

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

April 12, 2011
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

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

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

I. CALL TO ORDER

- Invocation – Pastor Steve Braun, Banning Foursquare Church
- 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.

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

IV. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 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 – Joint Meeting – 03/22/11	1
2.	Approval of Minutes – Regular Meeting – 03/22/11	2
3.	Resolution No. 2011-24, Awarding the Bid for the Replacement of the City Yard Office Building HVAC Units.	39
4.	Resolution No. 2011-25, Awarding the Bid for the Repair/Replacement of the City Yard Office Building HVAC Duct Work System.	44
5.	Resolution No. 2011-26, Authorizing Examination of Sales and Use Tax Records	49
6.	Resolution No. 2011-28, Pertaining to Any Consideration for the Pass And Redistricting.	54
7.	Resolution No. 2011-30, Authorizing the Acceptance of State Funds in the Amount of \$48,000 from the State of California Department of General Services and \$7,500 from the California Geographical Information System Services for the Purpose of Procuring New Equipment and Software for the Department’s Communication Center.	56
8.	Approve Amendment to 1 st Amendment with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.	60
9.	Report of Investments for February 2011	64

- 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 and Resolution No. 2011-27 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	74
	Recommendation: That the City Council hold a public hearing, consider the staff report, take public comment and at the close of the hearing adopt Resolution No. 2011-27, making findings for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504.	

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

VI. REPORTS OF OFFICERS

1. Auditor's Report for Fiscal year 2009-2010 Staff Report	94
Recommendation: That the City Council and Agency Board accept and place on file the auditor's reports from Lane, Soll & Lunghard, LLP for fiscal year ended June 30, 2010.	
2. FY 2010/11 Mid-Year Budget Review Staff Report	96
Recommendation: That the City Council approve Resolution No.2011-31 and Banning Utility Authority Resolution No. 2011-07UA, Authorizing the Administrative Services Director to make necessary budget adjustments to implement the mid-year analysis. Furthermore, that the Redevelopment Agency Board approve CRA Resolution No. 2011-13, Authorizing budget adjustments to implement the mid-year analysis for Redevelopment Agency accounts.	

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

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. Policy Discussion Re. Code Enforcement (*study session*)
5. Update on Shop Local Program
6. FEMA Training – Mayoral Institute, etc. (Council coordination necessary)

Future Meetings

1. Freeway Oriented Signs/Billboards – April 25, 2011 at 5:00 p.m.

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 Title II].

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/22/2011
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on March 22, 2011 at 3:05 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/Executive Director
David J. Aleshire, City Attorney/Agency Counsel
Zai Abu Bakar, Community Development Director
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney said that the City Council will meet pursuant to Government Code Section 54957 regarding personnel evaluation of the City Attorney and City Manager. Also the Agency Board will meet pursuant to the provisions of Government Code Section 54956.8 regarding real property negotiations regarding the All Start Dodge property located at 2301 W. Ramsey Street.

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

Meeting went into closed session at 3:06 p.m. and returned to regular session at 5:03 p.m.

ADJOURNMENT

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

Marie A. Calderon, City Clerk

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

03/22/11
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Hanna on March 22, 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
Zai Abu Bakar, Community Development Director
Fred Mason, Electric Utility Director
Leonard Purvis, Police Chief
Heidi Meraz, Community Services Director
Kahono Oei, City Engineer
Marie A. Calderon, City Clerk

The invocation was given by Pastor Jerry Westholder, Highland Springs Fellowship. Councilmember Franklin invited the audience to join her in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney stated that the City Council and the Agency met in closed session and discussed the evaluation of the City Attorney and the City Manager and the evaluations were conducted and no reportable action was taken. There was also a matter of real property negotiations involving the All Star Dodge property and status report was given and direction of was given for further negotiations and no reportable action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler, resident of Banning addressed the Council stating that at the last Council meeting she had presented some questions and she was hoping eventually we could get some answers on this and this pertains to a concept of accounts receivable. She said it would be nice to have

a true accounting of the monies that are out there and it would be nice to have them by category and also would like to add that maybe there are some outstanding delinquent utility bills, owner participation agreements, façade grants made to business people who them abandoned their businesses when the improvement was completed and now these places of business are vacant. Is there any legal recourse to recapture those monies that are out there? It is bad times for everybody but we cannot afford the City to be holding these accounts and if possible it would be nice to go after them. She said that we have to pay and maybe cities have a legal recourse to collect those overdue accounts. The total amounts would be then divided according to City of Banning accounts and Community Redevelopment. She said knows that is a bookkeeping item and it would be nice if you had a handle on this also so that you can manage the accounts a little bit better.

Bill Dickson, 5700 W. Wilson said he was pleased to announce that they have had a little change in their police volunteer program and they are out actively recruiting and they have 10 new volunteers coming on. Anyone who might be interested in volunteering, you can reach him at 951-403-1844. They are really proud that they have some new volunteers and they will be sent through the academy.

Charlene Sakurai, 4985 Bermuda Dunes stated that there will be a reception at the Banning Center for the Arts presenting the work of Roy Morrissey who is a very well known artist and has taught more in the San Marcos area of California. He is listed in the American Artist of Renown and has been featured in various art magazines including "Artist of the Rockies" Magazine. The reception will be held on Saturday, March 26th from 3 to 5 p.m. They are also taking this opportunity to introduce four new Co-op artists that have joined the group and they are Vickie Buchanan, Bette Jo Ford DeGrado, Andrew Jongsma and Luz Maria Salazar.

Don Smith addressed the Council stating that this Sunday they had a sold out show at the Women's Center for the Three Tenors and Family and everyone wanted the show not to end and wanted them to come back so they have agreed as a Family to put on these shows and charge nothing to teach the younger members of their family the importance of community service and charity work for a fundraiser so the Alliance is trying to get them back at a larger venue so more people can attend. There is a new event going to take place on June 26th at the Nicolet Middle School Auditorium and this will be a gospel music concert. Auditions will be held for people who have already applied on April 13th and April 16th. If anybody in the area has a gospel group or a church gospel choir that would like to audition, they can call the Alliance at 951-922-4911. The Art Hop will be held on May 7th and will be downtown in many of the buildings including City Hall Council Chambers.

Ralph from Victory Outreach Ministries addressed the Council thanking the City for embracing them with this march that they are having on March 26th at Roosevelt Williams Park at 2:00 p.m. They want to let the City know that Victory Outreach is here to shoulder the burden along with the Mayor and Council Members and the police department and this is called "Taking Our City Back". As you well know Banning is a beautiful city and it is a community where people can come in and raise their family and we want to keep it this way.

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Proclamation – Childhood Cancer Awareness Week – April 10-16, 2011

Mayor Hanna said that 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. This proclamation will be sent to them recognizing the work that they do and declare that the week of April 10-16, 2011 is Childhood Cancer Awareness Week.

2. Proclamation – National Public Safety Telecommunications Week – April 10-16, 2011

Mayor Hanna invited the Council to join her at the podium for the presentation of the proclamation. She read the proclamation for the benefit of the audience and presented it to Vickie Hernandez, Public Safety Dispatcher for the Banning Police Department. She said that the Council is so grateful for the work that the dispatchers do.

Ms. Hernandez thanked the Council for the proclamation and said that this is a job that is sometimes not a pat on the back everyday so they do appreciate this.

3. AB 811 and WRCOG's (Western Regional Council of Governments) Program
– Rick Bishop, Executive Director and Barbara Spoonhour, Program Manager

Rick Bishop, Executive Director addressed the Council stating that he and Barbara Spoonhour, Program Manager were here talking conceptually about this program about a year and a half ago and at that time this was a hope and an objective that they can move in a direction of putting together. At the time they were hoping this would become the model program in the state of California and perhaps the nation and they thinks that they are well on that path. He started his power-point presentation on WRCOG's Energy Efficiency and Water Conservation Program for Western Riverside County (see Exhibit "A") going over enabling legislation, benefits of subregional approach, examples of eligible improvements, and program benefits. Ms. Spoonhour continued the presentation going over the financing for the commercial solar program, home energy renovation opportunity and standard financing plan.

Councilmember Machisic thanked Mr. Bishop and Ms. Spoonhour for their presentation because this is a great idea for the cities of Western Riverside County. He said that this was discussed at the Executive Committee two years ago but it was only an idea and it took a lot of hard work on the part of Rick and Barbara to bring this idea to fruition. This is just one of the many programs that WRCOG provides for its members.

There were some further Council questions in regards to this program and the guidelines.

APPOINTMENTS:

1. Appointment to Parks and Recreation Advisory Committee

Councilmember Franklin nominated Veronica Topete. **Councilmember Botts moved that nominations be closed and we cast a unanimous vote for Veronica Topete. Seconded by Councilmember Robinson. Motion carried, all in favor.**

CONSENT ITEMS

Councilmember Robinson made a correction to the minutes of the regular meeting of March 8, 2011 on page 8 of the agenda packet and it should read “indignant” and not “indigent” and Councilmember Franklin pulled Consent Item No. 9 for discussion.

1. Approval of Minutes – Special Meeting – 03/07/11

Recommendation: That the minutes of the Special Meeting of March 7, 2011 be approved.

2. Approval of Minutes – Joint Meeting – 03/08/11

Recommendation: That the minutes of the Joint Meeting of March 8, 2011 be approved.

3. Approval of Minutes – Regular Meeting – 03/08/11

Recommendation: That the minutes of the Regular Meeting of March 8, 2011 be approved.

4. Approval of Minutes – Special Meeting – 03/15/11

Recommendation: That the minutes of the Special Meeting of March 15, 2011 be approved.

5. Adoption of Strategic Goals for the City of Banning

Recommendation: That the City Council adopt the Strategic Goals as outlined in the attached document titled “Goals for City of Banning”.

6. Sole Source Purchase from ComSerCo Communications for Motorola APX 700 Multi-Band Portable Radios.

Recommendation: that the City Council 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.

7. Approval of Parcel Map No. 36272 (Val Monte St. and Ramsey)

Recommendation: That the city council approve Parcel Map 36272 and authorize the City Engineer to sign the Parcel Map and accept dedication as shown on Parcel Map 36272 and direct the City Clerk to sign the Parcel Map certifying Council’s acceptance.

8. Amendment No. 4 to 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.

Motion Machisic/Robinson to approve Consent Items 1 through 8. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

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

Councilmember Franklin said that she wanted to make sure that all the questions of the public have been answered and there were no other issues. Also she did not recall seeing the number of youth that would be involved in the program initially. She also asked where in the park the garden would be located.

