNMENT.** Neither Purchaser nor Seller has the right to assign, either in whole or in part, this Agreement or their respective rights and liabilities under this Agreement, without the express written consent of the other party.

17. **ATTORNEY FEES.** In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement or any action or proceeding in any way arising from this Agreement , including any interpleader of the Deposit by the Escrow Holder, the prevailing party in such action, or the nondismissing party when the dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal or judgment.

18. **NOTICES.** All notices to be given under this Agreement must be in writing and sent to the respective party's notice addresses set forth below by:

18.1 certified mail, return receipt requested, postage prepaid, in which case notice shall be deemed delivered upon receipt as indicated in the return receipt, or

18.2 personal delivery, or by commercial messenger or courier service, in each which case notice will be deemed given upon receipt.

The notice addresses of the parties are as follows:

Seller:

City of Banning
Attn: City Manager
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3128

With a Copy To:

City of Banning
Attn: City Attorney
99 East Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3128

And

Burke, Williams & Sorensen, LLP
Attn: Banning City Attorney
3403 Tenth Street, Suite 300
Riverside, California 92501
Facsimile transmission may be made to: (951) 788-5785

Purchaser:

Banning Airport Associates, LLC
Attn: Tom Searles
1600 Dove Street, Suite 210
Newport Beach, California 92660
Facsimile transmission may be made to: (949) 798-0272

or to such other address as Purchaser or Seller may designate by written notice to the other given in the manner prescribed herein.

19. **ENTIRE AGREEMENT.** Notwithstanding the Master Agreement entered into on January 19, 2006, by the Seller and Purchaser, this Agreement contains the entire agreement between the parties with respect to the purchase and sale of the Real Property and supersedes all prior or contemporaneous agreements and understandings (whether written or oral) of the parties, including the Master Agreement, with respect to the purchase and sale of the Real Property. This Agreement cannot be modified in any manner except by an instrument in writing executed by the duly authorized representatives of the parties.

20. **WAIVERS.** No waiver of any covenant or condition in this Agreement is to be deemed a waiver of any other covenant or condition in this Agreement and no waiver is valid unless in writing and executed by the duly authorized representative of the waiving party. An extension of time for performance of any obligation or act is not to be deemed an extension of the time for performance of any other obligation or act.

21. **CONSTRUCTION.** The section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the parties to this Agreement. The section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form includes plural, and vice versa. This Agreement is not to be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared it. The recitals and all exhibits to this Agreement are incorporated into it by this reference.

22. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which is an original but all of which together constitute but one and the same instrument. Any signature page of this Agreement may be detached from any counterpart and re-attached to any other counterpart of this Agreement which is identical in form hereto but having attached to it one or more additional signature pages.

23. **TIME OF THE ESSENCE.** Time is of the essence in this Agreement.

24. **SUCCESSORS.** Subject to the provisions of Section 16 [Assignment], this Agreement inures to the benefit of and is binding upon the parties to this Agreement and their respective heirs, successors, and assigns.

25. **GOVERNING LAW.** This Agreement is to be governed by and construed in accordance with the internal laws of the State of California, without regard to principles of conflicts of laws.

26. **COMPUTATION OF TIME.** The date on or before which any act is to be done under this Agreement is computed by excluding the first day (such as the day Escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701.

27. **RECITALS AND DEFINITIONS.** The Recitals and Definitions set forth at the beginning of this Agreement are a substantive and integral part of this Agreement and are incorporated by reference in the Operative Provisions portion of this Agreement.

28. **SURVIVAL.** The representations, warranties, covenants and indemnities of and by the parties contained in this Agreement survive the Close of Escrow and the delivery of the Deed.

29. **EFFECTIVE DATE.** This Agreement shall become effective on the date it has been formally approved by the Seller's City Council and executed by the appropriate authorities of the Seller and Purchaser.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers or representatives as of the date first written above.

CITY:

THE CITY OF BANNING

By: _____
Randy Anstine, City Manager

ATTEST:

_____
Marie Calderon
City Clerk

APPROVED AS TO FORM

By: _____

Julie Hayward Biggs, City Attorney
Eric S. Vail, Assistant City Attorney

BAA:

BANNING AIRPORT ASSOCIATES, LLC

_____

Thomas W. Searles
Member

_____

John R. Saunders
Member

ATTACHMENT 39

CITY OF BANNING
P.O. BOX 998
BANNING, CA 92220
DEPT. PHONE: (951) 922-3125
FAX (951) 922-3128

STAGECOACH TOWN USA
ESTABLISHED 1913

DEPARTMENT OF
PLANNING

October 23, 2006

Ms. Leslie MacNair
California Department of Fish and Game
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764

Dear Ms. MacNair:

The City of Banning has become aware of an issue involving burrowing owl, and requests your assistance.

On September 14, 2006, the City's biological consultant, who was conducting a burrowing owl survey for 20 acres of City-owned land near our airport, informed the City that the site had been partially grubbed. The City had initiated the survey as part of its due diligence in anticipation of selling the property to a private party.

The site is immediately adjacent to a privately owned 40 acre parcel with an approved permit to construct a racetrack. Also, the racetrack developer secured a grading permit from the City some months ago, and had initiated grading on the property on July 27, 2006. On August 9, the Director of Public Works, while in the field on another matter, observed the grading contractor in the area, and saw that the contractor was over-grubbing and encroaching on the City property in question. Although the site was previously grubbed he instructed the contractor to stop encroaching, and to restrict his activities to the racetrack's acreage only.

As the City's biologist has identified burrowing owl on the un-disturbed portion of our 20 acre parcel, we are concerned that the grubbing may have disturbed the species, and request your assistance in rectifying the situation, to assure that any violation of the Fish and Game Code is limited to that which has occurred.

Please contact me at 951-922-3131 at your earliest convenience so that we may discuss this matter.

Sincerely,

Oscar Orci
Community Development Director

cc: Duane Burk, Director of Public Works
Randy Anstine, City Manager

02290

G:\Other\Staff\Orci\Ltrs F&G ltr owl.doc

442

ATTACHMENT 40

City of Banning
Public Works Department

99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3130 • Fax (951) 922-3141

RECEIVED
FEB 21 2007
By

February 21, 2007

Tom Searles and Associates
Banning Airport Associates, LLC
1600 Dove Street, Ste 450
Newport Beach, CA 92660

Subject: Notice to Proceed

Dear Tom,

I am writing you this letter to inform you and your associates of the Banning Airport Association, that in fact, you have met all the required criteria to begin construction on your project (Drag City). This includes the following: FAA land release and Environmental issues as forwarded to you, by me, on February 20, 2007 from our consultant AMEC. Construction may begin when all necessary permits have been obtained.

Sincerely,

Duane Burk
Director of Public Works

cc Randy Anstine, City Manager
Oscar Orci, Community Development Director
Eric Vail, City Attorney

02297

ATTACHMENT 41

BURKE, WILLIAMS & SORENSEN, LLP

3403 Tenth Street - Suite 300
Riverside, California 92501-3659
voice 951.788.0100 - fax 951.788.5785
www.bwslaw.com

Our File No:
04710-0012
email@bwslaw.com

March 8, 2007

VIA FACSIMILE & U.S. MAIL

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Extension of Escrow for Banning Airport Associates Purchase

Dear Tom:

Thank you for meeting with us on Monday, March 5, 2007 to discuss the Raceway and Business Park Projects currently underway near the Banning Municipal Airport. Thus far, your professional approach to the difficult land development and assemblage issues has been much appreciated by the City.

As you know, on or about December 13, 2005, the Banning Community Redevelopment Agency ("Agency") and Banning Airport Associates, LLC ("BAA") entered into a Master Agreement under which the Agency and BAA agreed to certain terms regarding site assembly services to facilitate the Raceway and Business Park Projects, and under which BAA agreed to enter into a purchase and sale agreement for a twenty (20) acre parcel of real property owned by the City of Banning adjacent to the Banning Municipal Airport ("City Parcel").[1]

At the time the parties entered into the Master Agreement they knew that the purchase and sale of the City Parcel could not be consummated without the Federal Aviation Administration ("FAA") decision to release its encumbrances on the property. Toward that end, Section 2.2 [Terms and Conditions of Purchase] of the Master Agreement identifies the FAA release as a condition precedent of sale and anticipated the need for parties to have flexibility in the length of the escrow to accommodate the FAA release process – the length of which the parties could not accurately estimate. An outside date of 365 days was provided to consummate the purchase and sale in Section 10.6 [Termination by City and Agency]. Under this provision, BAA had to acquire title to the City Parcel by December 13, 2006 or the City and Agency had the right to terminate the Master Agreement.

[1] Pursuant to Section 11.14 [Administration] of the Master Agreement, the City Manager and the Agency Executive Director bear responsibility for administering the project but may designate a person to assist in the administration of the project. Randy Anstine, who currently serves as both Banning City Manager and Agency Executive Director, has directed me to issue this letter.

As you also know, on July 25, 2006, the City of Banning entered into a Purchase and Sale Agreement with BAA implementing Article 2 of the Master Agreement under which the City agreed to sell and BAA agreed to purchase the City Parcel. On August 4, 2006, the City and BAA opened escrow on the sale of the City Parcel. The Purchase Agreement provides that escrow was to be for a period of at least ninety (90) days and that escrow was to close within thirty (30) days of the FAA's approval of the City's release proposal, execution of the release documents, and release of its encumbrances.[2] As of November 30, 2006, the FAA had approved the City's release proposal, executed the necessary release documents and authorized release of its encumbrances from the City Parcel. Thus, escrow should have closed on December 30, 2006. As of today's date, escrow has not closed.

At our meeting on March 5th the parties mutually agreed that: (i) the time period for the FAA to process and approve and execute the release documents was longer than originally anticipated by the parties; (ii) both parties acted in good faith and exercised their best efforts to apply for and obtain the FAA's approval of the release and to execute the documents and that any delay in time was not the result of any unreasonable, negligent or willful act of either party nor was any delay, if any, in obtaining the FAA approval any fault of either party; (iii) that the time periods for performance in both the Master Agreement and Purchase Agreement relating to the purchase and sell of the City Parcel should be extended for a period of ninety (90) days under Section 11.2 [Forced Delays; Extension of Times] of the Master Agreement; (iv) that this would result in an anticipated closing date of March 13, 2007; (v) that the March 13, 2007 closing and performance date should be and is hereby continued for thirty (30) days to **April 13, 2007**; and (vi) that Banning would consider the time period in Section 10.6 [Termination by City and Agency] extended to April 13, 2007.

Furthermore, at our meeting on March 5th we agreed that both parties have unfulfilled obligations under the Purchase Agreement that must be completed before escrow can close. Specifically, as of today's date, the City and Agency have not completed the final update of the appraisal of the City Parcel as allowed under by Section 2.3 [Final Purchase Price Adjustment] of the Purchase Agreement, and BAA has not deposited the full purchase price with the escrow agent. We have agreed that at this time, the parties contemplate being able to satisfy these obligations on or before April 13, 2007 and will attempt to so satisfy these obligations within this time. However, the parties recognize that numerous unforeseen circumstances beyond the control of the parties have impacted their ability to consummate this transaction and for this reason the parties agree to one future additional sixty (60) day extension if such is

[2] See sections 3.2 [Term of Escrow] and 8.4 [Timing of Closing] of the Purchase Agreement.

requested in writing by one of the parties no later than the close of business Monday, April 2, 2007.

The City is in the process of obtaining a final appraisal to satisfy its duties under the Purchase Agreement; upon receipt of the appraisal, BAA will receive a copy. When BAA receives the appraisal, BAA has agreed that it will immediately deposit the remaining amount of the purchase price and escrow can close.

Please signify your assent to this extension in writing. Should you have any further questions, please feel free to contact me at (951) 788-0100 or Randy Anstine or Jae Von Klug at (951) 922-3105. We look forward to continued cooperation among the parties and to working through these items in an expeditious manner.

Best regards,

BURKE, WILLIAMS & SORENSEN, LLP

Eric S. Vail

cc. Randy Anstine, City Manager
J. Peter Gyben, Esq

RIV #4837-4155-9041 v1

ATTACHMENT 42

3403 Tenth Street - Suite 300
Riverside, California 92501-3629
voice 951 788.0100 - fax 951 788 5785
www.bwslaw.com

BEAUMONT · BERKELEY · DESERT HOT SPRINGS · IRVINE · LOS ANGELES · ONTARIO · PALM SPRINGS · RIVERSIDE · SACRAMENTO · SAN BERNARDINO · SAN DIEGO · SAN LUIS OBISPO

BEAUMONT, WILLIAMS & SORENSEN, LLP

Our File No.
04710-0012
email@bwslaw.com

April 16, 2007

VIA FACSIMILE & U.S. MAIL

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Extension of Escrow for Banning Airport Associates Purchase

Dear Tom:

Thank you for continuing to work with us to move forward on and complete the Raceway and Business Park Projects currently underway near the Banning Municipal Airport. As you know, on or about December 13, 2005, Banning Airport Associates, LLC ("BAA") and the Banning Community Redevelopment Agency ("Agency") entered into a Master Agreement under which the Agency and BAA agreed to certain terms regarding site assembly services to facilitate the Raceway and Business Park Projects, and under which BAA agreed to enter into a purchase and sale agreement for a twenty (20) acre parcel of real property owned by the City of Banning adjacent to the Banning Municipal Airport ("City Parcel").[1]

As you will further recall, on March 5, 2007, BAA and the Agency agreed that the March 13, 2007 closing and performance date as to the City Parcel should be continued for thirty (30) days to April 13, 2007, and that Agency would consider the time period in Section 10.6 [Termination by City and Agency] extended to April 13, 2007. That agreement was memorialized in our letter of March 8, 2007, the terms of which, including but not limited to the factual summary and the operative extension, are incorporated herein by reference.

As of today's date, escrow remains open. However, and as previously agreed by the parties, both parties have unfulfilled obligations under the Purchase Agreement that must be completed before escrow can close. It is agreed that at this time, the parties contemplate being able to satisfy these obligations on or before **May 14, 2007**. The Agency is in the process of obtaining a final appraisal to satisfy its duties under the Purchase Agreement; upon receipt of the appraisal, BAA will receive a copy. When

[1] Pursuant to Section 11.14 [Administration] of the Master Agreement, the City Manager and the Agency Executive Director bear responsibility for administering the project but may designate a person to assist in the administration of the project. Randy Anstine, who currently serves as both Banning City Manager and Agency Executive Director, has directed me to issue this letter.

BAA receives the appraisal, BAA has agreed that it will immediately deposit the remaining amount of the purchase price and escrow can close.

This extension shall not become operative unless and until you signify your assent in writing. Therefore, please transmit a signed copy of this letter to me at your earliest convenience. Should you have any further questions, please feel free to contact me at (951) 788-0100 or Randy Anstine or Jae Von Klug at (951) 922-3105. We look forward to continued cooperation among the parties and to working through these items in an expeditious manner.

Best regards,

BURKE, WILLIAMS & SORENSEN, LLP

Eric S. Vail

The undersigned represents and warrants that he has the legal power, right, and actual authority to bind Banning Airport Associates, LLC, and by signing below agrees on behalf of Banning Airport Associates, LLC, to the terms and conditions set forth above as well as the terms and conditions of the March 8, 2007, letter incorporated herein by reference.

BANNING AIRPORT ASSOCIATES, LLC

By: Thomas Searles, Member

cc. Randy Anstine, City Manager
Jae Von Klug, Community Redevelopment Director
J. Peter Gyben, Esq

RJV #4820-5825-8661 v1

ATTACHMENT 43

File

City of Banning
Public Works Department

May 17, 007

VIA FACSIMILE & U.S. MAIL

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Remediation of Dust at BAA Site

Dear Tom:

Thank you for continuing to move forward on the Raceway and Business Park Projects currently underway near the Banning Municipal Airport. Unfortunately, it has come to my attention that the manner in which you are conducting grading operations on the property does not comply with your permit for that work. In undertaking grading of the site, Banning Airport Associates ("BAA") and your contractors are bound to comply with the terms of the grading permit issued by the City on September 22, 2005. That permit incorporated by reference the "Drag City Phase I Rough Grading Plans" provided to the City by Joseph E. Bonadiman & Associates, Inc., on February 13, 2004, and approved by City Engineer Kahono Oei that same day.

The Grading Plans require, in Note 21 of the Grading Notes, that "*Dust shall be controlled during grading by watering or other approved measures.*" This is an affirmative obligation on the part of BAA and your contractor, an obligation assumed by way of the "Contractors Statement" contained in the Grading Plans. It is an obligation that is repeatedly being unmet by BAA.

In February, I discussed the lack of watering and the dust that was being created on the site and blown into other parts of the City. In March, Assistant City Attorney Eric Vail contacted you to discuss the large amounts of dust being raised by the grading of the site, and the failure of your contractors to properly water the site. You committed to having two water trucks on site and to keeping the site watered so as to eliminate or substantially reduce dust from the site.

This week, City staff again received complaints from City residents about large amounts of dust arising from the work being done by your crews and blowing into other areas of the City. The City must now formally put you on notice that, unless the dust is abated, we will turn this matter over to our Code Enforcement staff. Code Enforcement

02325

99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3130 • Fax (951) 922-3141

453

consists of administrative, civil, and even criminal fines and proceedings. In addition, a failure to correct the problem could force the City to terminate the License Agreement under which the work is being done and potentially the entire working agreement between BAA and the City.

Should you have any further questions, please feel free to contact me, Randy Anstine or Jae Von Klug at (951) 922-3105 or Eric Vail at (951) 922-3105. We look forward to continued cooperation among the parties and to working through these items in an expeditious manner.

Sincerely,

Duane Burk

Director of Public Works

cc. Randy Anstine, City Manager
Jae Von Klug, Community Redevelopment Director
Eric Vail, Assitant City Attorney

RIV #4853-2885-2225 v1

ATTACHMENT 44

Project
FILE COPY

City of Banning

Office of the City Manager

June 26, 2007

VIA FACSIMILE & U.S. MAIL

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Default on Banning Airport Associates Purchase

Dear Mr. Searles:

We have been directed by the City Council of the City of Banning ("City") and the Board of Directors of the Banning Community Redevelopment Agency ("Agency") to send you this letter. The failure by Banning Airport Associates, LLC ("BAA") to timely make a deposit into escrow of the "Deposit" as defined by and required by Purchase and Sale Agreement entered into on July 25, 2006, by BAA and the City has caused BAA to be in **default** of that agreement.

On August 4, 2006, the parties opened escrow. Pursuant to Section 2.2.1 of the Purchase and Sale Agreement, BAA was required to deposit the full sum of Two Hundred Thirteen Thousand Seven Hundred Fifty Dollars and No Cents ($213,750.00) into escrow within fifteen (15) days of the opening of escrow. City records show that BAA has deposited the amount of Fifty Thousand Dollars and No Cents ($50,000), representing the "Base FAA Costs" as defined by the Purchase and Sale Agreement. BAA has not, however, deposited the remaining One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) required to meet the requirements of the Purchase and Sale Agreement. As of today, BAA has failed to fulfill its obligation to make the Deposit and the City has not waived the requirement that it do so.

Please consider this a formal notice that BAA is in **default** of the Purchase and Sale Agreement due to its failure to make the full Deposit. In light of your professional approach to the difficult land development and assemblage issues inherent in this project, the City desires to give you the opportunity to cure this default and to proceed with the overall project. We therefore request that you deposit the amount of One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents (**$163,750.00**) in escrow on or before **July 26, 2007**, a date that is the thirtieth day following the date of this letter.

02333

99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3101 • Fax (951) 922-3128

If BAA fails to timely deposit that amount, the City will either begin proceedings to terminate the Purchase and Sale Agreement or, at its sole election, will proceed to consummate the sale of the subject property subject to the following conditions:

1. Prior to the close of escrow, BAA provides to the City, evidence of funds, whether equity, debt, or otherwise, sufficient to undertake and complete both the purchase of the subject property and the construction of the raceway project.

2. BAA commences construction on the raceway project within ninety (90) days of the purchase of the subject property and completes such construction within two (2) years of the purchase.

3. The sale will be subject to the City's recorded right to repurchase the subject parcel for the purchase price less the Base FAA Costs (as defined by the Purchase and Sale Agreement) in the event BAA fails to commence construction on the raceway project within ninety (90) days of the purchase of the subject property or complete such construction within two (2) years of the purchase.

If BAA deposits the amount One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) in escrow on or before July 26, 2007, then the parties shall have thirty (30) days from the date of the deposit in which to close escrow. As you know, the close of escrow was originally to occur on December 13, 2006, but has been extended twice to May 14, 2007. At this time, the City is finalizing the second appraisal of the subject property required by Section 2.3 [Final Purchase Price Adjustment] of the Purchase and Sale Agreement and the final purchase price will be based on this appraisal, as previously agreed by the parties.

If BAA timely deposits the amount One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) in escrow but the parties fail to close escrow within thirty (30) days of the deposit, then the City reserves its right to either terminate the Purchase and Sale Agreement and take any and all actions available to it thereunder or to consummate the sale of the subject property subject to the three conditions outlined above.

On behalf of both the City and the Agency, we sincerely desire to complete this transaction with BAA and continue working toward the overall development of the raceway project and the associated projects. Should you have any further questions, please feel free to contact either of us at (951) 922-3105. We look forward to continued

cooperation among the parties and to working through these items in an expeditious manner.

Best regards,

Randy Anstine
City Manager

Jae Von Klug
Community Redevelopment Director

cc. Julie Hayward Biggs, City Attorney
Eric S. Vail, Assistant City Attorney
J. Peter Gyben, Esq

RIV #4849-9744-2049 v1

ATTACHMENT 45

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213 236.0600 - fax 213 236 2700
www.bwslaw.com

BURKE, WILLIAMS & SORENSEN, LLP

July 27, 2007

VIA FACSIMILE at (949)-798-0272 & U.S. MAIL

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 210
Newport Beach, CA 92660

Re: Default on Banning Airport Associates Purchase

Dear Mr. Searles:

Pursuant to the City of Banning's letter of June 26, 2007, you were put on notice that you are currently in default of the Purchase and Sale Agreement entered into on July 25, 2006, by Banning Airport Associates, LLC ("BAA") and the City, and that you had until July 26, 2007, to deposit the amount of One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents **($163,750.00)** into escrow. We have confirmed with the escrow agent that no such deposit was made, and so my office is forced to send you this letter. As represented in the June 26 letter, the City is now no longer willing to proceed with the transaction and will exercise its right to terminate the purchase and sale agreement and associated agreements unless you sign the acknowledgment below agreeing that the transaction will proceed subject to both original terms and conditions, as modified by previous letters, and the following three points:

1. Prior to the close of escrow pursuant to the Purchase and Sale Agreement, BAA will provide to the City evidence of funds, whether equity, debt, or otherwise, sufficient to undertake and complete both the purchase of the subject property and the construction of the raceway project.

2. BAA will commence construction on the raceway project within ninety (90) days of the purchase of the subject property and completes such construction within two (2) years of the purchase.

3. The sale will be subject to the City's recorded right to repurchase the subject parcel for the purchase price less the Base FAA Costs (as defined by the Purchase and Sale Agreement) in the event BAA fails to commence construction on the raceway project within ninety (90) days of the purchase of the subject property or complete such construction within two (2) years of the purchase.

If BAA agrees to these terms, please sign the acknowledgment below and transmit a copy of this letter agreement to me. Upon receipt of the acknowledgement by our office, we will contact the City to let them know of your assent and will begin drafting the appropriate amendments necessary to effectuate the new terms. You have until close of business on Tuesday, July 31, to return the acknowledgment. If you do so, then you are required to make the deposit immediately. Further, escrow will be required to be closed by August 25, 2007, consistent with the terms of the City's June 26 letter. If you fail to make the deposit or to close escrow by that date, the City will begin proceedings to terminate the Purchase and Sale Agreement.

My office does not have authorization change any other terms or to further extend the time for the deposit or the escrow, as such change would require additional consideration and action by the City Council. On behalf of both the City and the Agency, we sincerely desire to complete this transaction with BAA and continue working toward the overall development of the raceway project and the associated projects. Should you have any further questions, please feel free to contact either me at (951) 788-0100. .

Best regards,

Eric S. Vail
Assistant City Attorney

cc. Julie Hayward Biggs, City Attorney
Randy Anstine, City Manager
Jae Von Klug, Community Redevelopment Director

ATTACHMENT 46

First American Title Insurance Company National Commercial Services
5 First American Way Santa Ana, CA 92707

PR: NATLAC Ofc: 1 (1603)

DATE: 09/11/2007
RECEIPT NO.: 180760
FILE NO.: NCS-247349-SA1

RECEIPT FOR DEPOSIT

FUNDS IN THE AMOUNT OF: $163,500.00

WERE RECEIVED FROM: Salisbury Law GroupF.B.O. Buyer

CREDITED TO THE ACCOUNT OF: Buyer

TYPE OF DEPOSIT: Personal Check REPRESENTING: Initial Deposit

Comments:

Property Location: vacant land, Banning, CA

BY: Phuong Tran, 09/11/2007

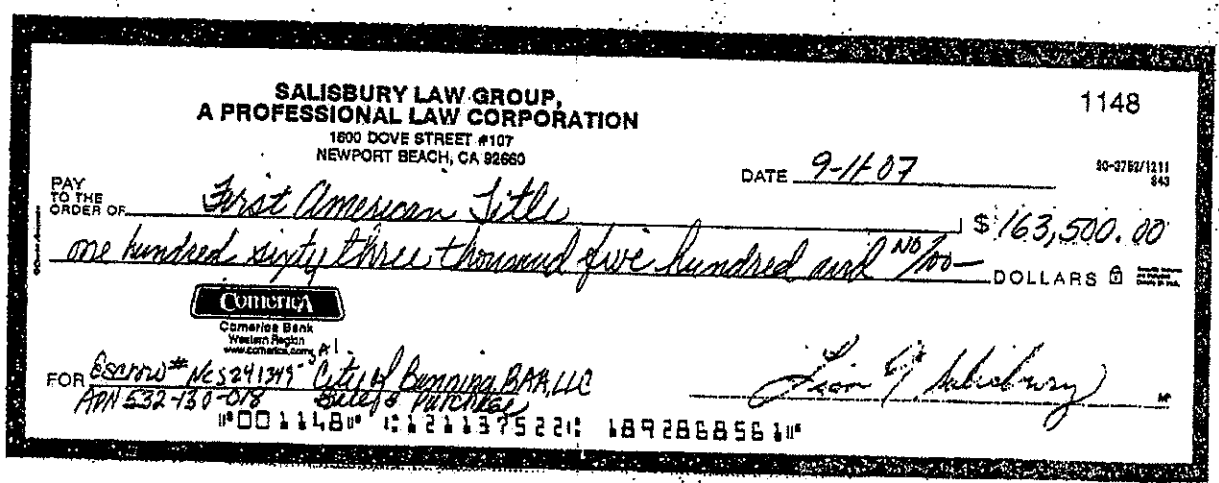
ESCROW OFFICER: Christine Sidney

"The validity of this receipt, for the deposit referenced,
is subject to clearance by the depository financial institution and credit to our account."

File Copy

02403

463



SALISBURY LAW GROUP,
A PROFESSIONAL LAW CORPORATION
1600 DOVE STREET #107
NEWPORT BEACH, CA 92660

1148

DATE 9-14-07

PAY TO THE ORDER OF First American Title

$ 163,500.00

one hundred sixty three thousand five hundred and NO/100 DOLLARS

Comerica
Comerica Bank
Western Region
www.comerica.com

FOR Escrow # NCS-241349 City of Banning BAR, LLC
APN 532-130-018 Sale of Vacant Land

Lisa G. Salisbury

⑈001148⑈ ⑆121137522⑆ 1892868561⑈

02404

1148

ATTACHMENT 47

BURKE, WILLIAMS & SORENSEN, LLP
3403 Tenth Street - Suite 300
Riverside, California 92501-3629
voice 951.788.0100 - fax 951.788.5785
www.bwslaw.com

Our File No:
04710-00015
jbiggs@bwslaw.com

September 14, 2007

VIA FACSIMILE TO (949) 798-0272 AND CERTIFIED MAIL, RETURN RECIEPT REQUESTED

Tom Searles
Searles Company, LLC
1600 Dove Street, Suite 450
Newport Beach, CA 92660

[redacted]

Re: Notice of Termination & Concellation of Escrow
Master Agreement & Purchase and Sale Agreement

Dear Mr. Searles:

As you know, my office serves as City Attorney for the City of Banning ("City") and as General Counsel for the Banning Community Redevelopment Agency ("Agency"). In that dual capacity, we have been authorized by the City Council and Agency Board to deliver this Notice of Termination and Cancellation of Escrow to BAA in accordance with that Master Agreement dated December 13, 2005 by and between the City, Agency and BAA ("Master Agreement") and that Purchase Agreement regarding sale of the City's 20 acre parcel to BAA dated July 25, 2006 by and between the City and BAA ("PSA").

YOU ARE HEREBY NOTIFIED that on Tuesday, September 11, 2007, the City Council, in a duly held closed session, unanimously elected to exercise the City's right to (1) terminate the Master Agreement with BAA (2) terminate the PSA with BAA and (3) to cancel Escrow Number NCS-247349-SA1(cs) with the First American Title Insurance Company established to consummate the sale of the City's 20 acre parcel to BAA ("Escrow"). The Council also authorized my office to take such actions as are necessary and appropriate to effectuate and implement the termination and cancellation. In this regard, we have prepared this letter to BAA and a letter to the Escrow Agent instructing the agent to cancel Escrow, apportion and charge the parties with their share of costs, and return to you or your representative any remaining balance to your deposit.

YOUR ARE FURTHER NOTIFIED that at their regularly scheduled Council and Board meetings for Tuesday, September 25, 2007 at 6:30 pm or as soon thereafter as may be heard, the City Council and Agency Board will consider resolutions of termination for the Master Agreement and PSA.

02405

466

On behalf of the City Council and Agency Board, please allow my office to express that that the Council and Board are aware of the gravity of this decision and that they approached the decision with great care and deliberation. The Council and Board are appreciative of your efforts to take over the stalled Drag City project and to move it forward as a viable project. Your professional approach and good faith negotiations encouraged the Council and Board to extend the lives of the Master Agreement and PSA far beyond what they would have otherwise been if other parties had been involved. In the end however, both BAA and its predecessor have been unable to perform.

We are aware that BAA deposited the sum of One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) into Escrow on September 11, 2007. Notwithstanding this deposit, BAA has still failed to comply with the terms of the Master Agreement and the Purchase and Sale Agreement, and the deposit does not cure the defaults of which BAA was previously notified.[1]

Specifically, in our letter of July 27, 2007, the City extended a final demand for BAA to cure its existing defaults of the Master Agreement and PSA. This final opportunity was presented based on your prior history of fair and open dealings with the City and its staff. The letter stated the City's position that BAA remained in default of the Master Agreement and PSA, that BAA had not timely cured these defaults, that the City was within its rights under the agreements to terminate them, but that it would agree to consummate the sale of its 20 acre parcel only if BAA agreed in writing to three (3) conditions relating to proof of financing, commencement of construction, and the City's right to repurchase the subject parcel should BAA not timely complete construction. In addition, the letter instructed BAA to "immediately" make the required deposit to close escrow no later than August 25, 2007. BAA did not agree in writing to the three conditions nor did it timely make the required deposit or close escrow.

The City and Agency will, at the next regular meeting of the City Council and Agency Board on September 25, 2007, formally terminate by resolution the Master Agreement pursuant to Sections 10 [Default] and Section 10.6 [Termination by City and Agency] of the Master Agreement, based on BAA's failure to meet the deadlines imposed therein as modified by the City's previous communications and mutual agreement of the parties. The Banning Community Redevelopment Agency will terminate by resolution the Master Agreement on the same date on the same grounds.

[1] These delays and the history of the transactions between the City and BAA are outlined in our letters of March 8, 2007, April 16, 2007, June 26, 2007, and July 27, 2007, and will not be repeated in full here. Please refer to those communications as necessary.

The City will also terminate by resolution the PSA on that date, due to BAA's failure to meet the requirements of Section 7.2 [Conditions to Seller's Obligation] of that agreement, said failure resulting in a material breach of the agreement and giving rise to the City's ability to so terminate. The City is not in default of either the Master Agreement or the PSA.

We will be sending today, under separate cover, a letter to the escrow agent canceling Escrow pursuant to the escrow instructions in the PSA and instructing the agent to return to you or your representative the entire deposit less your appropriate share of the fees and other charges incurred by the escrow agent. To the extent the escrow agent requires mutual consent of the parties to cancel the escrow, we hereby demand that you give that written consent immediately upon request.

We regret that this termination has become necessary, but intend to effectuate the City Council's and Agency Board's direction with all due speed. Should you have any further questions, please feel free to contact me at (951) 788-0100 or Randy Anstine or Jae Von Klug at (951) 922-3105.

Best regards,

BURKE, WILLIAMS & SORENSEN, LLP

Julie Hayward Biggs
City Attorney

cc. John R. Saunders, Member, Banning Airport Associates
Brenda Salas, Mayor, City of Banning
Bob Botts, Councilmember, City of Banning
Deborah Franklin, Councilmember, City of Banning
Barbara Hanna, Councilmember, City of Banning
John Machisic, Councilmember, City of Banning
Randy Anstine, City Manager
Jae Von Klug, Community Redevelopment Director
Eric Vail, Assistant City Attorney

RIV #4849-5499-0081 v1

ATTACHMENT 48

Chairman Botts opened the item for public comments and there were none.

Motion carried, all in favor.

1. A. CRA Resolution No. 2007-17, Formally Terminating that Master Agreement Entered into on or about December 13, 2005 with Banning Airport Associates, LLP
(Staff Report – Judith "Jae" Von Klug, Redevelopment Director)

Redevelopment Director said that the Redevelopment Agency has been working with developers on the construction of a drag racing facility just south of the airport for a number of years now. For the past two years they have been working with Banning Airport Associates primarily represented by Tom Searles. One of the requirements under that master agreement that was entered into with Banning Airport Associates was to make a deposit for the land that the City has intended to sell from the airport in the amount of approximately $163,750. The money was due by actually July 27, 2007 per some correspondence that the Agency sent Banning Airport Associates and it was not made. This item was discussed and the decision was made to bring forward the documents necessary to terminate the agreement.

Chairman Botts opened the item for public comments.

Chuck Braswell, 14655 So. Highland Home Rd. addressed the Agency Board stating that he has been hearing about the proposed drag strip which they prefer to call "Motor Sports Park" for about six and half years. One of the first events that he attended in the city of Banning was a ground breaking and there have been many stops and starts. He has never tried to develop a drag strip or a motor sports parks and it is a single purpose usage. He has developed many other single purpose usages and there is nothing more difficult to finance either with conventional finance companies or bringing in investors. They have seen a change of the lead persons in the park and now for a year and ten months BAA has been involved in this. A year and ten months is not very long. How long does it take to develop a police station? How long does it take to build a building by the City even when you have the ability to raise the money by leveraging and using other properties of the City? It is not easy when you are talking about single purpose usage. We are talking about financing something that is very difficult to finance in the first place but we are talking about financing something that can be an economic engine that can bring a life to this city such as this city has never seen before. The Executive Director from the Chamber and himself has asked Tom Searles to meet with them and they met with him and his attorney and one of the first things that was requested was that they bring in an economic study. There should be a study of the impact at 3 miles, at 5 miles and at 20 miles. That study will enlighten everyone. He talking to one of his neighbors who is one of the big names in racing and has won Indy twice with his automobiles said that you are dealing with lightening in a bottle. He said the impact that this could have on the city is immeasurable and you cannot believe it until you see some of the tracks around the nation and what has happened to those communities. Mr. Braswell said that a year and

ten months is not much time. He has developed projects when there was no conflict within the association of persons involved that took him two years to get a loan. Right now for the last year money has been tightening and he has housing project that have to sit because money is not available. With those projects there is no way of generating capital and income from selling the houses. We can sell the house but not generate enough income in the market today to justify the construction costs. With this motor sport park we have the opportunity of stimulating an industrial development around that park. This is something that we will never see if you take the action that has been proposed this evening. The second thing that they have asked for is that the biological studies on the 40 acres begin immediately. He said that he does biological studies every year at one location or another and it takes from 90 days to six months. They have also asked that the sound study be redone. The original study was on level ground. At the present we are not talking about level ground. We are talking about a project that is recessed 40 feet at the starting line. It is below ground so the sound characteristics will be different. In developing this project we are not just talking about putting in an 8 mile tract; you can do that on flat ground. But to put in the quarter mile tract which is what brings in the industry and the money you cannot do it out there on flat ground because of the slop of the land. As a consequence nothing could be done out there until the Scharff property was acquired. Nothing could be done until the FAA bought off on it. Tonight the Banning Chamber of Commerce Economic Development Corporation is requesting that the Agency Board take this into private session and permit some of them that are involved in this now and permit Mr. Searles from BAA to talk with the Agency Board about the progress that is being made in the progressing of this project. He said that he is committed to this and has committed himself to Tom Searles to help bring this into being and with his neighbor they can possible do it.

Andy Morocco resident of Beaumont and President of Drag City said that for the record they are not part of Banning Airport Associates. Their group known as "All American Racing" was the group that originally brought the drag city project to the City of Banning and succeeded in attaining project entitlements and approval with the City in 2002. Currently they are a third party that assigned its project entitlements to and signed an agreement with Banning Airport Associates to finance the complete construction for their drag strip. He wanted to make it clear to the City that he doesn't believe that the Agency Board is here to vote on whether or not the City wants a drag strip in their community like the staff report concluded or implies. That has already been decided by a past City Council and its citizens. He said that the Agency Board also must be in favor of a drag strip because they were out there at the last groundbreaking in July so he cannot image how the support would waiver so suddenly. The matter at hand tonight is whether or not the City wants to continue working with the Banning Airport Associates who have repeatedly failed to meet the necessary requirements of a binding master agreement to build a drag strip and a related industrial park. There are no arguments to these facts; they have failed. They have failed the City, the community and All American Racing. He said that they believed and trusted in BAA so much that on the night of December 13, 2005 they voluntarily signed over their entire project entitlements without any compensation to Banning Airport Associates. They believed that Drag City was on its way to being built at that time. But, in the end as they stand here this evening, it has only

come back full circle. He asked the City Attorney that with the termination of this master agreement would it be detrimental to any attempt to build a drag strip in Banning? What happens to the project entitlements and whom do they revert to?

City Attorney said that if the agreements are terminated the entitlements cease to exist. That does not mean that a new project or a new proponent couldn't come forward and put it together again. But this particular transaction as it has been structured would be non-existent any more.

Mr. Morocco said so then in essence if it were to be a termination tonight, then would the entitlements themselves going through traffic, sound and environmental and all that be necessary again. Or could it basically go with the actual ownership of the land for instance part of the project is approved on the City's 20 acres which would also carry entitlements as well, so therefore he would believe that the City would technically have those entitlements at the moment because they own the land.

City Attorney said that the project would be terminated and that means that those entitlements that have been granted that are subject to this agreement would not exist anymore. It would be subject to a renewed application and renewed review of the economics and all of the aspects of it really as it comes forward really as a new project. It would have to go through all the CEQA requirements.

Mr. Morocco said that tonight there is much to consider. He would make the following argument that the City Council reject the City staff's recommendation and do not terminate this agreement. First, wrapped inside this master agreement is the life blood and heart of a dream that is commonly referred to as their project entitlements. These entitlements tell you that you have proven and passed all the necessary and legal requirements as well as passed environmental, sounds, traffic and air studies. That they have submitted grading plans, paid City fees and paid for complete off site improvements, etc., etc. It took him and his father several years to acquire these project entitlements in which they spent countless hours and dollars with their investors, engineers, consultants and the FAA and the City itself. These entitlements screamed to the world that these were the first of its kind to be obtained by anyone and they said, "Drag City, the first professional drag strip to be built in over 40 years in Southern California." The second point that he would like the Board to consider is the fact that they are currently working directly with BAA's primary investor, Mr. John Saunders, to transfer their original project entitlements that they gave him back to them. Mr. Saunders is also the individual who actually owns the 40 acres that this project was slated for and co-signed the BAA Master Agreement with the City in 2005 with Mr. Searles. Obviously, Mr. Searles would not like them to succeed in this transaction because it would eliminate any financial gain or claim to the project that he may have. Hence, his last ditch effort to muddy the waters with the false claims to staff that CEQA noise and air quality issues needed to be in place so that he could secure construction financing. That is a total fabrication. These studies have already been completed and that is the reason their project entitlements currently exist in BAA's Master Agreement. That is why he is fighting for them. They have been through four different mayors, three city

managers and two major staff changes and two project brokers. Six months ago the City finally became successful in getting the FAA to release the necessary 20 acres needed for the drag strip. But what seems to be forgotten in the midst of this complicated project is that it took the City a total of five years and lots of taxpayer dollars to accomplish their effort. The project as a whole has been around for seven years so that means five of those years they have waited on the City. Sure there are many factors as to why the project hasn't been built thus far in all these years and Mr. Searles is another living testament to this. However, no matter what way you cut it, the City still needs to make good on their promise to release the 20 acres before any drag strip could be built and in reality that just happened less than six months ago after the burrowing owl was removed from the property. This project is not reliant on just one party, it is reliant on many including the City. We must work together to make it a reality. Once they are successful in attaining their project entitlements back from BAA they will be more willing to work directly with the City to provide what Mr. Searles has been unable to product thus far for the City and the reasons why he keeps making more excuses up day by day. Financing for the project and construction timeline is what they would be will to give and construction would begin before the end of this year and that is a promise they can make.

Mr. Ivan, lawyer for BAA, Mr. Searles and Mr. Saunders addressed the Agency Board he said that he was here to repeat Mr. Braswell's request that this be voted in to private session for a couple for a couple of different reasons. There seems to be a lot of deep feeling for the need for the race tract and the benefit that it will give to the city. He said that Mr. Searles and Mr. Saunders and the BAA people are committed to this work. The reason that he would propose that this be moved into private session, if nothing else, is to give each of the Boardmembers an opportunity to question himself, Mr. Searles and Mr. Saunders about the economic possibilities and everything else. In other words, if there are questions about financing he could answer some of those today and could answer more of those if he could put a presentation together to tell them exactly where it is coming from and how they are getting it and put together an economic feasibility plan for presentation. He is asking today that after all the time that has gone into this and the time that the City has spent in it and what you are not hearing from him is somehow a suggestion that the City has been anything except great. They have made progress and not exactly where they hoped they were but they did deposit the money for the 20 acres about the same day that the decision was made to terminate. He is suggesting that they have appreciated what the City has done for them so far and they are 95% of where they need to be for everybody to share in an opportunity which he thinks will benefit everyone in the city. They would like a chance for this not to be cut off now and would like the chance to be able to show their stuff to the Board in two weeks for four weeks or whenever possible. He would like it in private session to let them know what the Board wants and not take the action today to terminate.

Chairman Botts closed the item for comments.

There was Agency Board discussion on this item in regards to seeing if there is a plan as to how this project is going to happen and how the financing is going to come together, in regards to taking a look to see if some of the entitlements can be salvaged, having

something concrete, all pertinent information needs to be discussed, possibly something from an independent source of what this called economic engine might be, biological studies on the new acreage involved, global warming, and economic interest to the City. There was Agency Board discussion to continue to a closed session to have Banning Airport Associates give a presentation and then the Board/Council could decide from there to do a study or not do a study, etc.

Boardmember Machisic recommend that this item be removed from the agenda this evening and be rescheduled and agenized for the next Council meeting in closed session. Mayor Salas said that she would be out of town at the next meeting and would like it to be continued to October 23rd.

City Attorney said that the Agency Board is authorized to meet in closed session with regards to acquisition of disposition of land. That is the limitation for that particular exception to the open meetings law. While she believes there would be discussion of that issue we probably should agenize a closed session and open session on this item so that anything that doesn't fall in the closed session can be discussed in open session.

Motion Machisic/Franklin to continue to October 23rd with a closed session and an open session to gain further information pertinent to this project.

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

Motion carried, all in favor.

ITEMS FOR FUTURE AGENDAS

New Items:

Boardmember Franklin said that a lot of people signed the petitions for Trader Joe's and she would like to know about the process for Trader Joe's as well as the status of where we are with the grocery store because those two items keep coming up from the public and would like this at the next meeting. (Or maybe this should be on the Council agenda.)

CLOSED SESSION
Closed Session was moved until after the Council Meeting.

Agency Counsel stated that the Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator Randy Anstine on the price and terms of the acquisition of property for APNs: 541-146-003 and 541-150-023, 024; and price and terms of the acquisition of property for APNs: 541-141-002, 003.

Mayor Salas asked if there were any public comments on these items. There were none.

ATTACHMENT 49

RESOLUTION NO. 2007-113

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING FORMALLY TERMINATING THAT MASTER AGREEMENT ENTERED INTO ON OR ABOUT DECEMBER 13, 2005, WITH BANNING AIRPORT ASSOCIATES, LLP

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS. The City Council of the City of Banning ("City") finds as follows:

A. On or about December 13, 2005, the City, Banning Airport Associates, LLC ("BAA") and the Banning Community Redevelopment Agency ("Agency") entered into a Master Agreement under which the City, the Agency and BAA agreed to certain terms regarding site assembly services to facilitate a drag raceway and a business park project , and under which BAA agreed to enter into a purchase and sale agreement for a twenty (20) acre parcel of real property owned by the City adjacent to the Banning Municipal Airport.

B. On or about July 25, 2006, the City entered into a Purchase and Sale Agreement with BAA implementing Article 2 of the Master Agreement under which the City agreed to sell and BAA agreed to purchase the City's parcel. On August 4, 2006, the City and BAA opened escrow on the sale of the City Parcel. The Purchase and Sale Agreement provided that escrow was to be for a period of at least ninety (90) days and that escrow was to close within thirty (30) days of the Federal Aviation Administration's approval of the City's release proposal, execution of the release documents, and release of FAA encumbrances.

C. On August 4, 2006, the parties opened escrow. Pursuant to Section 2.2.1 of the Purchase and Sale Agreement, BAA was required to deposit the full sum of Two Hundred Thirteen Thousand Seven Hundred Fifty Dollars and No Cents ($213,750.00) into escrow within fifteen (15) days of the opening of escrow. City records show that BAA deposited directly with the City the amount of Fifty Thousand Dollars and No Cents ($50,000), representing the "Base FAA Costs" as defined by the Purchase and Sale Agreement. BAA did not timely deposit either in escrow or directly with the City the remaining One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) required to meet the requirements of the Purchase and Sale Agreement.

D. On or about November 30, 2006, the FAA approved the City's release proposal, executed the necessary release documents and authorized release of its encumbrances from the City Parcel. Thus, escrow should have closed on December 30, 2006..

E. On or about March 5, 2007, the City, the Agency, and BAA mutually agreed that:

(i) the time period for the FAA to process and approve and execute the release documents was longer than originally anticipated by the parties;

(ii) both parties acted in good faith and exercised their best efforts to apply for and obtain the FAA's approval of the release and to execute the documents and that any delay in time was not the result of any unreasonable, negligent or willful act of either party nor was any delay, if any, in obtaining the FAA approval any fault of either party;

(iii) the time periods for performance in both the Master Agreement and Purchase Agreement relating to the purchase and sell of the City Parcel should be extended for a period of ninety (90) days under Section 11.2 [Forced Delays; Extension of Times] of the Master Agreement;

(iv) that this would result in an anticipated closing date of March 13, 2007;

(v) that the March 13, 2007 closing and performance date should be and was therefore continued for thirty (30) days to April 13, 2007; and

(vi) that the City would consider the time period in Section 10.6 [Termination by City and Agency] extended to April 13, 2007:

F. On or about April 16, 2007, the City sent a letter to BAA reflecting the parties' agreement, as of April 13, 2007, to again extend the close of escrow to May 14, 2007, so that the parties could complete their obligations pursuant to the Master Agreement and Purchase Agreement.

G. The City thereafter completed its obligations pursuant to the Master Agreement and Purchase Agreement.

H. On or about June 26, 2007, BAA having not deposited the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) required to meet the requirements of the Purchase and Sale Agreement, the City sent notice to BAA that BAA was in default of the Purchase and Sale Agreement. The City gave BAA until July 26, 2007, to make the deposit and reserved the right to terminate the relationships between the parties or continue the agreement subject to certain conditions.

I. The City's previous communications to BAA made clear that should BAA fail to acquire the City's parcel pursuant to the terms of the Master Agreement as modified in writing by the parties, BAA would be in default of the Master Agreement.

J. BAA again failed to timely make the required deposit. On July 27, 2007, the City sent a notice of termination to BAA. The notice of termination required BAA to deposit the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and

No Cents ($163,750.00) immediately and to countersign the notice by July 31, 2007, thereby agreeing to three additional terms that would be added via amendment to the Master Agreement and Purchase Agreement to protect the City's position should BAA lack the financial ability to complete the drag strip project and commercial project.

K. BAA failed to countersign and return the notice, and did not make the required deposit until September 10, 2007.

L. BAA's delay in making the deposit and failure to countersign and return the notice of termination, thereby failing to agree to the new terms of the Master Agreement, has resulted in a failure by BAA to purchase the City parcel within three hundred sixty-five (365) days of the effective date of the Master Agreement, as amended in writing to allow additional time. Pursuant to Section 10.6.1 of the Master Agreement, the City has the authority to terminate the Master Agreement due to this failure by BAA.

SECTION 2. **Termination of Master Agreement.** The Master Agreement, entered into on or about December 13, 2005 by the City of Banning, the Banning Community Redevelopment Agency, and Banning Airport Associates, LLP, is hereby terminated pursuant to Section 10.6 [Termination by City and Agency] thereof, due to Banning Airport Associates' failure to complete the acquisition of the City's parcel as required by the terms of Section 10.6.1. The City Manager is authorized to issue any notices and execute any instruments necessary to complete the termination of the Master Agreement and to direct the City Attorney to do the same.

SECTION 3. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of October, 2007.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A Calderon, City Clerk
City of Banning

02477

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2007-113 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 23rd day of October, 2007and was duly adopted at a regular meeting of the City Council held on the 23rd day of October, 2007, by the following roll-call vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

NOES: None

ABSENT: None

ABSTAIN: None

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

ATTACHMENT 50

RESOLUTION NO. 2007-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING FORMALLY TERMINATING THAT PURCHASE AGREEMENT ENTERED INTO ON OR ABOUT JULY 25, 2006, WITH BANNING AIRPORT ASSOCIATES, LLP

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS. The City Council of the City of Banning ("City") finds as follows:

A. On or about December 13, 2005, the City, Banning Airport Associates, LLC ("BAA") and the Banning Community Redevelopment Agency ("Agency") entered into a Master Agreement under which the City, the Agency and BAA agreed to certain terms regarding site assembly services to facilitate a drag raceway and a business park project, and under which BAA agreed to enter into a purchase and sale agreement for a twenty (20) acre parcel of real property owned by the City adjacent to the Banning Municipal Airport.

B. On or about July 25, 2006, the City entered into a Purchase and Sale Agreement with BAA implementing Article 2 of the Master Agreement under which the City agreed to sell and BAA agreed to purchase the City's parcel. On August 4, 2006, the City and BAA opened escrow on the sale of the City Parcel. The Purchase and Sale Agreement provided that escrow was to be for a period of at least ninety (90) days and that escrow was to close within thirty (30) days of the Federal Aviation Administration's approval of the City's release proposal, execution of the release documents, and release of FAA encumbrances.

C. On August 4, 2006, the parties opened escrow. Pursuant to Section 2.2.1 of the Purchase and Sale Agreement, BAA was required to deposit the sum of Two Hundred Thirteen Thousand Seven Hundred Fifty Dollars and No Cents ($213,750.00) into escrow within fifteen (15) days of the opening of escrow.

D. City records show that BAA deposited directly with the City the amount of Fifty Thousand Dollars and No Cents ($50,000), representing the "Base FAA Costs" as defined by the Purchase and Sale Agreement. The City drew down these funds to pay the costs of obtaining from the FAA the release of FAA encumbrances on the City parcel.

E. BAA did not timely deposit either in escrow or directly with the City the remaining One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) required to meet the requirements of the Purchase and Sale Agreement.

F. On or about November 30, 2006, the FAA approved the City's release proposal, executed the necessary release documents and authorized release of its encumbrances from the City Parcel. Thus, escrow should have closed on December 30, 2006..

G. On or about March 5, 2007, the City, the Agency, and BAA mutually agreed that:

(i) the time period for the FAA to process and approve and execute the release documents was longer than originally anticipated by the parties;

(ii) both parties acted in good faith and exercised their best efforts to apply for and obtain the FAA's approval of the release and to execute the documents and that any delay in time was not the result of any unreasonable, negligent or willful act of either party nor was any delay, if any, in obtaining the FAA approval any fault of either party;

(iii) the time periods for performance in both the Master Agreement and Purchase Agreement relating to the purchase and sell of the City Parcel should be extended for a period of ninety (90) days under Section 11.2 [Forced Delays; Extension of Times] of the Master Agreement;

(iv) that this would result in an anticipated closing date of March 13, 2007;

(v) that the March 13, 2007 closing and performance date should be and was therefore continued for thirty (30) days to April 13, 2007; and

(vi) that the City would consider the time period in Section 10.6 [Termination by City and Agency] extended to April 13, 2007:

H. On or about April 16, 2007, the City sent a letter to BAA reflecting the parties' agreement, as of April 13, 2007, to again extend the close of escrow to May 14, 2007, so that the parties could complete their obligations pursuant to the Master Agreement and Purchase Agreement.

I. The City thereafter completed its obligations pursuant to the Master Agreement and Purchase Agreement.

J. On or about June 26, 2007, BAA having not deposited the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) required to meet the requirements of the Purchase and Sale Agreement, the City sent notice to BAA that BAA was in default of the Purchase and Sale Agreement. The City gave BAA until July 26, 2007, to make the deposit and reserved the right to terminate the relationships between the parties or continue the agreement subject to certain conditions.

K. BAA again failed to timely make the required deposit. On July 27, 2007, the City sent a notice of termination to BAA. The notice of termination required BAA to deposit the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and

No Cents ($163,750.00) immediately and to countersign the notice by July 31, 2007, thereby agreeing to three additional terms that would be added via amendment to the Master Agreement and Purchase Agreement to protect the City's position should BAA lack the financial ability to complete the drag strip project and commercial project.

L. BAA failed to countersign and return the notice, and did not make the required deposit until September 10, 2007.

M. BAA's delay in making the deposit and failure to countersign and return the notice of termination, thereby failing to agree to the new terms of the Master Agreement and Purchase Agreement, has resulted in a failure by BAA to meet the conditions of the City's obligation to sell the City parcel to BAA per Section 7.2 [Conditions to Seller's Obligation] of the Purchase Agreement.

N. City has no obligation to close escrow, and hereby treats BAA's failure to meet the terms of the Purchase Agreement as a default of the Purchase Agreement. Pursuant to Section 10 [Liquidated Damages] of the Purchase Agreement, the City has the right to retain all of the Base FAA Costs as well as 15% of the Base Fair Market Value as liquidated damages for BAA's default.

O. Pursuant to Section 8.6 [Prorations] of the Purchase Agreement, BAA and the City are each responsible for one-half (1/2) of the fees and costs charged by the escrow agent.

SECTION 2. **Termination of Purchase Agreement; Cancellation of Escrow.**

A. The Purchase Agreement, entered into on or about July 25, 2006 by the City of Banning and Banning Airport Associates, LLP, is hereby terminated due to Banning Airport Associates' failure to meet the terms of Section 7.2 [Conditions to Seller's Obligation] despite the City's attempts to assist Banning Airport Associates in complying, which failure on the part of Banning Airport Associates rises to the level of a default of the agreement.

B. The cancellation of the escrow on the City parcel, pursuant to a letter sent by the City Attorney in light of BAA's breach as described above, is hereby ratified.

C. The City hereby waives its right, as allowed by Section 10 [Liquidated Damages] of the Purchase Agreement, to any portion of the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) deposit.

D. The City hereby authorizes the escrow agent to return to BAA the One Hundred Sixty-Three Thousand Seven Hundred Fifty Dollars and No Cents ($163,750.00) deposit made on September 11, 2007, less BAA's share of the fees and costs payable by BAA pursuant to Section 8.6 [Prorations] of the Purchase Agreement. The Fifty Thousand Dollars and No Cents ($50,000.00) deposit of Base FAA Costs, having been deposited directly with the City and previously used to obtain the FAA release, shall not be subject to return.

SECTION 3. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of October, 2007.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2007-115 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 23rd day of October, 2007and was duly adopted at a regular meeting of the City Council held on the 23rd day of October, 2007, by the following roll-call vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

NOES: None

ABSENT: None

ABSTAIN: None

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

ATTACHMENT 51

3403 Tenth Street - Suite 300
Riverside, California 92501-3659
voice 951 788 0100 - fax 951 788.5785
www.bwslaw.com

BURKE WILLIAMS & SORENSEN, LLP

November 1, 2007

VIA FACSIMILE & U.S. MAIL

Andrew Marocco
Banning Airport Associates
P.O. Box 197
Banning, CA 92220

*Re: **Termination of Banning Airport Associates Purchase and Sale Agreement and Master Agreement and Potential Expiration of Remaining Entitlements***

Dear Mr. Marocco:

As you know, our office serves as City Attorney for the City of Banning ("City") and as General Counsel for the Banning Community Redevelopment Agency ("Agency"). In that dual capacity, we have been authorized by the City Council and Agency Board to deliver this letter notifying Banning Airport Associates ("BAA") of the City's and Agency's termination of that Master Agreement dated December 13, 2005 by and between the City, Agency and BAA ("Master Agreement") and that Purchase Agreement regarding sale of the City's 20 acre parcel ("City Parcel") to BAA dated July 25, 2006 by and between the City and BAA ("PSA").

YOU ARE HEREBY NOTIFIED that on Tuesday, October 23, 2007, in a public joint open session of the City Council and Agency Board, at which you were present, the City officially adopted Resolutions No. 2007-113 and 2007-115, formally terminating the Master Agreement and PSA, respectively due to the breach of the terms of those Agreements by BAA and the Agency adopted Resolution No. 2007-17 formally terminating the Master Agreement. We previously sent an official Notice of Termination and Cancellation of Escrow to Thomas Searles of BAA dated September 14, 2007 following action taken by the City Council and Agency Board on September 11, 2007. This letter serves as notification that the formal termination has been completed.

Causes for Termination are as follows:

1. Failure by BAA to timely make a deposit into escrow of the "Deposit" in violation of PSA section 2.2 [Deposits] and BAA's resulting failure to acquire title to the City Parcel pursuant to Master Agreement section 10.6.1. This issue has been fully addressed in previous communications and was cited in the resolutions terminating the Master Agreement and PSA, and will not be further addressed here.

While the City and Agency considered this default to be the most egregious, it itself necessitating termination of the PSA and Master Agreement, additional potential grounds for default of both agreements did exist as well.

2. Assignment of BAA's rights and obligations in violation of the assignment provisions in Master Agreement sections 9.1 [Assignment] and 10.6.3 and PSA Section 16 [Assignment].

3. Failure to execute a license agreement / failure to meet grading permit requirements in violation of Master Agreement sections 2.3 [License Agreement] and 3.2.3 [Reasonable Progress on Raceway Project] and PSA section 6 [License Agreement].

4. Failure to file a specific plan application in violation of Master Agreement section 4.2.2 [Business Park Specific Plan].

5. Insolvency in violation of Master Agreement section10.6.4.

At the joint City Council and Agency Board meeting on October 23, 2007, Andy Marocco, purporting to speak on behalf of BAA, claimed that completion of a burrowing owl survey on the City Parcel automatically extended timeframes and deadline dates under the Master Agreement and PSA and thereby provided BAA with additional time to complete the purchase of the City Parcel such that the Council and Agency Board could not act to terminate the Master Agreement and PSA. This position is meritless. First, under Section 5.3 [Absolute Termination Right] of the PSA, BAA was long ago deemed to have accepted the physical condition of the City Parcel and BAA cannot now assert physical condition as a reason not to have proceeded. Second, the burrowing owl issue is unrelated to the making of the deposit by BAA. Third, the extensions of time for the consummation of the purchase granted to BAA by the City and Agency under their letters of March 8, 2007 and April 16, 2007 took this issue into full consideration and provided BAA reasonable time to close escrow after resolution of the issue. Finally, BAA cannot avail itself of Master Agreement section 11.2 [Forced Delays; Extension of Time] because it did not comply with the provisions of that section.

On behalf of both the City and the Agency, we convey regret at the need to terminate the Master Agreement and PSA. The City and Agency had great hopes for the development of the raceway project and the associated commercial projects. BAA's inability to move the project forward was incurable, however, and termination became necessary. Should you have any further questions about the termination of the Master Agreement and PSA, please feel free to contact me or Eric Vail at (951) 788-0100.

Best regards,

Julie Hayward Biggs
City Attorney and
Agency General Counsel

cc. Randy Anstine, City Manager
Jae Von Klug, Community Redevelopment Director
Eric S. Vail, Assistant City Attorney
J. Peter Gyben, Esq

RIV #4816-9215-6674 v2

ATTACHMENT 52

CITY OF BANNING

P.O. BOX 998
BANNING, CA 92220
DEPT. PHONE: (951) 922-3125
FAX (951) 922-3128

DEPARTMENT OF
PLANNING

November 27, 2007

Mr. Andy Marocco
Banning Airport Associates
P.O. Box 197
Banning, CA 92220

Via E-Mail and U.S. Post

Re: Unclassified Use Permit No. 01-047501

Dear Mr. Marocco:

This letter shall serve as a formal response to your letter of November 2, 2007, in which you raised the issue of the continuing validity of the above-referenced Unclassified Use Permit ("UUP") and of Development Agreement No. 03-1504 ("DA").

Pursuant to Condition of Approval No. 1 (of the Planning Department Conditions of Approval) for the UUP, the UUP was intended to be active for a period of one (1) year, subject to extensions. This Condition was consistent with Section 9116.8 of the Code of the City of Banning, California, 1965, which required use permits to be exercised within a year of being granted or be deemed null and void. Pursuant to Section 9116.10 of the Code, three (3) extensions of no more than twelve (12) months each could be granted for any outstanding permit.

The UUP was granted on or about July 3, 2001. Banning Airport Associates or its predecessors-in-interest sought and received extensions for the UUP, the last extension coming on August 9, 2005 and extending the effective life of the UUP to and including August 14, 2006. That was the final allowable extension for the UUP, as recited in my letter of August 9, 2005, to Thomas W. Searles of BAA. The UUP therefore expired on August 14, 2006 pursuant to Section 9116.8 and is now null and void.

The DA, pursuant to Section 4.2 [Duration of Agreement] thereof, has a term that "shall extend for a period concurrent with Unclassified Use Permit (UUP) 00-47501 [sic]... unless the Agreement is earlier terminated or its term modified." Thus, the DA expired concurrently with the expiration of the UUP and is also now null and void.

Should you have any questions, please feel free to contact me at (951) 922-3125 or Assistant City Attorney Eric Vail at (951) 788-0100.

Sincerely,

Oscar W. Orci,
Community Development Director
City of Banning

cc: Mayor and City Council members
Randy Anstine, City Manager

ATTACHMENT 53

CITY OF BANNING

P.O. BOX 998
BANNING, CA 92220
DEPT. PHONE: (951) 922-3125
FAX (951) 922-3128

DEPARTMENT OF
PLANNING

December 10, 2007

Certified Mail 7002 3150 0004 1498 9252
Via E-Mail and U.S. Post

Mr. Andy Marocco
Banning Airport Associates
P.O. Box 197
Banning, CA 92220

Re: Unclassified Use Permit No. 01-047501

The purpose of this letter is to follow-up on our letter of November 27,2007, in which we informed you that the above-referenced Unclassified Use Permit ("UUP") and Development Agreement No. 03-1504 ("DA") have both expired, pursuant to their terms and to the Municipal Code of the City of Banning, California, 1965, on August 14, 2006.

While the City of Banning considers the UUP to be expired, null and void pursuant to Condition of Approval No. 1 (of the Planning Department Conditions of Approval) for the UUP and Section 9116.8 of the Municipal Code, we have set this matter for a revocation hearing pursuant to Condition of Approval No. 1 and Section 9116.11 of the Municipal Code in order to afford BAA with any due process rights to which it is entitled under the Code or the laws of the State of California or the United States of America.

This revocation hearing will take place at a special meeting of the Planning Commission of the City of Banning to be held at 6:30 p.m. on January 10, 2008, at the City Council Chambers in the Banning City Hall located at 99 East Ramsey Street in the City of Banning, County of Riverside, State of California.

At the revocation hearing, the City will present evidence as to the expiration of the UUP and will request that the Planning Commission formally revoke the UUP, which revocation will have the effect of also terminating the DA. Upon completion of the City's presentation, you will have the opportunity to submit evidence and arguments on your own behalf. The public will be notified of the hearing as well, and they will be invited to comment on the matter.

Should you have any questions, please feel free to contact me at (951) 922-3125 or Assistant City Attorney Eric Vail at 9951) 788-0100.

Sincerely,

Oscar W. Orci,
Community Development Director
City of Banning

cc: Mayor and City Council members
Randy Anstine, City Manager
Eric S. Vail Esq., Assistant City Attorney

ATTACHMENT 54

DEPARTMENT OF
PLANNING
(951) 922-3125

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (951) 922-3128

January 7, 2008

Mr. Andy Marocco
Drag City / All American Racing
P.O. Box 197
Banning CA 92220

RE: Unclassified Use Permit #01-47501

Mr. Marocco:

This letter is to follow up our phone conversation regarding the Planning Commission hearing on the Drag City project scheduled for Thursday, January 10, 2008. As we discussed, the notices of the public hearing were not mailed to the surrounding property owners 10 days in advance of the hearing as required by law. Therefore, since there was an error in providing proper notice of the public hearing, the City is unable to proceed with the hearing before the Planning Commission on January 10, 2008. My staff and I are in the process of rescheduling this public hearing and will contact you as soon as we are able to arrange for a new date and time.

I apologize for any inconvenience this may have caused.

Oscar W. Orci
Community Development Director

Cc: Randy Anstine, City Manager
Julie Biggs, City Attorney
Eric Vail, Assistant City Attorney

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

02645

496

ATTACHMENT 55

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (951) 922-3128

STAGECOACH TOWN USA
ESTABLISHED 1913
COMMUNITY DEVELOPMENT
DEPARTMENT
(951) 922-3125

January 10, 2008

Mr. Andy Marocco
Drag City / All American Racing
P.O. Box 197
Banning CA 92220

RE: Unclassified Use Permit #01-47501

Mr. Marocco:

This letter is to inform you that a new date has been scheduled for a public hearing regarding the above mentioned Unclassified Use Permit. The new date is Monday, January 28, 2008 at 6:30 p.m. in the City Council Chambers of Banning City Hall (99 E. Ramsey Street, Banning Ca 92220). This item will be advertised as a legal notice in the newspaper and property owners within 300 feet of the subject site will be mailed a notice as well.

I apologize for any inconvenience this may have caused.

Sincerely,

Oscar W. Orci
Community Development Director

Cc: Randy Anstine, City Manager
Julie Biggs, City Attorney
Eric Vail, Assistant City Attorney

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

02647

498

ATTACHMENT 56

UUP #01-47501
REVOCATION
DRAG CITY

RESOLUTION
NO. 2008-05

EXHIBIT "1"

20

02671

500

RESOLUTION NO. 2008-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA REVOKING UNCLASSIFIED USE PERMIT 01-47501.

WHEREAS, the purpose of this Resolution is to formally revoke the expired Unclassified Use Permit 01-47501 (the "Permit") which was granted by the Planning Commission on July 3, 2001 to All-American Racing ("AAR"), as more explicitly detailed below; and

WHEREAS, the purpose of the Permit was to allow a project known as "Drag City" and consisting of a professional drag racing facility and associated improvements on Assessors Parcel Numbers 532-130-008 and 532-130-018; and

WHEREAS, the Planning Commission has the authority per Section 9116.11 of the version of the Banning Municipal Code in effect at the time the expired Permit was granted and per Section 17.52.100 of the current version of the Municipal Code to revoke conditional use permits (including unclassified use permits); and

WHEREAS, in accordance with Government Code § 65854, on January 18, 2008, the City gave public notice by advertising in the Record Gazette Newspaper and by mailing to all property owners within 300 feet of the subject parcels of the holding of a public hearing at which the revocation of the Permit would be considered by the Planning Commission; and

WHEREAS, the Community Development Director has reviewed the revocation's potential effects on the environment and has recommended that the revocation is exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Sections 15270 and 15321; and

WHEREAS, on January 28, 2008, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the revocation of the Permit.

NOW THEREFORE, the Planning Commission does resolve, determine, find, and order, and recommend as follows:

Section 1: Environmental Findings under CEQA

1. The Planning Commission, in light of the whole record before it, including but not limited to the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, concludes that the revocation of the Permit is exempt from CEQA under CEQA Guidelines Sections 15270 and 15321 in that the revocation meets the criteria for application of a Class 21 Categorical Exemption and a Section 15270 Statutory Exemption.

Section 2: Findings of Fact.

The Planning Commission, in light of the whole record before it, including but not limited to the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby makes the following findings of fact:

1. On July 3, 2001, the Planning Commission conditionally approved the Permit.

2. The Permit holder, Banning Airport Associates, LLP ("BAA"), is the successor-in-interest to All-American Racing, to whom the Permit was originally granted.

3. The Permit contained the following two conditions, which were, respectively, Planning Condition 1 and Planning Condition 2:

> *1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.*
>
> *If no time frame is specified, the approval shall be for a period of one (1) year from the date of the Planning Commission's approval (expiration date to be July 3, 2002). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.*
>
> *2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code. [sic]*

4. The Permit is governed by the version of the Municipal Code in existence at the time the Permit was granted in 2001. Subsequent changes to the Municipal Code may not be used to detract from the rights granted BAA under the Permit. The Planning Commission will therefore apply the version of the Municipal Code in existence at the time the Permit was granted to the facts of this case.

5. In accordance with Section 9112 of the Code that was in effect at the time of the

Permit, unclassified use permits were to be processed in the manner specified for conditional use permits.

6. Section 9116.8 of that version of the Municipal Code addressed the time period for the commencement of construction or use under a permit and read:

> A Conditional Use Permit[1] shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.
>
> If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.

7. Section 9116.10 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> *The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. In no instance shall more than three extensions be granted.... The Community Development Director shall advise the Planning Commission of his/her approvals hereunder by report at the Planning Commission meeting immediately following such date of approval. Any approval granted hereunder shall become final five (5) days following date of such Planning Commission meeting unless modified or rejected by the Planning Commission.*

8. Section 9116.11 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> *The commission may revoke or modify a Conditional Use Permit as hereinafter provided. Prior to any modification or revocation of a conditional use permit the Planning Commission shall first hold a public hearing on the matter....*

---

[1] The City and the developer have, from the time the Permit was sought treated the Permit as a CUP for purposes of processing and Code Compliance.

A revocable Conditional Use Permit may be revoked or modified and an irrevocable Conditional Use Permit may be modified by the commission if any one (1) of the following findings can be made:

(a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;
(b) That the Conditional Use Permit was obtained by misrepresentation or fraud;
(c) That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months;
(d) That one or more of the conditions of the Conditional Use Permit have not been met;
(e) That the use is in violation of any statute, ordinance, law, or regulation; or
(f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance.

9. On August 1, 2002, the Planning Commission adopted a resolution supporting the determination of staff that the Permit should be extended for one year, thus extending the life of the Permit for a second year.

10. On November 26, 2002, the Redevelopment Agency of the City of Banning ("Agency") and AAR entered into a Reimbursement Agreement under which AAR would construct certain improvements to Barbour Street and the Agency would fund the construction.

11. On July 23, 2003, the City through Resolution No. 2003-34 granted to AAR a grading permit consistent with the grading required by the Permit. AAR performed some preliminary clearing and grubbing of the site, but did not perform any grading pursuant to the grading permit. The clearing and grubbing that was done consisted solely of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks.

12. On August 5, 2003, the City extended the Permit for an additional year and made some amendments to the conditions of the Permit. This was the second extension of the Permit and it stated that the Permit was due to expire on August 14, 2004.

13. On October 28, 2003, the City Council approved Ordinance No. 1308, establishing a development agreement that served to govern the development of the Drag City. Pursuant to Section 4.2 of the Development Agreement, its term would expire at the same time the Permit expired.

14. In early 2004 and concluding in May 2004, Barbour Street was extended from Hathaway east to the entrance of the site. This work was performed entirely off-site, and included the construction of the street, pipes under the street, and curbs and gutters.

While this work complied with Engineering Condition B.1 of the Permit, it was also done to satisfy AAR's obligations to the Agency under the Reimbursement Agreement.

15. Subsequent to the improvement of Barbour Street, on June 25, 2004, the Agency and AAR entered into a Cost Support Agreement under which the Agency committed additional funds to fully cover the costs of the Barbour Street improvements.

16. On July 30, 2004, a third extension (mistakenly identified as the second extension) was granted based on the off-site improvements and AAR's assertion that the preparation of building plans was under way. Based on this third extension, the Permit was due to expire on or about August 14, 2005.

17. In the Spring of 2005, AAR assigned all of its interest in the project and all related approvals -- including the Permit -- to Banning Airport Associates, LLC, ("BAA").

18. On August 9, 2005, the City Council and Redevelopment Agency approved an assignment and assumption agreement between AAR and BAA under which BAA took over the project and at the same time, AAR released all rights, obligations, and claims it had against the City.

19. On August 14, 2005, the City granted to BAA a fourth and final extension (mistakenly called the third and final extension) of the then-expired Permit. Based on this fourth extension, the Permit was due to expire on or about August 14, 2006.

20. On September 22, 2005, a second grading permit was issued for the site, this time to BAA, which grading permit was for work that went beyond the scope of the Permit and anticipated modification to the Permit or the issuance of a new use permit.

21. Upon receipt of this grading permit, BAA commenced clearing and grubbing pursuant to the grading permit issued in September 2005. This consisted of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks. The removed debris was left in large piles on the site. The site was left generally flat, but was not graded so as to be ready for development.

22. In August 2006, BAA and the Banning Chamber of Commerce held a groundbreaking at the site of the Drag City project to celebrate the commencement of construction on the Drag City project. The City was not involved in the planning of the groundbreaking but did provide a public address system and seating for the event.

23. Prior to the groundbreaking ceremony, BAA brought grading equipment onto the site. Some minor grading of the site had been performed for the ceremony, but the site remained substantially ungraded.

24. Subsequent to the groundbreaking, BAA performed some dust remediation work on the site. BAA at no time performed substantial grading of the site, and the site was not maintained in cleared and grubbed state.

25. In March 2007, BAA ceased performing dust remediation work on the site and has performed no further work on the site, although some grading equipment remains on the site.

Section 3: **Determinations and Conclusions.**

The Planning Commission, in light of the whole record before it, including but not limited to the foregoing findings of fact, the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby makes the following determinations and conclusions:

1. No further extensions of the expired Permit may be made, pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the expired Permit was granted. That provision provided that only three (3) extensions were allowed by law, and the Permit has already been extended four (4) times.

2. Expiration of the Permit served to extinguish on its own terms the development agreement adopted pursuant to Ordinance No. 1308, because the Permit has terminated and is of no further force.

3. Issuance of a grading permit and the moving of equipment onto the site was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. Without commencement of actual grading, mere preparatory actions do not constitute evidence of use or construction.

4. The clearing and grubbing work performed pursuant to the July 23, 2003 grading permit was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was mere site preparation and did not constitute the "commencement of construction."

5. The clearing and grubbing work performed pursuant to the September 22, 2005 grading permit was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was mere site preparation and did not constitute the "commencement of construction."

6. The extension of Barbour Street was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was done completely off-site and was paid for with Redevelopment Agency funds. The actions of AAR in seeking a permit extension and the City in granting that extension

subsequent to completion of the Barbour Street improvements serve as evidence that at the time the improvements were made the parties knew that they were insufficient to validate the permit.