Heidi Meraz, Community Services Director said that all the questions have been answered and at the time the last presentation was made she believes there were 12 participants. The garden would be located at the eastern portion of the arena area. At the very end of the arena there is a flat area before you reach the access roads that go up to the arena area and it is an area that is not used and is out of the way and should not present a problem.

Councilmember Franklin asked if it would be possible to request the program to come back and give us an update in about six months to let us know how well it is going or if there have been any issues. Mrs. Meraz said certainly they could do that.

Motion Botts/Machisic that the Consent Item No. 9 be approved adopting Resolution No. 2011-22, Approving the Lease Agreement with the Alliance for Youth Employment Skills (“AYES”) for the Use of Facilities at Dysart Park. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

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 – David J. Aleshire, City Attorney)

City Attorney said that this is a matter that goes back to 2001 so it is a ten year history and it has ended up involving litigation and tonight you are redoing a hearing that you held a number of years ago. This matter involves the revocation of an Unclassified Use Permit (UUP). The permit was originally issued in 2001 and involved a project to develop a drag strip on property at the airport. There are actually two parcels; a forty acre parcel and a 20 acre parcel. The project involved creating a drag strip, grandstands, concessions stands, parking spaces located on one parcel owned which was owned by the proponent of the project which was All American Racing and another 20 acre parcel owned by the City. What happened was that after the UUP was issued in 2001 there were a series of actions over a period of eight years but at the

end the project from the City's standpoint had not been commenced and there had not been construction and there had not been grading and so in March 2008 the City terminated the Unclassified Use Permit and the Development Agreement. Banning Airport Associates who by them was the developer of the project filed a lawsuit against the City and that lawsuit has gone on for a period of time and recently we had a hearing at the Riverside County Courthouse on the writ of mandate. The court determined that the findings that the City had made in 2008 were not clear and the court directed that we re-conduct the hearing. The court made no determination based upon the merits of the matter. The court directed that the City's decision on the re-hearing be finalized by April 22, 2011. So we gave notice to the project proponent, Banning Airport Associates, and are conducting this hearing tonight pursuant to the court's direction. He said that this matter is kind of an unusual type of hearing. In terms of the evidence tonight the court indicated that it would be a hearing under 1094.5 of the Code of Civil Procedure which means that we are basically going to consider the evidence that was considered at the prior hearing. The only sort of new evidence that could be admitted would be new evidence that was improperly excluded at the prior hearing or new evidence which could not with reasonable diligence been produced at the original hearing. So there is some limitation on the type of evidence that you would consider tonight but there will be testimony by the project proponent and the public will be able to testify and obviously we are going to make a record of the hearing.

City Attorney went over the chronology of events in more detail as listed in the agenda packet (see pages 85 through 89). After going through the chronology the City Attorney said as he stated during his opening comments that the court held a hearing even though the lawsuit was filed on April 16, 2008 the courts hearing was not held until December 23, 2010. The court determined that the findings of the March 2008 hearing were not clear enough for the court really be able to determine what the basis was of the City's actions. The court did not express a ruling on the merits as to whether the City's action was justified or not justified. The court basically said that they did not think that the findings were clear enough to really show what the Council's reasoning was in making its decision. The way we would like to approach the hearing tonight you will hear the evidence and at the close of the hearing he will answer questions but would like the Council Members to express what their thinking is about the evidence that they have heard and we will actually go back and then will prepare a resolution based upon your comments at the close of the hearing and that resolutions will be back on the Council's agenda as our action item.

City Attorney said you obviously have a very extensive record here and all of this has been part of the record of the court proceedings so we wanted it all to be available to the Council and you had had it to be able to go through it. He said that he knows the Council has had a chance to extensively read the staff report and in summary fashion he will tell the Council what staff's perception is in terms of the justification for the March 2008 action. The first point is that the UUP was extended various times but finally expired on August 14, 2006. Pursuant to the Banning Municipal Code Section 9116.8 where no use or construction commenced timely the UUP is automatically null and void. The fact that he recited would tell you why we think that no use was commenced. Also, even if a use does commence if it is discontinued for at least one year, it expires and we think that a ground breaking ceremony is not the commencement of use on a site. We don't think it is the commencement of grading on a site; it is a ceremony. But

if the Council were to think maybe that is the commencement of a use, there has certainly been a period of time that is more than a year that has lapsed from whatever events could be construed as a use which would indicate the permits have expired. Use of the site ceased or was abandoned for six or more consecutive months and therefore the UUP is subject to revocation. The UUP is subject to revocation by the City because Banning Airport Associates failed to meet one or more of the conditions of approval within the timeframe provided in the UUP and the expiration/revocation of the UUP also terminates the Development Agreements since the Development Agreement has the same term. So that in essence was the basis for the Council's prior action through the judicial proceedings. Staff has not seen anything that would change that and actually you are more familiar with the facts that he is because he was not here when this long story occurred.

Thomas Chapin, Attorney for Mr. Marocco addressed the Council stating that this is going to be a little different and normally attorneys like to get up there and bluff and bluster and that is not going to happen tonight. He is going to let Mr. Marocco go through his power point presentation reciting all of the relevant facts because he has lived this case for the last ten years.

Mr. Marocco addressed the Council stating he appreciated the opportunity to speak tonight and to give a power-point presentation. He knows that they have been burdened to look at and revisit more evidence from the past and some of it might be fresh in your mind and some it may not be. He knows that we have one Councilman that wasn't there at the time and if you have any specific questions, please feel free to ask him but the rest of the Council is probably aware of what had happened prior. He said he would like to go on the record in regards to some of the statements that were said by the City Attorney in the actual area of chronology and some of the facts that were in there. He said the first one that he definitely wants to talk about is on page 88, paragraph 7. He said halfway through that paragraph it states, "Again, BAA failed to move forward with the Project." If you remember at this particular meeting they asked Jae Von Klug at the time if we could present a power-point presentation and they did prepare a \$7,500 dollar economic impact study to share with the Council. When the time came when he was ready to present in a closed session and there was question or not whether or not that closed session would allow him to go into it and the attorney said that was a possibility and Jae Von Klug even said that was a smart idea to be able to talk to you about it and in that meeting we were going to talk to you about financing and of course, what they could do to make this project come to life again. Of course, they were denied that opportunity so when it says for the record "we failed to move forward on the Project" it was really that the City Council told the City Attorney that the didn't want to hear our presentation. Also on page 89 he would like to make a correction, paragraph 2, this will also be talked about in the power-point. He said for the record that there is some idea of an amount of dollars that are involved here and he believes that the City Attorney said that we only spent \$130,000 and actually it was \$170,000 plus and that is just with regard to Barbour Street. He will also present that evidence tonight as well which was already in the administrative record. He wanted to make sure that was clarified. Also, page 87, paragraph 3 down to the very bottom (which is paragraphs 4, 5 and 6) should really be discounted for tonight's discussion because tonight we are discussing revocation of the UUP and the Development Agreement. The Master Agreement is not an issue to be looked at mainly because it is not the controlling documents for this particular hearing tonight so it can be used as basically a chronology but it cannot be used as evidence that says we had to do mass

grading or any of that because that was already terminated prior to the hearing and revocation of the UUP and the Development Agreement. On page 86, paragraph 5, speaks about a "cost support agreement" for \$25,000 for landscaping and that should really be corrected as well. It was approved for \$25,000 and the reason why that even came about was that the City wanted more street lights and landscaping and that wasn't really part of the original conditions of approval so they were added and we said that we would pay for them but we do have to be reimbursed for as well.

Mr. Marocco at this time presented his power-point presentation (see Exhibit "B") commenting on what was said by the City Attorney, the prior City Attorney, City officials, and decisions of the court and explaining in further detail about the misleading facts. Mr. Marocco said to recap the Drag City project was unanimously approved by the City Council. The City voted and approved the UUP for the project. A Development Agreement was made by and between the petitioners and the City and several million dollars were spent on development of this project. He said that they have over \$3.5 million with the land purchase. The City broke its promise and ignored the fact that the petitioner has already acquired a vested right in completing its drag strip project. The City failed to work in "good faith". The truth will be known and hopefully they have proven tonight that because of these truths what was unclear is not in fact crystal clear. That the revocation of the UUP was illegal and that this action ultimately destroyed the Drag City project.

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

Dough Hicks, 710 N. 12th Street – spoke in support of the project
Bill Lamb, 931 April Lane – spoke in support of the project

Mayor Hanna closed the public hearing seeing no one else coming forward. She asked the Councilmembers if they had any questions and there were none.

City Attorney commented that they were not here when all this happened and ultimately what the Council decides to do with this is your own policy judgment but he does feel that some of what was said needs to be responded to just clarify the record for which every way you may decide to go. In terms of the testimony that you heard tonight one point that was made was that there were so called "false facts" that were presented back in March 8th that allegedly the Council relied upon and therefore made an erroneous decision because of the false facts that were presented. So he thinks one important thing to point out, and then again he wasn't here and doesn't know the exact tenor of how this was presented and he does not know for example, if it is alleged that the City Attorney at that point in time was taking the position that the City was not involved with the groundbreaking when Councilmembers were at the groundbreaking you would have your own opinion about whether you were participating in a groundbreaking or not. Normally a groundbreaking is a ceremonial event and gives the public a sense that a project is going forward and he is sure there was participation by a number of people. So what you may have made of the statements made by the City Attorney what he would point out in terms of the so called false facts of what is being presented tonight he doesn't think has too much relevancy. For example, in our