7. In addition to the extension of Barbour Street and the clearing and grubbing work being insufficient to validate the Permit pursuant to Section 9116.8, BAA ceased work in March 2007 and abandoned the project as of that date.

8. Both BAA's failure to commence construction or other appropriate evidence of use and BAA's cessation or abandonment for more than six months of that limited work that it actually undertook are grounds to revoke the Permit and in doing so to affirm the fact that the Permit has expired.

Section 4: **Revocation of Unclassified Use Permit 01-47501.**

The Planning Commission, in light of the whole record before it, including but not limited to the foregoing findings of fact, determinations and conclusions, the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby revokes Unclassified Use Permit 01-47501 and by so doing terminates any right or interest claimed by BAA or any of its principals, subsidiaries, agents, successors-in-interest, or anyone claiming any assignment of interest under the Permit.

PASSED, APPROVED AND ADOPTED this 28th day of January, 2008.

Betty DeSantis, Chairperson
Banning Planning Commission

APPROVED AS TO FORM AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

ATTACHMENT 57

STAFF REPORT
PLANNING COMMISSION

DATE:	JANUARY 28, 2008
CASE NO'S:	UNCLASSIFIED USE PERMIT #01-47501
REQUESTS:	EXPIRATION/REVOCATION OF UNCLASSIFIED USE PERMIT #01-47501 FOR A PROFESSIONAL DRAG RACING FACILITY ON APN NOS. 532-130-008 AND 532-130-018
APPLICANT:	CITY OF BANNING
SURROUNDING USES/ZONES:	NORTH: BANNING AIRPORT/PUBLIC FACILITIES WEST: INDUSTRIAL USE (DEUTSCH)/INDUSTRIAL SOUTH: VACANT & WATER WELL/INDUSTRIAL EAST: SINGLE FAMILY STRUCTURE/INDUSTRIAL
ENVIRONMENTAL CONSIDERATION:	THE CITY ATTORNEY AND COMMUNITY DEVELOPMENT DIRECTOR HAVE DETERMINED THAT REVOCATION IS CATEGORICALLY EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AS STIPULATED UNDER SECTION 15321 AND SECTION 15270 OF THE GUIDELINES FOR THE IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

BACKGROUND:

Staff and the City Attorney's office have concluded that the Unclassified Use Permit ("Permit") has already expired and revocation by the Planning Commission simply serves to confirm this conclusion and finally and fully terminate any interest or right granted by the Permit. Because the language of certain Permit conditions is somewhat ambiguous, formal revocation by the Planning Commission serves to meet the theoretical requirement that there be a revocation hearing even after expiration, and so the Commission is asked to hear the matter and formally revoke the Permit.

The revocation is being sought because the developer failed to perform construction or other appropriate evidence of use pursuant to the Permit. Even though the developer performed some clearing and grubbing, that work was insufficient to support continued validity of the Permit. Revocation of the Permit will also recognize and confirm termination of the Development Agreement entered into for the same parcels, as the Development Agreement states that it will expire at the same time as the Permit.

Revocation does not preclude use of the site for a drag racing facility or other use. It merely reiterates that the Permit, issued in 2001, is of no further force and effect and requires any party wishing to establish a drag racing facility or other use on the site to do so by applying for appropriate permits and approvals; complying with current environmental review standards; and abiding by the City's General Plan provisions.

CHRONOLOGY OF EVENTS:

On July 3, 2001, the Planning Commission approved Permit 01-47501, with Conditions of Approval, to allow a professional drag racing facility and associated improvements on Assessors Parcel Numbers 532-130-008 and 532-130-018. The project to be built pursuant to the Permit was known as "Drag City" and was granted to All-American Racing ("AAR").[1]

Drag City, as anticipated by the Permit, consisted of an at-grade drag strip running west-to-east. At its westernmost portion, the strip was to be bordered on the north and south by grandstands, concession stands, and restrooms creating a racing stadium. The strip was to run across two parcels of land,[2] with a return roadway to the north of the strip that served to get cars back to the garages that were to be built north of the stadium. There was to be parking to the south of the stadium. Finally, the Permit required Barbour Street, which at that time terminated at the entrance to the Municipal Airport, to be extended to the property on which Drag City was to be built. The development of Drag City was to take place in three stages, with the at-grade drag strip, southern portion of the stadium, and approximately 1300 parking spaces to be built in the first phase. Additional grandstands and more parking would be built in the second phase. The final phase included completion of overflow parking and development of an additional pit/garage area.

The Permit contains two conditions of approval that are relevant at this time, Planning Condition 1 and Planning Condition 2.[3] Condition 1 reads:

> *"All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.*
>
> *If no time frame is specified, the approval shall be for a period of one (1) year from the date of the Planning Commission's approval (expiration date to be July 2, 2002). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent*

[1] All-American Racing later assigned its interest to Banning Airport Associates, as described below.
[2] The old Photosonics parcel purchased by the developer and the City parcel that ultimately was not transferred to BAA due to BAA's inability to finance the purchase and the project.
[3] There are actually two conditions titled "Planning Condition 2." The first of the two is cited here and implicated in the matter before the Commission.

may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void."

Condition 2 reads in pertinent part:

"Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit...."

On August 1, 2002, the Planning Commission adopted a resolution supporting the determination of staff that the Permit should be extended for one year. In accordance with Section 9112 of the Code that was in effect at the time of the Permit, UUP's were to be processed in the manner specified for conditional use permits. Therefore, pursuant to Section 9116.10 of the Municipal Code in effect at the time the Permit was approved, three such extensions were permissible, each good for one year. Specifically, that section stated:

"The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. . In no instance shall more than three extensions be granted...."

On July 23, 2003, the City adopted Resolution No. 2003-34, which granted a grading permit to AAR, which complied with the terms of the Permit. AAR performed some preliminary clearing and grubbing of the site, but did not perform any grading pursuant to the grading permit.

On August 5, 2003, the City extended the Permit for an additional year and made some amendments to the conditions of the Permit. This was the second extension of the Permit and meant that the Permit was due to expire on August 14, 2004.

On October 28, 2003, the City Council approved Ordinance No. 1308, establishing a Development Agreement that served to govern the development of the drag racing facility and other improvements. Pursuant to Section 4.2 of the Development Agreement, its term would expire at the same time the Permit expired, if at all.

In early 2004 and concluding in May 2004, Barbour Street was extended from Hathaway east to the entrance of the site. This work was performed entirely off-site, and included the construction of the street, pipes under the street, and curbs and gutters. This was in compliance with one of the engineering conditions for the Permit. This also was done with Redevelopment Agency funds. While AAR oversaw the construction of the road and associated improvements, the funding for the construction came from the Agency.

In May 2004, AAR sought a third extension of the Permit. On July 30, 2004, this extension was granted based on the off-site improvements and AAR's assertion that the preparation of building plans was under way. In the letter granting the extension, the

then-Interim Community Development Director wrongly informed AAR that this was the second extension of the Permit. While the Barbour Street improvements had been completed, that work was not construction or other appropriate evidence of use sufficient to validate the Permit. Had it been so, the City would not have had to grant an additional extension.

On January 21, 2005, the City was informed by Searles Company, LLC, that it was taking over the Drag City project. At approximately the same time, AAR was in the process of assigning all of its interest in the project and all related approvals -- including the Permit -- to Banning Airport Associates, LLC, ("BAA"), an entity formed by Searles Company to develop the project.

On August 9, 2005, the City Council and Redevelopment Agency approved an assignment and assumption agreement between AAR and BAA under which BAA took over the project. At the same time, AAR released all rights, obligations, and claims it had against the City.

On August 14, 2005, the City granted to BAA what at the time was called the third and final extension of the Permit. The Permit was due to expire on August 14, 2006, and pursuant to Section 9116.10, no further extensions were allowable by law.[4]

On September 22, 2005, a second grading permit was issued for the site, this time to BAA. This grading permit was for work that went beyond the scope of the Permit. First, the Permit anticipated grading on two parcels; this grading permit allowed grading on those two parcels but anticipated a project that would extend eastward onto a third parcel.[5] Second, the Permit anticipated an at-grade drag strip and a drag racing stadium that rose up from the ground; this grading permit called for the creation of a below-grade "bowl" around which the drag racing stadium would be built and from which cars would set off on their west-to-east course. These modifications would necessarily require an amendment of the Permit, both to include the third parcel and to provide for the below-grade creation of the "bowl."

On December 13, 2005, the City, the Redevelopment Agency, and BAA entered into a Master Agreement that did two things: (1) set forth the general terms for the sale of the City parcel to BAA so that BAA could move forward with the Drag City project; and (2) set forth the conditions for site assembly to be performed by the City in order that a business park be developed by BAA adjacent to Drag City. Other than the sale of the City parcel, the Master Agreement did not concern the development of Drag City at all. The Master Agreement terminated a number of project-related agreements that had previously been entered into by the City and AAR (and assigned by AAR to BAA), including the following: a Memorandum of Understanding in 2002; a lease dated November 26, 2002, by which the City leased the City's parcel to AAR; a license agreement dated November 26, 2002, by which AAR granted the City a license over

[4] In actual fact, this extension was the fourth and was itself not allowable by law.
[5] This is sometimes called the "Scharff property" after the then-owners of the parcel. The Agency has completed the purchase of the parcel.

project-related parking spaces to be developed; a reimbursement agreement dated November 26, 2002, under which the Agency paid for the Barbour Street improvements; and a cost support agreement dated June 25, 2004, under which the Agency further agreed to fund the Barbour Street improvements. All of these agreements were terminated and their provisions incorporated into the Master Agreement.

On June 2, 2006, the City Attorney's office sent a letter discussing BAA's obligations to be met before the City would engage in site assembly under the Master Agreement – this included purchase of the City parcel.

On July 25, 2006, the City and BAA entered into a Purchase and Sale Agreement under which the City would sell to BAA the parcel owned by the City adjacent to the Photosonics site and the Municipal Airport.

In August 2006, BAA and the Banning Chamber of Commerce held a groundbreaking at the Photosonics site to celebrate the commencement of construction on the Drag City project. The City was not involved in the planning of the groundbreaking but did provide a public address system and seating for the event.

Thereafter, BAA commenced clearing and grubbing pursuant to the grading permit issued in September 2005. This consisted of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks. The removed debris was left in large piles on the site. The site was left generally flat, but was not graded so as to be ready for development.

On November 30, 2006, the Federal Aviation Administration approved the release of the City parcel to BAA. At that time, the City was in the process of completing the removal of burrowing owls from the City parcel, a removal that was complete by February 2007. The owls were not on the Photosonics parcel and so their presence on the City parcel could not impede BAA from proceeding with grading or other work.

In February and March of 2007, the City's Public Works Department inspected the Photosonics site and the City parcel and found that BAA had performed clearing and grubbing work but had not graded the site; had ceased implementing grading-related dust control measures; and had not implemented stormwater control measures.

In Spring and early Summer 2007, the City attempted to get BAA to complete the purchase of the City Parcel. Specifically, the City and BAA met on March 5th to discuss the project and on March 8, 2007, the City Attorney's office sent a letter memorializing the agreement reached on March 5th that extended the escrow for the City parcel until April 13, 2007.

On April 16, 2007, the City Attorney's office sent another letter to BAA extending the close of escrow until May 14, 2007.

On July 27, 2007, the City Attorney's office sent a letter notifying BAA that BAA had failed to make the deposit required by the Purchase and Sale Agreement, that BAA was therefore in default of the Purchase and Sale Agreement, and that the City would only

13

continue that agreement upon the satisfaction of three conditions – provision of evidence of sufficient funding for the project, commencement of construction on the drag strip within 90 days of the sale of the parcel, and the City's right to repurchase the parcel if BAA failed in its construction obligation. This letter extended the close of escrow until July 31, 2007.

On August 2, 2007, the City sent a letter to BAA reiterating its support for the project as envisioned by BAA and informing BAA that the City was completing the purchase of the Scharff parcel.

On September 10, 2007, BAA having not even made the deposit necessary to keep the transaction alive,[6] the City Council voted to terminate the Master Agreement and the Purchase and Sale Agreement.

In September 2007, BAA, which had been established by Searles Company, was purchased in whole by Andy Marocco and Ron Marocco. Messrs. Marocco were the owners of AAR, which had assigned its interest in the project to BAA, and were the original recipients of the Permit and the entitlements thereunder.

On October 11, 2007, the City was informed that Andy and Ron Marocco, the owners of AAR, had wholly acquired BAA, the entity to whom that had assigned all of AAR's interest in the Permit back in 2005.

On October 23, 2007, the City and the Agency adopted resolutions formally terminating the Master Agreement and the Purchase and Sale Agreement.

On November 2, 2007, Andy Marocco wrote a letter to the City regarding the continued existence of the Permit. Mr. Marocco, having been the original recipient of the Permit, correctly presumed that the termination of the Master Agreement and the Purchase and Sale Agreement did not affect the Permit.

Thereafter, the City Attorney's office, in consultation with City Staff, determined that the Permit had expired due to the lack of work performed thereunder. A notification of this expiration was sent to Mr. Marocco at BAA. The City Attorney's office, noting that Condition 2[7] created a theoretical need to also revoke the Permit, determined that a hearing on the matter was necessary.
That determination having been made, this hearing was scheduled. Prior to this hearing, the Public Works Department again reviewed the site and found no new work being performed.

---

[6] BAA was responsible to make both an initial deposit of $163,750, and a second deposit of $491,250, the total of which represented the full price of the parcel. BAA failed to make the initial deposit of $163,750. The City allowed BAA several attempts to fund the deposit, but BAA was unable to do so. BAA never demonstrated an ability to financially satisfy the Purchase and Sale Agreement.

[7] Cited above.

ANALYSIS:

As a preliminary matter, the Permit pre-existed the Master Agreement and the Purchase and Sale Agreement. And while the execution of the Master Agreement served to terminate several other agreements, it did not terminate or subsume the Permit. Thus, the Permit (and the Development Agreement) theoretically had continued force and effect even after the City and the Agency terminated the Master Agreement and Purchase and Sale Agreement.

1. The Permit Has Expired by Force of Law and by Its Own Terms.

BAA's[8] failure to exercise its rights under the Permit and begin construction or other appropriate evidence of use resulted in the Permit expiring of its own accord. BAA was given not one year, but 4 years to exercise its rights under the Permit.

The final extension of the Permit was not authorized under the Municipal Code because the Code only provided for three (3) twelve-month extensions of the Permit. Even assuming for the sake of argument the validity of the final extension, the Permit expired on August 14, 2005. BAA's failure to commence construction or other appropriate evidence of use in reliance on the Permit by August 14, 2006, means that the Permit expired. Section 9116.8 of the Municipal Code in effect at the time read:

> *"A Conditional Use Permit[9] shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City."*

What is at issue, therefore is whether the work done by BAA constituted construction or other appropriate evidence of use. It did not. The extension of Barbour Street was not construction or other appropriate evidence of use because it was performed offsite, was funded by the Agency, and was a precursor to construction as opposed to actual construction. At the time the work was done, AAR and the City recognized that it was not construction or other appropriate evidence of use and therefore the City granted an extension of the Permit. Had the road work been construction or other appropriate evidence of use, it alone would have validated the permit and no extension would have been necessary. The official "groundbreaking" ceremony was not construction or other appropriate evidence of use, because it was a ceremonial event and the only work that followed it was the clearing and grubbing. With respect to clearing and grubbing, it consisted of scraping the top level of the soil on the parcel to remove vegetation, rubbish,

[8] For purposes of the analysis, we will treat BAA and AAR as a single entity.
[9] The City has always treated the Permit as a CUP for purposes of processing and Code Compliance, and we analyze it as such.

and rocks, piling the debris, and leaving the site generally flat, but not graded so as to be ready for development.

It has long been held in California that granting of a land use approval does not in and of itself confer an unlimited vested right to develop.[10] Instead, a vested right to develop arises where actual building permits for identifiable work have been issued and substantial work has been done and substantial costs have been incurred in reliance on those permits.[11] This requires not "soft costs" or other preconstruction work, but actual grading or construction of the project anticipated by the land use approval.

Under this test, the only work done was the extension of Barbour Street in 2004 and clearing and grubbing in 2006. The former is clearly preconstruction work, and neither AAR nor the City considered it to be construction or other appropriate evidence of use, because the City granted a Permit extension soon after the work was complete. Clearing and grubbing likewise is preconstruction work and considered "soft cost" work that precedes actual reliance on a permit. No ground was broken, no grading done, no work that substantially advanced the Drag City project was performed on the site.

In addition, the 2005 grading permits approved by the City required below-grade grading to create a "bowl" on the parcels. This was a change from the work anticipated by the Permit, which only required at-grade work and no substantial digging and off-haul of soil. In addition, BAA's plans for the site required that the parking at the site would be changed, the drag strip would extend onto the Scharff parcel, the drag strip would start in the below-grade bowl instead of at grade, and the business park to be developed would be integrated into the plans for Drag City. BAA at the time acknowledged that the Permit would have to be substantially modified or reissued in light of BAA's proposed changes to the drag strip and to the rest of the Site.

Because BAA failed to commence construction or other appropriate evidence of use on the project anticipated by the Permit, failed to propose the Permit modifications required to make the terms of the Permit comply with BAA's plans for the site, and otherwise showed no appropriate evidence of use under the Permit, the Permit became "null and void and of no further force or effect" per Section 9116.8 as of August 14, 2006.

2. Notwithstanding Expiration of the Permit, a Hearing is Proper.

As discussed above, Condition 2 creates ambiguity. Theoretically non-occurrence of construction or other appropriate evidence of use required by the Permit would be "non-compliance to provisions" of the Permit requiring a revocation process. Thus, while the Permit has expired, the language of Condition 2 makes it arguable that revocation procedures are still necessary.

---

[10] See *Avco Community Developers, Inc. v. South Coast Reg'l Comm'n* (1976) 17 Cal.3d 785.
[11] *Avco*, 17 Cal.3d at 791, see also *Hafen v. County of Orange* (2005) 128 Cal.App.4th 133.

16

Revocation of the Permit will fully and finally terminate any potential or theoretical rights still held by BAA. It remains the position of the City Attorney's office that expiration served to terminate those rights, but in an abundance of caution the Planning Commission is asked to formally revoke any interest remaining in the Permit.

Revocation will terminate the Development Agreement pursuant to the terms of the Development Agreement.

Revocation will not foreclose the possibility of a drag racing facility or other use on the site, but will simply require that BAA apply for a new permit and go through environmental review and conditioning of the project that will require the project to be consistent with the current General Plan and the current standards for development in the City.

RECOMMENDATION:
Staff respectfully recommends that the Planning Commission adopt Resolution No. 2008-05 formally revoking Unclassified Use Permit ("Permit") 01-47501 for a professional drag racing facility and associated improvements on Assessors Parcel Numbers 532-130-008 and 532-130-018.

Respectfully submitted,

Eric Vail, Assistant City Attorney

Exhibits:
1. Resolution No. 2008-05
2. Evidence Information, (Under separate cover) including the following documents
   1. Portions of the Code of the City of Banning, California (1965)
   2. Unclassified Use Permit No. 01-47501
   3. Notice of Determination filed with the County Clerk for the County of Riverside in support of Unclassified Use Permit No. 01-47501
   4. Ordinance No. 1308, adopted by the City Council on October 28, 2003, and approving Development Agreement No. 03-1504
   5. Master Agreement, dated December 13, 2005
   6. Purchase and Sale Agreement, dated July 25, 2006
   7. Resolution No. 2007-115
   8. Resolution No. 2007-117
   9. Staff Report of August 6, 2002, time extension for UUP 01-47501
   10. Letter of August 12, 2002, confirming extension for UUP 01-47501
   11. Letter of April 20, 2003, regarding work under UUP 01-47501
   12. Staff Report of April 22, 2003, regarding work under UUP 01-47501
   13. Staff Report of April 26, 2003, regarding granting of a grading permit under UUP 01-47501
   14. Letter of July 29, 2003, regarding extension of UUP 01-47501
   15. Staff Report of August 5, 2003, regarding extension of UUP 01-47501

16. Letter of October 9, 2003, regarding extension of UUP 01-47501
17. Letter of May 21, 2004, regarding extension of UUP 01-47501
18. Letter of July 23, 2004, regarding extension of UUP 01-47501
19. Letter of January 21, 2005, regarding BAA beginning to take over the project from AAR
20. Letter of August 5, 2005, regarding extension of UUP 01-47501
21. Staff Report of August 9, 2005, regarding assignment and assumption by BAA of AAR rights, duties, and liabilities for Drag City project
22. Grading Permit No. 2005-06
23. Grading Permit No. 2003-07
24. Letter of October 23, 2006, regarding burrowing owl
25. Letter of March 8, 2007, regarding extension of escrow for BAA purchase of City parcel
26. Letter of April 10, 2007, regarding funding of BAA development of Drag City and business park
27. Letter of April 16, 2007, regarding extension of escrow for BAA purchase of City parcel
28. Staff Report of April 24, 2007, regarding status of Drag City project
29. Letter of May 17, 2007, regarding remediation of dust at site
30. Letter of July 9, 2007, regarding funding of BAA development of Drag City and business park
31. Letter of July 24, 2007, regarding funding of BAA purchase of City parcel
32. Letter of July 27, 2007, regarding BAA's default of the Purchase and Sale Agreement
33. Letter of August 2, 2007, regarding City's continued support of BAA's vision for the Drag City and business park projects
34. Letter of September 14, 2007, terminating Master Agreement and Purchase and Sale Agreement
35. Letter of September 14, 2007, terminating escrow under the Purchase and Sale Agreement
36. Letter of October 11, 2007, regarding sale of BAA to Andy and Ron Marocco
37. Letter of November 2, 2007, regarding continued viability of UUP 01-47501

UUP #01-47501
REVOCATION
DRAG CITY

RESOLUTION
NO. 2008-05

EXHIBIT "1"

20

02690

519

RESOLUTION NO. 2008-05

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA REVOKING UNCLASSIFIED USE PERMIT 01-47501.

WHEREAS, the purpose of this Resolution is to formally revoke the expired Unclassified Use Permit 01-47501 (the "Permit") which was granted by the Planning Commission on July 3, 2001 to All-American Racing ("AAR"), as more explicitly detailed below; and

WHEREAS, the purpose of the Permit was to allow a project known as "Drag City" and consisting of a professional drag racing facility and associated improvements on Assessors Parcel Numbers 532-130-008 and 532-130-018; and

WHEREAS, the Planning Commission has the authority per Section 9116.11 of the version of the Banning Municipal Code in effect at the time the expired Permit was granted and per Section 17.52.100 of the current version of the Municipal Code to revoke conditional use permits (including unclassified use permits); and

WHEREAS, in accordance with Government Code § 65854, on January 18, 2008, the City gave public notice by advertising in the Record Gazette Newspaper and by mailing to all property owners within 300 feet of the subject parcels of the holding of a public hearing at which the revocation of the Permit would be considered by the Planning Commission; and

WHEREAS, the Community Development Director has reviewed the revocation's potential effects on the environment and has recommended that the revocation is exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Sections 15270 and 15321; and

WHEREAS, on January 28, 2008, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the revocation of the Permit.

NOW THEREFORE, the Planning Commission does resolve, determine, find, and order, and recommend as follows:

Section 1: Environmental Findings under CEQA

1. The Planning Commission, in light of the whole record before it, including but not limited to the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, concludes that the revocation of the Permit is exempt from CEQA under CEQA Guidelines Sections 15270 and 15321 in that the revocation meets the criteria for application of a Class 21 Categorical Exemption and a Section 15270 Statutory Exemption.

Section 2: Findings of Fact.

The Planning Commission, in light of the whole record before it, including but not limited to the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby makes the following findings of fact:

1. On July 3, 2001, the Planning Commission conditionally approved the Permit.

2. The Permit holder, Banning Airport Associates, LLP ("BAA"), is the successor-in-interest to All-American Racing, to whom the Permit was originally granted.

3. The Permit contained the following two conditions, which were, respectively, Planning Condition 1 and Planning Condition 2:

> *1. All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.*
>
> *If no time frame is specified, the approval shall be for a period of one (1) year from the date of the Planning Commission's approval (expiration date to be July 3, 2002). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.*
>
> *2. Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code. [sic]*

4. The Permit is governed by the version of the Municipal Code in existence at the time the Permit was granted in 2001. Subsequent changes to the Municipal Code may not be used to detract from the rights granted BAA under the Permit. The Planning Commission will therefore apply the version of the Municipal Code in existence at the time the Permit was granted to the facts of this case.

5. In accordance with Section 9112 of the Code that was in effect at the time of the

Permit, unclassified use permits were to be processed in the manner specified for conditional use permits.

6. Section 9116.8 of that version of the Municipal Code addressed the time period for the commencement of construction or use under a permit and read:

> A Conditional Use Permit[1] shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.
>
> If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.

7. Section 9116.10 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> *The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. In no instance shall more than three extensions be granted.... The Community Development Director shall advise the Planning Commission of his/her approvals hereunder by report at the Planning Commission meeting immediately following such date of approval. Any approval granted hereunder shall become final five (5) days following date of such Planning Commission meeting unless modified or rejected by the Planning Commission.*

8. Section 9116.11 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> *The commission may revoke or modify a Conditional Use Permit as hereinafter provided. Prior to any modification or revocation of a conditional use permit the Planning Commission shall first hold a public hearing on the matter....*

---

[1] The City and the developer have, from the time the Permit was sought treated the Permit as a CUP for purposes of processing and Code Compliance.

A revocable Conditional Use Permit may be revoked or modified and an irrevocable Conditional Use Permit may be modified by the commission if any one (1) of the following findings can be made:

(a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;
(b) That the Conditional Use Permit was obtained by misrepresentation or fraud;
(c) That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months;
(d) That one or more of the conditions of the Conditional Use Permit have not been met;
(e) That the use is in violation of any statute, ordinance, law, or regulation; or
(f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance.

9. On August 1, 2002, the Planning Commission adopted a resolution supporting the determination of staff that the Permit should be extended for one year, thus extending the life of the Permit for a second year.

10. On November 26, 2002, the Redevelopment Agency of the City of Banning ("Agency") and AAR entered into a Reimbursement Agreement under which AAR would construct certain improvements to Barbour Street and the Agency would fund the construction.

11. On July 23, 2003, the City through Resolution No. 2003-34 granted to AAR a grading permit consistent with the grading required by the Permit. AAR performed some preliminary clearing and grubbing of the site, but did not perform any grading pursuant to the grading permit. The clearing and grubbing that was done consisted solely of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks.

12. On August 5, 2003, the City extended the Permit for an additional year and made some amendments to the conditions of the Permit. This was the second extension of the Permit and it stated that the Permit was due to expire on August 14, 2004.

13. On October 28, 2003, the City Council approved Ordinance No. 1308, establishing a development agreement that served to govern the development of the Drag City. Pursuant to Section 4.2 of the Development Agreement, its term would expire at the same time the Permit expired.

14. In early 2004 and concluding in May 2004, Barbour Street was extended from Hathaway east to the entrance of the site. This work was performed entirely off-site, and included the construction of the street, pipes under the street, and curbs and gutters.

While this work complied with Engineering Condition B.1 of the Permit, it was also done to satisfy AAR's obligations to the Agency under the Reimbursement Agreement.

15. Subsequent to the improvement of Barbour Street, on June 25, 2004, the Agency and AAR entered into a Cost Support Agreement under which the Agency committed additional funds to fully cover the costs of the Barbour Street improvements.

16. On July 30, 2004, a third extension (mistakenly identified as the second extension) was granted based on the off-site improvements and AAR's assertion that the preparation of building plans was under way. Based on this third extension, the Permit was due to expire on or about August 14, 2005.

17. In the Spring of 2005, AAR assigned all of its interest in the project and all related approvals -- including the Permit -- to Banning Airport Associates, LLC, ("BAA").

18. On August 9, 2005, the City Council and Redevelopment Agency approved an assignment and assumption agreement between AAR and BAA under which BAA took over the project and at the same time, AAR released all rights, obligations, and claims it had against the City.

19. On August 14, 2005, the City granted to BAA a fourth and final extension (mistakenly called the third and final extension) of the then-expired Permit. Based on this fourth extension, the Permit was due to expire on or about August 14, 2006.

20. On September 22, 2005, a second grading permit was issued for the site, this time to BAA, which grading permit was for work that went beyond the scope of the Permit and anticipated modification to the Permit or the issuance of a new use permit.

21. Upon receipt of this grading permit, BAA commenced clearing and grubbing pursuant to the grading permit issued in September 2005. This consisted of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks. The removed debris was left in large piles on the site. The site was left generally flat, but was not graded so as to be ready for development.

22. In August 2006, BAA and the Banning Chamber of Commerce held a groundbreaking at the site of the Drag City project to celebrate the commencement of construction on the Drag City project. The City was not involved in the planning of the groundbreaking but did provide a public address system and seating for the event.

23. Prior to the groundbreaking ceremony, BAA brought grading equipment onto the site. Some minor grading of the site had been performed for the ceremony, but the site remained substantially ungraded.

24. Subsequent to the groundbreaking, BAA performed some dust remediation work on the site. BAA at no time performed substantial grading of the site, and the site was not maintained in cleared and grubbed state.

25. In March 2007, BAA ceased performing dust remediation work on the site and has performed no further work on the site, although some grading equipment remains on the site.

Section 3: Determinations and Conclusions.

The Planning Commission, in light of the whole record before it, including but not limited to the foregoing findings of fact, the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby makes the following determinations and conclusions:

1. No further extensions of the expired Permit may be made, pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the expired Permit was granted. That provision provided that only three (3) extensions were allowed by law, and the Permit has already been extended four (4) times.

2. Expiration of the Permit served to extinguish on its own terms the development agreement adopted pursuant to Ordinance No. 1308, because the Permit has terminated and is of no further force.

3. Issuance of a grading permit and the moving of equipment onto the site was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. Without commencement of actual grading, mere preparatory actions do not constitute evidence of use or construction.

4. The clearing and grubbing work performed pursuant to the July 23, 2003 grading permit was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was mere site preparation and did not constitute the "commencement of construction."

5. The clearing and grubbing work performed pursuant to the September 22, 2005 grading permit was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was mere site preparation and did not constitute the "commencement of construction."

6. The extension of Barbour Street was not "construction or other appropriate evidence of use" sufficient to validate the Permit pursuant to Section 9116.8 of the version of the Municipal Code in existence at the time the Permit was granted. The work was done completely off-site and was paid for with Redevelopment Agency funds. The actions of AAR in seeking a permit extension and the City in granting that extension

subsequent to completion of the Barbour Street improvements serve as evidence that at the time the improvements were made the parties knew that they were insufficient to validate the permit.

7. In addition to the extension of Barbour Street and the clearing and grubbing work being insufficient to validate the Permit pursuant to Section 9116.8, BAA ceased work in March 2007 and abandoned the project as of that date.

8. Both BAA's failure to commence construction or other appropriate evidence of use and BAA's cessation or abandonment for more than six months of that limited work that it actually undertook are grounds to revoke the Permit and in doing so to affirm the fact that the Permit has expired.

Section 4: Revocation of Unclassified Use Permit 01-47501.

The Planning Commission, in light of the whole record before it, including but not limited to the foregoing findings of fact, determinations and conclusions, the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated January 28, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby revokes Unclassified Use Permit 01-47501 and by so doing terminates any right or interest claimed by BAA or any of its principals, subsidiaries, agents, successors-in-interest, or anyone claiming any assignment of interest under the Permit.

PASSED, APPROVED AND ADOPTED this 28th day of January, 2008.

Betty DeSantis, Chairperson
Banning Planning Commission

APPROVED AS TO FORM AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-05, was duly adopted by the Planning Commission of the City of Banning, California, at a special meeting thereof held on the 28th day of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Virginia Sorenson, Recording Secretary
City of Banning, California

ATTACHMENT 58

Banning Airport Associates

February 6, 2008

Oscar Orci
Community Redevelopment Director
99 E. Ramsey St.
Banning, CA 92220

FEB 0 6 2008
Planning

RE: Unclassified Use Permit No. 01-047501 "Notice of Appeal"

Dear Mr. Orci,

Pursuant to Banning City Code Section 9116.13 I am writing a "notice of appeal" with regard to our Unclassified Use Permit No. 01-047501 that was revoked at the Planning Commission Meeting of January 28, 2008.

I am also submitting check # 1008 in the amount of $4,031.00 per the City's Fee Schedule that I received from you last week.

I look forward to the public hearing within the next 40 days.

Sincerely,

Andy Marocco President, Banning Airport Associates, LLC

PO BOX 197 Banning, CA 92220 (951) 755-7376 office (951) 755-7049 fax
Email: Amarocco@mac.com

02700

529

Project General Information - City of BANNING

Project General Information

Project number:	08 92000001
Project description:	[redacted]
Application date:	03/06/2008
Project type code:	ADAP ▸ ADMINISTRATIVE APPEALS
Project status code:	AC ▸ ACTIVE
ASSESSOR'S PARCEL NUMBER:	532-130-008 & 019
ZONING/GENERAL PLAN:	I
Planner assigned:	OO ▸ OSCAR ORCI
Accounting project nbr:	
Number of dwelling units:	0
Total square footage:	0
Building permits notify:	None
Permit process:	

02701

530

ATTACHMENT 59

RESOLUTION NO. 2008-34

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DENYING BANNING AIRPORT ASSOCIATES, LLC'S APPEAL OF PLANNING COMMISSION RESOLUTION NO. 2008-05 REVOKING UNCLASSIFIED USE PERMIT #01-47501.

WHEREAS, on January 28, 2008, the Planning Commission held a duly noticed public hearing on the revocation of Unclassified Use Permit #01-47501 ("Permit"), which was granted by the Planning Commission on July 3, 2001 to All-American Racing ("AAR"), and which was later assigned to Banning Airport Associates ("BAA"), at which interested persons had an opportunity to testify in support of or in opposition to the revocation of the Permit; and

WHEREAS, the purpose of the Permit was to allow a project known as "Drag City" consisting of a professional drag racing facility and associated improvements on Assessors Parcel Numbers 532-130-008 and 532-130-018; and

WHEREAS, in accordance with Section 9112 of the Code that was in effect at the time of the Permit, Unclassified Use Permit's were to be processed in the manner specified for conditional use permits; and

WHEREAS, the Planning Commission had the authority per Section 9116.11 of the version of the Banning Municipal Code in effect at the time the expired Permit was granted and per Section 17.52.100 of the current version of the Municipal Code to revoke conditional use permits (including unclassified use permits); and

WHEREAS, at the January 28, 2008 Planning Commission meeting, the Planning Commission voted 4-0 to revoke the Permit, and adopted Resolution No. 2008-05 ["A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA REVOKING UNCLASSIFIED USE PERMIT 01-47501]; and

WHEREAS, on February 6, 2008, BAA submitted a letter appealing the Planning Commission's decision to revoke the Permit; and

WHEREAS, on March 11, 2008, the City Council held a duly noticed public hearing where BAA's appeal of the Planning Commission's determination to revoke the Permit was heard.

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY FIND, DETERMINE AND RESOLVE AS FOLLOWS:

SECTION 1. FINDINGS.

The City Council, in light of the whole record before it, including but not limited to the recommendation of the City Attorney as provided in the Staff Report dated March 11, 2008, and documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing of this matter, hereby makes the following findings of fact:

1. On July 3, 2001, the Planning Commission conditionally approved the Permit.

2. The Permit holder, Banning Airport Associates, LLP ("BAA"), is the successor-in-interest to All-American Racing, to whom the Permit was originally granted.

3. The Permit contained the following two conditions, which were, respectively, Planning Condition 1 and Planning Condition 2:

> 1. All conditions of approval attached to Unclassified Use Permit #01-47501 must be met within the time frames stipulated in each condition for each phase of development. In the event he subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.
>
> If no time frame is specified, the approval shall be for a period of one (1) year from the date of the Planning Commission's approval (expiration date to be July 3, 2002). All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.
>
> 2. Non-compliance to provisions of Unclassified Use Permit #01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code. [sic]

4. The Permit is governed by the version of the Municipal Code in existence at the time the Permit was granted in 2001. Subsequent changes to the Municipal Code may not be used to detract from the rights granted BAA under the Permit. The Planning Commission will therefore apply the version of the Municipal Code in existence at the time the Permit was granted to the facts of this case.

5. Section 9112 of the Code that was in effect at the time of the Permit required Unclassified Use Permit's to be processed in the manner specified for conditional use permits

6. Section 9116.8 of that version of the Municipal Code addressed the time period for the commencement of construction or use under a permit and read:

A Conditional Use Permit[1] shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.

If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City.

7. Section 9116.10 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. In no instance shall more than three extensions be granted.... The Community Development Director shall advise the Planning Commission of his/her approvals hereunder by report at the Planning Commission meeting immediately following such date of approval. Any approval granted hereunder shall become final five (5) days following date of such Planning Commission meeting unless modified or rejected by the Planning Commission.

8. Section 9116.11 of that version of the Municipal Code addressed extensions of permits and read in relevant part:

> The commission may revoke or modify a Conditional Use Permit as hereinafter provided. Prior to any modification or revocation of a conditional use permit the Planning Commission shall first hold a public hearing on the matter....
>
> A revocable Conditional Use Permit may be revoked or modified and an irrevocable Conditional Use Permit may be modified by the commission if any one (1) of the following findings can be made:
>
> (a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;

[1] The City and the developer have, from the time the Permit was sought treated the Permit as a CUP for purposes of processing and Code Compliance in accordance with Section 9112 of the Code that was in effect at the time of the Permit.

(b) That the Conditional Use Permit was obtained by misrepresentation or fraud;
(c) That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months;
(d) That one or more of the conditions of the Conditional Use Permit have not been met;
(e) That the use is in violation of any statute, ordinance, law, or regulation; or
(f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance.

9. On August 1, 2002, the Planning Commission adopted a resolution supporting the determination of staff that the Permit should be extended for one year, thus extending the life of the Permit for a second year.