report in terms of whether the developer paid significant costs on Barbour Rd. he thinks as we presented it we indicated that we thought the costs were \$130,000. Their presentation was that it was \$170,000. We certainly did not say tonight that the developer spent nothing on Barbour Rd. Our presentation tonight indicated that money was spent. We are not saying what was alleged is a false fact. In terms of the City we are not trying to present a picture that the City was not involved with the groundbreaking. What we are indicating is that we don't think a groundbreaking creates a vested right. So if the City Attorney previously was saying the City had no involvement with the groundbreaking and that is a so called false fact, we think that the groundbreaking itself irrespective of what the involvement the City might have been does not create a vested right. The third false fact was the construction of Barbour whether it constituted commencement of the use. It has been our position that that is an offsite improvement. Spending money on offsite improvements in and of it self does not create a vested right. The fourth false fact is whether there was grading or whether it was merely clearing and grubbing. They did have a permit to undertake grading. In fact, they had two permits so we are not contending there was no permit. There was no false fact here that he sees in regards to that. We contend that the extent of activity that occurred was more clearing and grubbing as opposed to a large scale grading operation and in fact, the permits expired through this use. In regards to the Burrowing Owl in his presentation he doesn't think he said the Burrowing Owl situation did not impede the progress of the project so if previously that was a position that was taken that is not being stated tonight so he thinks that the things that are alleged to be false facts are the information being presented tonight he doesn't think there is a misleading in terms of this. There might be a different emphasis on some of this and again whether these facts constitute a vested right is a separate issue. He said that with regards to the vested rights issue and you saw on the timeline presentation which showed studies, engineering, planning, financing, buying of land and the suggestion was if you add those things up that together constitutes a vested right. As was stated the Avco Case which was a case which established that in California you have to have a vested right and the case itself held that. In that case various planning activities, things that were pre-development that occurred did not create a vested right. A lot of money spent on planning does not create a vested right. Engineering studies, planning, finance activities those do not create a vested right. And in fact, in the Avco decision it was determined what you have to have is not only grading activity, you have to have a building permit and have had to have poured your foundations. That is what you have to get to have a vested right. So it is our contention that a groundbreaking ceremony, clearing and grubbing activities, buying a piece of land, spending money on studies these things in California do not get you a vested right and that is why the Council had the discretion to basically look at the progress of this project, give extensions, work very hard to try and make this project go forward but it was permissible for the Council to decide somewhere along this period of time that this developer was going to be unable to go forward and perform and create the project. In essence, the City tried up a piece of ground for ten years with the hope of getting a project and ended up with a developer who yes, did spend some money, did some street improvements which we contributed to but the Council could conclude that you lost the confidence in their ability of ultimately being able to undertake the project. Another thing that was pointed out was that the FAA released the property on November 30 2006 so the FAA not releasing the property created some delays. Granted that did create some delays and in his report he indicated that. The issue of the Burrowing Owl was resolved on February 20, 2007. That could create some delays. Taking November 30, 2006 and February 20, 2007 it was more than a year after those dates before the City finally sent a Notice of Determination. So there was still plenty of time after the occurrence of those events where they

could have gone forward. In fact, it was stated that the City had somehow in 2005 started taking the position that they were not performing. In fact, the first time we sent a Notice of Default was June 26, 2007 so there wasn't anybody back in 2005 that had decided to sabotage this project and take an opposition to the project.

City Attorney said so in essence, it clearly is your decision. There is nothing that prevents you from redoing the decision that you made several years back if you are persuaded by the presentation tonight. But we do not believe that there was a vested right. And ultimately it may be that the court will have to make that determination. The court has not ruled on that. The court has only said that in terms of what is the basis of your decision the findings made before were insufficient which he thinks he said in his original presentation so you have to review that. But he thinks the essence of the question is if this developer did not have a vested right which we believe that they did not, then did the City have the discretion to give up on their ability to complete this project and you would know best given the performance that was rendered over this lengthy period of time was it appropriate to give up and stop giving them extensions and actually go ahead and give them a Notice of Termination.

Mayor Hanna said that it hard to know where to plunge in on this long series of things. She thinks the City was very gracious in accommodating and working with this proponent for years and what really kind of brought in a new fresh air of hope into this from her perspective was when Tom Searls got involved. And then as your report indicates on page 87 on December 13, 2005 we entered into a Master Agreement and what the proponent was just saying was that the Master Agreement is peripheral and not relevant to what is going on today. However, I certainly believed at the time that and your report states as well that the Master Agreement expressly terminated the previous MOU, Lease Agreement, License Agreement, Reimbursement Agreement, Cost Agreement, everything and we entered into a new agreement which as you indicate they must commence and diligently and continuously carry out mass grading and apply for an amendment to the UUP and Development Agreement. She asked is the Master Agreement not relevant somehow to this case.

City Attorney said he thinks it is relevant to the timeline and relevant to the overall circumstances in terms of your decision making but the decision is based upon the UUP and the Development Agreement. The Master Agreement itself you're not taking an action. We are not reviewing the termination of the Master Agreement.

Mayor Hanna said her recollection of the groundbreaking was that it was largely a Chamber event and she certainly wasn't comfortable with it and she went there and then just left. She doesn't consider that necessarily any relevance in terms of creating a vested right from her perspective. It was just a ceremony.

Councilmember Robinson said he is really concerned about these conditions of approval when they don't meet deadlines, not just with this proponent but any proponent, that means that it is automatically null and void any agreement that we make. And again, we look at the construction not being met so you can say that would make it null and void. You also have a situation of the escrow being six months later and we start talking about good faith and we know what it to borrow money sometimes there is a glitch but there were conditions that were set out as it appears to him

in the presentation that were not met and not met for a number of years. How do we go back possibly and make something that is null and void and conditions that were not met okay now. Is there anything possible you can do after something is null and void and the good faith is breached?

City Attorney said if your good faith is breached and you don't believe that you have a partner who will perform, there would not be much incentive to go back. Theoretically could you start all over and issue a new UUP and do new agreements and start from scratch and do a new development agreement, of course you could do that. The question is whether you have a partner with whom you have confidence that you would want to start down that road.

Councilmember Botts said he has tried to digest this and he went back to his old notes. He said that he was at the groundbreaking but he was not on the Council at that time. He was a member of the Chamber and as he recalls the Chamber of Commerce really put that together and certainly the invitation appears that it came from the City and he probably wouldn't have remembered that. He thinks that our attorney said that was relevant that in fact that the City was involved in some fashion is not a triggering effort but he was there and it was a ceremonial event. He remembers equipment being there, and he is not an engineer, but in his opinion when you talk about scraping and grubbing his perception was that the graders took a couple of inches off the top soil and he was on that site quite a bit during his campaign to be elected and then subsequent to that and as a layman's opinion grading did not take place. The equipment he would say, and he could be wrong, went around an around and made a lot of dust and then that equipment sat for months and months and months and never started up again as he recalls. He doesn't think the good faith was breached. He said he was aware of the project before he got on the Council and has lived with it since 2000 and to suggest that this City didn't work very, very hard with these applicants is just ludicrous. Now we are dealing with different people, you all started with a different City Manager and a different Development Director but just to say that we didn't time and time again prior to his being on the Council and then subsequent to that and he was elected in 2006 and took office in 2007 and began to participate in the decisions he would say that we lost faith in the ability of this applicant to put this project together. That would be his personal opinion as we began to look at deadline after deadline and default after default maybe that was in the Master Agreement but it just wasn't coming together and that was in the good economic times. And for whatever reasons these gentlemen and their organization simply couldn't put that project together and when he got on the Council we began to see the deadlines being missed and then a new transaction and then a new partner. He would guess that they were scrambling to try to put the project together so they went to Orange County and found a new developer, Tom Searls and formed BAA and he thinks the Mayor said we saw some hope and that would be his opinion. It appears to him at that time that Mr. Searls wasn't able to put the project together either. Regarding Burrowing Owls anyone dealing with development knows what it is like to deal with Fish and Game and wildlife and he doesn't want to put a time on it but normally it is years and years and years when you are dealing with Fish and Game and the federal government trying to relocate Burrowing Owls. He would like to say it was months but we praised Duane and Fish and Game for very, very quickly being able to relocate these Burrowing Owls and yes, there was a little delay but it was not a long delay. He doesn't want to debate the issue but after 8 years into the project there was never an economic analysis and then finally after we gave notice and began to feel this project wasn't going to move forward the proponent did come up with an economic analysis but his recollection was that was already after we gave notice several times that we felt we couldn't go forward with the project.

Councilmember Machisic said that he was at the groundbreaking and when you talk about moving ground his recollection was that this project was supposed to be twenty or twenty-five feet below grade so he would imagine that you would have to move a little bit of dirt and he apologized if his recollection is wrong but that was his recollection. He doesn't think that we ever got to that point of removing any quantity of dirt of that kind. Also, the Burrowing Owl in an interesting aspect he remembers that very distinctly and the process when Fish and Game shut you down. They shut us down immediately and they relocate the owls in an appropriate setting and then they cover them with netting and then they are fed individually everyday for about three months so it is a long drawn out process. He said he was very supportive of this project initially and he would guess the thing that kind turned him against it and now in favor of it is because of the delays. We gave four extensions and his feeling is that he would like to have seen some progress and he thinks the City did the right thing when they terminated the agreement in that point in time in 2008 he believes.

Councilmember Franklin said she was not on the Council at that time of the last groundbreaking but she does recall being there and one of the things that she heard from other people because she thought it was an exciting project and something that would be beneficial to our city was that this was just one of several groundbreakings and that the people that she spoke to at that time did not have a lot of confidence it was going to move forward. She thinks that what has been said tonight only shows how much the City was willing to extend as much time as possible to help the proponent move forward on the project and she thinks saying that the City didn't do everything is an appearance of giving false hope to people that something could move forward that didn't move forward before. You have heard extensively and we have all read through extensively all the different time frames and she would agree that there comes a point that she just feels you have to say it is not going to happen based on the time delays that occurred time and time again and that's also for her what made her say she couldn't support it any more.

Councilmember Robinson said when he went though this report he had a lot of questions. He understands that the BAA was required to do a landscape and irrigation plan and was that every done? The report indicates that it wasn't. He said there were supposed to construct utility connections from the site to Westward Avenue and this is where this Barbour Street all comes in; was that every completed? How about the dedication of the additional right of way along Barbour Street to Scott Street; the report indicates that was never done. City Attorney said he didn't know.

Kahono Oei, City Engineer said none of the work that you mentioned on Westward was done on the project. Only Barbour Street was completed. In regards to the landscape and irrigation plan on the project there was a plan but the work itself was never done. The right of way along Barbour Street to Scott Street was accepted by the City as part of the improvements.

Councilmember Robinson said that there seems that there is quite a long list of things that were not completed. We are talking about grubbing and clearing and as Councilmember Machisic said that would require staking and removal of soil down to a depth and engineering on site and do you know if it was ever staked out for excavation. Mr. Oei said he didn't recall and based on his recollection the amount of dirt that was supposed to turned from that project was about 1.2 million cubic yard and he doesn't think that happened.

Councilmember Botts said he was thinking back on the construction at the time and he thinks that the City Attorney said this now that the construction on Barbour Street did not signify that the construction has started on the project. He said he was trying to think back and we had a lot of information that came to us as we struggled with this decision but clearly he remembers that was a point of contention. He remembers another point of contention was the applicant continually talking about additional monies that were spent and he doesn't recall if that was every documented; Matich and others. Perhaps they did pay them but he recalls that there was a real question whether how much of that money had been spent.

Mayor Hanna said that the UUP expired on its own she suggests because they did not complete all the conditions of approval by August 14, 2006 and we gave four extensions and they still were not all completed and they couldn't have gotten anymore under our rules. We already gave one beyond the maximum. And it expired on its own if there was no use or construction on the site by August 14, 2006. There is no evidence of use on the site. The site was never used for drag racing because a facility was never built. The only construction was Barbour Street and that was offsite and not part of the whole development and the use of the site stopped for six months or more and kept going and going and going.

Mayor Hanna asked for a motion on this item.

Motion Botts/Machisic that we reaffirm our prior decision and that the City Attorney prepare the resolution making the appropriate findings and bring it back to the next City Council meeting. Motion carried, all in favor.

Meeting recessed at 7:16 p.m. and reconvened at 7:25 p.m.

REPORTS OF OFFICERS

Mayor Hanna said at this time the Council will consider Item No. 2 under Reports of Officers.

2. Resolution No. 2011-23, Authorizing Refinancing the City's 1997 Refunding Certificates of Participation ("COP's").
(Staff Report – June Overholt, Administrative Services Director)

Director Overholt addressed the Council giving the staff report as contained in the agenda packet. She said that in February of 1997 the City issued the 1997 COP's (Certificates of Participation) and that was to refinance the 1990 COP's and those were issued to help build this building and equip it. The current interest rate on this debt issues is 5.3% to 5.5% so given our current market that is actually kind of high and we have an opportunity to get financing for 3.75% and this is through a direct lender and would no longer be bonds which is what we currently have. This would save the City about \$41,000 per year in our budget and over the remaining life of this debt it is almost \$400,000.00. She said this information came to her about a month ago and she was making sure it was viable and all came together within this last week. She highlighted some of the benefits and facts regarding this refinancing. She said the window in which she became aware of this was really short and very tight and we have been working very hard to get it done and she really appreciated the work of all the participants who

helped bring the documents to you. She said if the Council has any technical questions, Mr. Fawell and Mr. Snow, legal counsel for this particular financing, are in attendance.

Councilmember Machisic asked June Overholt to repeat for the audience who is listening to repeat two things: 1) how much money you are saving per year and total savings; and 2) that the term of this bond does not exceed the old bond.

Director Overholt said the saving per year that are anticipated is to be at least \$41,00 per year and over the remaining life it would be about \$400,000 and she believes the remaining life is nine years. We are not changing it or extending it or pushing it out further.

There were some Council questions in regards to bond rating, downsides to doing this and costs with doing a refinancing.

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

Motion Machisic/Robinson that the City Council approve the following: 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; and 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. Motion carried, all in favor.

1. General Plan Annual Report for Year 2010
(Staff Report – Zai Abu Bakar, Community Development Director)

Zai addressed the Council stating that she would be giving a short power-point presentation and basically it will summarize all of the information in the staff report. She wanted to focus on the policy issues and stated during the implementation of the General Plan last year there were different policy issues that have come up and they are: 1) Traffic Circulation regarding level of service for roadways; 2) Highland Home Road; 3) Land Use & Non-Conformity; 4) Housing Element and Density; and 5) Parks and Recreation Element. She explained each of these policy issues and she also refreshed the Council's memory of some of the projects completed within the last year and some of the capital improvements that were completed. She also went over some other projects being done in the city which include the San Gorgonio Memorial Hospital Expansion, Banning High School Athletic and Classroom, Carriage at Sun Lakes, Habitat for Humanity projects, Lawrence Equipment from South El Monte, Inland Behavioral Health Services, Superior Court of California and Village at Paseo San Gorgonio.

There were some Council and staff discussion regarding traffic circulation regarding Sunset Grade Separation, State comments regarding density, updates or changes to plan, traffic circulation and level of service.

Councilmember Franklin said in regards to the Housing Element she knows that we have to have that approved so if there are any issues with that does that jeopardize anything we want to do in the future.

Zai said if we don't get our Housing Element approved we might not be able to apply for grants. She said our Housing Element is that close but the issue is more of getting the consultant to complete our Housing Element and she thinks we can get through some of the rezoning issues and some other issues that the State is asking for.

City Manager said that he would make sure that is on the next agenda under closed session.

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

Motion Robinson/Machisic 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. Motion carried, all in favor.

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

City Council

Councilmember Franklin –

- Attended the water meeting for the San Gorgonio Pass Water Agency and they do have an opening now for an At-Large person and are accepting letters of interest with resumes up till April 7th and they have to be in writing. They are looking to replace Cark Workman who actually lived in Banning but as of now is moving out of the area.
- Attended a housing seminar last week put on by the Housing Opportunities Collaborative for the Inland Empire and in two hours they had nine presenters that gave a lot of information for people who might be either having upcoming foreclosures or are in the process of foreclosures and there is actually money available. They mentioned one program that has \$2 billion dollars in it for the state of California so in talking to the director of the Collaborative he does want to come out to this area and she has talked to staff about how we might be able to make this happen.
- She received a letter and maybe others have received the letter that looks like it came from the Gas Company and she thinks that people should know that the Gas Company will actually check your lines free once a year. The letter came out making it look like this is something new or something different for people to have to do when it is the same that we have always had a free inspection. They are charging \$5.00 a month that would be on your gas bill for you to pay to get something that we already get free.
- She is the Advisory Committee Member for First Five and the State has finalized taking \$1 billion dollars from First Five funding and the impact that it has is not only on future programs but also on current programs because they took money that has already been encumbered to existing programs and are under contact. So people who have childcare may see a change coming up in what services are being provided.

- The Fair Housing Council has the Champions of Justice Program where they recognize people throughout Riverside County every year and this year they are recognizing John and Jane Russo as Champions of Justice and she wanted to commend them for giving so much to our community.

Councilmember Robinson –

- Stated the Boys and Girls Club had a grand reopening last Saturday and they did a great job on the remodeling and Fire Memories, Inc. was out there with their large wagon that feeds firefighters out on fire lines and it was quite a thrill to see that and thank you to the Hammers for doing that.
- He attended OK Kids Comfort Fundraiser and Appreciation Dinner for all the kids that participate and they received a little award handmade by Banning Cultural Alliance Youth Group. This is for terminally ill kids and Chris McCallum also took a kid down to the San Diego Chargers game at no cost. These are the kinds of programs that are very beneficial and make you proud of the efforts in the Pass to help support of terminally ill children.

Mayor Hanna –

- Tomorrow is the Centennial Celebration Community Forum at the Banning High School on West Westward from 6 to 8 p.m. If you have any ideas on how to celebrate the 100th Anniversary of the City of Banning in the year 2013, please come down. This is the beginning of a planning process for that centennial celebration.
- Habitat for Humanity will have a Ribbon Cutting for a home that has been totally renovated at 1569 N. Almond Way at 3:45 p.m. on Thursday, March 24th.
- She and Councilmember Franklin attended a WRCOG Port of Long Beach Harbor Boat Tour on March 10th and it was really amazing.
- #10 Saloon Musical (dinner/theater) will be performed again on Sunday, April 3rd at 3:30 p.m. and there is only one performance and will be held at the Banning Whitehouse with western attire welcomed. They will have a barbecue and if you are interested in attending, please call 922-9421.

City Committee Reports – There were none.

Report by City Attorney - Nothing to report at this time.

Report by City Manager

- April 6th planning a Joint Planning Commission and City Council Meeting on Freeway Oriented Signs and Billboards - a notice will be sent out on availability for the meeting.
- On your Consent Agenda there was an item adopting Strategic Goals and basically that is just the primary goals and we will be bringing those back. You spent a day and a half on the strategies for those goals and how you are going to obtain them.
- We will start planning some field trips for the Council and one will be a package treatment facility so you can actually see how they look and operate and how they don't smell. Also on some of his weekly meetings he is planning on taking them for a drive around the city every once in a while so you can see what is going on.

- Also ethics training was cancelled again yesterday and we sent you two dates so please let us know your preference.
- In regards to the State budget no action was taken today as far as the big issue concerning redevelopment agencies. As you know there is currently floating through the California Redevelopment Association a comprise which basically you would take your low-mod incoming housing monies and you will be able to give that to the State to pass it on to the schools and if every year you do that, they add that many years to your project. It is a reasonable thing but also voluntary. He doesn't know if that is going to have any legs with Governor Brown but as you know if redevelopment is eliminated, a lot of great projects are going to go down the hill and we will have more budgetary issues that will be even more challenging this next year.

ITEMS FOR FUTURE AGENDAS

New Items -

Mayor Hanna said she would like to suggest that we go out to bid on our solid waste and recycling franchise agreement. She said she learned recently that our waste management contact ends in June and she feels that we should go out to bid and not because of any dissatisfaction at least from her perspective of Waste Management but our current contact has been in place since 1993. We have not gone out to bid in 18 years. Waste management types of contracts tend to be long term, at least 10 years, because of the enormous costs of providing the trucks and all the services involved. She thinks that 18 years is a really long time not to test the waters. It is obvious to her with the contact ending in June there is no way that we could be ready to go with another contract by then and given Duane's medical condition at the moment her suggestion would be to renew the contact for one-year and during that period go out for bid for a long-term contact. She asked the Council what they felt about this.

Councilmember Botts said that he would guess that we depend upon staff to look at a lot of this and he is not prepared to say we should go out for bid right now. He would suggest staff is working on all of that.

City Manager said that staff is currently negotiating and feels the price is currently one of the lowest in the area with the good service and everything else. It is up to the Council obviously if you would like to go out to bid.

Councilmember Machisic said last year's contact was increased about 23 cents which he thought was a minimum increase and like City Manager said we have one of the lowest rates as far as trash collection and as far as he knows the service has been excellent. He said he would be hesitant on going out for bid since we have such a great deal.

City Attorney said the issue is whether you want to put something on the agenda to make a decision whether we go out for bid. It is not on the agenda tonight so you really can't make a decision about whether or not to go out to bid.

Mayor Hanna asked the Council do you want it to come back. **The consensus of the Council was that it not come back.**

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

Councilmember Machisic asked that Pending Item No. 6 be removed. **There was Council consensus.**

Councilmember Franklin said there is one thing that needs to be on there because at the last meeting we agreed that we would get a status on loans and other monies that are owed to the City.

City Manager said that would be added to the pending items list.

ADJOURNMENT

By common consent the meeting adjourned the meeting at 8:15 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.