10. On November 26, 2002, the Redevelopment Agency of the City of Banning ("Agency") and AAR entered into a Reimbursement Agreement under which AAR would construct certain improvements to Barbour Street and the Agency would partially fund the construction.

11. On July 23, 2003, the City through Resolution No. 2003-34 granted to AAR a grading permit consistent with the grading required by the Permit. AAR performed some preliminary clearing and grubbing of the site, but did not perform any grading pursuant to the grading permit. The clearing and grubbing that was done consisted solely of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks.

12. On August 5, 2003, the City extended the Permit for an additional year and made some amendments to the conditions of the Permit. This was the second extension of the Permit and it stated that the Permit was due to expire on August 14, 2004.

13. On October 28, 2003, the City Council approved Ordinance No. 1308, establishing a development agreement that served to govern the development of the Drag City. Pursuant to Section 4.2 of the Development Agreement, its term would expire at the same time the Permit expired.

14. In early 2004 and concluding in May 2004, Barbour Street was extended from Hathaway east to the entrance of the site. This work was performed entirely off-site, and included the extension of the street, pipes under the street, and curbs and gutters. While this work complied with Engineering Condition B.1 of the Permit, it was also done to satisfy AAR's obligations to the Agency under the Reimbursement Agreement.

15. Subsequent to the improvement of Barbour Street, on June 25, 2004, the Agency and AAR entered into a Cost Support Agreement under which the Agency committed additional funds to cover the costs of the Barbour Street improvements.

16. On July 30, 2004, a third extension (mistakenly identified as the second extension) was granted based on the off-site improvements and AAR's assertion that the preparation of building plans was under way. Based on this third extension, the Permit was due to expire on or about August 14, 2005.

17. In the Spring of 2005, AAR assigned all of its interest in the project and all related approvals -- including the Permit -- to Banning Airport Associates, LLC ("BAA").

18. On August 9, 2005, the City Council and Redevelopment Agency approved an assignment and assumption agreement between AAR and BAA under which BAA took over the project and at the same time, AAR released all rights, obligations, and claims it had against the City.

19. On August 14, 2005, the City granted to BAA a fourth and final extension (mistakenly called the third and final extension) of the then-expired Permit. Based on this fourth extension, the Permit was due to expire on or about August 14, 2006.

20. On September 22, 2005, a second grading permit was issued for the site, this time to BAA, which grading permit was for work that went beyond the scope of the Permit and anticipated modification to the Permit or the issuance of a new unclassified use permit.

21. Upon receipt of this grading permit, BAA commenced clearing and grubbing of the site pursuant to the grading permit issued in September 2005. This consisted of scraping the top level of the soil on the parcel to remove vegetation, rubbish, and rocks. The removed debris was left in large piles on the site. The site was left generally flat, but was not graded so as to be ready for development.

22. In August 2006, BAA and the Banning Chamber of Commerce held a groundbreaking at the site of the Drag City project to celebrate the commencement of construction on the Drag City project. The City was not involved in the planning of the groundbreaking but did provide a public address system and seating for the event.

23. Prior to the groundbreaking ceremony, BAA brought grading equipment onto the site. Some minor grading of the site had been performed for the ceremony, but the site remained substantially ungraded.

24. Subsequent to the groundbreaking, BAA performed some dust remediation work on the site. BAA at no time performed substantial grading of the site, and the site was not maintained in cleared and grubbed state.

25. In March 2007, BAA ceased performing dust remediation work on the site and has performed no further work on the site, although some grading equipment remains on the site.

SECTION 2. DETERMINATION OF APPEAL.

The City Council, in light of the whole record before it, including but not limited to the foregoing findings of fact, the recommendation of the City Attorney and Community Development Director as provided in the Staff Report dated March 11, 2008, and the documents incorporated therein by reference, and any other evidence within the record or provided at the public hearing on this matter, hereby denies BAA's appeal of the Planning Commission's determination to revoke the Permit.

PASSED, APPROVED, AND ADOPTED this 11th day of March, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-34, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of March 2008, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

NOES: None

ABSENT: None

ABSTAIN: None

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

CITY COUNCIL AGENDA
REPORT OF OFFICERS

DATE: **March 22, 2011**

TO: **City Council**

FROM: **Zai Abu Bakar, Community Development Director**

SUBJECT: **General Plan Annual Report for Year 2010**

RECOMMENDATION:
That the City Council adopt Resolution No. 2011-20 and direct staff to file the report with the Governor's Office of Planning and Research and the State Housing and Community Development.

PLANNING COMMISSION REVIEW
The Planning Commission reviewed the report at its meeting on March 2, 2011. The Commission asked if many cities are not able to meet the housing element target number that was assigned by the State Housing and Community Development. Staff responded in the affirmative. Overall, the Commission believed that the City has done a good job in implementing its General Plan. The Commission adopted Resolution No. 2011-01 recommending approval of the Annual Report to the City Council.

BACKGROUND:
The California state law requires that each city and county adopt a general plan to guide development in their city and land outside its boundaries that has relation to its city planning (Govt. Code §65300). The California Supreme Court has called the general plan the "constitution for future development." The general plan expresses the community's development goals and embodies public policy relative to the distribution of future land uses, both public and private. The purpose of the General Plan is to guide development and to improve the quality of life of the City's residents as land development continues to occur.

Required Elements in the General Plan
State law requires that the General Plan include seven (7) mandated elements: land use, housing, traffic circulation, safety, parks and recreation, conservation, and noise. Each of these elements must have goals, policies, and objectives that would contribute to the overall quality of life for Banning residents. Non-mandated elements can be included in the General Plan; however, once the element is adopted, the goals, policies, and objectives in the non-mandated element have equal status. For example, the land use policies are not any superior to the open space element or economic development element. Each of the element goals, policies, and objectives shall be internally consistent in texts, graphics, and diagrams in that they cannot conflict with each other.

Amendment to the General Plan
The State law allows cities to update or amend their General Plan as needed. A comprehensive update to the General Plan usually occurs within the 10-15 year time frame. An amendment can occur at any time; however, the number of amendments is limited to four (4) amendments per calendar year. If two or more elements are considered or approved at one meeting, they are considered one General Plan amendment. The City should be strategic in processing the amendments to ensure that it has not exhausted all of the amendments in case some important/unique policy issues come up and require a General Plan

amendment. Once the number of amendments is exhausted per year, the City will have to wait until the following calendar year to do an amendment.

Requirement for Annual Progress Report

Government Code §65400 mandates that cities and counties in California submit an annual report on the status of the General Plan and progress in its implementation, including the progress in implementing the housing element (Exhibit "A"), to their decision makers (City Council or board of supervisors), the Governor's Office of Planning and Research (OPR) and the Housing and Community Development (HCD) by April 1st of each year. The purpose of the General Plan annual report is to provide enough information to identify the necessary "course adjustments" or modifications to the General Plan and means to improve local implementation.

The State uses the information submitted by the City to identify statewide trends in the land use decision making process and how local planning and development activities relate to statewide planning goals and policies.

ANALYSIS:

The City Council adopted the current General Plan on January 31, 2006. The General Plan has 21 elements (seven [7] of which are mandated by the State). It contains 263 implementation action programs.

Progress

It has been five (5) years since the adoption of the General Plan in 2006. The City continues to take proactive steps in implementing the goals, policies and action programs of the General Plan. The City has implemented, completed and/or has an active/ongoing status of 222 action programs (85%) out of 263 action programs. Only 41 action programs (15%) have not been completed and/or initiated. In summary, the City has done a good job of implementing the General Plan. The primary reasons some of the action programs have not been completed/initiated relates to budget deficits, reduction in staff, and work program priority for each of the City departments.

The General Plan Progress Report is organized alphabetically by element (Exhibit "B"). Each section contains the adopted goals and policies including a summary table that reflects the action program, responsible agency, adopted schedule and implementation status. For easy reference, the action programs that have been completed and/or are active and ongoing are **highlighted in bold type**, while the programs that have not been completed/initiated are ***highlighted in Italics.***

Highlights of Development Activities in 2010

Since 2006, the State and the nation have been facing a major economic recession. All the cities and states are impacted by this recession. The City of Banning experienced a significant reduction in building construction activities.

Despite the economy, the City continues to make progress in land development and community revitalization. This is due to the contribution that was made by the Banning Community Redevelopment Agency (CRA), the Banning Unified School District, the San Gorgonio Memorial Hospital, and the San Gorgonio Pass Habitat for Humanity. The CRA funded various infrastructure improvements in the redevelopment project area. The Agency funded the replacement of the Downtown water lines that are undersized and nearly 100 years old. These water lines require on-going repair and maintenance. The new water lines will provide adequate water pressure for domestic use and fire suppression for existing and

future development in the Downtown area. The CRA also funded the extension of Apex Avenue and the turn pockets for Beaver Clinic and San Gorgonio Memorial Hospital on Ramsey Street. The Apex Avenue extension provides the second point of access to the neighborhoods along that street. In addition, the CRA also funded the undergrounding of the storm drain improvements and installation of sidewalk, curb, and gutter in and around the State Courthouse. The Courthouse is anticipated to break ground in July 2011.

The CRA also funded two key on-going housing programs for low income residents using the 20% set-aside money received from the tax increment generated within the Redevelopment Project Area. These programs are the first time home buyers program, which provides a maximum of $20,000.00 assistance toward the purchase of a home by a low income resident. The exterior rehabilitation program provides up to $10,000.00 in grants to a low income resident who needs assistance in re-roofing, painting, window replacement, air conditioning and heating unit replacement. Within the last calendar year, the CRA assisted one resident with down payment assistance and 11 exterior rehabilitations. The California Community Redevelopment Law (CCRL) requires that the 20% set aside money be used to fund low income housing in all areas of the City. The CRA also funded various façade improvements in the Downtown area, which help improve the aesthetics of the area.

The Banning Unified School District and the San Gorgonio Memorial Hospital also contributed to the progress in building activities. The Habitat for Humanity has completed the construction of two homes in the community. Additionally, within the last calendar year, Habitat purchased one home for rehabilitation. Exhibit "C" provides a detailed list of development activities in the City.

POLICY ISSUES

As part of implementing the current General Plan, issues have surfaced in traffic circulation, land use, and housing elements as follows:

Traffic Circulation

1. Level of Service for Roadways

The General Plan requires Level of Service C (as opposed to D) for traffic flow in most areas of the City. Most cities in Southern California require Level of Service D for their traffic flow, including the City of Beaumont. Highland Springs Avenue is located in two cities. The easterly half of the street is in the City of Banning and has a LOS C. The westerly half is in the City of Beaumont and has a LOS D. This presents a challenge for any traffic engineer to try to evaluate and mitigate development projects' traffic impact. A wider right-if-way is required when a City requires LOS C as opposed to D. Future development in Banning will be required to build wider streets or provide traffic improvements such as intersection widening, installation of traffic signals and mitigate more impacts compared to Beaumont. This makes Banning unattractive for development because it will cost more to widen a roadway or provide other traffic improvements, which put the City of Banning at an economic disadvantage compared to Beaumont.

A local roadway, for example San Gorgonio Avenue, is required to have a 60 foot right-of-way, with a 40-foot street section from curb-to-curb. This represents two travel lanes on each side, and a parkway on one side. The Life Point Church and Fellowship was required to dedicate additional right-of-way when they expanded their property to construct two modular buildings so that the Church has more storage. The Church was not aware of the dedication requirement resulting from the General Plan requirement. The Church had to dedicate a 15-foot section of their property along San Gorgonio Avenue for a future right-of-way expansion based on today's standard in the General Plan. There are other similar cases for residential properties where dedications are required to provide for a right-of-way to accommodate more traffic flow.

The General Plan currently acknowledges that the LOS C, although desirable, is generally unattainable in most of southern California, especially during peak hours.[1] Additionally, the General Plan states that Ramsey Street will not be able to accommodate LOS C. "In order to maintain LOS C on Ramsey Street, additional travel lanes would be required at its intersection with Highland Springs, Sunset, 8th Street and Hargrave. Some of these lanes would need to be on Ramsey, some on the cross street.... LOS D does not represent a significant degradation in traffic flow. When balancing the need for an efficient traffic system and the widening of streets to accommodate peak hour traffic, it appears that a lowering of the City's requirement for Ramsey Street from LOS C to D will not result in a significant negative effect."[2]

If the LOS is maintained at a higher level, it would result in the following:

- Wider right-of-way is growth inducing because it allows more traffic to be accommodated, which impacts air quality and water run-off. Wider streets cost more for construction and long-term maintenance once they are built.

- Where the City does not own the right-of-way to widen an existing street, it must acquire property either through a friendly acquisition or a take. Staff believes that this is not the intention when the General Plan was adopted.

- As part of development, developers will have to prepare and have approved either a Mitigated Negative Declaration or Environmental Impact Report just to mitigate the traffic impacts alone (and not other impacts) to comply with the California Environmental Quality Act (CEQA). These documents are time consuming and costly to prepare. An Environmental Impact Report takes approximately one year to prepare and could cost around $100,000.00 or more depending upon the complexity of the project.

All of the above makes Banning less attractive for development and investment.

2. Highland Home Road

Highland Home Road interchange was included in the General Plan to provide a north-south traffic congestion relief at other on- and off-ramps in Banning based on Caltrans one mile spacing standards between interchanges. Caltrans does not have this interchange in the State Transportation Improvement Plan, which means that they will not support the construction of the interchange. Currently, there is no funding for the project. The feasibility study that was completed in 2008 concluded that the construction

[1] General Plan Circulation Element, page III-62
[2] Ibid, page III-72

of the interchange was not feasible due to design issues and lack of right-of-way. Also, the Public Works Department had a $60,000 feasibility study completed for this interchange and it concluded that the Highland Home Road interchange would not geometrically fit. To continue to evaluate traffic impacts to an interchange that is highly unlikely to be built is to understate the real traffic impacts to existing intersections and to further delay the improvements that are necessary to accommodate traffic.

In both of these cases, Staff believes that this was not the intention when the General Plan was adopted in 2006. Staff anticipates bringing a General Plan Amendment to the Planning Commission and City Council to address policy issues on traffic.

Land Use & Non-Conformity

When the current General Plan was adopted, land uses in certain areas were changed, which made the existing uses non-conforming. The following are the areas where land uses were made non-conforming resulting from the adoption of the current General Plan.

- When the decision was made to elongate the Downtown Commercial zone to be consistent with the current General Plan, many single-family homes (about 100) were made non-conforming. The Zoning Code was amended to allow **existing** single-family homes to be permitted, therefore, people could obtain financing to repair, sell and get insurance. However, we still have a very large Downtown Commercial Zone District. It goes as far north as Nicolet in one place and as far west as 8th Street and as far east as almost to Hargrave. Also, in the previous Zoning Code, Ramsey Street from Drury to Hathaway was Commercial Manufacturing. With the new Code, all of those manufacturing uses are now non-conforming. This presents a challenge to permit commercial uses in the buildings that were not made for commercial establishments.

- On Lincoln Street, from close to the corner of Sunset to almost 12th Street, the General Plan land use and the corresponding zoning district changed the zone from Manufacturing to General Commercial, which created non-conformities with the manufacturing facilities that are there. The former Pacific Window property, which is now occupied by Lawrence Equipment is one example.

- Another area that was a drastic change was the north side of Williams from Hargrave to Hathaway. That whole area was Medium Density Residential and High Density Residential. Properties were purchased with plans for apartments, condos, etc in mind. The Code was changed to Low Density Residential. Nothing has been built as the lots are too strangely configured to be split for single-family homes and the South side of Williams has a lot of old manufacturing uses and no one wants to invest in a new home and look at the old buildings.

- Another oddity was that the Zoning Code includes areas designated as specific plans that were not approved. In addition, the General Plan/Zoning Map shows the details of the specific plan land uses, which is not a common practice. Most of the specific plans have expired because the developers did not follow-through and get their entitlements approved. The current General Plan/Zoning Map has zoning that perhaps a new plan would not want, such as Five Bridges and Lariat (these specific plans have expired).

- Creation of the Highway Serving Commercial (HSC) Land Use District/Zoning. In the previous General Plan/ Zoning Code, the General Commercial zone ran all along Ramsey Street from 4th Street to Highland Springs Avenue. The HSC zone is now along Ramsey from 8th Street to Sunset Avenue, thereby creating many non-conformities such as Cho's Nursery, Hollywoofs Pet Grooming, all professional offices, such as State Farm Insurance and all real estate offices.

Housing Element and Density

The Housing Element has been updated and has since been reviewed by the State Housing and Community Development twice. The State provided additional comments. Due to an issue with the current consultant contract, the housing element is pending while the City is resolving the housing element contract with the Consultant.

One of the outstanding issues in the State comments relates to density. The State is requiring that the City of Banning rezone additional sites to accommodate high density residential housing for the purpose of complying with the Regional Housing Needs Assessment (RHNA) requirements. The State is requesting the density of a minimum 30 units per acre. Staff will be bringing a proposal to the Planning Commission and City Council related to rezoning to address state requirements.

Parks and Recreation Element

Subsequent to the Planning Commission review of the General Plan Annual Report, the City Council adopted the Parks and Recreation Master Plan Update. This is an update to the 1990 Parks Master Plan. The Master Plan update is a living document that will be used by staff, the parks and recreation committee (proposed to be Parks and Recreation Commission), the Planning Commission, and City Council for the construction of parks and recreation facilities and programs as residential development continues in the future. The General Plan will need to be updated to reflect the information in the Parks Master Plan.

CONCLUSION:

The City has done a commendable job of implementing the General Plan as evidenced by the implementation or completion or has an ongoing status of 85% of its action programs.

FISCAL DATA:

There is no impact to the General Fund since the costs for preparing the report is included in FY 2010-2011 budget.

RECOMMENDED BY:

Andrew J. Takata
City Manager

PREPARED BY:

Zai Abu Bakar
Community Development Director

Attachments:

1. City Council Resolution 2011-20
2. Exhibit "A" – Reporting Forms on Progress for implementing the Housing Element
3. Exhibit "B" – General Plan Annual Progress Report for Year 2010
4. Exhibit "C" – Detail List of Projects Completed, Under Construction, Entitlement Approved or Under Review

ATTACHMENT 1

Resolution No. 2011-20

RESOLUTION NO. 2011-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE GENERAL PLAN ANNUAL REPORT FOR YEAR 2010

WHEREAS, the California state law requires that each city and county adopt a general plan to guide development in their city and land outside its boundaries that has relation to its city planning (Govt. Code §65300); and

WHEREAS, the City undertook a comprehensive update to the General Plan and Zoning Ordinance which were adopted by the City Council on January 31, 2006; and

WHEREAS, the California State law requires that the General Plan include seven (7) mandated elements: land use, housing, traffic circulation, safety, parks and recreation, conservation, and noise; and

WHEREAS, the City of Banning General Plan has 21 elements (seven [7] of which are mandated by the State) and contains 263 implementation action programs; and

WHEREAS, Government Code §65400 mandates that cities and counties in California submit an annual report on the status of the General Plan and progress in its implementation to their decision makers (City Council or board of supervisors), the Governor's Office of Planning and Research (OPR) and the Housing and Community Development (HCD) by April 1st of each year; and

WHEREAS, the purpose of the General Plan annual report is to provide enough information to identify the necessary "course adjustments" or modifications to the General Plan and means to improve local implementation; and

WHEREAS, the City is also required to report progress in implementing its housing element and the Regional Housing Needs Assessment as part of the annual report; and

WHEREAS, the economic recession has hampered development in the community, including housing construction because financial institutions have tighter regulations and are not lending any construction loans; and

WHEREAS, the City continues to take proactive steps in implementing the goals, policies and action programs of the General Plan; and

WHEREAS, the City has implemented, completed and/or has an active/ongoing status of 222 action programs (85%) out of 263 action programs. Only 41 action programs (15%) have not been completed and/or initiated. In summary, the City has done a good job of implementing the General Plan. The primary reasons some of the

action programs have not been completed/initiated relates to budget deficits, reduction in staff, and work program priority for each of the City departments; and

WHEREAS, Exhibit "A" to this report contains the reporting forms on progress for implementing the Housing Element; and

WHEREAS, Exhibit "B" to this report details the implementation action programs and status; and

WHEREAS, the Planning Commission has reviewed the General Plan Annual Report at its meeting on March 2, 2011 and recommended approval to the City Council; and

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1: Compliance with Government Code Section 65400.

The City Council determined that this General Plan Annual Report is prepared for compliance with Government Code Section 65400.

SECTION 2: City Council Approval.

The City Council has reviewed and approved the General Plan Annual Report for filing with the Governor's Office of Planning and Research and the State Housing and Community Development.

PASSED, APPROVED AND ADOPTED this 22nd day of March 2011.

Barbara Hanna, Mayor
Banning City Council

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2011-20 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 22nd day of March 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

ATTACHMENT 2

Exhibit "A" – Reporting Forms on Progress For Implementing the Housing Element

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

Table A

Annual Building Activity Report Summary - New Construction
Very Low-, Low-, and Mixed-Income Multifamily Projects

Housing Development Information									Housing with Financial Assistance and/or Deed Restrictions		Housing without Financial Assistance or Deed Restrictions
1	2	3	4				5	5a	6	7	8
Project Identifier (may be APN No., project name or address)	Unit Category	Tenure R=Renter O=Owner	Affordability by Household Incomes				Total Units per Project	Est. # Infill Units*	Assistance Programs for Each Development	Deed Restricted Units	Note below the number of units determined to be affordable without financial or deed restrictions and attach an explanation how the jurisdiction determined the units were affordable. Refer to instructions
			Very Low-Income	Low-Income	Moderate-Income	Above Moderate-Income			See Instructions	See Instructions	
None											
(9) Total of Moderate and Above Moderate from Table A3 ▶ ▶											
(10) Total by income Table A/A3 ▶ ▶					1						
(11) Total Extremely Low-Income Units*											

* Note: These fields are voluntary

550

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

Table A2
Annual Building Activity Report Summary - Units Rehabilitated, Preserved and Acquired pursuant to GC Section 65583.1(c)(1)

Please note: Units may only be credited to the table below when a jurisdiction has included a program it its housing element to rehabilitate, preserve or acquire units to accommodate a portion of its RHNA whichmeet the specific criteria as outlined in GC Section 65583.1(c)(1)

Activity Type	Affordability by Household Incomes				(4) The Description should adequately document how each unit complies with subsection (c)(7) of Government Code Section 65583.1
	Extremely Low-Income*	Very Low-Income	Low-Income	TOTAL UNITS	
(1) Rehabilitation Activity	3		5	8	The City of Banning Community Redevelopment Agency (CRA) Assisted 8 residents to rehabilitate their homes using Agency's Exterior Rehabilation Program.
(2) Preservation of Units At-Risk	1			1	The City of Banning CRA partners with the San Gorgonio Pass Habitat for Humanity to purchase home using Agency's 20% set-aside money and have a 45 year covenant.
(3) Acquisition of Units		1		1	The City of Banning CRA assisted a resident in purchasing a home using the Agency's First Time Home Buyers Assistance Program
(5) Total Units by Income	4	1	5	10	

* Note: This field is voluntary

Table A3
Annual building Activity Report Summary for Above Moderate-Income Units (not including those units reported on Table A)

	1. Single Family	2. 2 - 4 Units	3. 5+ Units	4. Second Unit	5. Mobile Homes	6. Total	7. Number of infill units*
No. of Units Permitted for **Moderate**	1					1	
No. of Units Permitted for **Above Moderate**		22				22	

* Note: This field is voluntary

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

Table B

Regional Housing Needs Allocation Progress

Permitted Units Issued by Affordability

Enter Calendar Year starting with the first year of the RHNA allocation period. See Example.												Total Units to Date (all years)	Total Remaining RHNA by Income Level
Income Level		RHNA Allocation by Income Level	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year* 7	Year 8	Year 9		
Very Low	Deed Restricted	437											427
	Non-deed restricted								10			10	
Low	Deed Restricted	618											589
	Non-deed restricted								29			29	
Moderate	Deed Restricted	705											662
	Non-deed restricted								40	2	1	43	
Above Moderate		1,645									22	22	1,623
Total RHNA by COG. Enter allocation number:		3,405							79	2	23	104	3,301
Total Units ► ► ►													
Remaining Need for RHNA Period ► ► ► ► ►													

Note: units serving extremly low-income households are included in the very low-income permitted units totals.

* The units reported are from 2006-2008

552

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

Table C

Program Implementation Status

Program Description (By Housing Element Program Names)	**Housing Programs Progress Report - Government Code Section 65583.** Describe progress of all programs including local efforts to remove governmental constraints to the maintenance, improvement, and development of housing as identified in the housing element.		
Name of Program	**Objective**	**Timeframe in H.E.**	**Status of Program Implementation**
Transitional and Supportive Housing	Zoning Ordinance amendment to allow the use	Aug 2010	Delayed due to budget and staffing cuts
Housing for all income groups		June 2008-June	Ongoing
Update General Plan Elements	Update as required to comply with state law	As required by	As appropriate
Riverside County Housing Assistance	City publicizes programs on website and	Through 2014	The City is focusing on implementing its housing programs and would refer interested
Homeless Assistance and Monitoring Program	Fund active public relations program	Through 2014	Delayed due to budget and staffing cuts
Single-Room Occupancy	Encourage and facilitate development	Through 2014	Delayed due to budget and staffing cuts
Hoemownership Education Program	Provide training for future homeowners	Ongoing	Currently being implemented as part of the Community Redevelopment Agency
Special Needs Housing	Create incentives and procedures	Ongoing	Delayed due to budget and staffing cuts
Funding Availability and Sources	Create a list of funding sources	Ongoing	Not compiled
Assist the County in Marketing their Home Purchasing	Refer Potential Homeowners to the County	Ongoing	Ongoing
Participate in the County Mortgage Credit Certificate Programs	City promote the County Program	Ongoing	Ongoing
Zoning for licensed group homes, foster homes residential care facilities, and similar state-licensed facilities	Revise the Zoning Ordinance	Through 2014	Delayed due to budget and staffing cuts
Farm Worker Housing	Identify number of workers and suitable sites	Through 2014	Delayed due to budget and staffing cuts
Employee Housing	Revise the Zoning Ordinance to allow this use	Dec 2010	Delayed due to budget and staffing cuts
Zoning to ensure compatibility between residential and non-residential uses	Revise the Zoning Ordinance to allow this use	Dec 2010	Delayed due to budget and staffing cuts
Riverside County Housing Authority Vouchers	Monitor vouchers availability and waiting list and promote the County program	Through 2014	Delayed due to budget and staffing cuts
Reasonable Accomodations	Update Zoning Ordinance and Adopt Prcedures	Ongoing and through 2014	Delayed due to budget and staffing cuts
Rezoning to Accommodate High Density Residential	Update Zoning Ordinance and Adopt Prcedures	Ongoing and through 2014	In progress
HOME and CDBG programs for rehabilitation program	Pursue grants programs to rehabilitate extremely low owner/renter occupied units	Ongoing and through 2014	Delayed due to budget and staffing cuts
Riverside County Home Improvement Program	Publicize County's prgram at the counter, newsletter, and city's website	Ongoing and through 2014	Delayed due to budget and staffing cuts
Community Redevelopment Agency Housing Rehabilitation Program	Expand the current program to include energy efficieny program	Ongoing and through 2014	On-going
Cross training of code enforcement, building inspection, and redevelopment	Training to improve communication and information flow	Ongoing and through 2014	On-going
Neighborhood Stabilization Plan	Pursue Participation in the Program	Ongoing and through 2014	Participating with the Riverside Housing Corporation.
Funding for At-Risk Units	Pursue funding through MOME and MHP program	Ongoing and through 2014	Delayed due to budget and staffing cuts
Home Mortgage Disclosure Act and Cimmunity Reinvestment Act	Actively participate in the program	Ongoing and through 2014	Delayed due to budget and staffing cuts

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

Zoning Ordinance Update	Review and update the Ordinance to reduce housing construction costs	Every two years	On-going
Development Fees	Survey surrounding cities to ensure rates are reasonanle and competitive.	Ongoing and through 2014	Delayed due to budget and staffing cuts
Concurent entitlement processing	Encourage developers to take advantage of concurrent entitlement processing and	Ongoing and through 2014	This policy is adopted into the Zoning Code and is being implemented
Permit Streamlining and one-sto-shop	Adopt procedures	Ongoing	Procedures adopted in the Zoning Code and is being implemented
Reduce parking standards for low income housing	Prepare the zoning code amendment	December 2009	Delayed due to budget and staffing cuts
Design Review Process	Ensure that the Design Review Process does not constraint multi-family residential development of 5 or more units and develop alternative procedures if it does	Through 2014 and beyond	Delayed due to budget and staffing cuts
Enregy Conservation	Augment the current design guidelines to encourage energy conservation	December 2010	Partially completed through landscape design guidelines.
Residential building standards	Examine the residential building standards and update as appropriate	Annualy through 2014	This is done through the State Building code standards
Expanded Energy Conservation Through the Housing Rehabilitation Program	Expand the current program to include energy efficieny program	Draft to be completed in Dec 2009 and continuous through 2014	Curently implemented.

554

ANNUAL ELEMENT PROGRESS REPORT
Housing Element Implementation
(CCR Title 25 §6202)

Jurisdiction City of Banning

Reporting Period 1/1/2010 - 12/31/2010

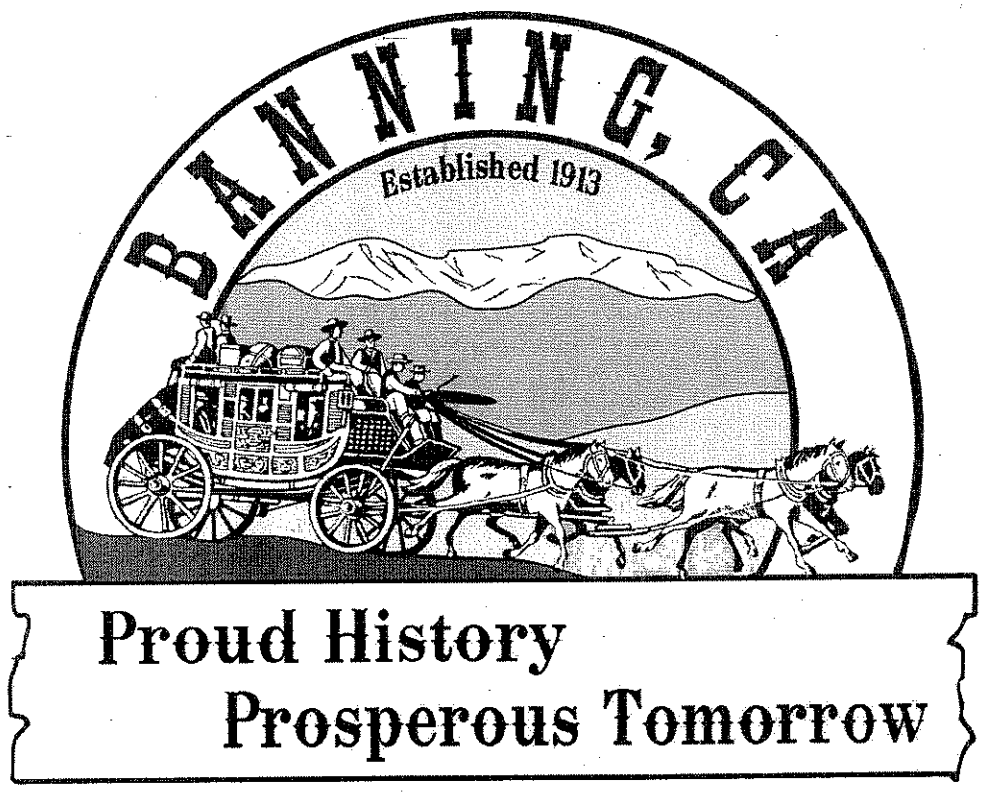
Title 24 Compliance	Residential development must comply with Title 24	Ongoing and through 2014	Curently implemented.
Sustainable Development Standard	Established Ordinance to create standards for sustainable development	Ongoing and through 2014	Implemented through the California Green Building Code
Inventory of Vacant Land	Create an inventory and update it annually. Post approved project information on the website	Ongoing and through 2014	Delayed due to budget and staffing cuts
CalFHA Housing Program	The CRA to provide direct mailing to all residents advertising CalFHA Progra.	Ongoing and through 2014	Not implemented due to budget cuts
Partner with non-profit and for-profit housing developers and pursue available funding	Pursue other funding sources for affordable housing and provide incentive	Ongoing and through 2014	Delayed due to budget and staffing cuts. The CRA is partnering with San Gorgonio Pass Habitat for Humanity to building and rehabilitate affordable housing.
Rezoning of the Downtown Commercial District	Rezone to allow development of higher density between 16-30 units per acre and allow mixed-use development	July 2010	Additional sites for rezoning is being evaluated.
Provide incentives for development in the newly rezoned Downtown Commercial District	The City and CRA to offer incentives	Ongoing and through 2014	Not implemented pending the rezoning. Funding/incentives will be reevaluated since the City and CRA have structural deficits in their budgets.
City and CRA Funding for multi-family projects	Established partnerships with developers of multi-family housing projects who have proven track record and City and Agency to consider funding.	By December 2010	Funding/incentives will be reevaluated since the City and CRA have structural deficits in their budgets.
State and Federal Funding	Pursue various state and federal funding	Ongoing and through 2014	No implemented due to limited staffing and budget cuts
Density Bonus	Revise Zoning Ordinance to incorporate density bonus	FY 2009-10	Delayed due to budget and staffing cuts
Annual review of Housing Element	Review element annually and report to the State HCS	by April 1st each year	On-going as part of the annual report on progress of implementing the General Plan
Eliminate Encroachment and Incompatible Use	Use the General Plan and Zoning to eliminate incompatible uses	Ongoing and through 2014	Ongoing
Land inventory for single-family and multiple-family development and zone change	Monitor and initiate zone change to accommodate affordable housing	Quarterly basis	Delayed due to budget and staffing cuts
Second Unit	Adopt a second unit ordinance to comply with Government Code 65852.2	by July 2010	Completed
Second Unit Building Plan Standards	Adopt standard plan for second unit to reduce costs or no costs	Ongoing and through 2014	Delayed due to budget and staffing cuts
AB 2292 - Cannot Lower Density Unless Trade-off	Implement the law	July 2009	Delayed due to budget and staffing cuts
Homeless Shelter	Zoning Code amendment to permit homeless shelter by right	July 2010	Delayed due to budget and staffing cuts
Fair Housing Laws	Conduct annula meetings with residents who receive housing assistance to ensure their understanding of the law and reaffirm their commitment	Ongoing and through 2014	Implement through the CRA first time homebuyers program
Fair Housing Information	Develop fliers and distribute the information through various means including outreach events, school fairs, health fairs, and City-sponsored events	Ongoing and through 2014 and annually thereafter	On-going and is provided at the Community Development Counter and the website.
Housing Complaints Resolution	Work with State Fair Employment & Housing Commission to resolve complaints	Ongoing and through 2014	Ongoing

555

ATTACHMENT 3

Exhibit "B" – General Plan Annual Progress Report for Year 2010

General Plan
Annual Progress Report
For Year 2010



City of Banning
99 E. Ramsey Street
Banning, CA 92220
(951) 922-3100

Table of Contents

Air Quality Element 4

Archaeological and Cultural Resources Element 7

Biological Resources Element 10

Circulation Element 12

Economic Development Element 21

Emergency Preparedness Element 26

Energy and Mineral Resources Element 29

Flooding and Hydrology Element 32

Geotechnical Element 35

Hazardous and Toxic Materials Element 37

Housing Element 40

Land Use Element 46

Noise Element 53

Open Space and Conservation Element 56

Parks and Recreation Element 59

Police and Fire Protection Element 64

Public Buildings and Facilities Element 67

Schools and Libraries Element 69

Water Resources Element 72

Water and Waste Water and Utilities Element 75

Wildland Fire Hazard Element 79

Introduction

The following discussion will provide a summary of the progress in achieving the Goals, Policies and Implementation Programs for each of the 21 General Plan elements. Each General Plan Element contains implementation programs that identify each department(s) responsible for implementation of the programs and outlines the timing/schedule to complete the programs. The elements have been alphabetized for easier reference. The programs that have been completed and/or active and ongoing are **highlighted in bold** and the programs that have not been completed are *highlighted in italics.*

Air Quality Element (11 programs)

GOAL 1
To preserve and enhance local and regional air quality for the protection of the health and welfare of the community.

Policy 1
The City shall be proactive in regulating local pollutant emitters and shall cooperate with the Southern California Association of Governments and the South Coast Air Quality Management District to assure compliance with air quality standards.

Policy 2
The City shall continue to coordinate and cooperate with local, regional and federal efforts to monitor, manage and reduce the levels of major pollutants affecting the City and region, with particular emphasis on PM_{10} and ozone emissions, as well as other emissions associated with diesel-fueled equipment and motor vehicles.

Program 2.A

On an on-going basis, the City shall continue to participate in efforts to monitor and control PM_{10} emissions from construction and other sources, and all other air pollutants of regional concern. The City shall coordinate with SCAQMD to provide all reporting data for the SCAQMD annual report.
Responsible Agency: Building and Public Works Departments, Planning Department, SCAQMD
Schedule: Continuous; On-going
Implementation Status – Ongoing through Development Review Process, standard conditions for Public Works. The City consulted with the SCAQMD with regard to air quality impacts from land development projects.

Policy 3
City land use planning efforts shall assure that sensitive receptors are separated from polluting point sources.

Program 3.A
The General Plan Land Use Map and Element shall be developed and maintained to locate air pollution point sources, such as manufacturing operations and highways, at an appropriate distance from sensitive receptors, including hospitals, schools, hotels/motels and residential neighborhoods.
Responsible Agency: Planning Department, SCAQMD
Schedule: 2005-2006
Implementation Status – Implemented through application of zoning regulations and consultation with the SCAQMD through CEQA review related land development projects that may have the potential to impact sensitive receptors.

Policy 4
Development proposals brought before the City shall be reviewed for their potential to adversely impact local and regional air quality and shall be required to mitigate any significant impacts.