WRCOG's Energy Efficiency and Water Conservation Program for Western Riverside County



**City of Banning
City Council Meeting
March 22, 2011**



Enabling legislation

- **AB 811 (2008)**
 - Authorizes legislative body to enter into contractual assessment with property owners to finance energy efficiency and generation renewable energy sources
 - Assessments are paid back through property tax
- **AB 474 (2010)**
 - Authorizes the addition of water conservation/efficiency improvements into the Program

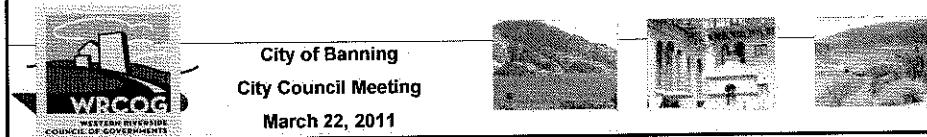


**City of Banning
City Council Meeting
March 22, 2011**



Benefits of subregional approach

- Economies of scale (1 program vs. 18 individual programs)
- Consistent regional messaging and marketing
- Consistent program design and implementation
- Ability to leverage and coordinate funding sources



Examples of eligible improvements

- Heating and air conditioning
- Cool roofs
- Natural gas storage water heater
- Tankless water heater
- Windows and glass doors
- Outside irrigation
- Insulation
- Window film
- Home sealing
- Lighting control systems
- Solar thermal systems (hot water)
- Solar thermal systems for pool heating
- Photovoltaic systems
- Low flush toilets



Program benefits

For property owners

- Does not require "up-front" costs to be borne by the property owner(s)
- Provides no-money-down means of financing energy efficiency improvements
- Provides fixed-rate financing and repayment process via property taxes
- Provides access to financing that may not readily be available through traditional means, such as home equity loans
- Investment recaptured through lower utility bills

For Western Riverside County

- Creates and retains an estimated 1,200 jobs
- Reduces/delays the need for costly infrastructure investments related to energy production and transmission
- Provides a mechanism to retrofit thousands of properties and achieve significant energy savings

Financing

Current approaches include:

1. Commercial Solar Program

\$25 Million Available!

2. Home Energy Renovation Opportunity (HERO)

\$100 Million Available!

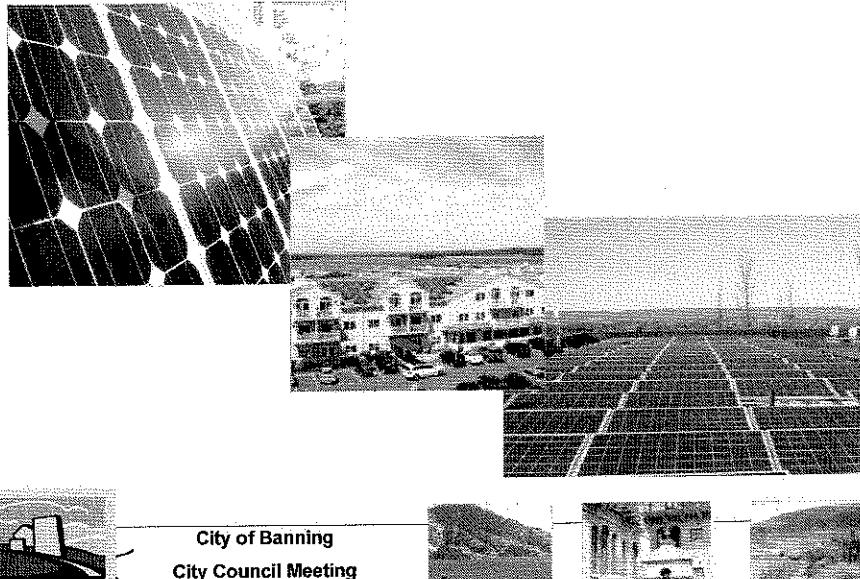
3. Standard Financing Plan



City of Banning
City Council Meeting
March 22, 2011



1. Structured Finance Commercial Solar Program



City of Banning
City Council Meeting
March 22, 2011

Commercial Solar Program

Structured Finance (investor/issuer) will provide:

- \$25 million available for large scale commercial solar projects (>1MW)
 - Smaller projects to be included at a later date

Cost structure:

- Approximately 4.25% cost of issuance
- Estimated 6.5%-7% interest rates to the consumer
- \$4-5 million average cost of improvements for a property
- 20-year financing
- Tax benefits accrue to property owner



City of Banning
City Council Meeting
March 22, 2011

Program requirements for Structured Finance

Commercial (Smaller projects to be added in the future)

- Must be the property owner of record
- Received lender consent
- Must be current on property debt or property taxes
- No bankruptcy
- A debt service coverage ratio of 1.05 or higher

2. Home Energy Renovation Opportunities (HERO) Program (Residential Program)

"Be a HERO!"



City of Banning
City Council Meeting
March 22, 2011



HERO (Residential) Program

Renovate America (consultant/investor/issuer) will provide:

- \$100 million revolving credit facility for residential properties; could later be expanded to include small commercial

Cost structure:

- 6.95% (Lowest PACE interest rate available today)
- Approximately 4.5% cost of issuance
- Assessments that involve mortgages funded through Fannie Mae and Freddie Mac would need to be paid off if refinancing or sale of property.
- Pre-payment option at any time

HERO financing vs. other financing options

Financing Option	Monthly Payment ²	Interest Rate	Max Term	Due On Sale	Equity in Home
HERO	\$150	6.95%	20 years	Yes ⁵	Yes
Second Mortgage	\$186	8.40%	15 years	Yes	Yes
Lease	\$325	11.00%	7 years	Yes	No
Credit Card	\$206 ³	12.99% ³	-	No	No
Cash	\$176 ⁴	-	-	--	--

(1) Property assessed clean energy legislation has passed in 22 states.

(2) Assumes \$19,000 in energy renovations.

(3) Interest only payment.

(4) The average homeowner lives in their property for 9 years. The \$176 represents the amortization of \$19,000 over 9 years.

(5) Due on sale if using a conforming loan (FNMA or Freddie Mac). If buyer does not utilize a conforming loan, then payments transfer to new owner.

Program Requirements for HERO

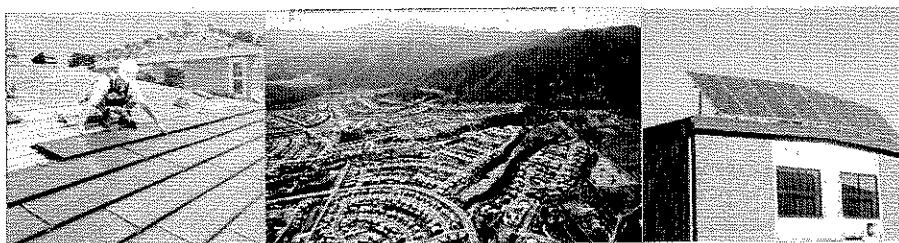
Residential:

- Must be the property owner of record
- Must be current on property debt or property taxes
- No bankruptcy
- More than 20% equity

Commercial (*may be added in the future*):

- Must be the property owner of record
- Must have lender consent
- Must be current on property debt or property taxes
- No bankruptcy
- A debt service coverage ratio of 140% or higher

3. Standard Financing Program



**City of Banning
City Council Meeting
March 22, 2011**

Standard Financing Program

- Original financing strategy endorsed by Executive Committee in June 2010
- WRCOG to issue municipal bonds
 - Residential Program: Future option (Needs federal legislation)
 - Non Residential Program: Able to proceed
 - Starting to gather interested properties



City of Banning
City Council Meeting
March 22, 2011



Program Requirements for Standard Financing

Residential (needs federal legislation):

- Must be the property owner of record
- Must be current on their property debt or property taxes
- No bankruptcy
- No "underwater" homes

Commercial (currently gathering interest lists):

- Must be the property owner of record
- Lenders have given consent to Program financing
- Must be current on property debt or property taxes
- No bankruptcy
- A debt service coverage ratio of 140% or higher

Judicial validation

Due to concerns over the lack of judicial precedent reviewing and upholding contractual assessment programs and potential conflicts between AB 811 and Proposition 218 and Proposition 26, staff will seek judicial validation that will answer, among other questions, the following:

- Are AB 811 contractual assessments subject to Proposition 218 and Proposition 26? If so, may the property owner waive such owner's rights under Proposition 218 and 26 when entering into a voluntary contractual assessment?
- Are AB 811 contractual assessments a priority lien on assessed property?
- Has WRCOG complied with all applicable requirements of Chapter 29 and the Improvement Bond Act of 1915 for the issuance of limited obligation improvement bonds pursuant to the Master Indenture and the Supplemental Indenture?

Timeline

April / May 2011: Begin marketing program

- Dedicated/interactive website
- Conduct contractor workshops
- Conduct property owner workshops

May / June 2011: Begin accepting applications

Jurisdictional Responsibilities

Process permits for homeowners / businesses as required by jurisdiction.



City of Banning
City Council Meeting
March 22, 2011



QUESTIONS?

Contact Information:

Western Riverside Council of Governments
4080 Lemon Street, 3rd Floor
Riverside, CA 92501

Rick Bishop, Executive Director
(951) 955-8303 or e-mail bishop@wrcog.cog.ca.us

Barbara Spoonhour, Program Manager
(951) 955-8313 or e-mail spoonhour@wrcog.cog.ca.us



City of Banning
City Council Meeting
March 22, 2011



Exhibit "A"

28

reg.mtg.-3/22/11

29

10

REVOCA¹TION of UUP 01-47501 & Termination of Development Agreement

THE COURT'S DECISION

"The City failed to make adequate findings and conclusions, failed to draw legally relevant sub-conclusions supportive of the ultimate decision, and failed to bridge the analytic gap between the raw evidence and the ultimate decision...."

-Honorable Judge Mark E. Johnson
12/23/2010

Presented by
Andy Marocco
BAA/President

March 22, 2011

Exhibit "B"
29
reg.mtg.-3/22/11

The City Attorney, states his belief, on Page 90,
Paragraph 4 of your Staff Reports

THE COURT'S DECISION

"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."

Conclusion:

For the above reasons, the Writ of Mandate requested by the Petitioner, Banning Airport Associates (BAA) and Andrew Marocco is granted.

Therefore, when the administrative findings are not adequate as required by the law, the appropriate remedy is to remand the matter back to the agency so that proper findings can be made.