Program 4.A
Projects that may generate significant levels of air pollution shall be required to conduct detailed impact analyses and incorporate mitigation measures into their designs using the most advanced technological methods feasible. All proposed mitigation measures shall be reviewed and approved by the City prior to the issuance of grading or demolition permits.

Responsible Agency: Planning Department
Schedule: On-going
Implementation Status - Implemented through CEQA Process and Development Review.
Program 4.B
Provide consistent and effective code enforcement of construction and grading activities and off-road vehicle use to assure that the impacts of blowing sand and fugitive dust emissions are minimized.
Responsible Agency: Building Department, Code Compliance, SCAQMD
Schedule: On-going
Implementation Status – Ongoing through standard approval process and also monitoring during construction.
Program 4.C
The City shall encourage immediately, and investigate legislating the reduction of TDM requirements to a level of 50 employees or more.
Responsible Agency: Public Works Department/Planning Dept
Schedule: 2005-2006 Pending
Implementation Status - *Pending*

Policy 5

The City shall promote the use of clean and/or renewable alternative energy sources for transportation, heating and cooling.

Program 5.A
Vehicles that use alternative fuel sources, such as compressed natural gas and electricity, shall be purchased and maintained for use in the City's vehicle fleet when new vehicles are purchased.
Responsible Agency: City Manager's Office
Schedule: 2005-2006
Implementation Status – New city vehicles that are purchased use compressed natural gas and the implementation is on-going.
Program 5.B
The City's Compressed Natural Gas fueling station shall continue to be open to public use.
Responsible Agency: Public Works Department
Schedule: On-going
Implementation Status - Active and Ongoing.

Policy 6

The City shall support the development of facilities and projects that facilitate and enhance the use of alternative modes of transportation, including pedestrian-oriented retail and activity centers, dedicated bicycle paths and lanes, and community-wide multi-use trails.

Program 6.A
The City shall pursue a balance of employment and housing opportunities that encourage pedestrian and other non-motorized transportation and minimize vehicle miles traveled.
Responsible Agency: Economic Development Department, Redevelopment Agency, Planning Department
Schedule: On-going
Implementation Status – On-going as new development is proposed. The Butterfield Specific Plan (Pardee) will incorporate commercial development with active walking/jogging trails, bike paths, and

neighborhood electric vehicles. The Village at Paseo San Gorgonio is a Downtown redevelopment project that encourages people to walk and enjoy the outdoor environment.
Program 6.B
The City shall promote the expanded availability of mass transit services, coordinating with all agencies to link residential and commercial business and employment centers with the City's residential neighborhoods and nearby communities.
Responsible Agency: Community Services Department, Economic Development Department, Redevelopment Agency, Planning Department
Schedule: Ongoing
Implementation Status – The City coordinates with other regional transit such as the Riverside Transit Agency and attends regional transit meetings. Expansion will occur when population increases demand for expanded service. The City Manager is pursuing opportunities for a regional rail/transit station.
Program 6.C
The City shall promote and support the development of ridesharing, carpooling, flexible work scheduling, telecommuting and Park and Ride programs among public and private employers.
Responsible Agency: Planning Department, Public Works Department, Community Services Department, Transit Agencies, Major Employers
Schedule: Ongoing
Implementation Status - Ongoing as the City currently has a four day work week (4/10 work schedule). This program is codified in Chapter 8.60 of the Municipal Code.
Program 6.D
The City shall require shade trees with non-damaging root systems to be planted in all medians on all streets, to cool the asphalt and reduce the Reactive Organic Compounds (ROC) and Volatile Organic Compounds (VOC) generated by asphalt streets and parking lots. A list of permitted trees with non-damaging root systems shall be developed.
Responsible Agency: Planning Department, Public Works Department
Schedule: Ongoing
Implementation Status - Ordinance in place, Active and Ongoing. Public Works reviews street tree plans for acceptable species; Planning requires one tree for every seven (7) parking spaces in the parking lot.

Archaeological and Cultural Resources Element (13 programs)

GOAL 1
Documentation, maintenance, preservation, conservation and enhancement of archaeological and historic sites, artifacts, traditions and other elements of the City's cultural heritage.

Policy 1
The City shall exercise its responsibility to identify, document and evaluate archaeological, historical and cultural resources that may be affected by proposed development projects and other activities.

Program 1.A
All new development proposals, except single family dwelling on existing lots of record, shall submit a records search for historic and cultural resources as part of the planning process.
Responsible Agency: Planning Department
Schedule: 2005-2006, Ongoing
Implementation Status – Ongoing and is implemented through the CEQA process during land development review.
Program 1.B
Development or land use proposals which have the potential to disturb or destroy sensitive cultural resources shall be evaluated by a qualified professional and, if necessary, comprehensive Phase I studies and appropriate mitigation measures shall be incorporated into project approvals.
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status – Standard conditions for grading.
Program 1.C
The City shall implement the requirements of state law relating to cultural resources, including Government Code 65352.3, and any subsequent amendments or additions.
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status –City consults with tribal representatives on all land development projects.

Policy 2
The City shall expand and enhance its historic preservation efforts.

Program 2.A
Prepare a historic preservation plan, which outlines the goals and objectives of the City's preservation programs and serves as an official historic context statement for the evaluation of cultural resources within the City boundaries.
Responsible Agency: Planning Department
Schedule: 2006-2007
Implementation Status – *Not implemented.*
Program 2.B
The City shall consider participating in the Certified Local Government program so that it may benefit from historic preservation expertise, technical assistance, special grants, information exchange, and statewide preservation programs coordinated by the State Office of Historic Preservation. The evaluation of participation in the program shall be part of the historic preservation plan.

Responsible Agency: Planning Department, Historical Society, City Council
Schedule: 2006-2007
Implementation Status – *Not implemented.*
Program 2.C
Encourage property owners and residents to nominate qualified properties to the City's inventory system and/or any federal and state registers.
Responsible Agency: Planning Department, Morongo Band of Cahuilla Indians
Schedule: Ongoing
Implementation Status – *Not implemented.*
Program 2.D
Should the Saint Boniface School site be proposed for development, extensive analysis of the site shall be conducted, and mitigation proposed, to document its historic significance.
Responsible Agency: Planning Department
Schedule: 2005-2006, Ongoing
Implementation Status – Tract map approved but a project is not yet developed.

Policy 3
Establish and maintain a confidential inventory of archaeological and historical resources within the City, including those identified by the Eastern Information Center (EIC) at the University of California, Riverside and in focused cultural resources studies.

Policy 4
Sensitive archaeological and historic resources shall be protected from vandalism and illegal collection, to the greatest extent possible.

Program 4.A
Mapping and similar information, which identifies specific locations of sensitive cultural resources, shall be maintained in a confidential manner, and access to such information shall be provided only to those with appropriate professional or organizational ties.
Responsible Agency: Planning Department
Schedule: Immediate; continuous
Implementation Status – *Not implemented.*

Policy 5
Encourage public participation in and appreciation of the City's cultural heritage.

Program 5.A
Implement a systematic program to enhance public awareness of the City's heritage, generate broad support for its preservation, and enhance community pride.
Responsible Agency: Planning Department, Historical Society, City Council, Morongo Band of Mission Indians
Schedule: 2005-2006, Ongoing
Implementation Status – *Not implemented.*
Program 5.B
Support the efforts of local cultural associations to acquire historical materials and artifacts, and to educate the public about the City's and region's cultural heritage.

Responsible Agency: Planning Department, Historical Society, Morongo Band of Mission Indians
Schedule: 2005-2006, Ongoing
Implementation Status –*Not implemented.*

Policy 6

Support the listing of eligible structures or sites as potential historic landmarks and their inclusion in the National Register of Historic Places.

Program 6.A
Develop procedures for the designation of local landmarks and historic districts.
Responsible Agency: Planning Department, Historical Society, Morongo Band of Mission Indians
Schedule: 2005-2006
Implementation Status – *Not implemented.*

Policy 7

The City shall consider offering economic or other incentives, such as direct subsidies or application/permitting fee reductions or waivers, to property owners to encourage the maintenance and enhancement of significant cultural buildings and sites.

Program 7.A
Develop an application process for City-sponsored incentives to maintain and enhance significant buildings and sites, and provide property owners with information and guidance on eligibility requirements.
Responsible Agency: Planning Department
Schedule: 2006-2007
Implementation Status – *Not implemented.*

Biological Resources Element (7 programs)

GOAL 1
A pattern of community development that supports a functional, productive, harmonious and balanced relationship between the built and natural environment.

Policy 1
The City shall continue to participate in the preservation of habitat for endangered, threatened and sensitive species.

Program 1.A
Through the Western Riverside MSHCP, maintain an accurate and regularly updated map of sensitive plant and animal species and habitat in Banning and its planning area.
Responsible Agency: Planning Department
Schedule: 2005-2006, Ongoing
Implementation Status – Implemented as required by the MSHCP.
Program 1.B
The City shall participate in the Western Riverside County Multiple Species Habitat Conservation Plan.
Responsible Agency: Planning Department, Riverside County
Schedule: Ongoing
Implementation Status – Implemented as required by the MSHCP.
Program 1.C
City staff shall continue to request biological resource surveys for new development.
Responsible Agency: Planning Department, Riverside County
Schedule: Continuous
Implementation Status - Implemented as required by the MHSCP and through the CEQA review process.

Policy 2
As part of the development review process, the City shall evaluate projects based on their impact on existing habitat and wildlife, and for the land's value as viable open space.

Program 2.A
The City shall encourage developers to recover native and drought tolerant plant materials, and incorporate them into project landscaping, to provide or enhance habitat for local species.
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status – Ongoing part of land development review process.
Program 2.B
The City shall make available at City Hall a listing of planting materials that emphasizes native vegetation, but may also include non-native, plants that are compatible with the local environment.
Responsible Agency: Planning Department
Schedule: 2005-2006, Ongoing
Implementation Status – Landscape Guidelines contain the list.

Policy 3

The City shall encourage and cooperate with other agencies in establishing multiple use corridors that take advantage of drainage channels and utility easements as wildlife corridors, public access and links between open space areas and the built environment.

Program 3.A
The City shall consult and coordinate with the Riverside County Flood Control District to encourage the establishment of a system of multiple use corridors for movement of people and wildlife between open space areas.
Responsible Agency: Planning Department, Riverside County Flood Control District
Schedule: 2005-2006, Ongoing
Implementation Status – Future trail plans that are proposed to be constructed adjacent to flood control facilities will be coordinated with the Riverside County Flood Control District.

Policy 4

Drainage channels, utility corridors and pipeline easements shall be preserved in natural open space to the greatest extent possible.

Policy 5

The City shall promote the protection of biodiversity and encourage an appreciation of the natural environment and biological resources.

Program 5.A
The City shall coordinate with the Banning and Beaumont Unified School Districts, the County and other agencies as identified, to provide educational programs that offer an understanding of the region's natural environment and make the public aware of biological resource issues.
Responsible Agency: Planning Department, Banning and Beaumont Unified School Districts, Riverside County, and others as identified
Schedule: 2005-2006, Ongoing
Implementation Status – *Not implemented*

Circulation Element (38 programs)

GOAL 1
A safe and efficient transportation system.

Policy 1
The City's Recommended General Plan Street System shall be strictly implemented.

Program 1.A
Street rights of way shall be 134 feet for Urban Arterial Highways, 110 feet for Arterial Highways, 100 feet for Major Highways, 88 feet for Secondary Highways, 78 feet for Divided Collectors, 66 feet for Collectors, and 60 feet for Local Streets. Local street standards can be amended as described in Policy 2.
Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: 2005-2006, Ongoing
Implementation Status – Implemented through development process.
Program 1.B
The City's Public Works roadway standards shall be amended to match the standards contained in this General Plan.
Responsible Agency: Public Works Department
Schedule: 2005-2006
Implementation Status – The roadway standard plans will be completed by December 2011.
Program 1.C
Minimum lane width for all City streets shall be designed at 12 feet.
Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: 2005-2006, Ongoing, implementation
Implementation Status – Ongoing standard requirement for all development projects.

Policy 2
Local streets shall be scaled to encourage neighborhood interaction, pedestrian safety and reduced speeds.

Program 2.A
The design of new local streets can vary from the City's standard of 60 foot right-of-way, 40 foot paved width, under the following conditions: 1. The minimum travel lane width shall be 12 feet. 2. Parking shall be provided on at least one side of any public street. Parking lanes shall be a minimum of 8 feet in width. 3. Parking may be eliminated on private streets, if provisions are made in Conditions, Covenants and Restrictions (CC&R's) for enforcement by the Homeowners' Association. 4. Landscaped traffic circles, chokers, and center islands are encouraged, but must meet the requirements of the Fire Department. 5. The minimum parkway width shall be 10 feet. 6. Linear sidewalks are discouraged. Meandering sidewalks, which provide landscaping and street trees adjacent to the curb, shall be included in local street design. The design of local streets varying from the City's standard, shall be included in the Tentative Tract Map application, and shall be reviewed by the Planning Commission and approved by the City Council.

Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: 2005-2006
Implementation Status – Ongoing.
Program 2.B
Existing local streets will be inventoried, and a master plan of potential improvements designed to improve their aesthetic and safety, including landscaped medians, sidewalks and traffic calming devices, shall be developed, cost engineered, and implemented.
Responsible Agencies: Public Works Department, Planning Commission, City Council
Schedule: 2006-2007
Implementation Status – Ongoing, CIP program adopted and being implemented.

Policy 3
The City shall establish and maintain a 5-Year Capital Improvement Program for streets.

Program 3.A
The Public Works Department shall establish a Capital Improvement Program for 5 years, and update it annually.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – Capital Improvement Program approved & being implemented.

Policy 4
Proactively participate in regional transportation planning.

Program 4.A
Maintain active relationships with the City of Beaumont, the County of Riverside, the Western Riverside County Council of Governments, the California Department of Transportation and the Morongo Band of Mission Indians to share information and promote comprehensive transportation planning in the region.
Responsible Agency: Public Works Department, City Manager's Office, City Council, City of Beaumont, County of Riverside, WRCOG, CalTrans, Tribe
Schedule: 2005-2006
Implementation Status – Ongoing.
Program 4.B
Aggressively pursue Banning projects in the Transportation Uniform Mitigation Fee (TUMF) program, particularly the addition of projects to the TUMF project list, including grade separated road crossings.
Responsible Agency: Public Works Department
Schedule: 2005-2006
Implementation Status – Ongoing, Funding being secured for Sunset Grade Separation Project.
Program 4.C
Aggressively pursue the design and development of interchanges at Highland Home Road and Cottonwood Road (North - South), including all sources of funding, and the coordination of I-10 widening with their installation.
Responsible Agency: Public Works Department, City Manager's Office, City Council, CalTrans, Railroad
Schedule: 2005-2006
Implementation Status – Feasibility for Highland Home Road completed; however, the construction

of the full interchange is not feasible due to design and right-of-way issues and lack of funding. The interchange is not included in the Caltrans State Transportation Improvement Plan. The Cottonwood Road is under consideration.

Policy 5
Consider amendments to the Highland Home/Highland Springs/18th Street/Brookside street configurations based on public safety, design feasibility and area needs.

Policy 6
The City shall maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 interchanges, where Level of Service D or better shall be maintained.

Program 6.A
Periodically review current traffic volumes and the actual pattern of development to coordinate, program and, as necessary, revise road improvements.
Responsible Agency: Public Works Department
Schedule:
Implementation Status - Ongoing & Active.

Policy 7
New development proposals shall pay their fair share for the improvement of streets within and surrounding their projects on which they have an impact, including roadways, bridges, grade separations and traffic signals.

Policy 8
Traffic calming devices shall be integrated into all City streets to the greatest extent possible and all new streets shall be designed to achieve desired speeds.

Policy 9
Street trees within the City right of way shall be preserved, unless a danger to the public health and safety or if the tree is diseased.

Program 9.A
Sidewalks in areas with street trees shall be designed to "wrap around" the tree if they are added to an existing neighborhood.
Responsible Agency: Public Works Department
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 10
Sidewalks shall be provided on all roadways 66 feet wide or wider. In Rural Residential land use designation pathways shall be provided.

Program 10.A
The Public Works Department shall prepare an inventory of discontinuous sidewalks on all qualifying roadways, and fund individual projects through the Capital Improvement Program annually.
Responsible Agency: Public Works Department, City Council
Schedule: Inventory in 2006-2007, Annually thereafter
Implementation Status – Annually through CIP.

Program 10.B
All new development proposals located adjacent to qualifying roadways shall be required to install curb, gutter and sidewalk concurrent with construction.
Responsible Agency: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Ongoing through land development review and CIP.
Program 10.C
The City shall develop procedures to address neighborhood sidewalk needs as they are requested by that neighborhood.
Responsible Agency: Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status – Ongoing as needed.
Program 10.D
Work with the School District to develop safe routes to school.
Responsible Agency: Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status - Ongoing.

Policy 11
Sidewalks or other pedestrian walkways shall be required on all streets within all new subdivisions.

Policy 12
In the absence of a vehicular grade separation, the City shall aggressively pursue a grade separated pedestrian access across San Gorgonio, to assure that high school students do not have to cross the railroad tracks on their way to and from school.

Policy 13
Pedestrian access in the Downtown Commercial designation shall be preserved and enhanced.

Program 13.A
All development and redevelopment proposals for the Downtown area shall include enhanced sidewalk, pedestrian walkway, lighting and landscaping designs and assure connections to existing and planned sidewalks.
Responsible Agency: Public Works Department, Planning Department
Schedule: As development proposals are presented
Implementation Status – New development, including the Village at Paseo San Gorgonio in Downtown will include all elements in this policy.

Policy 14
The City shall aggressively pursue the construction of all weather crossings over General Plan roadways.

Program 14.A
The Public Works Department shall prioritize the need for bridges listed in this Element, develop preliminary cost estimates, identify and pursue sources of funding, including developer funding, for each facility.
Responsible Agency: Public Works Department, City Council
Schedule: 2005-2006, Annually thereafter
Implementation Status – Ongoing CIP and through private development funding. Sunset Avenue

grade separation is currently a priority project.
Program 14.B
All new development proposals shall pay their fair share of bridge construction needed to serve their project.
Responsible Agency: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status - Implemented through land development review process.

Policy 15
The City shall develop a Golf Cart Plan compliant with state requirements.

Program 15.A
The City shall develop a golf cart plan and associated ordinances and other required implementation programs.
Responsible Agency: Public Works Department, City Council
Schedule: 2006-2007
Implementation Status – Citywide golf cart plan is not implemented due to lack of funding. However, future golf courses that are to be developed as part of development will require a golf cart plan that connects homes to commercial development within the project or beyond based on future opportunities.

Policy 16
Golf cart paths and facilities shall be funded, to the greatest extent possible, by new development.

Program 16.A
The routing and facilities required in the Golf Cart Plan shall be incorporated into the Development Impact Fee when the Plan is adopted.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – *Not implemented since there is no Citywide golf cart plan.*
Program 16.B
Golf cart facilities shall be incorporated into new project plans located on golf cart routes.
Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: 2005-2006, Ongoing
Implementation Status - Implemented case-by-case based on future development. The proposed Butterfield Specific Plan (Pardee Homes) includes golf cart routes connecting homes to the commercial area in the development.

Policy 17
Encourage the expansion of an integrated Pass transit system.

Program 17.A

The City will explore the potential for either bus or rail connection to the Metrolink transit system.
Responsible Agency: City Manager's Office, Community Services Department
Schedule: 2006-2007, Ongoing
Implementation Status – Ongoing and the City Manager is actively pursuing this matter.

Policy 18
The City shall review its transit service to major regional attractions, and intra-City recreational locations in future planning efforts, based on need.

Policy 19
Bus pullouts shall be designed into all new projects on arterial roadways, to allow buses to leave the flow of traffic and reduce congestion.

Program 19.A
Bus pullouts will be retrofitted on built-out streets, wherever possible.
Responsible Agency: Public Works Department, City Council
Schedule: 2006-2007, Ongoing
Implementation Status – Ongoing.

Policy 20
Promote the location of a passenger rail station for long distance and commuter rail service.

Policy 21
Update the Airport Master Plan every five years to meet the needs of the general aviation, business and tourism segments of the community.

Program 21.A
Land use designation decisions within the area of influence of the airport shall be specifically reviewed to assure compatibility.
Responsible Agency: Planning Commission, City Council
Schedule: Ongoing
Implementation Status – Ongoing through land development review process.
Program 21.B
Work with the Chamber of Commerce, the Morongo Band of Mission Indians, and other interested parties to provide services which meet the needs of passenger and freight transport.
Responsible Agency: Airport Management, Economic Development staff, Chamber of Commerce, Morongo Band of Mission Indians, City Council
Schedule: Ongoing
Implementation Status – Ongoing, implemented through the Airport Committee.

Policy 22
Maintain an accurate mapping of all utility corridors.

Program 22.A
The Building Department shall inventory and map transmission utility easements on the Land Use Map (including electric, fiber optics, natural gas and petroleum).
Responsible Agency: Building Department, Planning Department
Schedule: Inventory in 2005-2006, Annually thereafter

Implementation Status – The State of California requires these maps to be maintained through the Service Alert System. There has been no comprehensive inventory conducted by the city. The Electric Utility Department maintains its own inventory of electric utility lines.

Policy 23
The City shall purchase and/or replace its fleet of vehicles with alternate fuel vehicles when available to the greatest extent possible, and shall encourage other agencies to do the same.

Policy 24
Public alleys throughout the City shall be maintained to be useful and safe at all times.

Program 24.A
The City shall create a downtown alley master plan and where appropriate pave, light and otherwise improve alleys.
Responsible Agency: Public Works Department
Schedule: Ongoing
Implementation Status – Ongoing
Program 24.B
The Public Works Department shall inventory all public alleys, determine which are necessary, and vacate those that are not.
Responsible Agency: Public Works Department, City Council
Schedule: 2006-2007
Implementation Status – Ongoing and active.

Policy 25
The City shall develop and implement plans for a coordinated and connected bicycle lane network in the community that allows for safe use of bicycles on City streets.

Program 25.A
The City shall inventory all streets for potential Class I, Class II and Class III bikeways, and shall program their installation in its Capital Improvement Program.
Responsible Agency: Planning Department; Engineering Division; Public Works Department; Planning Commission; City Council
Schedule: 2005-2006.
Implementation Status – *Not yet completed.*
Program 25.B
Class I bikeways and sidewalks should be installed on both sides of Wilson Street, Ramsey Street, and Lincoln Street, and other major streets where sufficient right-of-way is available.
Responsible Agency: Engineering Division; Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status – *Not yet completed.*
Program 25.C
Class II bikeways and sidewalks should be designated on all existing arterial streets that have sufficient width to safely accommodate bicycle travel lanes.
Responsible Agency: Planning Department; Engineering Division; Public Works Department
Schedule: 2005-2006.

Implementation Status – *Not yet completed.*
Program 25.D
The City should designate Class III bikeways only where Class I and Class II facilities are not feasible.
Responsible Agency: Planning Department; Public Works Department
Schedule: Continuous.
Implementation Status – *Not yet completed.*

Policy 26
The City should continue to work with the Morongo Band of Mission Indians and neighboring cities and communities to create a regional bicycle and trail network.

Policy 27
The City shall provide for a comprehensive, interconnected recreational trails system suitable for bicycles, equestrians and/or pedestrians.

Program 27.A
Evaluate the practicality of utilizing flood control channels for multi-use trails, where flooding and safety issues can be accommodated, and negotiate inter-agency agreements for this purpose.
Responsible Agency: Planning Department
Schedule: 2005-2006.
Implementation Status – Ongoing through land development review process.
Program 27.B
Evaluate the practicality of developing a multi-use trails system along the Banning Bench adjacent to and extending into San Bernardino National Forest lands, where environmental and safety issues can be accommodated, and negotiate inter-agency agreements with the U.S. Forest Service for this purpose.
Responsible Agency: Planning Department, U.S. Forest Service/San Bernardino National Forest
Schedule: 2005-2006.
Implementation Status – *Not yet completed.*
Program 27.C
Establish a multi-purpose trail between Dysart Park and Smith Creek Park, suitable for equestrian, bicycle and pedestrian use.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: 2005-2006, ongoing as development occurs
Implementation Status – *Not yet completed.*

Policy 28
Motorized vehicles shall be prohibited on City trails.

Program 28.A
The City shall develop a non-motorized trail system and associated ordinances and other required implementation programs.
Responsible Agency: Public Works Department, Planning Commission, City Council
Schedule: 2006-2007
Implementation Status – *Not completed.*
Program 28.B

The non-motorized trail system shall be funded, to the greatest extent possible, by new development.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – Ongoing through land development review process.
Program 28.C
The routing and facilities required in the non-motorized trail system Plan shall be incorporated into the Development Impact Fee when the Plan is adopted.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – *Not yet completed.*

Economic Development Element (20 programs)

GOAL 1
A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 1
General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

Program 1.A
The city shall annually monitor the remaining capacity of all General Plan land use categories to assure that a variety of economic development opportunities are available.
Responsible Agency: Planning Department, Redevelopment Agency
Schedule: 2005-2006, Annually thereafter
Implementation Status - On-going.
Program 1.B
All proposals for new development or redevelopment shall be evaluated to assure that these uses complement, support and are compatible with the City's core economic assets.
Responsible Agency: Planning Department, Redevelopment Agency, Finance Department, City Council
Schedule: Continuous
Implementation Status – On-going.

Policy 2
The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

Program 2.A
Work closely with Mount San Jacinto College throughout their planning process to assist in its efficient and timely development, implement educational programs geared to job creation and retention, and to coordinate synergistic development opportunities.
Responsible Agency: Redevelopment Agency, Mount San Jacinto College
Schedule: 2005-2006, Ongoing
Implementation Status – Phase I of the Mt. San Jacinto Community College development was completed in December 2010. New phases are in progress. The improvements in and around the state courthouse project site are in progress for the ground breaking of the courthouse in July 2011.
Program 2.B
Aggressively pursue retail commercial developments which reduce the current retail sales leakage.
Responsible Agency: Redevelopment Agency, Chamber of Commerce
Schedule: Ongoing
Implementation Status – Active and ongoing contacts with retailers and developers through letters, e-mails, and phone calls. Attended ICSC national and regional tradeshows and market the City.
Program 2.C
Continue to maximize the role of the Chamber of Commerce, City web site and other mechanisms that

promote and enhance the City's business climate.
Responsible Agency: Redevelopment Agency, Chamber of Commerce
Schedule: Ongoing
Implementation Status - Active and on-going.

Policy 3

Encourage and promote infill development in orderly and logical development patterns that decrease the costs, and increase the efficiency of new utilities, infrastructure, and public services.

Program 3.A
The City shall maintain a package of economic incentive programs that benefit developers of infill projects.
Responsible Agency: Redevelopment Agency, Finance Department
Schedule: 2005-2006
Implementation Status – The City Council adopted the Electric Utility incentive program for existing business expansion and new business. The City also provided a one-stop shop program where developers can meet with City staff at no cost in advance of their formal application to the City. The City also has a single point of contact from start to the completion of the construction.
Program 3.B
The City shall contribute to the financing of tertiary treatment facilities as an economic development tool.
Responsible Agency: Redevelopment Agency
Schedule: 2006-2007
Implementation Status - *Not yet completed.*
Program 3.C
Use the Downtown Charette as a guideline for the Downtown Commercial area, for the development of high quality, pedestrian oriented retail locations.
Responsible Agency: Planning Department, Redevelopment Agency, Planning Commission, City Council
Schedule: 2005-2007, Ongoing
Implementation Status - Ongoing.

Policy 4

Attract a greater number of commercial retail businesses to the Downtown Core area to develop a safe, vital and consumer-friendly downtown shopping area.

Program 4.A
Provisions for the Downtown Commercial Zoning District shall encourage specialty retail uses, live-work uses, and other uses which support and expand the pedestrian and tourist-related shopping experience.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: 2005-2006
Implementation Status – Ongoing .
Program 4.B
The City shall coordinate with public, private and business organizations to explore grant funding to provide funds for rehabilitation and increased code enforcement in the Downtown Core area.
Responsible Agency: Redevelopment Agency, Chamber of Commerce, City Council
Schedule: 2005-2006; Continuous
Implementation Status – The Community Redevelopment Agency enters into a number of Owner Participation Agreements with the business community who desire to upgrade the façade of their

buildings. Code Enforcement efforts are ongoing in the Downtown and throughout the City.

Program 4.C
The City shall work with CABAM and other citizen groups with an interest in development of the Downtown core area, to identify grant monies, private development interests and business synergies to build on existing revitalization activities in this area.
Responsible Agency: Redevelopment Agency, CABAM, development community
Schedule: 2005-2006; Continuous
Implementation Status - Currently working with Cultural Alliance and other citizen groups.

Policy 5
Explore opportunities with private entities to fund Smith Creek Park as a viable recreation area.

Program 5.A
Update the Smith Creek Park master plan and actively market this development opportunity among private entities that could fund development and provide for future maintenance of the park and improvements.
Responsible Agency: Community Services Department, Redevelopment Agency, City Council, development community
Schedule: 2006-2007
Implementation Status - *Not implemented*

Policy 6
Encourage and facilitate highway-serving commercial development at appropriate Interstate-10 interchanges within the City limits.

Program 6.A
Proactively work with CalTrans to improve on- and off-ramp landscaping and improvements to provide more attractive gateways to the City.
Responsible Agency: Planning Department, Redevelopment Agency, CalTrans
Schedule: 2005-2006; Ongoing
Implementation Status - Currently working with CalTrans to improve the Highland Springs interchange and 8th Street off ramps.
Program 6.B
Preserve highway commercial land use designations at interchange locations, and encourage the location of high quality freeway-serving businesses.
Responsible Agency: Planning Department, Redevelopment Agency
Schedule: 2005-2006; Ongoing

Implementation Status - Implemented through Zoning and land development review process.
Program 6.C
Code compliance on gateway streets and properties adjacent to Interstate 10 shall be strictly enforced.
Responsible Agency: Code Enforcement
Schedule: Ongoing
Implementation Status - Ongoing.

Policy 7

Explore joint funding opportunities for the improvement of existing at-grade rail crossings, and investigate necessary infrastructure and funding to extend rail access to lands designated for industrial development.

Program 7.A
Consult with representatives of the Railroad, state and federal legislators, and appropriate state agencies to apply for available funding for these improvements.
Responsible Agency: Redevelopment Agency, Public Works Department, Railroad, City Council
Schedule: 2005-2006; Ongoing
Implementation Status - Grant received for Sunset grade separation / SETS grant submitted for water and sewer improvements east of Hargrave.

Policy 8

In order to maintain existing economic activities and attract new commercial and industrial development, the City shall assure the provision of adequate utilities, infrastructure, and other capital facilities.

Policy 9

All development interests, including residential, commercial and industrial project proponents, shall be responsible for their fair share of on-site and off-site improvements required to support their development proposals. Such improvements may include, but are not limited to, street construction and signalization, grade separation, utility extension, drainage facilities, and parks.

Program 9.A
The Community Redevelopment Agency shall consider requests for assistance from project developers for the development of infrastructure and compare them to the economic benefit of the proposed project.
Responsible Agency: Redevelopment Agency
Schedule: 2005-2006; Ongoing
Implementation Status - Ongoing efforts by Redevelopment to fund requests.
Program 9.B
Proactively work with the Riverside County Transportation Commission in putting Banning projects on the highest priority within the Transportation Uniform Mitigation Fee (TUMF) program.
Responsible Agency: City Manager's Office, City Engineer, City Council
Schedule: Ongoing
Implementation Status - Ongoing. Attend and participate at monthly meetings with RCTC.

Policy 10

Continue to cultivate cooperative relationships with the Morongo Band of Mission Indians and Bureau of Indian Affairs, particularly regarding development of Indian lands within and adjacent to the planning area, and development and enhancement of community facilities that provide joint benefit to the Tribe and the City.

Policy 11
The City will have a comprehensive tourism plan.

Program 11.A
Encourage and promote special events and activities which strengthen the City's image and attractiveness to residents, visitors, and businesses.
Responsible Agency: City Council, Redevelopment Agency, Chamber of Commerce, Morongo Band of Mission Indians, Inland Empire Tourism Council, Banning and Beaumont Unified School Districts, ECOPAC
Schedule: 2005-2006
Implementation Status – Special Events are conducted by the Banning Cultural Alliance through CRA funds such as Phineas Festival, Art Hop, and Play House Bowl and many other downtown activities.
Program 11.B
The City shall conduct market research on tourism approaches, target the tourism markets of interest, and create tourism plan goals and an implementation strategy.
Responsible Agency: City Redevelopment Agency, Chamber of Commerce, Inland Empire Tourism Council, ECOPAC
Schedule: 2006-2007
Implementation Status – Ongoing EDC efforts to accomplish tourism plan.

Emergency Preparedness Element (8 programs)

GOAL 1
A detailed, integrated and comprehensive emergency preparedness plan for the City, ensuring a high level of readiness and responsiveness to man-made and natural disasters of any scope, and which maximizes response capabilities of the City, County, State and Federal governments.

Policy 1
The City shall maintain and update its Multi-Hazard Functional Planning Guidance document to ensure maximum operational functionality and to incorporate federal mandates by required deadlines.

Program 1A
The City shall maintain close communication and coordination with Riverside County to expedite adaptation of and compliance with the federal NIMS program.
Responsible Agency: City Manager, Disaster Preparedness Coordinator, Riverside County Emergency Services Department
Schedule: 2005
Implementation Status - The Emergency Services Coordinator/Fire Marshal has completed "NIMSCAST," the national online NIMS compliance evaluation program developed by FEMA. Continual updates will be done on "NIMSCAST" to ensure current information about the City's compliance is recorded. The latest update was in November 2010. The Emergency Services Coordinator/Fire Marshal monitors the City's Compliance with SEMS and NIMS and provides training or training opportunities to ensure SEMS and NIMS compliance. The organizational chart was updated in December 2010.

Policy 2
The City shall maintain and update the Banning Emergency Plan to keep it updated with staffing and technical capabilities of the City and cooperating agencies.

Program 2.A
Periodically schedule and direct the review and revision of the Banning Emergency Plan.
Responsible Agency: City Manager, Disaster Preparedness Coordinator, Riverside County Emergency Services, Other City Departments, Sun Lakes EPAP
Schedule: Every two years.
Implementation Status - The City's Emergency Operations Plan was updated and approved by the City Council in August 2007. The plan requires review and updates, as needed, every two years. The latest update was in December 2010.

Policy 3
The City shall identify and establish emergency evacuation and supply routes and plans to preserve or reestablish the use of Highland Springs Avenue, San Gorgonio Avenue, Wilson Street, Ramsey Street, Interstate-10 and other essential transportation routes.

Program 3.A
Through PASSCOM or other appropriate regional organization, the City shall coordinate with adjoining cities, Riverside County, the Morongo Band of Mission Indians and CalTrans to facilitate the designation of emergency evacuation and supply routes, and for the development of a multi-agency emergency response plan that provides expeditious and timely repair to major streets and highways damaged by earthquakes,

flooding or other disasters.
Responsible Agency: City Manager, Disaster Preparedness Coordinator, Public Works Department, Cities of Beaumont and Calimesa, Riverside County Emergency Services, CalTrans, Morongo Band of Mission Indians
Schedule: Continuous
Implementation Status - The Emergency Services Coordinator/Fire Marshal is working with the Emergency Services Coordinator of the Morongo Band of Mission Indians to establish a Mutual Aid Agreement between the Tribe and the City for mutual assistance during disasters. Work continues to designate and develop an alternate east/west route through the Pass Area should I-10 become impassible. Agreement in principal between County of Riverside, Banning City, and Morongo Band of Mission Indians for a route south of I-10. Currently no funds available to proceed.

Policy 4

The City shall identify and establish emergency appropriate locations for emergency supply stockpiles.

Program 4.A
Through County-provided CERT training or other appropriate community venues, the City shall recruit de-centralized locations where stockpiles of food, water and emergency medical supplies may be stored and maintained.
Responsible Agency: City Manager, Disaster Preparedness Coordinator, Public Works Department, Riverside County Emergency Services
Schedule: Continuous
Implementation Status - Nothing accomplished as of December 20, 2007 regarding stockpiling food and water except for supplies for use by EOC personnel during a disaster. For medical emergencies the Fire Department has purchased a trailer and equipped it to handle "Mass Casualty" incidents. The trailer is stocked with medical and rescue supplies. The County of Riverside provided money for a conex with food and water to be placed on the Banning bench, but the city has not had the funds to provide that within the city. Work continues with local communities to stockpile as a community and also be personally prepared.

Policy 5

The City shall cooperate and coordinate with Riverside County Emergency Services, local utility purveyors and other agencies and utilities in the preparation of public information materials to assist residents, visitors and business owners in responding to local disasters and emergencies.

Program 5.A
The City shall coordinate and cooperate with County Emergency Services, Banning Water District, Eastern Municipal Water District, Beaumont/Cherry Valley Water District, Southern California Edison, the Gas Company, and other agencies and utilities in the development and dissemination of information and instructions on appropriate actions in the event of a local disaster or emergency.
Responsible Agency: City Council, City Manager, Disaster Preparedness Coordinator, Riverside County Emergency Services, SCE, the Gas Company, Banning Water District, EMWD, and Beaumont/Cherry Valley Water District.
Schedule: Continuous
Implementation Status - The Fire Department Emergency Services Bureau continually communicates with County OES and local agencies to dispense pertinent disaster preparedness Information through public events and organization meetings.
Program 5.B
Coordinate with the County to facilitate with appropriate public and quasi-public agencies and private organizations to assure that CERT training incorporates a public information program to

advise the community on how to prepare for and cope in a local disaster or emergency.
Responsible Agency: City Council, City Manager, Disaster Preparedness Coordinator, Riverside County Emergency Services, Banning Unified School District, Sun Lakes EPAP, private schools, nursing homes, and various local business organizations
Schedule: Continuous
Implementation Status - Ongoing Implementation.
Program 5.C
Encourage and train community volunteers to assist police and fire personnel during and after a major emergency.
Responsible Agency: City Manager, Disaster Preparedness Coordinator, Riverside County Emergency Services, Sun Lakes EPAP
Schedule: Continuous
Implementation Status - The Fire Department has an active volunteer program. Emergency Services Coordinator/Fire Marshal, along with one Council member and a citizen volunteer, has provided numerous training programs related to neighborhoods preparing for disasters. PASSCOMM, County OES, and local groups have provided local training and preparedness.