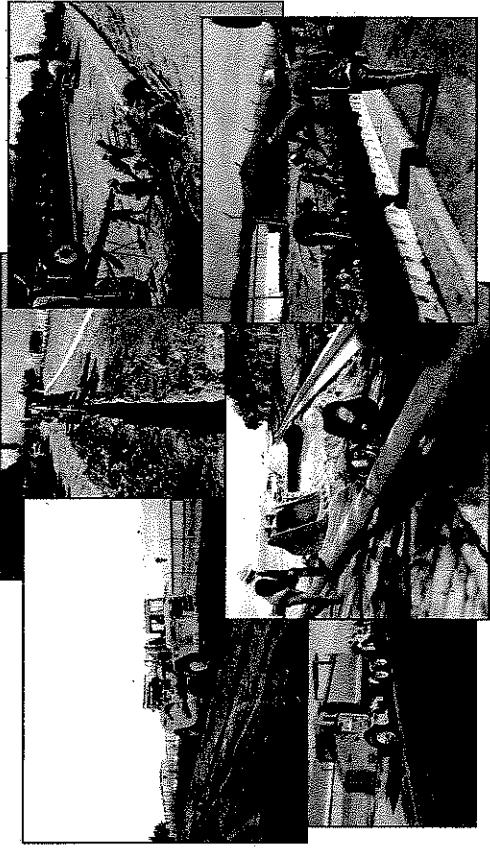
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HEART OF THE MATTER

When the Planning Commission and City Council
Revoked the UUP

1. They were never given any "evidence" to back up the city attorney's claims.
2. The "staff report" was flawed with dozens of false facts.
3. The revocation of the UUP was illegal, due to the fact that the project was "vested".

1. That the Barbour Street Improvements were not paid for by AAR and that the funding came from the Agency. (AR02648)



THE BASIC PROBLEM....

FALSE FACTS were used as "reasons" to revoke
The UUP and Developer's Agreement

At the January 28, 2008, Planning Commission Meeting City Attorney Eric Vail presented his staff report. The misleading facts were illustrated in the Chronology of Events in his staff report to the Commission:

1. That the Barbour Street Improvements were not paid for by AAR and that the funding came from the Agency.
2. That the City of Banning was not involved in the ground breaking other than the use the PA and seats.
3. That construction of Barbour Street did not constitute sufficient evidence to validate the Unclassified Use Permit.
4. That Banning Airport Associates did not do any grading on their property.
5. That the Burrowing Owl did not impede BA from proceeding with grading or other work on their property.

(AR02648)

"TRUE" BARBOUR STREET IMPROVEMENTS COST

\$230,230.00	Matich
\$ 3,002.00	SoCal Gas
\$19,315.00	City Add Ons
<hr/>	<hr/>
\$252,547.00	TOTAL COST
-\$62,500.00	City Reimbursement
-\$19,315.00	City Cost Support

\$170,732.00 PAID BY BAA

(AR AR01789-01790, 01769-01770, 02184-02186)

2. That the City of Banning was not involved in the ground breaking other than the use the PA and seats. (AR02648)

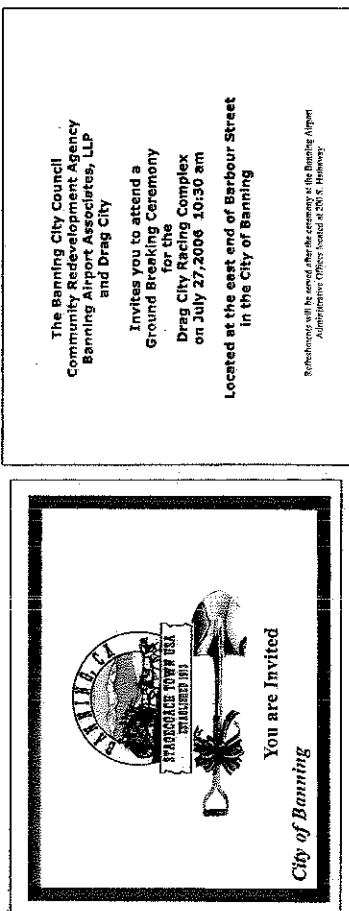
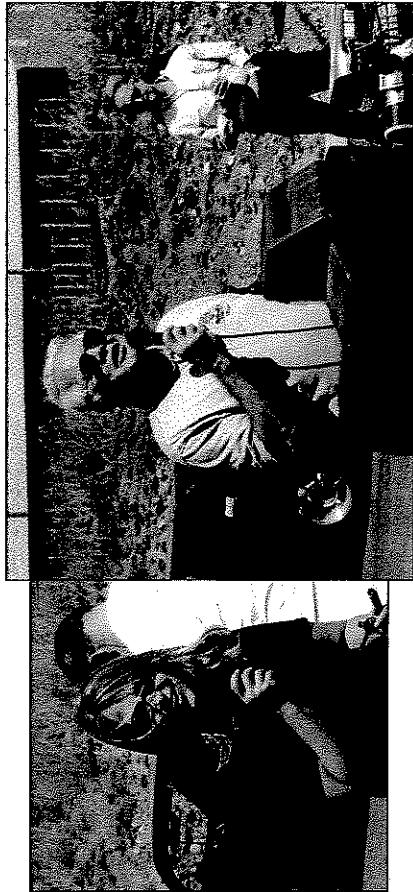


Exhibit "B"
31
reg. mtg.-3/22/11

32

2. That the City of Banning was not involved in the ground breaking other than the use the PA and seats. (AR02648)



2. That the City of Banning was not involved in the ground breaking other than the use the PA and seats. (AR02648)

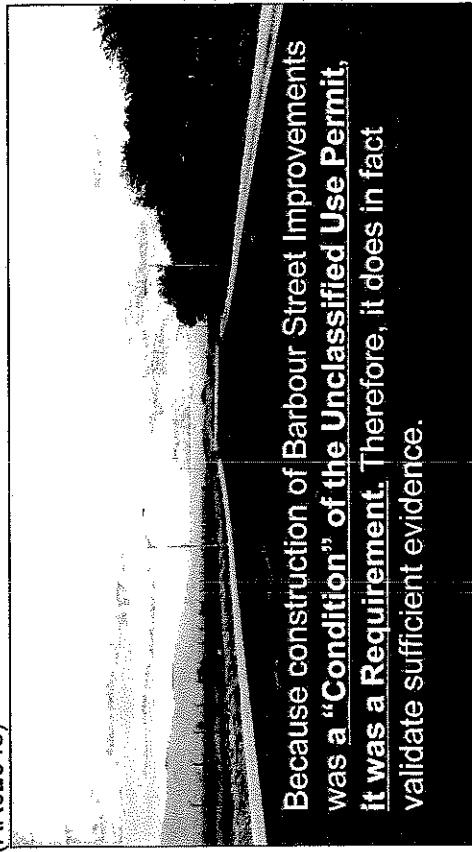


2. That the City of Banning was not involved in the ground breaking other than the use the PA and seats. (AR02648)



3. That construction of Barbour Street did not constitute sufficient evidence to validate the Unclassified Use Permit.

(AR02648)



Because construction of Barbour Street Improvements was a "Condition" of the Unclassified Use Permit, it was a Requirement. Therefore, it does in fact validate sufficient evidence.

5. That the Burrowing Owl did not impede BAA from proceeding with grading or other work on their property.

(AR02648)

BAA could not work on both parcels because the city could not get its 20-acre parcel released from the FAA for five years. (AR 02567-79) Further, after the FAA release was made burrowing owls were found on the city property and had to be mitigated. It took several months until the City land was clear of the protected species preventing any project work on it. (AR 02280, 02297)

Judith Von Klug, Redevelopment Director, April 24, 2007, CRA Meeting Directors Report:

"The developer moved forward with a groundbreaking ceremony and briefly began grading the land owned by BAA for the project. This was done in anticipation of FAA release of City land. Unfortunately, a condition of the ending release was an environmental survey be completed. That survey was done in the following months and determined that there were in fact burrowing owls, a protected species, nesting on the City owned land." (AR 02316)

/4

4. That Banning Airport Associates did not do any grading on their property.

(AR02648)

Judith Von Klug, Redevelopment Director, April 24, 2007, CRA Meeting Directors Report:
"The developer moved forward with a groundbreaking ceremony and briefly began grading the land owned by BAA for the project. (AR 02316)

Oscar Orci, Community Development Director October 23, 2006 Letter Regarding Burrowing Owl:
"The racetrack developer secured a grading permit from the City some months ago, and had initiated grading on the property on July 27, 2006." (AR 022905)

33

The reason there is such confusion or to use the term "unclear" stems from some very simple reasons.



TRUTHS

1. The project was "Vested"
2. "Grading" was commenced
3. No "Timelines" existed
4. BAA relied on the City's "Good Faith"

If we can prove these "truths" exist, then the "discussion points" of the tonight's staff report doesn't matter.

There "truth" becomes self evident.

/6

What does it mean to be "Vested"?

In the landmark California court case **Avco Community Developers, Inc. v. South Coast Regional Com.** [17 Cal. 3d 785], the California Supreme Court recognized the long-standing rule in California that *if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete a construction in accordance with the terms of the permit.* (AR 02687)

/8

What does it mean to be "Vested"?

In Avco, the petitioner assumed and relied that they would have a building permit issued and gambled on onsite improvements. The courts ruled against their claim to a vested right because they did not have a building permit.

Unlike the developer in Avco, BAA in this case actually had an **Approved Project** from the start with a **UUP**, **Developer's Agreement**, **Purchased Land** and was issued a **Grading Permit**. The facts clearly show that the project was "VESTED".

Therefore, there was no longer a need for the UUP to be renewed nor could it be revoked due to the fact that Petitioner met **SEVENTEEN Conditions of Approval** of the permit, including **construction of offsite improvements** per the requirement of the UUP.

Proof of "vestment" is in the statements and actions of the City officials themselves.

Eric S. Vail , Assistant City Attorney, August 9, 2005, Staff Report :

"BAA has actually invested money in the area, as evidenced by its purchase of the Photo-Sonics property. (40 acres) (AR 02011)

It can also be shown that in December 2005, after the so-called final extension of the UUP ended, that the project was in fact considered vested, Eric Vail again stated:

"The Existing Project Entitlements continue to be in force and binding against the parties". (AR 02205)

Attorney claims "Grading" did not commence, only that clearing and grubbing did.

Yet, the in the city's own administrative record submitted to the court states the opposite:

Judith Von Klug, Redevelopment Director, April 24, 2007, CRA Meeting Directors Report:

"The developer moved forward with a groundbreaking ceremony and briefly began grading the land owned by BAA for the project. This was done in anticipation of FAA release of City land. Unfortunately, a condition of the ending release was an environmental survey be completed. That survey was done in the following months and determined that there were in fact burrowing owls, protected species, nesting on the City owned land."
(Emphasis Added.) (AR 02316)

Oscar Oro, Community Development Director October 23, 2006 Letter

Regarding Burrowing Owl:
"The racetrack developer secured a grading permit from the City some months ago, and had initiated grading on the property on July 27, 2006."
(Emphasis Added.) (AR 02290)5

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GRADING

TIMELINES

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23

Attorney claims “timelines and deadlines existed” and were not meet.

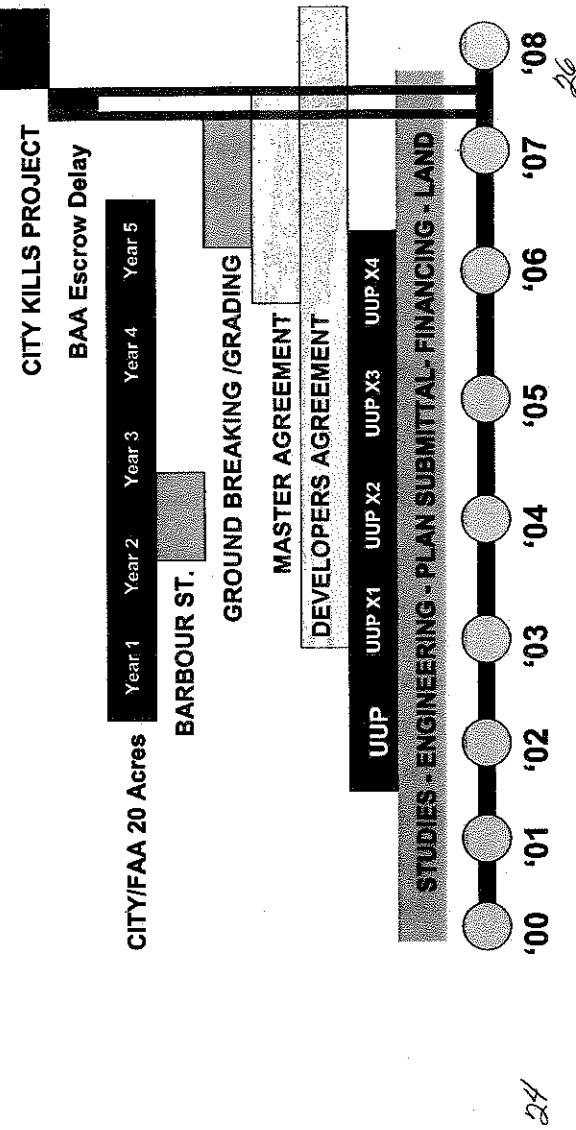
Yet, the city's own administrative record submitted to the court states the opposite;

Eric S. Vail , Assistant City Attorney, August 9, 2005, Staff Report
“The Agreements Impose no express time deadlines for performance by AAR and the Agreements remain legally binding upon the parties.” (AR 02011) (Emphasis added)

Nicole Sauvlat Criste, Interim Community Development Director
July 30, 2004, Letter:

“The development issues associated with this (project) site are considerable, and may therefore require more time to resolve than a typical development project.”(AR 02928)

DRAG CITY - PROJECT TIMELINE



ISSUES that directed the course of the Project Timeline

Page 88 -2nd Paragraph 3/22/2011 Staff Report

City Attorney States:

“First, the FAA land release was not completed until November 30, 2006 (AR at p.02299)

Second, burrowing owls were found on the acres parcel, and the California Department of Fish and Game did not authorize the parties to proceed until relocation of the burrowing owls were completed on February 20, 2007. (AR at pp 02290,02297)”.
25

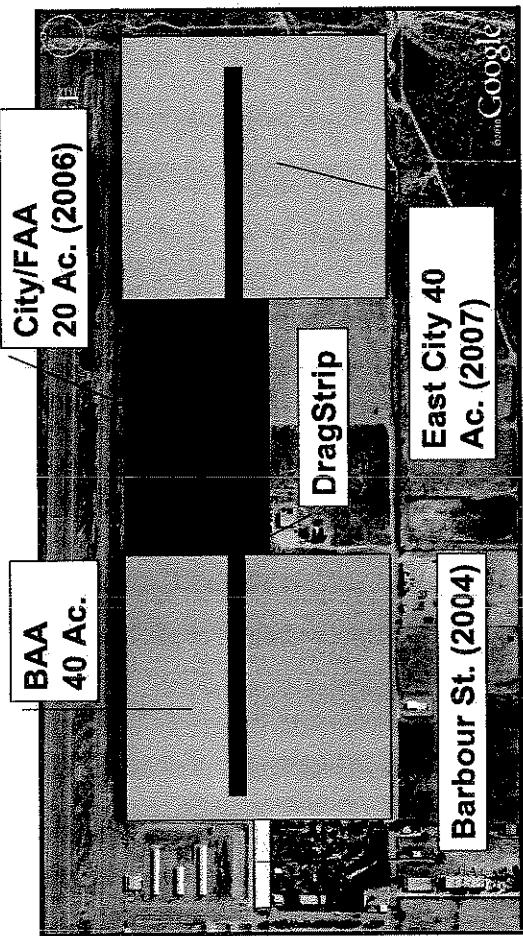
GOOD FAITH

GOOD FAITH?

THE City's IRONIC WORDS...

On August 2, 2007, Randy Anstine, City Manager wrote a letter to BAA:

"This letter is to reiterate the City of Banning's unequivocal support for the Drag City Raceway Project. We continue to believe that this endeavor is an essential component for the future economic vitality of the City and are committed to its success....We want to ensure that our partnership moves forward to realize this dream." (AR 02350)



PROJECT SITE - "DRAG CITY"

30

Exhibit "B"
36
reg.mtg.-3/22/11

HOWEVER, THIS WOULD CHANGE JUST 41 DAYS LATER!

GOOD FAITH?

THE CITY's ACTIONS After the letter...

SO MUCH OF THIS PROJECT DEPENDED SPECIFICALLY ON "GOOD FAITH" OF THE CITY TO GET 20 ACRES RELEASED FROM THE FAA.

City Attorney's Staff Report States:

"the FAA land release was not completed until November 30, 2006 (AR at p.02299)

28

- Aug 14, 2007- CRA Special Meeting- Closed Session Discussing Project
- Sep 11, 2007- CC/CRA Meeting- Notice of Master Agreement & Escrow Termination
- Sep 14, 2007- Letter Terminating Master Agreement
- Sep 14, 2007- Letter Terminating Purchase Sale Agreement
- Oct 23, 2007 -CC Resolution 2007-113 Master Agreement Terminated
- Oct 23, 2007- CC Resolution 2007-115 Purchase & Sale Agreement Terminated
- Jan 28, 2008- PC Resolution 2008-05 UUP-01-47501 Revoked
- Mar 11, 2008- CC Resolution 2008-34 UUP-01-47501 Revoked

WHAT HAPPENED?

29
WITHOUT IT, NO DRAG STRIP COULD BE BUILT!

Questions about "Working in Good Faith"

Can also prove the obvious

If the City truly believed that the permits were null and void as early as August 2005 and BAA did not have a "vested right" in the project, Then why did the City hold a co-sponsored "official groundbreaking" a year later in July 2006?

Why did the City continue to work with BAA to bring the project to fruition and continue its five year negotiations with the FAA to have the 20-acre released for the Drag City project? Which finally came three years after the so called last "permit" expired.

34

THE TRUTH WILL BE KNOWN

Hopefully we have proven tonight, that because of the these truths, what was "unclear" is now in fact crystal "clear", that the Revocation of the UUP was illegal and that this action ultimately destroyed the Drag City Project.

32

RECAP OF PROJECT

Last Words

To recap, the Drag City project was unanimously approved by the City Council. The City voted and approved the UUP for the project. A development agreement was made by and between the Petitioners and the City and several million dollars was spent on development of the project. The City broke its promise and ignored the fact that the petitioner already acquired a "vested right" in completing its drag strip project. The City, failed to work in "good faith".

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39

CITY COUNCIL AGENDA

Date: **April 12, 2011**

To: **Honorable Mayor and City Council**

From: **Fred Mason, Electric Utility Director**

Subject: **Resolution No. 2011-24, Awarding the Bid for the Replacement of the City Yard Office Building HVAC Units**

RECOMMENDATION: Adopt Resolution No. 2011-24, awarding the bid for the Replacement of the City Yard Office Building HVAC Units to Arrowhead Mechanical Inc., dba Arrowhead Sheet Metal (“Arrowhead”), of San Bernardino, California, in the amount not to exceed \$37,900 (Thirty-seven thousand and nine hundred dollars) including taxes.

JUSTIFICATION: The replacement of the City Yard Office Building HVAC Units is essential to ensure the energy efficiency of the City’s facilities and to qualify for the Energy Efficiency Conservation Block Grant money available to offset these costs.

BACKGROUND: On December 8, 2009 City Council passed Resolution No. 2009-108, approving the application for Energy Efficiency and Conservation Block Grant (“EECBG”) funds available through the California Energy Commission’s (“CEC”) EECBG Program. The City was notified by the CEC that it was being allotted funds for qualified energy efficiency conservation programs through the EECBG. Staff searched for areas within the City facilities that qualified for the EECBG and would provide a substantial energy savings. The City Yard Office Building HVAC units have been determined to be inefficient due to the low SEER rating and age of the current units. Staff anticipates the replacement of the HVAC units to result in a savings of approximately 32,000 kWh per year.

Through the EECBG and the Public Benefits Program rebates, the majority of the cost for this project will be covered. The minor roof repairs needed to complete the project do not qualify for either of these funding options. The \$3,500.00 roof expense shall be paid for from monies available in the Electric budget.

Staff solicited bids for the replacement of the City Yard Office Building HVAC units and received four bid proposals. The four proposals were submitted by:

1. Arrowhead Mechanical, Inc., San Bernardino, Ca at \$37,900.00
2. AToM, Inc., Hemet, Ca at \$53,979.00
3. Diversified Heating & Cooling, Yucca Valley, Ca at \$64,000.00
4. Leading Edge AC, Cathedral City, Ca at \$43,440.00

The proposals were evaluated by staff and it was determined that Arrowhead's proposal best meets the requirements of the City and is the lowest responsible bidder.