Policy 6

The City shall thoroughly consider and assess vulnerability to natural and manmade disasters or emergencies when reviewing proposals for the siting and development of critical and essential public/quasi-public facilities.

Program 6.A
In order to assure the maximum possible protection from environmental and manmade hazards, including earthquakes and flooding, the City shall consider their vulnerability to natural and manmade disasters and emergencies when reviewing proposals for critical and essential facilities, as well as sensitive land uses.
Responsible Agency: Planning Department, Public Works Department, Fire Department
Schedule: Continuous
Implementation Status - This is being accomplished as evidenced by the cooperative efforts between Fire and Public Works to mitigate flooding and mudslides after the 2006 fires. The combined efforts have continued with fire and public works to prepare for and mitigate storm damage with fire crews from Oak Glen camp in 2010 and will continue.

Energy and Mineral Resources Element (9 programs)

GOAL 1
Efficient, sustainable and environmentally appropriate use and management of energy and mineral resources, assuring their long-term availability and affordability.

Policy 1
Promote energy conservation throughout all areas of the community and sectors of the local economy, including the planning and construction of urban uses and in City and regional transportation systems.

Program 1.A —
The City shall strictly and consistently enforce all state mandated energy-conserving development and building codes/regulations, and shall investigate and report on the appropriateness of developing more stringent local energy performance standards.
Responsible Agencies: Building Department, Planning Department, ~~Public Utilities~~ Electric Utility
Schedule: Ongoing
Implementation Status - Active and ongoing part of development process.
Program 1.B
The City shall continue to participate in transportation planning efforts and shall encourage the expanded use of public transit, vehicles fueled by compressed natural gas and hydrogen, buses with bike racks and other improvements that enhance overall operations and energy conservation.
Responsible Agency: City Manager's Office, Community Services Department, Public Utilities Department
Schedule: Ongoing
Implementation Status - Ongoing and Active.
Program 1.C
The City shall strive for efficient community land use and transportation planning and design, and shall assure the provision of convenient neighborhood shopping, medical and other services located to minimize travel and facilitate the use of alternative means of transportation.
Responsible Agency: Public Works Department, Planning Department, Community Services Department
Schedule: Ongoing
Implementation Status - Through Development Review Process; bikeways, golf cart paths & pedestrian trails have been planned for new projects.
Program 1.D
The City shall encourage the use of, and programs for, electric vehicles, hybrids, bicycles and pedestrian facilities.
Responsible Agency: ~~Public Utilities~~ Electric Utility Department, City Council
Schedule: Ongoing
Implementation Status - Active and ongoing.

Policy 2
Promote the integration of alternative energy systems, including but not limited to solar thermal, photovoltaic's and other clean energy systems, directly into building design and construction.

Program 2.A
The City shall make available to residents, businesses, and the building industry information on commercially available conservation technologies, solar thermal and photovoltaic energy systems, fuel cell and other alternative energy technology. Building regulations and guidelines that provide for the safe and efficient installation of these systems shall also be provided.
Responsible Agency: Building Department, Community Development Department, Public Works Department, Electric Utility
Schedule: .2006-2007, Ongoing
Implementation Status - Active and ongoing. Interconnection programs are still available for customers wishing to install "behind the meter" generation. However rebate funds have been exhausted.

Policy 3
Proactively support long-term strategies, as well as state and federal legislation and regulations, that assure affordable and reliable production and delivery of electrical power to the community.

Policy 4
Support public and private efforts to develop and operate alternative systems of wind, solar and other electrical production, which take advantage of local renewable resources.

Program 4.A
Support and facilitate the integration of co-generation and other on-site energy production and management systems into larger industrial, commercial and institutional operations in the City to enhance operational efficiencies, reliability, and to provide additional opportunities for local power production.
Responsible Agency: Public Works Department; Planning Department; Building Department; Electric Utility
Schedule: Ongoing
Implementation Status - Active and Ongoing.

Policy 5
Assure a balance between the availability of mineral resources and the compatibility of land uses in areas where mineral resources are mined.

Program 5.A
The City shall monitor and regulate the safe and environmentally responsible extraction and recycling of significant mineral resources located within the planning area.
Responsible Agency: Community Development Department, Public Utilities Department
Schedule: Ongoing.
Implementation Status –*Not implemented.*
Program 5.B
The City shall establish a formal relationship with the County Geologist or other qualified agency to monitor mineral resource operations under SMARA.
Responsible Agency: Planning Department, Riverside County Geologist.
Schedule: 2005-2006

Implementation Status – Completed.
Program 5.C
The City shall strictly enforce the provisions of the existing mining permit within City limits.
Responsible Agency: Code Compliance, Planning Department
Schedule: Ongoing
Implementation Status – *Not completed.*

Flooding and Hydrology Element (12 programs)

GOAL 1
A comprehensive system of flood control facilities and services effectively protecting lives and property.

Policy 1
Proactively plan and coordinate with other responsible agencies to upgrade the City's local and regional drainage system.

Program 1.A
Continued implementation of the recommendations of the 1994 RCFC Master Drainage Plan study.
Responsible Agency: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Ongoing.
Program1.B
Capital Improvement Plans for drainage management and control shall be developed, updated and maintained and shall be based upon the Master Drainage Plan project descriptions.
Responsible Agencies: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Completed.
Program 1.C
Monitor and update the Master Plan of Drainage every five years to reflect changes in local and regional drainage and flood conditions.
Responsible Agencies: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Ongoing.
Program 1.D
Require all new development to complete on site drainage analysis and improvements, at their expense, as part of project development.
Responsible Agencies: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Ongoing, part of development process.

Policy 2
Major drainage facilities, including debris basins and flood control channels, shall be designed to maximize their use as multi-purpose recreational or open space sites, consistent with the functional requirements of these facilities.

Program 2.A
Coordinate and cooperate with RCFC in achieving multi-use agreements within flood control channels and designing safe, attractive recreational facilities that maintain the functional requirements of the drainage facilities.
Responsible Agencies: Public Works Department, Planning Department, RCFC
Schedule: Ongoing
Implementation Status – Ongoing; through SP's and other projects adjacent to Flood Control.

Program 2.B
Work with RCFC to design drainage and flood control facilities that minimize negative aesthetic impacts and retain natural groundcover and vegetation to the greatest extent possible.
Responsible Agencies: Public Works Department, Planning Department, RCFC, US Army Corps of Engineers
Schedule: Ongoing
Implementation Status – Ongoing; through entitlement process when designs are submitted for approval.

Policy 3
The City Engineer shall continue to actively participate in regional flood control and drainage improvement efforts and to develop and implement mutually beneficial drainage plans.

Policy 4
The City shall cooperate in securing FEMA map amendments, recognizing the importance of redesignation of the 100-year flood plains within the City boundaries and sphere-of-influence as improvements are completed.

Program 4.A
In conjunction with the RCFC, the City shall coordinate and cooperate in the filing of appropriate FEMA application materials to incrementally secure amendments to the Flood Insurance Rate Maps for the City, consistent with existing and proposed improvements.
Responsible Agencies: Public Works Department, Planning Department, RCFC
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 5
Pursue all credible sources of funding for local and regional drainage improvements needed for adequate flood control protection.

Program 5.A
Consider the establishment of Area Drainage Plans or Assessment Districts for purposes of funding necessary drainage improvements in particular geographic areas of the City.
Responsible Agencies: Public Works Department, Planning Department, Economic Development Agency, Developers
Schedule: Ongoing
Implementation Status – *Not yet completed.*
Program 5.B
Explore County funding, state funding under the Cobey-Alquist Flood Plain Management Act, other State programs, and federal funding options for local and area-wide flood control projects.
Responsible Agencies: Public Works Department, Planning Department, Economic Development, State; County
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 6

All new development shall be required to incorporate adequate flood mitigation measures, such as grading that prevents adverse drainage impacts to adjacent properties, on-site retention of runoff, and the adequate siting of structures located within flood plains.

Program 6.A
Stormwater retention shall be enforced through the development review process and routine site inspection.
Responsible Agencies: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status – Ongoing; through grading approval process.

Policy 7

Assure that adequate, safe, all-weather crossing over drainage facilities and flood control channels are provided where necessary, and are maintained for passage during major storm events.

Program 7.A
Bridging of roadways within new development projects shall be the responsibility of the developer on whose project the bridge occurs, and shall be included as a condition of approval.
Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: Ongoing
Implementation Status – Ongoing; yes through approval process.
Program 7.B
All new development proposals shall pay their fair share of bridge construction needed to serve their project.
Responsible Agency: Public Works Department, Planning Department
Schedule: Ongoing
Implementation Status - Ongoing.

Geotechnical Element (7 programs)

GOAL 1
Increased protection and safety of human life, land, and property from the effects of seismic and geotechnical hazards.

Policy 1
The City shall establish and maintain an information database containing maps and other information which describe seismic and other geotechnical hazards occurring within the City boundaries, sphere-of-influence and planning area.

Program 1.A
Consult and coordinate with surrounding communities, the California Division of Mines and Geology, Riverside County, other applicable state and federal agencies, and professional engineering geologists to establish, improve and routinely update the database.
Responsible Agency: Planning Department, California Division of Mines and Geology, Riverside County, Consulting Geologists
Schedule: 2005-2006; Continuous
Implementation Status – Continuous.

Policy 2
In accordance with state law, all development proposals within designated Alquist-Priolo Earthquake Fault Zones shall be accompanied by appropriate geotechnical analysis.

Program 2.A
Establish a cooperative agreement with the County Geologist, State Geologist, contract state-certified geologist, or contract geological engineer to review and determine the adequacy of geotechnical and fault hazard studies prepared within the City.
Responsible Agency: City Engineer/Consulting Engineering Geologist
Schedule: 2005-2006, Ongoing
Implementation Status – Completed.

Policy 3
Development in areas identified as being susceptible to slope instability shall be avoided unless adequately engineered to eliminate geotechnical hazards.

Program 3.A
The City shall make available copies of the General Plan Slope Instability Susceptibility Map and discourage development within areas so designated, or require detailed geotechnical analysis and mitigation measures that reduce potential hazards to insignificant levels.
Responsible Agency: Planning Department, City Engineer/Consulting Engineering Geologist
Schedule: 2005-2006, Ongoing
Implementation Status – Ongoing, implemented through new grading ordinance.

Policy 4

To minimize the potential impacts of subsidence due to extraction of groundwater, the City shall actively support and participate in local and regional efforts at groundwater conservation and recharge.

Program 4.A
Consult and coordinate with the City of Banning Public Utilities – Water Department, U.S. Geological Survey, and other appropriate agencies to routinely monitor groundwater levels and surface elevations in the City.
Responsible Agency: City of Banning Public Utilities – Water Department, U.S. Geological Survey
Schedule: Continuous
Implementation Status – Continuous.
Program 4.B
The City shall encourage the preparation of, support and participate in, the study of the temporary surplus of the Beaumont Water Basin and its impact on subsidence.
Responsible Agency: Water Department, Beaumont/Cherry Valley Water District, San Gorgonio Pass Water Agency
Schedule: Ongoing
Implementation Status – *Not Completed*

Policy 5

The City shall coordinate and cooperate with public and quasi-public agencies to assure the continued functionality of major utility systems in the event of a major earthquake.

Program 5.A
Maintain working relationships and strategies between the Public Works Department (wastewater and electric), utilities, and other appropriate agencies to strengthen or relocate utility facilities, and take other appropriate measures to safeguard major utility distribution systems.
Responsible Agency: Planning Department, Public Works Department, City Engineer, Public and Quasi-Public Utilities
Schedule: 2004-05; Ongoing
Implementation Status – Ongoing, through pre applications, development meetings and with PAC.

Policy 6

New septic tank leach fields, seepage pits, drainage facilities, and heavily irrigated areas shall be located away from structural foundations and supports to minimize the potential for localized collapse of soils.

Program 6.A
The City shall require that development applications include plans indicating the location of leach fields, seepage pits, drainage facilities, and water-dependent landscaping so that City staff may evaluate the potential for ground saturation.
Responsible Agency: Planning Department, Building Department, City Engineer
Schedule: 2005-2006, Ongoing
Implementation Status – Through grading review, part of development review process.

Hazardous and Toxic Materials Element (10 programs)

GOAL 1
Maintain and promote measures to protect life and property from hazards resulting from human activities and development.

Policy 1
The City shall continue to encourage research on potential and known hazards to public health and safety and make this information available to the general public, commercial interests, and governmental organizations.

Policy 2
The City shall continue to conduct and participate in studies with other agencies to identify existing and potential hazards to public health and safety.

Program 2.A
Maintain, coordinate, and update the location of hazardous spills as a result of accident or intentional action, and community evacuation plans.
Responsible Agencies: Fire Department, Planning Department, County Health Department
Schedule: Ongoing
Implementation Status Ongoing.
Program 2.B
The Fire Department shall maintain a citywide Emergency Response Program, which provides for emergency services in the event of a hazardous spill or airborne release.
Responsible Agencies: Fire Department, City Manager's Office, County Health Department
Schedule: Ongoing
Implementation Status – SIMS & NEMS ongoing training.
Program 2.C
Coordinate with responsible agencies to assure enforcement of state and federal regulations for the testing and monitoring of underground fuel storage tanks for leakage.
Responsible Agencies: Fire Department, state and federal EPA, County Health Department
Schedule: Ongoing
Implementation Status – Ongoing activity with fire.

Policy 3
The City shall thoroughly evaluate development proposals for lands directly adjacent to sites known to be contaminated with hazardous or toxic materials, traversed by natural gas transmission lines or fuel lines, or sites that use potentially hazardous or toxic materials.

Program 3.A
Consult with the County of Riverside Department of Health on a quarterly basis to identify existing and new hazardous waste sites within the General Plan study area.
Responsible Agencies: Planning Department, Fire Department, County Health Department
Schedule: Ongoing
Implementation Status Ongoing.

Program 3.B
A Conditional Use Permit shall be required for all new development that generates, transports, uses or stores significant amounts of hazardous materials.
Responsible Agencies: Planning Department
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 4
Require and facilitate the adequate and timely cleanup of contaminated sites identified within the City of Banning and its sphere-of-influence.

Program 4.A
Coordinate with responsible county, state and federal agencies to activate cleanup procedures, and monitor the status of cleanup efforts on an ongoing basis.
Responsible Agencies: Planning Department, Fire Department, State and federal EPA, County Health Department, California Regional Water Quality Control Board
Schedule: Ongoing
Implementation Status - Ongoing

Policy 5
The City shall designate appropriate access routes to facilitate the transport of hazardous and toxic materials.

Program 5.A
Coordinate with the Fire Department, Police Department, neighboring jurisdictions, and other appropriate agencies to identify segments of highway or local roads that shall be restricted from transporting hazardous and toxic materials in order to preserve public safety.
Responsible Agencies: Planning Department, Fire Department, Police Department
Schedule: 2005-2006
Implementation - *Not yet completed*
Program 5.B
Enforce roadway access restrictions and consider the implementation of fines or penalties for violations.
Responsible Agencies: Fire Department, Police Department
Schedule: 2005-2006
Implementation Status - *Not yet completed*

Policy 6
Continue to promote programs that encourage or educate the public in the proper handling and disposal of household hazardous waste or dangerous materials.

Program 6.A
Establish a Household Hazardous Waste program through the City's solid waste contractor.
Responsible Agencies: City Manager's office, solid waste contractor
Schedule: Ongoing
Implementation Status - Ongoing.

Policy 7
The City shall actively oppose plans to establish hazardous or toxic waste dumps, landfills, or industrial processes that may potentially adversely affect the City and its Sphere-of-Influence.

Policy 8

Maintain an inventory and information database, including mapping, of all major natural gas transmission lines and liquid fuel lines within the City limits and Sphere of Influence.

Program 8.A
The City shall insure that location of all major natural gas transmission lines and liquid fuel lines that run though the City are clearly identified, that right-of-way and maintenance easements are maintained, and that all existing and proposed development are located a safe distance from these lines.
Responsible Agencies: Building and Safety, Planning Department, Fire Department
Schedule: Ongoing
Implementation Status – Ongoing.

Housing Element (16 programs)

GOAL 1
Housing Opportunities - Provide a wide range of housing types to meet the existing and future needs of planning area residents.

Policy 1
Provide a variety of residential development opportunities in Banning, ranging from very low density to high density development as described in the Community Development Element and Plan Map in accordance with the Regional Housing Needs Assessment.

Program 1.A
The City, through planning and regulatory actions will designate adequate housing sites to meet its RHNA allocation for each income level (Objective 1,780 dwelling units through June 30, 2005 as follows: 481 very-low income, 289 low-income, 405 moderate-income and 605 above moderate income).
Responsible Agency: Community Development; City Council; Planning Commission
Schedule: January 1, 1998 – June 30, 2005
Implementation - Status The housing element update for 2006-2014 is in progress.
Program 1.B
City to assist Riverside County in advertising the shared housing program by placing program brochures in key locales throughout the community and contacting agencies serving seniors so they are aware of the program (Objective 10 roommate matches per year)
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and On-going.
Implementation Status - *Not implemented.*

Policy2
Encourage both the private and public sectors to produce or assist in the production of high quality housing to meet the needs of the handicapped, the elderly, large families, female-headed households and homeless.

Policy3
Promote the development of low- and moderate-income, and senior citizen housing by allowing developers density bonuses or other financial incentives for providing units for low- and moderate-income residents. Provide rental assistance vouchers, as available, for some or all of the affordable units provided.

Program 3.A
Continue implementing "Density Bonuses and Other Incentives for Lower Income and Senior Housing", and to annually evaluate the program to ensure the Density Bonuses and Other Incentives are effective in encouraging developers to include projects containing housing affordable to low- or moderate-income households.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going
Implementation Status - Developers are encouraged to take advantage of the housing density bonus and other city incentives.

Program 3.B
Participate in one bond-funded housing project for ownership housing and one for rental housing during the five-year period of this Housing Element. To achieve these objectives, Agency staff will do the following during 2001
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: One project each in 2003 and 2004
Implementation Status –*Not implemented.*
Program 3.C
The City of Banning will maintain its cooperative agreement with the County for the mortgage credit certificate program and should assist the County in advertising the program through distribution of program brochures to local realtors and residential sales offices.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: : Current and on-going
Implementation Status – Ongoing.
Program 3.D
Establish ongoing working relationship with at least one nonprofit organization to administer housing programs and/or affordable housing developments
Responsible Agency Community Development Department & Redevelopment Agency
Schedule: Meet with non-profits organizations by June 2001 and establish partnerships by December 2001
Implementation Status – Ongoing.
Program 3.E
The City can facilitate use of Section 8 program by encouraging apartment owners to list available rental units with the County Housing Authority for potential occupancy by tenants receiving Section 8 certificates.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going
Implementation Status – Ongoing.

Policy 4:
Require that housing constructed expressly for low- and moderate-income households not be concentrated in any single portion of the City.

Policy 5:
Continue to coordinate with local social service providers, such as HELP, to address the needs of the City's homeless population. Permit the development of emergency shelters in commercial and industrial zones, and transitional housing in residential zones in locations close to services, subject to a Conditional Use Permit.

Program 5.A
Designation of specific zones in which emergency and transitional facilities will be permitted.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: site analysis and code amendments by September 2001
Implementation Status – Ongoing.

Policy 6: Encourage the development of residential units which are accessible to handicapped persons or are adaptable for conversion to residential use by handicapped persons.

Policy 7: Locate higher density residential development in close proximity to public transportation, services and recreation.

Policy 8: Permit the development of childcare facilities concurrent with new housing development.

Policy 9: Monitor all regulations, ordinances, departmental processing procedures and fees related to the rehabilitation and/or construction of dwelling units to assess their impact on housing costs.

Program 9.A
The City will provide a one-stop process for a developer with an affordable housing project. An interagency approval process system will be established to include the City Planning, Building, Public Works and Fire Departments. A designated individual within the Planning Department will act as the project manager, or liaison, for the participating City departments and the applicant. A timeframe with milestones for development approval will be established for each project to ensure processing in a timely manner. The City will also prepare a permit handbook that explains the permits process and application requirements.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: December 2001
Implementation Status – One-stop process is implemented and is for all projects, including affordable housing.
Program 9.B
Maintain development fees at a level commensurate with the services and facilities needed to meet community standards
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going
Implementation Status – Development fees, along with Citywide fees are currently being reviewed.
Program 9.C
Improve permit processing efficiency and reduce permit processing time.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: : December 2001
Implementation Status - Active and ongoing process as part of Permit Streamlining Act.

Policy 10:
Encourage the use of energy conservation devices and passive design concepts which make use of the natural climate to increase energy efficiency and reduce housing costs.

Policy 11:
Provide opportunities for move-up housing in Banning.

GOAL 2

Maintenance and Preservation – Enhance the quality of existing residential neighborhoods in Banning.

Policy 1:
Correct housing deficiencies through the development of a residential rehabilitation program.

Program 1.A
Administer a Home Improvement Program to provide loans to eligible lower income families for necessary home repair and rehabilitation work, including room additions to alleviate overcrowding. Rehabilitate 15 dwelling units per year (75 over 5 years)
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going; Rehabilitate 15 dwelling units per year (75 over 5 years)
Implementation Status – Active and on-going.

Policy 2:
Continue to utilize the City's code enforcement program to bring substandard units into compliance with City codes and to improve overall housing conditions in Banning.

Program 2.A
The City will continue its sensitive enforcement of residential Building codes, and will inform property owners in violation of City codes of any rehabilitation assistance he/she may be eligible for in correcting code violations. To implement this Program, the City will fund a half-time position for a Neighborhood Code Enforcement Officer.
Responsible Agency: Community Development Department & Code Enforcement
Schedule: Establish a 2-year Pilot Program by FY 2001/02; Status report to Council by July 1, 2003 evaluating program.
Implementation Status: Ongoing.

Policy 3:
Minimize the displacement impacts occurring as a result of residential demolition.

Policy 4:
Promote increased awareness among property owners and residents of the importance of property maintenance to long-term housing quality.

Program 4.A
The Redevelopment Agency will purchase abandoned homes and provide necessary rehabilitation. This program was formerly administered in conjunction with the Banning Partners for a Revitalized Community, which is no longer active. A new program, along the same lines, had been administered by the Banning Redevelopment Agency. The Redevelopment Agency and HUD have purchased four homes to restore and are currently looking for a non-profit agency to partner to start
Responsible Agency: Community Development Department & Code Enforcement
Schedule: Current and on-going; Rehabilitate 5 dwelling units per year (25 over 5 years)
Implementation Status – Ongoing through contract with Habitat for Humanity.

Policy 5:
Encourage the use of rehabilitation funds for room additions to alleviate overcrowding, and for accessibility improvements to address the needs of the handicapped.

Policy 6:
Educate property owners on the benefits of home repair and remodeling using design and materials consistent with the historic character of the residence.

GOAL 3

Environmental Sensitivity - Ensure that new housing is sensitive to existing development as well as the natural environment.

Policy 1:
Ensure that multi-family development is compatible in design with single-family residential areas.

Policy 2:
Regularly examine new residential construction methods and materials, and upgrade the City's residential building standards as appropriate.

Policy 3:
Prohibit new residential development to front on major arterial highways without adequate setbacks and buffering.

Policy 4:
Prohibit housing development in areas subject to significant geologic, flooding, blow sand, noise and fire hazards.

Policy 5:
Accommodate new residential development which is coordinated with the provision of infrastructure and public services.

Program 5.A
The City will continue to use the Design Review Process to evaluate site suitability. Under design review criteria, housing should be located on sites that are physically adequate and environmentally suitable for such development and compatible with existing nearby development. These criteria will provide a yardstick for the City to identify and evaluate potential sites for environmentally sound housings
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going.
Implementation Status – New infill housing is encouraged in developed areas of town to make use of current infrastructure.

Policy 6: Encourage the use of energy conservation devices and passive design concepts which make use of the natural climate to increase energy efficiency and reduce housing

GOAL 4

Fair Housing – Promote equal opportunity for all residents to reside in the housing of their choice.

Policy 1:
Affirm a positive action posture which will assure that unrestricted access is available to the community.

Policy 2:
Prohibit practices which restrict housing choice by arbitrarily directing prospective buyers and renters to certain neighborhoods or types of housing.

600

Policy 3:
Continue support and participation in the Riverside County New Horizons' Fair Housing Program to further spatial de-concentration and fair housing practices.

Program 3.A
Promote equal housing opportunity; educate the public, real estate industry representatives, lenders, and property owners on fair housing requirements; promptly refer and resolve fair housing disputes.
Responsible Agency: Community Development Department & Redevelopment Agency
Schedule: Current and on-going.
Implementation Status – Ongoing.

Land Use Element (17 programs)

GOAL 1

A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents.

Policy 1
The City maintain a land use map which assures a balance of residential, commercial, industrial open space and public lands.

Program 1.A
The city shall annually monitor the remaining capacity of all General Plan land use categories and recommend changes to the City Council as needed.
Responsible Agency: Planning Department, Planning Commission
Schedule: 2005-2006, Annually thereafter
Implementation Status – Ongoing.
Program 1.B
The City's Zoning Ordinance shall directly correspond to General Plan land use designations, and shall be kept consistent with the General Plan.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: 2005-2006, Annually thereafter
Implementation Status – Ongoing.

Policy 2
The Planning, Public Works and Economic Development staffs shall be closely coordinated, to assure efficient and cost effective processing of applications.

Program 2.A
The City shall develop a Fast Track application process for projects which enhance the City's economic development. Procedures and timelines shall be provided to qualifying project applicants in writing.
Responsible Agency: Planning Department, Public Works, Economic Development staff, Redevelopment Agency, City Manager's Office
Schedule: 2005-2006
Implementation Status – Ongoing and complies with Permit Streamlining Act.

Policy 3
Development in all land use categories shall be of the highest quality.

Program 3.A
The Zoning Ordinance shall include design standards and guidelines which assist the development community in developing high quality projects.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: 2005-2006
Implementation Status – Completed.

Policy 4
Specific Plans shall be required for projects proposing one or more of the following:

a. More than one residential land use designation;
b. A combination of residential, recreational, commercial and/or industrial land use designation; or
c. Extension of infrastructure (water, sewer and roadways) into an area where these do not exist.

Policy 5
All land use proposals shall be consistent with the goals, policies and programs of this General Plan, and with the Zoning Ordinance.

Policy 6
The City shall implement a program for Art in Public Places.

Program 6.A
An Art in Public Places Ordinance shall be prepared and incorporated into the Municipal Code.
Responsible Agency: Community Services Department, Planning Department, Planning Commission, City Council.
Schedule: 2005-2006
Implementation Status – Art in Public Places is currently required as part of new development in Downtown Commercial zoning district.

Residential Goals, Policies and Programs:

GOAL 1

Preserve and enhance the City's neighborhoods.

GOAL 2

A broad range of housing types to fill the needs of the City's current and future residents.

Policy 1
The land use map shall provide a range of housing densities while considering land use compatibility with non-residential land uses.

Policy 2
Projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected.

Policy 3
Density transfers resulting in a 50% increase in density shall be permitted in the Residential/Agriculture-Hillside and Rural Residential-Hillside land use designations.

Policy 4
The City's Zoning Ordinance shall include design standards and guidelines which encourage high quality residential development.

Program 4.A
Design standards and guidelines shall be included in all residential zoning categories.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: 2005-2006
Implementation Status – Standards and guidelines contained in zoning ordinance.

Policy 5
The City shall complete Specific Neighborhood Plans when requested by the neighborhood.

Program 5.A
Develop and implement an outreach program and outline of parameters for Neighborhood Plans.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: 2006-2007; As requested by neighborhoods
Implementation Status – Ongoing.

Policy 6
The Zoning Ordinance shall include principles, standards and guidelines which allow for creative and flexible design of residential projects, including clustered housing, narrowed local streets, trails, parks and plazas.

Policy 7
The Zoning Ordinance shall include principles, standards and guidelines which provide for high quality, high density mixed use residential development, in the Downtown Commercial zoning designation.

Policy 8
The City will participate in a Community Plan for the Banning Bench with Riverside County and the Banning Bench Community of Interest. Specific development proposals will continue to be processed during its preparation.

Program 8.A
Negotiate with the Banning Bench Community of Interest as part of the Master Plan for either inclusion in the City's Sphere of Influence or annexation.
Responsible Agency: City Council, Community of Interest
Schedule: 2005-2006
Implementation Status – *Not yet completed.*

Commercial Goals, Policies and Programs:

GOAL 1 - Commercial

Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities.

GOAL 2 - Industrial

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

Policy 1
The land use map shall include sufficient commercial lands to provide a broad range of products and services to the City and region, while carefully considering compatibility with adjacent residential lands.

Policy 2
In coordination with the Economic Development Element, the City shall maintain market information, including information on the City's identified service needs, potential sites, Fast Track System and provide information on those sites to the development community.

Program 2.A
Develop and maintain an inventory of potential commercial sites, including lands which may require consolidation, and demographic information for use by the Economic Development staff in attracting new businesses to the City.
Responsible Agency: Economic Development staff, Planning Department, City Manager's Office
Schedule: 2005-2006
Implementation Status – In progress.
Program 2.B
The Redevelopment Agency shall consider land purchases which allow for the consolidation of smaller, under-utilized commercial sites into larger and more useable parcels, to be marketed to the development community.
Responsible Agency: Redevelopment Agency
Schedule: Ongoing as lands are identified
Implementation Status – Ongoing.

Policy 3
The Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects.

Policy 4
The Zoning Ordinance shall include principles, design standards and guidelines, based on the Downtown Design Charette, which provide for high quality, pedestrian oriented retail development in the Downtown Commercial zoning designation.

Policy 5
The City shall coordinate with the Banning Unified, the Beaumont Unified School Districts and the Mount San Jacinto Community College to provide vocational education to support commercial and industrial businesses in the City and surrounding areas.

Policy 6
The City shall develop and implement a community identification program, including monument signage, directional signs, etc. which provide attractive entry statements for the City, and which direct visitors to local points of interest.

Policy 7
The land use map shall include sufficient industrial lands for manufacturing, warehousing and distribution, while carefully considering compatibility with adjacent lands.

Policy 8
Industrial lands shall be located on major roadways with good access to Interstate 10, to assure that potential traffic impacts associated with tractor-trailers are minimized.

Policy 9
The Redevelopment Agency will consider purchases of residential properties occurring in the industrial land use designations when they are put up for sale.

Program 9.A
Establish contacts in the real estate community to be notified of residential properties for sale in the industrial areas, and consider purchases when appropriate.
Responsible Agency: Redevelopment Agency
Schedule: Ongoing as properties become available
Implementation Status – Ongoing.

Policy 10
The Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality industrial projects.

Policy 11
Industrial campuses and master planned projects are encouraged.

Policy 12
The City shall coordinate with developers and the Railroad to secure railroad spurs.

Policy 13
The City shall adequately regulate sand and gravel operations to assure that their impacts to surrounding development is minimized.

Program 13.A
The City shall establish a formal relationship with the County Geologist or other qualified agency to monitor mineral resource operations under the State Mining and Reclamation Act (SMARA).
Responsible Agency: Planning Department, Riverside County Geologist
Schedule: 2005-2006
Implementation Status – Formal relationship is established and ongoing.

Public Facilities Goals, Policies and Programs:

GOAL 1
Sufficient and appropriately located public facilities to serve the needs of the City's residents, businesses and visitors.

Policy 1
The City shall take a leadership role with all providers of public services in the community to assure they provide adequate and quality levels of service based on future demands.

Program 1.A
The City shall take a leadership role with the various public and private providers responsible for schools, fire, health and other providers.
Responsible Agency: Planning Department, City Manager's Office, City Council, Fire Department, Banning and Beaumont Unified School Districts, County of Riverside, San Gorgonio Memorial Hospital
Schedule: Quarterly
Implementation Status - The Fire Department master plan for expansion based on community growth was approved by the City Council and is continually re-evaluated. The Fire Department has

been working with the Finance Department to develop a plan for Fire and Police Community Funding districts in new developments.

Policy 2
The City shall review projects, particularly those which propose master planned communities, to assure that public facilities are provided to meet the needs of the project and the surrounding area.

Program 2.A
The City shall, where appropriate, regulate the location of public facilities through conditions of approval.
Responsible Agency: Planning Department, Public Works Department, Planning Commission, City Council
Schedule: Ongoing
Implementation Status – Ongoing through conditions of approval.

Open Space Goals, policies and Programs:

GOAL 1

The conservation and management of open space areas to provide recreational opportunities and protect important resources in perpetuity.

Policy 1
Lands preserved through conservation easements, acquired by private or public agencies, or dedicated for open space shall be designated for the appropriate Open Space land use category on the land use map as they are preserved.

Program 1 A
Review development proposals adjacent to designated open space lands and assure that land uses are compatible, and buffers provided when necessary.
Responsible Agency: Planning Department, Public Works Department
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 2
The City shall proactively coordinate with private and public agencies so that lands available for conservation are dedicated appropriately to assure their management in perpetuity.

Program 2.A
The City shall coordinate with land owners and private and public agencies to the greatest extent possible to assure that lands proposed for open space either through donation or purchase are conveyed to the appropriate management agency.
Responsible Agency: Planning Department, City Manager's Office, County of Riverside, State and Federal Agencies, Land Conservation Agencies
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 3

The City of Banning shall protect the peaks and ridgelines within the City, and encourage coordination with adjacent jurisdictions to protect the peaks and ridgelines within the City's area of influence, to protect the historic visual quality of the hillside areas and natural features of the Pass area.

Program 3.A
The City shall investigate and implement actions and regulations that facilitate hillside development that is compatible with the natural characteristics of the terrain while protecting the significant view sheds, and natural hillside features such as topography, natural drainage, vegetation, wildlife habitats, movement corridors etc.
Responsible Agency: City Council, City Manager's Office, Planning Department, Public Works Department, City of Beaumont, County of Riverside, Morongo Band of Mission Indians
Schedule: 2005-2006, Ongoing
Implementation Status – Grading ordinance adopted. Implementation is ongoing.

Noise Element (10 programs)

GOAL 1

A noise environment that complements the community's residential character and its land uses.

Policy 1
The City shall protect noise sensitive land uses, including residential neighborhoods, schools, hospitals, libraries, churches, resorts and community open space, from potentially significant sources of community noise.

Program 1.A
The City shall require building setbacks, the installation of wall and window insulation, soundwalls, earthen berms, and/or other mitigation measures in areas exceeding the City's noise limit standards for private development projects as they occur.
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status – Ongoing through land development review process.
Program 1.B
The City shall maintain and enforce its Noise Control Ordinances that establish community-wide noise standards and identify measures designed to resolve noise complaints.
Responsible Agency: Planning Department, Code Enforcement, Police Department
Schedule: Ongoing
Implementation Status – Ongoing through land development review process.
Program 1.C
The City shall use the development review process to assure the use of buffers between sensitive receptors and incompatible land uses.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: Ongoing
Implementation Status – Ongoing through land development review process.
Program 1.D
The City shall require that commercial compactors, loading zones, and large trash bins be located at a sufficient distance from residential properties to reduce noise impacts to its acceptable standard.
Responsible Agency: Planning Department
Schedule: Continuous
Implementation Status – Ongoing through land development review process.
Program 1.E
The City shall purchase, maintain and operate its own noise monitoring equipment.
Responsible Agency: Code Enforcement
Schedule: 2006-2007, Ongoing
Implementation Status – Equipment is older prior to 2006 and needs to be updated.

Policy 2
The relationship between land use designations in the Land Use Element and changes in the circulation pattern of the City, as well as individual developments, shall be monitored and mitigated.

Program 2.A
The City shall develop guidelines and minimal criteria requirements for noise analyses for proposed development projects. Studies shall evaluate project impacts and the effectiveness of proposed mitigation measures.
Responsible Agency: Planning Department, Public Works Department
Schedule: July 1, 2005; every five years.
Implementation Status – Ongoing through land development review process and through the building code standards.
Program 2.B
The City shall periodically review and amend the Land Use Map to assure reasonable land use/noise level compatibility.
Responsible Agency: Planning Department
Schedule: Annually
Implementation Status – Ongoing.

Policy 3
Private sector project proposals shall include measures that assure that noise exposures levels comply with State of California noise insulation standards as defined in Title 25 (California Noise Insulation Standards) and/or Banning Ordinances 1138 and 1234, whichever is more restrictive.

Policy 4
The City shall maintain a General Plan Circulation Map and assure low levels of traffic within neighborhoods by assigning truck routes to major roadways only.

Program 4.A
The City shall review designated primary truck routes and ensure they are clearly marked throughout the community. Except for traffic providing location-specific services and deliveries, construction trucks and delivery trucks shall be limited to designated truck routes, including: Ramsey Street, and those portions of Lincoln Street, Highland Springs Avenue, Hathaway Street, Sunset Avenue, Eighth Street, San Gorgonio Avenue and Hargrave Street so designated.
Responsible Agency: Public Works Department, City Engineer
Schedule: Annually
Implementation Status – *Not yet implemented*
Program 4.B
The City shall discourage development projects that result in through-traffic in residential neighborhoods.
Responsible Agency: Planning Department, Planning Commission, City Council
Schedule: Ongoing
Implementation Status - Ongoing through land development review process.

Policy 5
The City shall ensure that flight paths and airport improvements adhere to all local, state and federal noise regulations.

Policy 6
All development proposals within the noise impact area of the Interstate and the railroad shall mitigate both noise levels and vibration to acceptable levels through the preparation of focused studies and analysis in the development review and environmental review process.

Policy 7
The City shall coordinate with adjoining jurisdictions to assure noise-compatible land uses across jurisdictional boundaries.

Policy 8
The City shall impose and integrate special design features into proposed development that minimize impacts associated with the operation of air conditioning and heating equipment, on-site traffic, and use of parking, loading and trash storage facilities.

Policy 9
The City shall support development that results in grade separated railroad tracks.

Program 9.A
The City shall assure that new development and project expansions pay their fair share toward grade separations based on their impacts.
Responsible Agency: Planning Department, City Engineer
Schedule: Ongoing
Implementation Status - Ongoing through land development review process.

611

Open Space and Conservation Element (7 programs)

GOAL 1

Open space and conservation lands that are preserved and managed in perpetuity for the protection of environmental resources or hazards, and the provision of enhanced recreational opportunities and scenic qualities in the City.

GOAL 2

A balance between the City's built and open space environment and local and regional protection and preservation of its unique environment.

Policy 1
Identify and assess lands in the City, its sphere-of-influence and planning area, that are suitable for preservation as public or private, passive or active open space.

Program 1.A
The City shall maintain and use Open Space land use designations on the General Plan Land Use Map.
Responsible Agency: Planning Department, Community Services Department.
Schedule: 2005-2006
Implementation Status –Ongoing, private open space & public parks have been set aside through the Specific Plan process that requires minimum public land set aside.
Program 1.B
Environmental hazard zones, including earthquake fault lines, floodways and floodplains, steep or unstable slopes, shall be designated as open space on the land use map.
Responsible Agency: Planning Department
Schedule: 2005-2006
Implementation Status –These have been identified in the General Plan and no development is permitted in these areas of concern.
Program 1.C
Lands on which cultural resources are identified may be preserved as Open Space
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status – The St. Boniface Cemetery has been set aside. This is actively monitored through the CEQA process as part of land development.
Program 1.D
Inventory the costs of land acquisition, maintenance and other administrative functions, and encourage the transfer of public open space and conservation properties to existing land trusts for local property management.
Responsible Agency: Planning Department, City Council.
Schedule: 2005-2006, Update every two years.
Implementation Status – *No progress to date.*

Policy 2

The City shall protect natural hillsides above the toe of slope in perpetuity as undeveloped open space, and shall provide specific parameters under which development can occur within the Rural Residential – Hillside and Ranch/Agriculture Residential – Hillside land use designations. For purposes of this General Plan, the toe of slope is defined as the dividing line between rock formations where there is a noticeable break in the angle of slope from steep to shallow.

Program 2.A
The Zoning Ordinance shall be amended to include detailed provisions for the preservation of natural hillsides above the toe of slope. These provisions shall include, but not be limited to, density transfers from hillside areas to developable areas within the same parcel, building prohibitions for lands with grades exceeding 25%, permitted uses and building standards for developable areas in these hillsides, and grading parameters in these hillsides.
Responsible Agency: Planning Department, City Engineer, Planning Commission, City Council.
Schedule: 2005-2006
Implementation Status – Active and ongoing to comply with the Grading Ordinance that was adopted by the City Council on July 14, 2009.
Program 2.B
The City shall seek recreational usage of desirable hillside lands currently owned by public agencies, such as the Bureau of Land Management, the United States Forest Service or the County of Riverside; and shall secure open space lands from private entities by negotiating public access provisions and/or establishing a density transfer program.
Responsible Agency: City Manager's Office, Planning Department, City Council
Schedule: 2006-2007; Ongoing
Implementation Status – *No progress to date.*

Policy 3

Ridgelines shall be preserved as permanent open space.

Policy 4

The City shall preserve all watercourses and washes necessary for regional flood control, ground water recharge areas and drainage for open space and recreational purposes.

Policy 5

The City shall preserve permanent open space edges or greenbelts that define the physical limits of the City and provide physical separation between adjoining neighborhoods.

Program 5.A
The Land Use Map and Zoning Ordinance shall regulate development at the boundaries of the planning area to assure the preservation of a well-defined, functional or visual edge.
Responsible Agency: Planning Department.
Schedule: 2005-2006
Implementation Status – Ongoing as part of land development review process.

Policy 6

Where practical, new development shall integrate pipeline, above- and under-ground utility corridors and other easements (including electric, cable and telephone distribution lines) into a functional open space network.

Policy 7

Drought tolerant landscaping materials and design features shall be incorporated into parks, roadway medians, common area landscaping, public facilities_and other appropriate open space lands to retain and preserve the natural environment.

Parks and Recreation Element (26 programs)

GOAL 1
A high quality public park system with adequate land and facilities to provide recreational facilities and activities for the City's residents.

GOAL 2
A comprehensive bikeway, trail and walking path system that connects homes to work places, commercial venues and recreational facilities, and which enhances the safety and enjoyment of cyclists, equestrians and pedestrians.

Policy 1
Update the Master Parks and Recreation Plan so as to assure adequate parklands and facilities that meet the immediate and future needs of the community, and is complementary to the natural environment.

Program 1.A
Update the City's parks master plan to address the proposed and anticipated parks and recreational facilities to be developed within the City.
Responsible Agency: Community Services Department, Public Works Department, Parks and Recreation Advisory Committee, Planning Commission
Schedule: 2005-2006, then every five years
Implementation Status – Park Master Plan to be adopted by the City Council on March 22, 2011.
Program 1.B
The parks master plan shall maintain a standard of 5 acres of parkland per 1,000 residents.
Responsible Agency: Community Services Department, Parks and Recreation Advisory Committee
Schedule: Ongoing
Implementation Status – Standard established in the General Plan and soon to be adopted Master Plan.
Program 1.C
Include dog parks, tennis courts and golf facilities in Parks Master Planning updates.
Responsible Agency: Community Services Department, Parks and Recreation Advisory Committee
Schedule: Ongoing
Implementation Status – Addressed in the soon-to-be adopted Parks Master Plan.

Policy 2
The City will distribute parks and recreation facilities in a manner that is convenient to City neighborhoods and balanced within population concentrations.

Program 2.A
The location and design of neighborhood parks shall consider neighborhood suggestions and input regarding facility needs, vehicular and pedestrian access, noise and lighting impacts, and public safety.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee.
Schedule: Ongoing.
Implementation Status – Active policy, ongoing as developments occur.

Program 2.B
City staff shall identify and prioritize park development projects based upon need, land availability, neighborhood suggestions and funding, and shall encourage the planting of trees as in parks and open spaces.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: Ongoing.
Implementation Status- On-going. Park projects are reviewed as part of land development review process.
Program 2.C
Investigate and identify the broad range of sources of financing and operating revenue, including Development Impact Fees, Mello Roos special districts, public/private ventures, state and federal grant opportunities, developer fees and inter-agency joint use agreements to supplement revenues collected for parks and recreation purposes.
Responsible Agency: City Manager's Office; Parks and Recreation Division; Community Services Department; Banning and Beaumont Unified School Districts
Schedule: Ongoing
Implementation Status – Under discussion internally.
Program 2.D
Investigate and identify sources of development financing and revenue, including charitable organizations, state and federal grant opportunities to supplement revenues collected for development of parks and recreation facilities and programs.
Responsible Agency: City Manager's Office; Parks and Recreation Division; Community Services Department
Schedule: Ongoing
Implementation Status – Ongoing.
Program 2.E
The City will consider the implementation of a Quimby Ordinance for the purchase of park lands for new developments as they occur.
Responsible Agency: Parks and Recreation Division; Community Services Department, City Council
Schedule: 2005-2006
Implementation Status – *Not implemented.*

Policy 3

Require developers of new residential projects to provide on-site recreational and/or open space facilities in addition to City-wide park requirements.

Program 3.A
Encourage the planting of trees in parks and open spaces.
Responsible Agency: Community Services Department
Schedule: Ongoing
Implementation Status – Ongoing.
Program 3.B
Recreation facilities within projects will be maintained by the residents within the project either through a homeowners' association, assessment district or community facilities district.

Responsible Agency: Community Services Department
Schedule: Ongoing
Implementation Status – Ongoing.

Policy 4

Encourage the development of recreational programs and activities that serve all population segments, including children, the elderly and the disabled.

Program 4.A
Develop a community education program for the City's parks and recreation facilities which focuses on the sense of community which parks and recreation facilities can foster.
Responsible Agency: Parks and Recreation Division; Community Services Department
Schedule: 2005-2006, Annually
Implementation Status – Ongoing.
Program 4.B
Develop advertising and publicity programs for recreational programs and events to encourage participation.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: Annually
Implementation Status – Ongoing.
Program 4.C
Develop and distribute educational materials relating to the planting and maintenance of drought tolerant landscaping on private property.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: 2006-2007
Implementation Status – Ongoing and active and is part of the City's Landscape Design Guidelines.

Policy 5

The City shall consider alternative methods of providing park and recreational amenities to meet future population demands.

Program 5.A
Support the development of private recreational ventures that will serve the general population.
Responsible Agency: Planning Department; Community Services Department; Economic Development Department
Schedule: Ongoing
Implementation Status – Parks Master Plan.
Program 5.B
Develop a program by which the City can accept parkland gifts and dedications that would be beneficial to the community.
Responsible Agency: City Attorney; Planning Department; City Council
Schedule: 2005-2006
Implementation Status – To be addressed in Parks Master Plan.
Program 5.C

Develop a program that establishes public participation in tree or landscaping planting efforts to commemorate special civic occasions.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: 2006-2007
Implementation Status – Ongoing, Sun Lakes public tree planting.

Policy 6
The City shall develop and implement plans for a coordinated and connected bicycle lane network in the community that allows for safe use of bicycles on City streets.

Program 6.A
The City shall inventory all streets for potential Class I, Class II and Class III bikeways, and shall program their installation in its Capital Improvement Program.
Responsible Agency: Planning Department; Engineering Division; Public Works Department; Planning Commission; City Council
Schedule: 2005-2006.
Implementation Status – *Not completed and it is to be addressed in the Parks Master Plan.*
Program 6.B
Class I bikeways and sidewalks should be installed on both sides of Wilson Street, Ramsey Street, and Lincoln Street, and other major streets where sufficient right-of-way is available.
Responsible Agency: Engineering Division; Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status – *Not completed and it is to be addressed in the Parks Master Plan.*
Program 6.C
Class II bikeways and sidewalks should be designated on all existing arterial streets that have sufficient width to safely accommodate bicycle travel lanes.
Responsible Agency: Planning Department; Engineering Division; Public Works Department
Schedule: 2005-2006.
Implementation Status – *Not completed and it is to be addressed in the Parks Master Plan.*
Program 6.D
The City should designate Class III bikeways only where Class I and Class II facilities are not feasible.
Responsible Agency: Planning Department; Public Works Department
Schedule: Continuous.
Implementation Status – *Not completed and it is to be addressed in the Parks Master Plan.*

Policy 7
The City should continue to work with the Morongo Band of Mission Indians and neighboring cities and communities to create a regional bicycle and trail network.

Policy 8
The City shall provide for a comprehensive, interconnected recreational trails system suitable for bicycles, equestrians and/or pedestrians.

Program 8.A
Evaluate the practicality of utilizing flood control channels for multi-use trails, where flooding and safety issues can be accommodated, and negotiate inter-agency agreements for this purpose.
Responsible Agency: Planning Department
Schedule: 2005-2006.
Implementation Status – Ongoing, requirement.
Program 8.B
Evaluate the practicality of developing a multi-use trails system along the Banning Bench adjacent to and extending into San Bernardino National Forest lands, where environmental and safety issues can be accommodated, and negotiate inter-agency agreements with the U.S. Forest Service for this purpose.
Responsible Agency: Planning Department, U.S. Forest Service/San Bernardino National Forest
Schedule: 2005-2006.
Implementation Status – Included in the soon-to-be adopted Master Plan.
Program 8.C
Establish a multi-purpose trail between Dysart Park and Smith Creek Park, suitable for equestrian, bicycle and pedestrian use.
Responsible Agency: Community Services Department; Public Works Department; Parks and Recreation Advisory Committee
Schedule: 2005-2006, ongoing as development occurs
Implementation Status – Ongoing.

Policy 9

Motorized vehicles shall be prohibited on City trails.

Program 9.A
The City shall develop a non-motorized trail system and associated ordinances and other required implementation programs.
Responsible Agency: Public Works Department, Planning Commission, City Council
Schedule: 2006-2007
Implementation Status – Included in the soon-to-be adopted Parks Master Plan.
Program 9.B
The non-motorized trail system shall be funded, to the greatest extent possible, by new development.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – Ongoing as part of land development review process.
Program 9.C
The routing and facilities required in the non-motorized trail system Plan shall be incorporated into the Development Impact Fee when the Plan is adopted.
Responsible Agency: Public Works Department
Schedule: 2006-2007
Implementation Status – *Not yet completed.*

Police and Fire Protection Element (5 programs)

GOAL 1
The highest possible quality and level of service for fire and police protection to preserve and protect the health, welfare and property of residents, business owners, visitors and property owners.

Policy 1
The City shall work closely with the Fire and Police departments to assure that adequate facilities are constructed and service is provided as development and growth occur to maintain and enhance levels of service and insurance ratings.

Program 1.A
On an annual basis, consult and coordinate long-term planning with the Police and Fire departments regarding the optimal location of future police and fire stations, equipment, paramedic/ambulance service, and to ensure that levels of staffing are adequate.
Responsible Agency: City Manager, Police Department, Fire Department
Schedule: Ongoing
Implementation Status - Ongoing. The new police station has been built and occupied. The Fire Department has developed a long-range master plan that outlines the number and placement of fire stations. The master plan was approved by the City Council. The Fire Department uses the master plan to identify fire station requirements when proposed developments are presented. Recent City budgetary concerns have required that the Fire Department consider lowering the number of Stations originally approved in the master plan thereby lowering what it feels is the appropriate level service for Banning residents. Working with Pardee on fire station location within their project to make it more regionalized with Beaumont, Banning and the County for location and cost controls.

Policy 2
The City shall review all proposals for new or significant remodeling projects for potential impacts concerning public safety.

Program 2.A
The City shall continue to monitor levels of development in the planning area to assess the need for new fire stations.
Responsible Agency: Planning Department, Fire Department
Schedule: Ongoing
Implementation Status - The Fire Department has developed a long-range master plan that outlines the number and placement of fire stations. The master plan was approved by the City Council. The Fire Department uses the master plan to identify fire station requirements when proposed developments are presented. Recent City budgetary concerns have required that the Fire Department consider lowering the number of stations originally approved in the master plan thereby lowering what it feels is the appropriate level service for Banning residents.
Program 2.B
All development applications shall be routed to the Police and Fire Departments for comment as part of the application review process.
Responsible Agency: Planning Department, Fire Department, Police Department
Schedule: Ongoing

Implementation Status - All development proposals are routed to the Police Department for comment All development proposals are routed to the Fire Department for comments.

Policy 3

The City shall strictly enforce fire standards and regulations in the course of reviewing development and building plans and conducting building inspections of large multiple family projects, community buildings, commercial structures and motel structures.

Policy 4

All proposed development projects shall demonstrate the availability of adequate fire flows prior to approval.

Program 4.A
Coordinate with the City of Banning Utility Department – Water Division and the Banning Heights Mutual Water Company to ensure availability of adequate water supplies and pressures for fire flows for all existing and proposed development.
Responsible Agency: Planning Department, Fire Department, City of Banning Utility Department – Water Division, Banning Heights Mutual Water Company, Building Department.
Schedule: Ongoing
Implementation Status - All projects are conditioned to meet appropriate fire flow requirements. The Water Department must verify that the required flow can be met.
Program 4.B
Proposed projects in hilly areas with potential access problems, and/or lack of sufficient water and/or water pressure, may require special on-site fire protection measures. Such measures shall be specified during project review.
Responsible Agency: Planning Department, Fire Department
Schedule: Ongoing
Implementation Status – The City Fire Code requires that any building located more than 10 minutes response time from the closest fire station have an automatic fire sprinkler system installed throughout the building. The fire department will require that developers have in place adequate water systems to support fire protection needs. Effective January 1, 2011, an automatic residential fire sprinkler system shall be installed in all new one-and-two family dwellings in accordance with the 2010 California Residential Code (Title 25, Part 2.5)

Policy 5

Crime prevention design techniques, including the use of "defensible space," high security hardware, optimal site planning and building orientation, and other design approaches to enhance security shall be incorporated in new and substantially remodeled development. (All development proposals routed to Police Department for comment.)

Policy 6

The City shall continue to support and promote community-based crime prevention programs as an important augmentation to the provision of professional police protection services. (Ongoing through 100 Neighborhoods, KO. Gangs in Neighborhoods, GRATE, BPAL)

Policy 7

The City shall periodically review the level, quality, innovation and cost-effectiveness of police and fire protection services, including contract services. (Five-Year Strategic Plan 2006-2011 has been completed.)

Policy 8
The Police and the Fire Departments shall closely coordinate and cooperate with the City and County emergency preparedness teams and shall assure the most effective emergency response practical. (Ongoing training and coordination with all parties involved.)

Policy 9
The Fire Department shall maintain a 5-minute response time.

Policy 10
The Police Department shall maintain a level of service (LOS) goal of 2.0 sworn officers per 1000 residents. (It is recommended that LOS goal be changed to 1.5.)

Policy 11
The Fire Department Ambulance Services shall maintain a 5-minute response time.

Policy 12
The City shall investigate the requirements for an International Organization for Standardization (ISO) rating specifically for the City. (Commission on Accreditation for Law Enforcement Agencies (CALEA).)

Policy 13
The City shall continue to pursue grant positions for the Police Department. (KO Gangs and GRATE have three positions funded by grant.)

Policy 14
The City shall pursue all funding mechanisms to fund the need for police and fire services generated by new development. (Working to establish CFD's & Development Impact Fees.)

Public Buildings and Facilities Element (5 programs)

GOAL 1

The provision of a full range of dependable, cost-effective, and conveniently located public buildings, services and facilities that meet the functional, social and economic needs of the entire community.

Policy 1
The Land Use Element shall consider the long-term availability of sites for future public and quasi-public buildings, infrastructure, and other facilities.

Program 1.A
The City shall review its official Land Use Map and development patterns every five years to assure the availability of adequate sites for future public and quasi-public buildings, infrastructure, and other facilities. The City shall confer and coordinate with utilities and other public and quasi-public agencies regarding their long-term needs.
Responsible Agency: Community Development Department, Public Works Department, Banning Heights Mutual Water Company, SCE, SCG, Verizon, Time Warner
Schedule: 2005; every five years
Implementation Status – Ongoing. Recommendations of city-approved master plans of facilities such as parks, recreation, sewer, and water will be incorporated into future development as part of land development review process.

Policy 2
Continue to identify and evaluate viable, long-term funding mechanisms that provide for the construction, maintenance and operation of existing and future public buildings and facilities, including assuring that new development funds its fair share of these facilities.

Program 2.A
The City shall explore the possibility of establishing a New Construction tax for the purpose of establishing an on-going funding source for adequate provision of public buildings and utilities associated with new development.
Responsible Agency: City Council, Finance Department, Public Works Department, Building Department.
Schedule: 2005
Implementation Status – *Not yet completed.*
Program 2.B
The City shall pursue and encourage joint-use facilities with other local agencies.
Responsible Agency: Community Services Department, Banning and Beaumont Unified School Districts
Schedule: 2005-2006, Ongoing
Implementation Status – Joint use with Banning Unified School District.

Policy 3
Coordinate with public utility providers and other public/quasi-public agencies to assure that utility buildings and facilities are compatible with the surrounding landscape.

Program 3.A
The City shall establish and maintain close working relationships with utility purveyors and other public

and quasi-public agencies serving the City to assure the least intrusive integration of related buildings and facilities into the community.
Responsible Agency: Community Development Department, Public Works Department, Banning Heights Mutual Water Company, SCE, SCG, Verizon, Time Warner
Schedule: Immediate; Continuous
Implementation Status – Ongoing.
Program 3.B
All new maintenance and utility facilities (and their signage) shall be integrated into the surrounding environment using landscape treatments, architectural elements, and/or other appropriate design mechanisms. Whether as a regulatory or advisory function, design plans shall be reviewed by the Community Development Department.
Responsible Agency: Community Development Department, Public Works Department, Banning Heights Mutual Water Company, SCE, SCG, Verizon, Time Warner
Schedule: Immediate; Continuous
Implementation Status – Active as it is implemented.

Policy 4
All public buildings and facilities shall comply with the same development standards as private development.

Policy 5
Encourage the undergrounding of all utility lines and the undergrounding or screening of transformers/facilities.

Policy 6
Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.

Policy 7
The Zoning Ordinance shall be reviewed to facilitate the location of public buildings and offices in a centralized location near the Civic Center.

Schools and Libraries Element (7 programs)

GOAL 1

The provision of quality school and library facilities in the City that is accessible, safe and conveniently located within the community.

Policy 1
Assist, cooperate and coordinate with the Banning and Beaumont Unified School Districts and state agencies in identifying, acquiring and developing school sites needed to meet future growth demands. Encourage the selection of potential school sites that are centrally located in areas of existing or future residential development.

Program 1.A
The City shall review and advise the Banning and Beaumont Unified School Districts on their master plans, development proposals and environmental documentation, and shall otherwise coordinate and cooperate with the Districts to assure the provision of safe, conveniently located and effective educational facilities.
Responsible Agency: Banning and Beaumont Unified School Districts, Planning Department, City Council
Schedule: Ongoing
Implementation Status – Working with Banning Unified School District for coordination & MSJC.

Policy 2
Continue to work with the Banning Unified School District to amend the District's boundary to encompass all lands within its corporate limits and sphere of influence.

Program 2.A
Maintain effective communication with Banning Unified School District staff and board members to lobby for amendment of the District's boundary.
Responsible Agency: Banning Unified School District, Planning Department, City Council, Beaumont Unified School District
Schedule: Ongoing
Implementation Status – Need to pursue.
Program 2.B
Establish an organized committee comprised of City officials, interested community members and leaders and Banning Unified School District staff and board members to lobby for amendment of the District's boundary.
Responsible Agency: City Council, City Manager's Office, Banning Unified School District
Schedule: 2005-2006
Implementation Status – Need to pursue.

Policy 3
Schools and libraries shall be protected from excessive noise and traffic conditions, incompatible land uses, and the threat of on-site disturbance to the greatest extent practicable.

Program 3.A

The City shall routinely evaluate and update the Land Use Element to assure that school and library sites are compatible with surrounding land uses, arterial roadways and other significant noise generators.
Responsible Agency: Planning Department
Schedule: Ongoing
Implementation Status – On-going.
Program 3.B
The City shall work closely with the District to improve the safety of students traveling to and from school over the railroad tracks, and shall strive to provide separate, safe pedestrian and bicycle access, particularly in the vicinity of the high school.
Responsible Agency: Planning Department, Public Works Department, City Council
Schedule: Ongoing
Implementation Status – Safe routes to school program being implemented. State Safe Route to Schools' grant application has been submitted to the State for approval.
Program 3.C
To maximize the safety of students, parents, school staff and the general public, the City shall coordinate with the Banning Unified School District to maintain an adequate staff of school resource officers responsible for monitoring and patrolling school campuses during appropriate school hours.
Responsible Agency: Banning Unified School District, Police Department, Beaumont Unified School District
Schedule: Ongoing
Implementation Status – Active and ongoing.

Policy 4
The City shall cooperate in securing school impact fees from developers, in accordance with state law.

Policy 5
The City shall pro-actively work with the Banning Unified School District to improve the level and quality of education wherever possible.

Policy 6
The City shall encourage and support local higher education institutions that enhance general, career and vocational skills, employment opportunities and personal growth.

Policy 7
The City shall cooperate with Banning Unified School District, the Riverside Office of Education, and Mt. San Jacinto College to facilitate the establishment of a community education committee, which will develop a mission statement and process of committee activities. The committee's essential goal shall be to enhance the provision of quality education to all students in the City.

Policy 8
As appropriate, the City shall pursue agreements with the school districts to assist in the purchase, lease or joint use of land and facilities for school and recreational purposes, and to provide the neighboring community with access to recreational facilities and open space during non-school hours.

Policy 9
The City shall support and facilitate the development of youth programs to provide quality after-school programs and facilities.

Program 9.A
The City shall establish a committee comprised of education professionals, elected and appointed officials, and County and City staff, and shall explore the possibility of establishing after-school programs targeted towards providing educational, recreational and personal development programs for school-aged children.
Responsible Agency: Banning Unified School District, City Council, Riverside County Office of Education, Community Services Department, Beaumont Unified School District
Schedule: Ongoing
Implementation Status – Active and ongoing coordination.

Policy 10

The City will encourage the Library Board to confer and coordinate with Mt. San Jacinto College to explore the provision of library services, and cooperative efforts with the Banning Public Library, in conjunction with the proposed MSJC Education Center.

Policy 11

The City shall coordinate with the Banning Public Library to assure that adequate library space, services and resources are provided to meet the educational and literary needs of the community.

Policy 12

Recognizing the importance of the library system for educational and cultural development within the community, the City shall explore the need for and feasibility of expanded library facilities and resources, including the potential for and appropriateness of accessing on-line resources associated with the Riverside County library system.

Water Resources Element (11 programs)

GOAL 1

A balance of development which assures the maintenance of the water supply and its continued high quality.

Policy 1
New development projects proposing 50 units on property whose General Plan Land Use designation would allow 50 units, and/or 10 acres of commercial/industrial/other development, or more, whether through a tract map, Specific Plan or other planning application, shall be required to fund the provision of its entire water supply, either through SWP, recycled water or other means, as a condition of approval.

Program 1.A
In accordance with the 2003 Determination of Maximum Perennial Yield for the City of Banning, the City shall implement an annual ground water audit. This process involves evaluating groundwater level trends, production rates, ground water quality or other aquifer/well/pump considerations from the previous year (the water audit should be performed six months prior to the start of the water accounting year) and using this information to make recommendations for pumping in the following year.
Responsible Agency: Public Utilities Department
Schedule: 2005-2006, Continuous
Implementation Status – Active and on-going.
Program 1.B
The City shall develop construction plans and cost estimates for the construction of recycled water facilities for both Phase I and II, and make them available to the development community.
Responsible Agency: Public Utilities Department
Schedule: 2005-2006
Implementation Status – Undergoing of wastewater treatment plan/upgrade & install recycled water productions.
Program 1.C
The City shall coordinate with the San Gorgonio Pass Water Agency and other appropriate agencies to assure that the City's SWP water can be delivered.
Responsible Agency: Planning Department, Public Utilities Department
Schedule: 2005-2006, Ongoing
Implementation Status – Active and ongoing.

Policy 2
The City shall require the use of drought-tolerant, low water consuming landscaping as a means of reducing water demand for new development.

Program 2.A
Continue to implement the City's Water Efficient Landscape Ordinance by requiring the use of native and drought-tolerant planting materials and efficient irrigation systems.
Responsible Agency: Public Utilities Department, Planning Department
Schedule: Continuous
Implementation Status – Ordinance adopted and being implemented.

Program 2.B
The City shall coordinate and cooperate with the San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and the Beaumont-Cherry Valley Water District to expand and strengthen educational/public relations programs regarding the importance of water conservation and water-efficient landscaping.
Responsible Agency: Public Works Department, Planning Department, Banning Heights Mutual Water Company, Beaumont-Cherry Valley Water District
Schedule: Continuous
Implementation Status – Water efficient Landscape Ordinance and water efficient Landscape Guidelines are handed out at Planning Counter.

Policy 3

The City shall require the use of recycled wastewater for new development, or where it is unavailable, the infrastructure for recycled water when it becomes available, as a means of reducing demand for groundwater resources.

Program 3.A
Coordinate with the Banning Heights Mutual Water Company regarding the future expansion of recycled wastewater treatment facilities to serve existing and new development projects in the City.
Responsible Agency: Planning Department, Public Works Department, Banning Heights Mutual Water Company
Schedule: Continuous
Implementation Status – No projects identified – will be available for future coordination; expansion is coordinated and conditioned for appropriate projects.
Program 3.B
Aggressively pursue all sources of funding to allow for the installation of a comprehensive recycled water distribution system throughout the City.
Responsible Agency: Public Works Department, City Manager's Office
Schedule: Immediate, Continuous
Implementation Status – In process of SRF.
Program 3.C
The City shall study the potential of providing incentives to developers and property owners for the installation of on-site recycled water reclamation systems. Recycled water systems include the reuse of water from sources such as sink drains, dishwashers and washing machines for irrigation purposes.
Responsible Agency: Public Utilities Department, City Manager's Office
Schedule: 2005-2006
Implementation Status – On going studies with future development projects.

Policy 4

Require that all new development be connected to the sewage treatment system, or install dry sewers until such time as that connection is possible.

Policy 5

The City shall provide guidelines for the development of on-site storm water retention facilities consistent with local and regional drainage plans and community design standards.

Program 5.A
Enforce regulations and guidelines for the development and maintenance of project-specific on-site retention/detention basins which implement the NPDES program, enhance groundwater recharge, complement regional flood control facilities, and address applicable community design policies.
Responsible Agency: Public Utilities Department, Planning Department
Schedule: Continuous
Implementation Status – Ongoing and required as conditions for all projects.

Policy 6

Coordinate with the San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and the Beaumont-Cherry Valley Water District, the California Regional Water Quality Control Board and other appropriate agencies to share information on potential groundwater contaminating sources.

Program 6.A
Develop and maintain a system to share records and technical information with the San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and the Beaumont-Cherry Valley Water District, CRWQCB and other appropriate agencies regarding all sites that have the potential to contaminate groundwater resources serving the City.
Responsible Agency: Public Works Department, the San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and the Beaumont-Cherry Valley Water District, California Regional Water Quality Control Board
Schedule: Continuous
Implementation Status – Ongoing and active.

Policy 7

The City shall ensure that no development proceeds that has potential to create groundwater hazards from point and non-point sources, and shall confer with other appropriate agencies, as necessary, to assure adequate review and mitigation.

Policy 8

Encourage water conservation in existing development.

Program 8.A
Establish incentive programs for conversion of existing buildings to water conserving fixtures and landscaping.
Responsible Agency: Public Utilities – Water Department
Schedule: 2005-2006
Implementation Status – In progress.

Water and Waste Water and Utilities Element (10 programs)

GOAL 1

A comprehensive range of water, Wastewater and utility services and facilities that adequately, cost-effectively and safely meet the immediate and long-term needs of the City.

Policy 1

The City shall coordinate between the City Utility Department-Water Division, Banning Heights Mutual Water Company, Beaumont/Cherry Valley Water Agency, San Gorgonio Pass Water Agency, California Regional Water Quality Control Board and Riverside County Environmental Health to protect and preserve local and regional water resources against overexploitation and contamination.

Program 1.A
Support the efforts of the City Utility Department-Water Division, San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and Beaumont/Cherry Valley Water Agency to develop alternative resources for groundwater recharge, and to expand and construct facilities for the treatment and distribution of reclaimed and/or recycled water.
Responsible Agency: Utility Department-Water Division, Banning Heights Mutual Water Company, Public Works Department, San Gorgonio Pass Water Agency
Schedule: Ongoing
Implementation Status – Ongoing and active.
Program 1.B
The City, it's Utility Department-Water Division, San Gorgonio Pass Water Agency, and Banning Heights Mutual Water Company shall continue and extend their efforts to increase domestic water conservation by expanding efforts to promote the use of water efficient landscaping in all development, and the installation of efficient water-using technologies in new and substantially remodeled structures.
Responsible Agency: Utility Department-Water Division, San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company, Public Works Department
Schedule: Ongoing
Implementation Status - Ongoing and active.
Program 1.C
The City, it's Utility Department-Water Division and Banning Heights Mutual Water Company shall evaluate and, as appropriate, implement actions and regulations that facilitate residential and business retrofits of landscaping/irrigation and water-using appliances/processes that significantly increase water use efficiencies.
Responsible Agencies: Utility Department-Water Division, Banning Heights Mutual Water Company, Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status - Ongoing and active.
Program 1.D
The City shall provide water customers with incentives for the conservation of water.
Responsible Agency: Utility Department-Water Division
Schedule: 2005-2006, Ongoing
Implementation Status - Ongoing and active (i.e., 3rd tier program).

631

Policy 2
Sewer connection shall be required at the time a lot is developed when service is available.

Program 2.A
To the greatest extent practical, the City and its Utility Department-Sewer Division shall require new development to extend and connect to sewer lines rather than permitting the installation of on-lot septic tanks. In the event on-lot septic systems are required, development shall be required to install "dry sewers" and pay connection fee in anticipation of future sewer main extensions.
Responsible Agencies: Utility Department-Sewer Division, Public Works Department, Riverside County Environmental Health Department
Schedule: Ongoing
Implementation Status - Ongoing and active.

Policy 3
In the event a sewer line exists in the right-of-way where a for-sale residential unit is served by a septic system, the septic system shall be properly abandoned prior to a sale and/or close of escrow, and the unit shall be connected to the sewer system.

Program 3.A
The Building and Public Works Departments shall establish procedures for identifying home sales, and shall publicize the requirement for connection of sewers with the mortgage companies and escrow companies of the area.
Responsible Agency: Building Department, Public Works Department
Schedule: 2005-2006, Ongoing
Implementation Status - Ongoing and active.

Policy 4
The City shall make every effort to assure and assist in facilitating the timely and cost-effective extension and expansion of services that support community development and improved quality of life.

Program 4.A
The City shall coordinate its Capital Improvement Program with those of local utility and service providers to assure cost-effective and adequate capacity of services and facilities for future growth and development.
Responsible Agencies: Public Works Department, Utility Department, Banning Heights Mutual Water Company, other utilities and service providers
Schedule: 2005-2006
Implementation Status - Ongoing and active.
Program 4.B
The City shall coordinate with appropriate public and quasi-public agencies and utilities in conducting on-going assessments of infrastructure capacity and evaluating expansion and improvements needed to carry out responsible growth management.
Responsible Agencies: Public Works Department, Utility Department, Banning Heights Mutual Water Company, other utilities and service providers
Schedule: 2005-2006
Implementation Status - Ongoing and active.

Policy 5

To ensure the timely expansion of facilities in a manner that minimizes environmental impacts and disturbance of existing improvements, the City shall confer and coordinate with service and utility providers in planning, designing and siting of supporting and distribution facilities.

Program 5.A
The City shall encourage the consolidation of underground utility lines and other subsurface transmission facilities to limit the impacts of these facilities on the disruption of traffic and roadways.
Responsible Agencies: Public Works Department, Utility Department, Banning Heights Mutual Water Company, SCE, SCG, other utilities and service providers
Schedule: Ongoing
Implementation Status - Ongoing and active.

Policy 6

The City shall proactively support the widespread integration of energy resource conserving technologies throughout the community.

Program 6.A
The City shall investigate and, as appropriate, implement actions and regulations that facilitate residential and business conservation strategies and the implementation of technology retrofits that significantly increase efficiencies in energy use.
Responsible Agencies: Planning and Public Works Departments, Utility Department, Banning Heights Mutual Water Company, SCE, SCG, other utilities and service providers
Schedule: 2005, Ongoing
Implementation Status - Ongoing and active.

Policy 7

The City shall continue to confer and coordinate with its solid waste service franchisee to maintain and, if possible, exceed the provision of AB 939 by expanding recycling programs that divert valuable resources from the waste stream and returning these materials to productive use.

Policy 8

The City shall support, and to the greatest extent practical, shall encourage commercial and industrial businesses to reduce and limit the amount of packaging and potential waste associated with product sale and production.

Policy 9

Utility lines on scenic roadways, major streets and in the downtown shall have primary consideration for undergrounding.

Policy 10

Major utility facilities, including power and other transmission towers, cellular communication towers and other viewshed intrusions shall be designed and sited to ensure minimal environmental and viewsheds impacts and environmental hazards.

Policy 11
The City shall encourage the planning, development and installation of state-of-the art telecommunications and other broadband communications systems as essential infrastructure.

Policy 12
The City shall encourage in others and itself the use of alternative fuel vehicles.

Policy 13
The City shall investigate lower cable rates for ungated neighborhoods.

Policy 14
The City shall encourage alternative energy use for individual property owners and consider developing an incentive program.

Wildland Fire Hazard Element (15 programs)

GOAL 1

Protect human life, land, and property from the effects of wildland fire hazards.

Policy 1

The City shall establish and maintain an information database containing maps and other information which describe fire hazard severity zones, fire threat zone, and other wildfire hazards occurring within the City boundaries, sphere-of-influence and planning area.

Program 1.A
Consult and coordinate with surrounding communities, the State Board of Forestry and Fire Protection, California Department of Forestry and Fire Protection, Riverside County Fire Department, other applicable state and federal agencies to establish, improve and routinely update the database
Responsible Agency: Planning Department, Banning Fire Department, Beaumont Fire Department, State Board of Forestry and Fire Protection, California Department of Forestry and Fire Protection, Riverside County Fire Department, Morongo Band of Mission Indians.
Schedule: 2005-2006; Ongoing
Implementation Status - A new severity zone map has been developed by the California Department of Forestry and Fire Protection (CafFire) and is being reviewed by the City Fire Staff. The revised map for the City, if approved by the City Council, will go into effect July 1, 2008. Revisions to the Map will be ongoing as development occurs but at a minimum of every 5 years.
Program 1.B
The City shall make available copies of the Fire Severity Map and discourage development within areas
so designated, or require detailed mitigation measures that reduce potential hazards to
insignificant levels.
Schedule: Immediately; Ongoing
Implementation Status - The current map, produced by the State, is currently available to view at the fire department administrative office at 3900 W. Wilson. The City Council approved fire severity map will also be a public document. Over one year ago the City Fire Marshal developed standards for development in high fire hazard areas. That document has been made available to developers as needed. At the December 13, 2007 City Council meeting the Fire Marshal introduced Ordinance 1378 which, if approved, will adopt Chapter 7B of the California Fire Code defining construction standards for building in fire hazard areas. The current handout will be revised to reflect the new code. With the new CFC and residential sprinkler codes this issue has been updated in 2011 along with the Fire Hazard Severity map being available on line at ftp://frap.cdf.ca.gov/fhszlocalmaps/riverside
Program 1.C
Prepare an informational handout to be distributed to developers, property owners, and other
Appropriate parties, which describes the need for and design of fire safe developments.
Responsible Agency: Planning, City Engineer, Fire Department
Schedule: 2005-2006 Ongoing

Implementation Status - The Fire Department has developed a 1-page handout briefly describing the requirements. The handout will be revised to match the new building code requirements.

Program 1.D
Establish and maintain a program by which all potentially hazardous structures, which pose a threat due to inadequate fire hazard construction are identified, inventoried, and retrofitted with fire retardant materials. Program shall include informational handouts describing appropriate methods of retrofitting and possible sources of funding to facilitate the rehabilitation of such structures.
Responsible Agency: Building and Safety Department, City Engineer, Fire Department
Schedule: 2005-2006
Implementation Status – *Nothing done at this time.*

Policy 2

On going coordination between the Banning Fire Department, Beaumont Fire Department, the Riverside County Fire Department, the California Department of Forestry, the Morongo Band of Mission Indians and the US Forest Service in fire prevention programs.

Program 2.A
Cooperate with all neighboring agencies in order to identify opportunities for fuel breaks in very high hazard severity zones and to ensure that fire breaks are provided where necessary and appropriate.
Responsible Agency: Fire Marshall, City of Beaumont, County of Riverside, Morongo Band
Schedule: 2005-2006, Ongoing
Implementation Status – Approximately 1½ years ago, the Fire Marshal met with representatives from Cal Fire/Riverside County Fire and San Bernardino County Fire, and the U.S. Forest Service Service to discuss fuel modification projects in the wildland areas north of Banning from Yucaipa to the Morongo Reservation. For budget cycle 2004-2006 the City Fire Marshal proposed a 4 year fuel break construction project in Banning Canyon. The Council approved financing for the project. When funding was requested to continue for the final 2 years of the project, it was denied. Fuel break Projects to the northwest of Banning are being done by Calfire but have little effect toward the protection of the watershed in Banning Canyon.
Program 2.B
Development proposals shall be transmitted to the Police Department and the City Fire Marshal, and input shall be incorporated into project design or conditions of approval, as appropriate.
Responsible Agency: Building and Safety Department, Planning Department, Police Department, Fire Department
Schedule: Ongoing
Implementation Status – All development proposals are routed to the Fire Department for comments.
Program 2.C
The Police and Fire Departments shall closely coordinate and cooperate with the City and County emergency preparedness teams and shall assure the most effective disaster response practical.
Responsible Agency: City Manager's office, Fire Department, Police Department, County of Riverside, PASSCOM
Schedule: Immediately; Ongoing

Implementation Status – The Fire Department's Disaster Preparedness Bureau has completed the City's Emergency Operations Plan. The Department has an ongoing training program for City Employees and City residents. Coordination with local disaster preparedness organizations and County OES is ongoing. The Fire Department evaluates all projects to ensure adequate egress in emergency situations. Cities EOP was updated December 2010.
Program 2.D
Contact and establish working relationships and strategies with Banning Heights Mutual Water Company, High Valley Water District, public utilities, and other appropriate agencies to strengthen or relocate utility facilities, and take other appropriate measures to safeguard major utility distribution systems to the greatest extent practical.
Responsible Agency: Planning Department, Public Works Department, City Engineer, Public and Quasi-Public Utilities
Schedule: 2005-2006; Continuous
Implementation Status – Active and ongoing.
Program 2.E
Encourage and cooperate with CalTrans and the railroad to reduce hazardous fuel loads (vegetation) near bridges, roadways, rail lines and state highways, which may be subject to closure during major wildland fire events.
Responsible Agency: Public Works Department, City Engineer, CalTrans, railroad
Schedule: Continuous
Implementation Status – Active and ongoing.
Program 2.F
The public will be educated regarding disaster prevention and emergency responses including evacuation procedures.
Responsible Agency: Police and Fire Departments, School Districts, PassCom
Schedule: Immediately; Ongoing
Implementation Status – Active and ongoing.

Policy 3

Continue to identify wildfire hazard areas, and to enforce special standards for construction in wildland fire hazard areas.

Program 3.A
New and substantially remodeled structures or developments shall incorporate wildfire prevention design techniques, such as the use of "defensible space," fire retardant sidings, optimal site planning and building orientation, landscaping orientation, and other design approaches to reduce wildfire hazards.
Responsible Agency: Building and Safety Department, Planning Department, Police Department, Fire Department
Schedule: Ongoing
Implementation Status – Active and ongoing with land development review.
Program 3.B
Require that adequate emergency vehicle access and evacuation routes be available with approval of any new development.
Responsible Agency: Building and Safety Department, Planning Department, Police Department, Fire Department

Schedule: Ongoing
Implementation Status– Active and ongoing.
Program 3.C
The City shall adopt standard requirements for all development proposals in High Fire Hazard Areas, including requirements for the preparation of Fire Protection Plans prior to the approval of Tentative Tract Maps, Tentative Parcel Maps, or other land use permits.
Responsible Agency: Fire Marshal
Schedule: 2005-2006
Implementation Status – Active and ongoing.

Policy 4

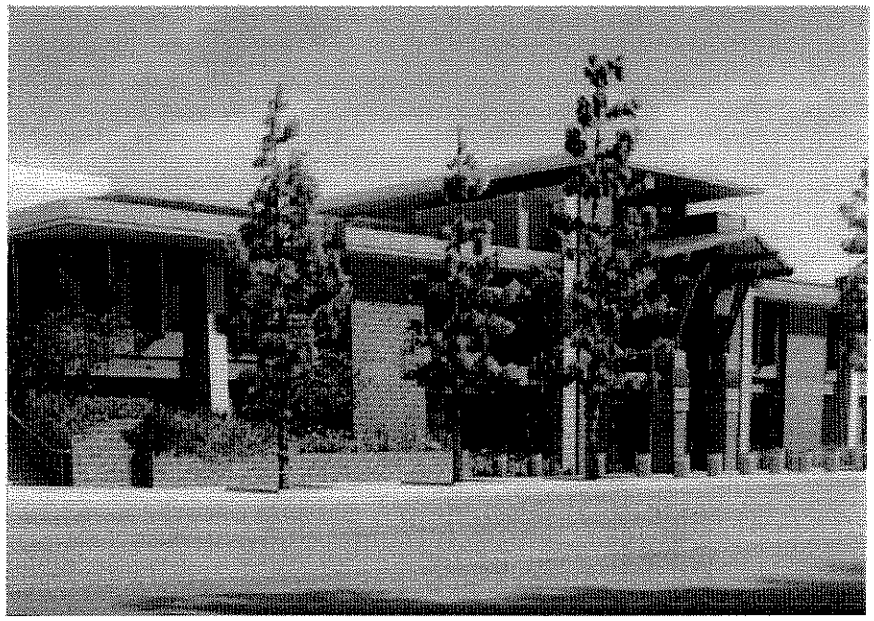
The City shall make every attempt to assure that adequate water supplies and pressures are available during a fire, earthquake or both.

Program 4.A
Coordinate with Banning Heights Mutual Water Company, High Valley Water District and other agencies responsible for supplying water to the region to assure sufficient water supplies and pressures are available to provide adequate fire flows for all existing and proposed development.
Responsible Agency: Public Works Department, Building and Safety Department, Planning Department, Fire Department, Banning Heights Mutual Water Company, High Valley Water District
Schedule: Ongoing
Implementation Status– Active and ongoing.
Program 4.B
Special on-site fire protection measures may be required on well vegetated, hilly areas with slopes of 10 percent or greater, with possible access problems, and/or a lack of sufficient water and/or water pressure. Such measures shall be specified during project review.
Responsible Agency: Building and Safety Department, Planning Department, Fire Department, Banning Heights Mutual Water Company, High Valley Water District
Schedule: Ongoing
Implementation Status – Active and ongoing with development project.

ATTACHMENT 4

Exhibit "C" – Detail List of Projects Completed, Under Construction, Entitlement Approved or Under Review

BANNING – Despite the difficult local, regional and national economy Banning continues to move forward with new development projects and further community revitalization.



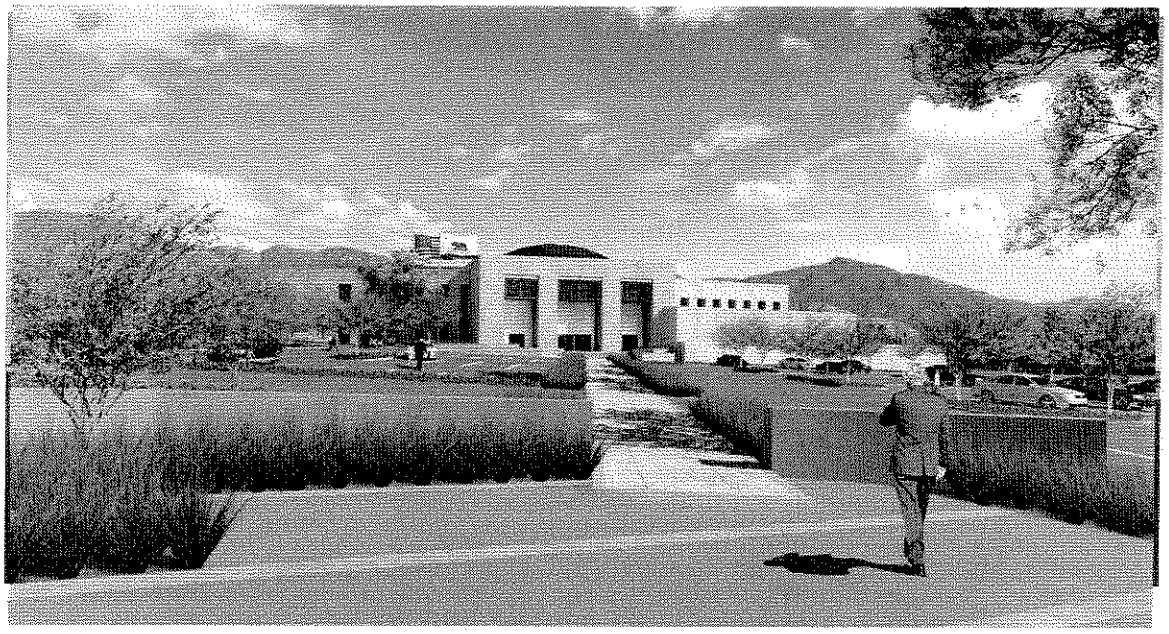
The new Banning Police Station was completed in January 2010.

EXHIBIT "C"



Downtown, the City made tremendous progress with the completion of the renovation and restoration of the historic Fox Theater which re-opened to record crowds in late November 2009. Additionally, the Agency has invested approximately $2.3 million and completed several façade renovation projects on key downtown buildings. The City is also replacing the existing undersized water lines to increase fire flow and to ensure that there is no interruption of service to businesses in the downtown area.

EXHIBIT "C"



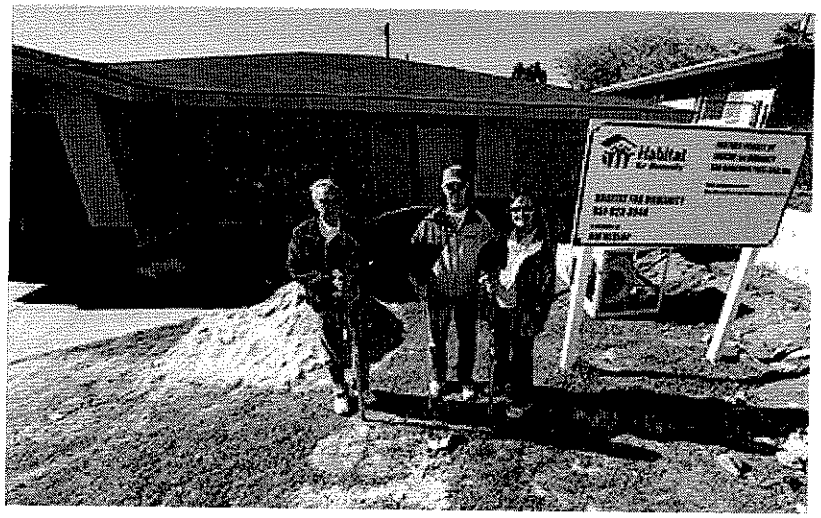
The Superior Court of California is proposing the construction of an approximately 68,000 square foot court house that includes 6 courtrooms, office work areas, and other support services on a 4.86 acre site just east of City Hall on Ramsey Street. The building will include space for court administration, a court clerk, court security operations, a holding area, and facility support. The total project cost is estimated at $63 million. Ground breaking and start of construction is scheduled for the summer of 2011.

EXHIBIT "C"



In November *The Frost Company* submitted an application in conjunction with the Redevelopment Agency to develop approximately 5 ½ acres across from City Hall along Ramsey Street. The project is proposed as mixed use development that includes approximately 65,000 square feet of office, retail, and restaurant space. Titled the Village at Paseo San Gorgonio the project is intended to compliment the development of the courthouse across the street and includes frontage along Interstate 10.

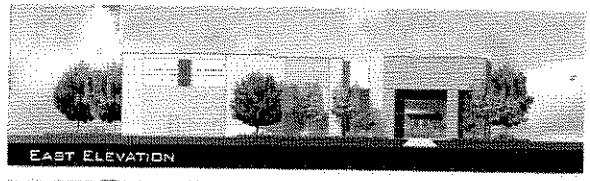
EXHIBIT "C"

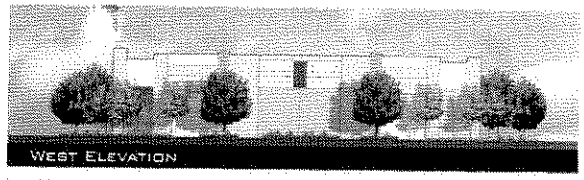


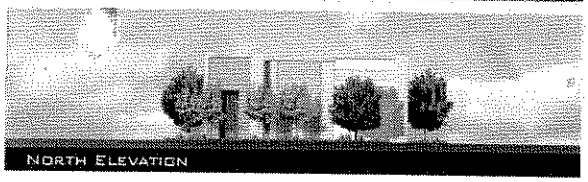
The San Gorgonio Pass Area Habitat for Humanity, in partnership with the Community Redevelopment Agency, completed building two single-family homes in the community, and has contracted for additional new construction and acquisition and rehabilitation of distressed properties in partnership with the City for FY 2010-2011.

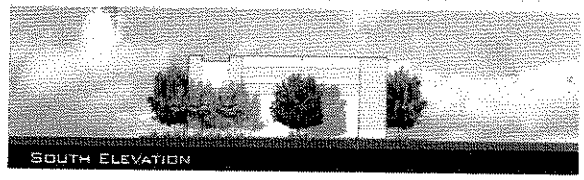
EXHIBIT "C"

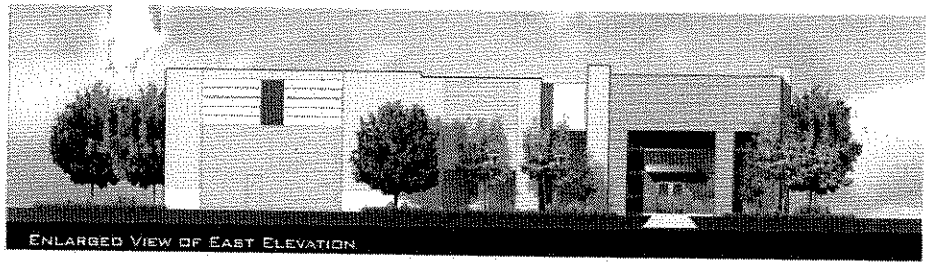
BUILDING 5











HPA

Conceptual Elevations

BANNING BUSINESS PARK

Banning, CA

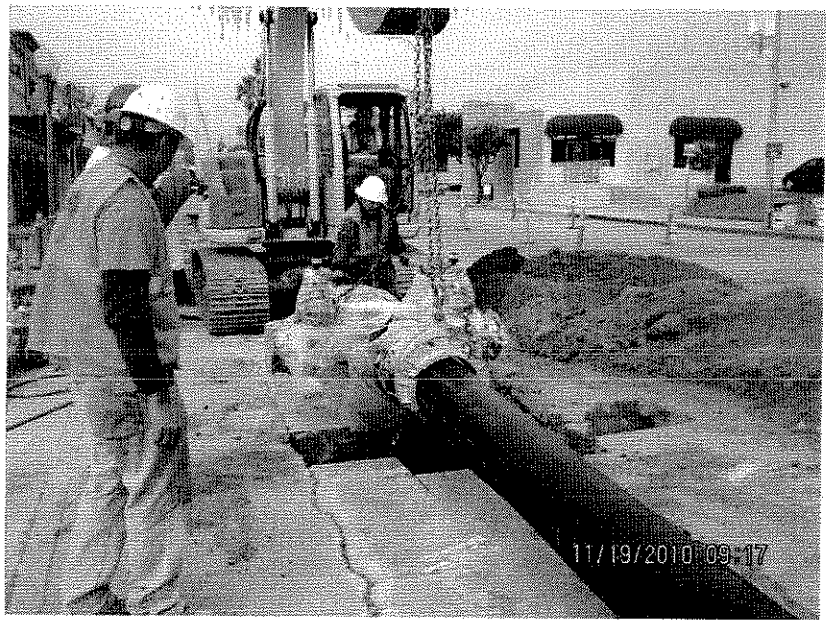
OSI Partnership I, LLC

The development entitlement for O'Donnell Business Park was approved by the City Council in July 2010 which will provide over one million square feet of light industrial space and warehousing in the Banning market with the potential to accommodate hundreds of new jobs. Construction drawings are under review for Phase I of the project that includes the development of the largest warehouse building of approximately 787,000 square feet.

EXHIBIT "C"

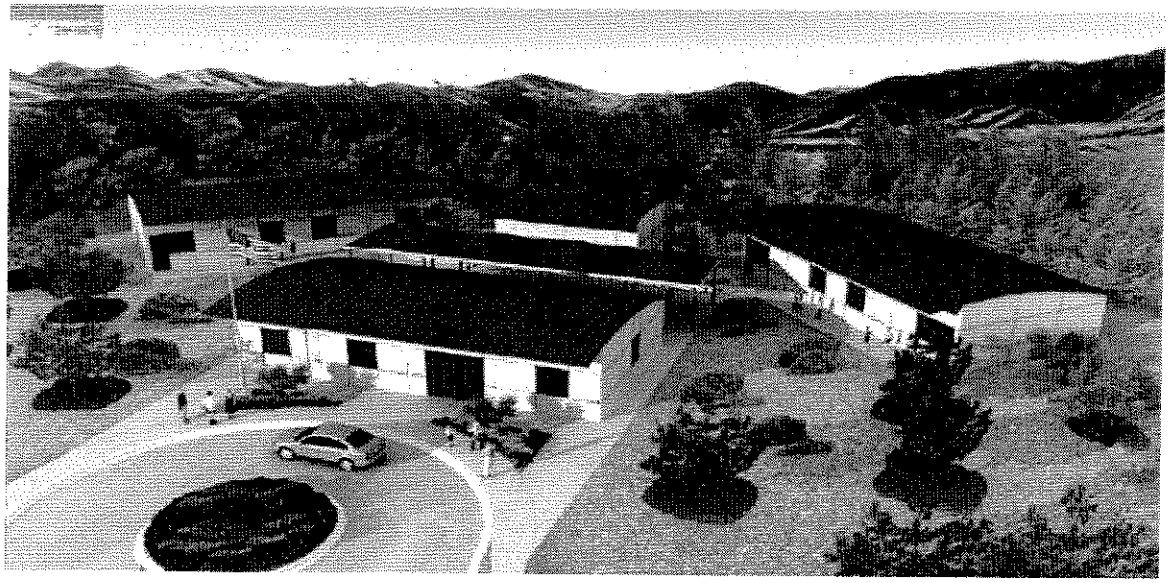


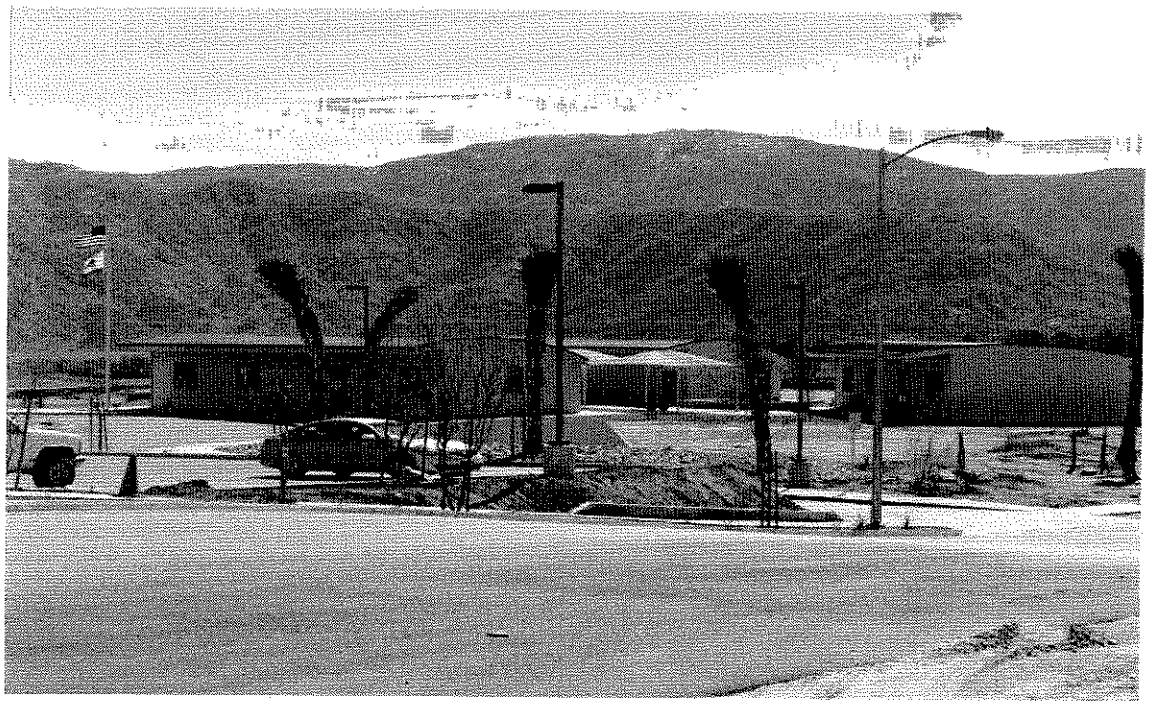
The Brinton Reservoir at the northeast corner of Sunset and Wilson Street was completed in May of 2010 providing new water storage capacity of eight million gallons in northwest Banning to supply future development and provide redundancy to the current domestic water system.



Waterline Replacement Project

EXHIBIT "C"





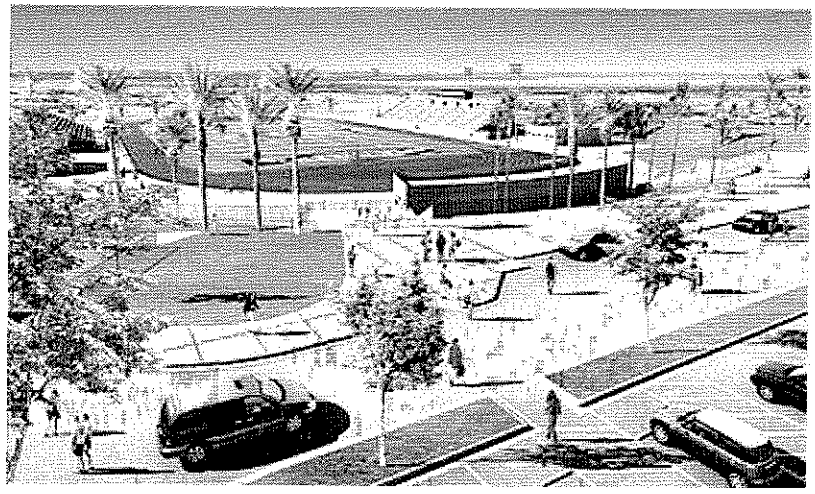
The San Gorgonio Campus of Mt. San Jacinto College is under development. The new campus site is located at the southwest corner of Westward Avenue and Sunset Avenue just south of Interstate 10. Phase I of the project included the initial placement of modular buildings to accommodate four classrooms, offices for counseling and enrollment, and restrooms. The first classes began in at the new campus began in January 2011.

EXHIBIT "C"



The San Gorgonio Memorial Hospital continues with their $108 million improvement project that includes the expansion of their central plant, emergency department, and other remodeling and improvements. Future improvements include the expansion of capacity (additional beds in a 6-story building) and the further development of the hospital campus. Funding for this project was provided through general obligation bonds approved by voters in March 2006. The first phases of the project are complete and they included the construction of the helipad, cooling tower, and underground utilities. The new emergency department that includes the two story intensive care unit is approximately 33% complete.

EXHIBIT "C"





The construction of an athletic complex and two-story classroom building at Banning High School is approximately 80% complete. The improvements include 23 additional classrooms, baseball fields, outdoor basketball courts, a swimming pool, a field for soccer and softball games, and a stadium with a track and press box. The $29 million project is financed through bond sales.

EXHIBIT "C"

(photo not available)

C D & G Construction is renewing the construction of Tract 32175 a small 10-lot subdivision located on King Street west of Alessandro Road. They intend on completing the missing improvements and placing the lots for sale immediately. At this time they have pulled permits to complete the perimeter decorative block wall.



Pardee Homes is processing an amendment to the Specific Plan that was approved in the mid-90s, including preparing a draft Environmental Impact Report for a construction of a golf-course community that includes two commercial sites totaling 40 acres and a development 5,387 single and multiple-family residential developments, with neighborhood and community parks, trails, a community center site, and two (2) elementary school sites. Entitlement hearings before the decision makers are anticipated in first/second quarter of 2011.

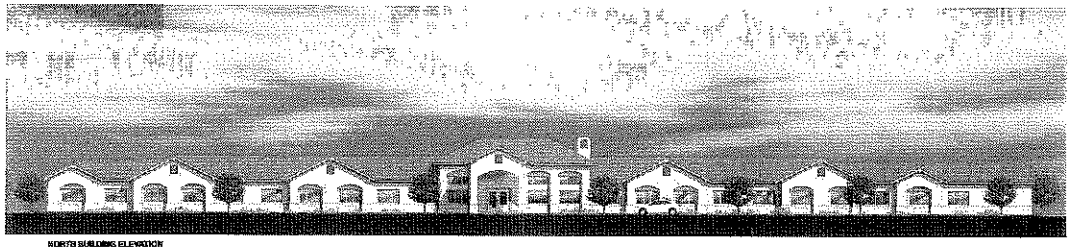
EXHIBIT "C"



FACADE ELEVATION

Inland Behavioral and Health Services of San Bernardino received Planning Commission approval in December 2009 to construct a 9,000 square foot medical and dental clinic on East Ramsey Street. It is anticipated that construction drawings will be completed shortly and then building permits will be issued.

EXHIBIT "C"



Careage, Inc. of Gig Harbor, Washington has completed construction of a 15,200 SF, single story Special Care Facility in "Sun Lakes Village North Specific Plan". The project includes 17 rooms with 32 occupant beds providing resident care, along with two (2) outdoor private courtyards on the south side of the building. The project is part of the existing Lakes Retirement Community.

(photo not available)

Recently, regarding the subject of business development, it is noted that Lawrence Equipment, a food product machinery manufacturer, purchased the former window manufacturing building on Lincoln Street and is actively relocating its operation to the new site; and, Poison Spyder Customs, an off-road equipment distributor and manufacturer, is relocating to a suite on Lincoln Street. These and other on-going business development projects are encouraging.

EXHIBIT "C"

CITY COUNCIL AGENDA

Date: **March 22, 2011**

TO: **Mayor and City Council Members**

FROM: **June Overholt, Administrative Services Director / Deputy City Manager**

SUBJECT: **Resolution No. 2011-23 Authorizing Refinancing the City's 1997 Refunding Certificates of Participation ("COP's")**

RECOMMENDATION:

It is recommended that the City Council:

1. Approve refinancing the City's 1997 COP's using a direct lender, tax exempt loan to be arranged by Bill Fawell of W. J. Fawell Co., Public Finance with a financial institution. Kyle Snow, Esq. of Best, Best & Krieger will act as special counsel to the City on the proposed refinancing.
2. Approve Resolution 2011-23 authorizing proceedings to refinance the City's outstanding 1997 COP's
3. Authorize the Administrative Services Director or Deputy Finance Director to make the necessary accounting and budget entries to defease the existing 1997 COP and record the new debt.

JUSTIFICATION/ BACKGROUND:

In November, 1990 the City of Banning issued its 1990 COP's to finance a new Administration Building. In February 1997, the City issued its 1997 COP's to refinance the 1990 COP's. The City has an opportunity to refinance the 1997 COPs in order to obtain a lower interest rate (from 5.5 % to 3.75%) with a potential savings of over $390,000.

The next available window for refinancing without any prepayment premium after providing a 30 day written notice to bondholders is May 1, 2011. The 1997 COP's can only be paid off on a payment date that occurs on May 1st and November 1st of each year through maturity on November 1, 2020. If the City misses this opportunity to refinance its 1997 COP's, the next available window will be November 1, 2011.

Last year, staff was approached about the possibility of doing a refinancing but the project was postponed in light of the budget issues being addressed at the time. This year when the opportunity was presented, staff determined that the window of opportunity for lower rates may not be available in six months. Therefore, staff has been working with Bill Fawell of W.J. Fawell Co., Public Finance. Since 1994, W. J. Fawell Co., has successfully refinanced thirty-five (35) tax exempt bond issues, totaling over $78M million for California local government agencies, using tax exempt, "bank qualified", direct lender loan financing. Mr Fawell provided the City with a proposal to refinance the 1997 COP's using a "bank qualified", tax exempt loan financed through a financial institution rather than through issuing bonds.

Consideration and approval of this refinancing provides an opportunity for the City to reduce costs as part of the strategic goals to achieve fiscal stability.

DISCUSSION:

The recommended refinancing is summarized in the table below.

Preliminary Refunding Summary

EST. ISSUE SIZE	TERM (11/1/20)	CURRENT RATES	EST. REF. RATE	ADJUSTED GROSS DEBT SERVICE SAVINGS	EST. ANNUAL TRUSTEE SAVINGS	EST. TOTAL SAVINGS	EST. ANNUAL SAVINGS (9.5 YRS)
$3,491,000	9.5 yrs.	5.30-5.50%	3.75%	$388,223	$9,540	$397,763	$41,870

The benefits the City will achieve include the following:

- Annual debt service and bond administration expense savings are estimated at $41,870 per year through maturity.
- Total net savings through maturity is estimated at over $390,000
- Current interest rates between 5.30% and 5.50% will be reduced to approximately 3.75% subject to final bank approval. The estimated 3.75% refinancing rate could be adjusted as part of the terms and conditions of the final lender credit approval
- The maturity date of November 1, 2020 will remain.
- Savings to the City begin May 2, 2011 once the refinancing is complete.
- The lender will not require a bond reserve fund for the proposed refinancing. Therefore, the existing 1997 COP Reserve Fund will be used by the Trustee to pay down the debt at closing, reducing the 1997 COP debt by $522,562.
- Refinancing will pay off the City's estimated arbitrage rebate obligation to the IRS with respect to interest earnings owed on the 1997 COP Reserve Fund, thus saving the City approximately $14,000 it would otherwise have to pay from cash reserves. In addition, by permanently extinguishing the City's arbitrage rebate obligation, this will save the City an estimated $6,000 in future arbitrage rebate calculation consulting expense through maturity on 11/1/20.
- The 1997 COP's were secured by a leasehold interest in the Civic Center, Police Station, a public park, Fire Station No. 1 and two City parking lots (Allesandro and Ramsey). It is expected that the lender will only require a leasehold interest on the Civic Center, removing the encumbrances on these other City properties.

Key members of the financing team members include: Bill Fawell, as Financial Advisor. Kyle Snow, Partner with Best Best & Krieger, Riverside, CA has prepared all of the financing documents, which will insure that the refinancing fully complies with all State and Federal regulations regarding tax exempt financing. Mr. Snow served as bond counsel to the City on the original 1990 COP issue. Grant Thornton, a nationally recognized CPA firm that specializes in public finance, will verify in a written report the 1997 COP payoff amount and debt service

savings that will be achieved. Grant Thornton also served as Verification Agent on the 1997 COP's.

BBVA Compass will be the lender for the proposed refinancing. BVVA Compass is a leading U.S. banking franchise throughout the Sunbelt operating over 716 branches. BVVA Compass is one of the 20 largest commercial banks in the USA. Furthermore, BVVA Compass is a subsidiary of BBVA financial services group with approximately 740 billion in total assets, 7,400 branches and 107,000 employees in 30 countries. Coincidently, the commercial banker overseeing this refinancing for BVVA/Compass, James Manning, is a former resident of the City of Banning, where he resided during his late teen years. Mr. Manning's familiarity with the City of Banning was very helpful in obtaining final lender credit approval for the proposed refinancing.

All costs to refinance the bonds and payoff the City's arbitrage rebate obligation to the IRS are estimated at $93,000. The costs of issuance for a private refinancing are significantly less than a public sale (bonds). Savings are approximately $90,000. This cost will be factored into the refinancing and paid through the refinancing. However, accounting entries will be made to record the transactions to defease (pay off) the existing bonds and record the new debt. As a result some appropriations may be needed. The bonds are recorded in Fund 300 – City Hall COP Debt Service.

In approving the Resolution, the City Council will be approving the underlying refinancing documents that are listed in the Resolution. Any blanks will be filled in on the refinancing documents prior to closing. The resolution outlines that various documents that are required in order to complete the refinancing. No subsequent Council action will be required.

Council is being asked to authorize the City Manager and Administrative Services Director to proceed with the refinancing in order to meet the deadlines required by the bond holders. In order to pay off the bond holders on May 1, 2011 they must first be given a minimum 30 day notice of prepayment. The financing schedule calls for the notices of prepayment to be sent out by the Trustee on March 23, 2011". This means that notices will begin March 23rd.

FISCAL DATA:

As a result of the refinancing, estimated annual savings of $41,870 will be available to reduce costs primarily to the General Fund.

RECOMMENDED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Andy Takata
City Manager

RESOLUTION NO. 2011-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING PROCEEDINGS TO REFUND OUTSTANDING 1997 CERTIFICATES OF PARTICIPATION (ADMINISTRATION BUILDING PROJECT) SERIES A OF 1997 AND APPROVING RELATED DOCUMENTS AND ACTIONS

WHEREAS, the City of Banning (the "City") previously caused the execution, delivery and sale of its $6,810,000 initial aggregate principal amount Refunding Certificates of Participation Series A of 1997 (the "1997" Certificates") to refinance obligations issued to finance the acquisition and construction of the City administrative building and related capital improvements (the "Project"); and

WHEREAS. the City desires to refinance the outstanding principal balance of the 1997 Certificates by entering into a lease/leaseback arrangement with BBVA/Compass Bank (the "Bank") whereby the City will lease the Project and other property to be determined by the City Manager (together, the "Leased Property") to the Bank and the Bank will immediately lease the Leased Property back to the City; and

WHEREAS, the City Council wishes at this time to approve proceedings to refinance the 1997 Certificates and thereby realize interest rate savings, and to approve related documents and actions;

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

Section 1. **Approval of Refinancing Proceedings**. The City Council hereby approves the refinancing of the 1997 Certificates. To that end, the City Council hereby approves each of the following agreements in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the Mayor, the City Manager or Administrative Services Director/Deputy City Manager, and the execution thereof by the Mayor, the City Manager or Administrative Services Director/Deputy City Manager shall be conclusive evidence of such approval:

a. **Termination Agreement** between the City, the Community Redevelopment Agency of the City of Banning (the "Agency") and The Bank of New York Mellon Trust Company, N.A., as trustee for the 1997 Certificates (the "1997 Trustee"). whereby the City, the Agency and the 1997 Trustee agree to terminate the documents relating to the 1997 Certificates.

b. **Lease Agreement** between the City and the Bank, whereby the City leases to the Bank the Leased Property in consideration of the agreement by the Bank to provide sufficient funds to refinance the 1997 Certificates and pay related financing costs, and the Bank leases such real property back to the City in consideration of the

payment of semiannual lease payments by the City as rental for such Leased Property.

c. **Irrevocable Refunding Instructions** given by the City to the 1997 Trustee, whereby the 1997 Trustee agrees to establish an irrevocable escrow fund to be held for the purpose of paying the principal, interest and prepayment premium represented by the 1997 Certificates, and to prepay the 1997 Certificates in full on the first available prepayment date.

The Mayor, the City Manager or Administrative Services Director/Deputy City Manager are and each of them is hereby authorized and directed for and in the name and on behalf of the City to execute and the City Clerk is hereby authorized and directed to attest the final form of each of the foregoing documents.

Section 2. **Material Terms of Lease Agreement**. The Lease Agreement shall be for a term not in excess of the original term of the 1997 Certificates, the aggregate principal amount of the lease payments shall not exceed $3,500,000 and the interest components of the lease payments thereunder shall be computed at an interest rate of 3.75% per annum.

Section 3. **Selection of Site as Leased Property**. The City intends to use the City administrative facility as the Leased Property under the Lease Agreement. If the Bank or special counsel to the City determines that other City property is more suitable to serve as the Leased Property, the Mayor, the City Manager and the Administrative Services Director/Deputy City Manager are and each of them is hereby directed and authorized to determine such other City property that, in consultation with special counsel to the City, will be suitable as the Leased Property under the Lease Agreement.

Section 4. **Official Actions**. The Mayor, the City Manager or Administrative Services Director/Deputy City Manager and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

Section 5. **Special Counsel and Financial Advisor**. The law firm of Best Best & Krieger LLP is hereby retained as special counsel to the City in connection

with the financing described herein on the terms and conditions to be agreed upon by such firm in writing with the City Manager or the Administrative Services Director/Deputy City Manager. Bill Fawell, President of W. J. Fawell Co., Public Finance, is hereby approved as Financial Advisor and the City Manager or Administrative Services Director/Deputy City Manager are and each of them is authorized to sign and accept such proposal on behalf of the City.

Section 6. **Effective Date**. This Resolution shall take effect from and after the date of its passage and adoption.

PASSED, ADOPTED AND APPROVED at a regular meeting of the City Council of the City of Banning on the 22nd day of March, 2011.

Barbara Hanna, Mayor

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

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

CERTIFICATION:

I, Marie A Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-23 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 22nd day of March, 2011.

AYES:

NOTES:

ABSENT:

ABSTAIN:

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