FISCAL DATA: Funds for the replacement of the HVAC Units are available as such: \$16,000.00 through the Energy Efficiency Conservation Block Grant, \$18,400.00 through the Public Benefits Rebate Program and \$3,500.00 shall be funded from the Electric budget in account # 670-7000-473-30.02.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

Prepared by Carla Young

RESOLUTION NO. 2011-24

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING AWARDING THE BID FOR THE REPLACEMENT OF
THE CITY YARD OFFICE BUILDING HVAC UNITS.**

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

WHEREAS, it is essential that the City of Banning continues to implement energy efficiency conservation within its facilities; and

WHEREAS, Energy Efficiency and Conservation Block Grant (EECBG) funds are available through the California Energy Commission's EECBG Program for grants to local governments for eligible cost-effective energy efficiency projects; and

WHEREAS, the City of Banning has been awarded \$165,461.00 for qualified energy efficiency conservation projects under the California Energy Commission's EECBG Program; and

WHEREAS, \$16,000.00 of this award amount has been allotted to the replacement of the City Yard Office Building HVAC units; and

WHEREAS, \$18,400.00 is available through the City of Banning Public Benefits Rebate Program; and

WHEREAS, a portion of the work is not eligible for Grant or Rebate consideration so \$3,500.00 shall be funded from the Electric budget in account # 670-7000-473-30.02; and

WHEREAS, Staff solicited bids and received four bid proposals for the replacement of the HVAC units on the City Yard Office Building; and

WHEREAS, Arrowhead Mechanical, Inc. is the lowest responsible bidder;

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

Section I. Adopt Resolution No. 2011-24, approving the bid award, in the amount of \$37,900.00, for the Replacement of the City Yard Office Building HVAC Units project to Arrowhead Mechanical, Inc. and authorize the City Manager, or his designee, to execute the necessary documents to complete said project.

Section II. Authorize the Administrative Services Director to appropriate funds and to complete the necessary account transfers as required for the completion of all projects funded by the \$165,461.00 EECBG.

Section III. Authorization for the award of such bid shall become void if not completed and executed within 60 days of the effective date hereof.

Section IV. Authorize the Mayor to execute Resolution No. 2011-24, said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-24 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April 2011 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

CITY COUNCIL AGENDA

Date: **April 12, 2011**

To: **Honorable Mayor and City Council**

From: **Fred Mason, Electric Utility Director**

Subject: **Resolution No. 2011-25, Awarding the Bid for the Repair/Replacement of the City Yard Office Building HVAC Duct Work System**

RECOMMENDATION: Adopt Resolution No. 2011-25, Awarding the bid for the Repair/Replacement of the City Yard Office Building HVAC Duct Work System to Leading Edge Air Conditioning ("Leading Edge") of Cathedral City, California, in the amount not to exceed \$28,950.00 (Twenty-eight thousand nine hundred fifty dollars) including taxes.

JUSTIFICATION: The repair/replacement of the City Yard Office Building HVAC duct work system is essential to ensure the maximum energy efficiency of the HVAC units being replaced through the Energy Efficiency Conservation Block Grant ("EECBG").

BACKGROUND: Through Resolution No. 2011-24, the City will be replacing the HVAC units on the City Yard Office Building. Due to the age, unreliability, and inefficiency of the current HVAC duct work within the building, it has become apparent that optimal energy efficiency will be attained if the repair/replacement of the City Yard Office Building HVAC duct work system is completed in conjunction with the replacement of the HVAC units, as approved in Resolution No. 2011-24.

Staff solicited bids for the repair/replacement of the City Yard Office Building HVAC duct work system and received three bid proposals. The three proposals were submitted by:

1. Arrowhead Mechanical, Inc., San Bernardino, Ca at \$61,900.00
2. Leading Edge AC, Cathedral City, Ca at \$28,950.00
3. Q-Services, Inc., San Bernardino, Ca at \$49,995.00

The proposals were evaluated by staff and it was determined that Leading Edge's proposal best meets the requirements of the City and is the lowest responsible bidder.

FISCAL DATA: Funds for the repair/replacement of the HVAC duct work system shall be available in the Electric budget, account # 670-7000-473-30.02, in the amount of \$28,950.00.

RECOMMENDED BY:



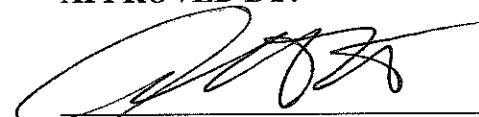
Fred Mason
Electric Utility Director

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

Prepared by Carla Young

RESOLUTION NO. 2011-25

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING AWARDING THE BID FOR THE
REPAIR/REPLACEMENT OF THE CITY YARD OFFICE
BUILDING HVAC DUCT WORK SYSTEM.**

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

WHEREAS, it is essential that the City of Banning continues to implement energy efficiency conservation within its facilities; and

WHEREAS, Resolution No. 2011-24 authorized the City Yard Office Building HVAC units to be replaced; and

WHEREAS, optimal energy efficiency will be attained if the repair/replacement of the City Yard Office Building HVAC duct work system is completed in conjunction with the replacement of the HVAC units, as approved in Resolution No. 2011-24; and

WHEREAS, \$28,950.00 shall be funded from the Electric budget, account # 670-7000-473-30.02; and

WHEREAS, Staff solicited bids and received three bid proposals for the repair/replacement of the HVAC duct work system at the City Yard Office Building; and

WHEREAS, Leading Edge Air Conditioning is the lowest responsible bidder;

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

Section I. Adopt Resolution No. 2011-25, approving the bid award, in the amount of \$28,950.00, for the Replacement of the City of Banning Yard Office Building HVAC Duct Work System project to Leading Edge Air Conditioning, and authorize the City Manager, or his designee, to execute the necessary documents to complete said project.

Section II. Authorize the Administrative Services Director to complete the necessary account transfers as required.

Section III. Authorization for the award of such bid shall become void if not completed and executed within 60 days of the effective date hereof.

Section IV. Authorize the Mayor to execute Resolution No. 2011-25, said authorization shall become void if not executed within 30 days of the effective date of this resolution.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor

ATTEST:

Marie A. Calderon, City Clerk

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

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

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-25 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April 2011 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

**CITY COUNCIL AGENDA
RESOLUTION**

Date: **April 12, 2011**

TO: **Mayor and City Council Members**

FROM: **June Overholt, Administrative Services Director / Deputy City Manager**

SUBJECT: **Resolution No. 2011-26 Authorizing Examination of Sales and Use Tax Records**

RECOMMENDATION:

The City Council adopt Resolution No 2011-26, "authorizing specific individuals to examine confidential sales and use tax records."

JUSTIFICATION:

State legislation precludes any individuals from having access to sales and use tax information of specific businesses; however, exceptions are permitted. Since sales and use tax is a primary revenue source for the City, it is essential for specific executive and management positions to review appropriate actual data. A Council resolution identifying specific individuals empowered to have access to sales and use tax information is required.

BACKGROUND:

Assembly Bill 1965 (chapter 962, Statutes of 2000) prohibits the State Board of Equalization (Board) from releasing the names and addresses of individuals who are registered with or hold licenses issued by the Board except under certain circumstances. The Board's legal staff has determined that a resolution authorizing the release of registration information is sufficient to override the bill's prohibition.

The City's current resolution (2002-30) authorizing examination of and access to sales and use tax records requires an update to reflect changes within the City organization. The existing resolution is still in effect and allows our consultant Hinderliter, de Llamas and Associates (HdL) and certain staff authority to interact with the Board by telephone, written correspondence or any other media.

In order to reflect the recent organizational changes and potential future changes, the following positions are being added to the resolution:

- Administrative Services Director / Deputy City Manager
- Deputy Finance Director
- Community Development Director
- Redevelopment Director

FISCAL DATA:

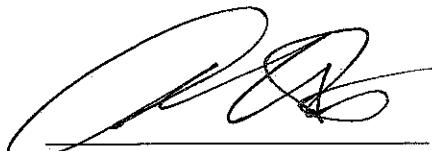
No financial impact occurs to the City as a result of authorizing specific City personnel and our consultants access to confidential sales and use tax information.

RECOMMENDED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2011-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING EXAMINATION OF SALES AND USE TAX RECORDS

WHEREAS, pursuant to Ordinance No. 434, the City of Banning entered into a contract with the State Board of Equalization to perform all functions incident to the administration and collection of local sales and use taxes; and

WHEREAS, the City Council of the city of Banning deems it desirable and necessary for authorized representatives of the City to examine confidential sales and use tax records of the State Board of Equalization pertaining to sales and use taxes collected by the Board for the city pursuant to that contract; and

WHEREAS, Section 7056 of the California Revenue and Taxation Code sets forth certain requirements and conditions for the disclosure of Board records, and establishes criminal penalties for the unlawful disclosure of information contained in, or derived from, the sales and use tax records of the Board;

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

SECTION 1:

That the City Manager, Administrative Services Director, Finance Director, Deputy Finance Director, Economic Development/Redevelopment Manager, Redevelopment Director, Community Development Director, and Finance Coordinator are hereby appointed to represent the City with authority to examine sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the Board pursuant to the contract between the City and the Board. The information obtained by examination of Board records shall be used only for purposes related to the collection of city sales and use taxes by the Board pursuant to that contract.

SECTION 2:

That Hinderliter, de Llamas & Associates is hereby designated to examine the sales and use tax records of the Board pertaining to sales and use taxes collected for the City by the board. The entity designated by this section meets all of the following conditions:

- Has an existing contract with the City to examine those sales and use tax records;

- Is required by that contract to disclose information contained in, or derived from, those sales and use tax records only to the officer or employee authorized under Section 1 of this resolution to examine the information;
- Is prohibited by that contract from performing consulting services for a retailer during the term of that contract; and
- Is prohibited by that contract from retaining the information contained in, or derived from those sales and use tax records, after that contract has expired.

The information obtained by examination of Board records shall be used only for purposes related to the collection of City sales and use taxes by the Board pursuant to the contract between the City and the Board.

SECTION 3:

That this resolution supersedes all prior resolutions of the City Council of the City of Banning adopted pursuant to subdivision (b) of Revenue and Taxation Code Section 7056.

PASSED, APPROVED, AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor
City of Banning

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

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

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2011-26, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

RESOLUTION NO. 2011-28

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING PERTAINING TO ANY CONSIDERATION FOR THE PASS AND REDISTRICTING.

WHEREAS, the Pass Area consisting of the Cities of Banning, Beaumont and Calimesa and the County areas of Cabazon and the Morongo Band of Mission Indians are geographically connected and in close proximity to one another; and

WHEREAS, the Cities of Banning, Beaumont and Calimesa and the County areas of Cabazon and the Morongo Band of Mission Indians are looking at the possibility of regional sharing of services; and

WHEREAS, the Cities of Banning, Beaumont and Calimesa currently share Animal Control Services; and

WHEREAS, the Cities of Banning, Beaumont and Calimesa and the County areas of Cabazon and the Morongo Band of Mission Indians share borders and meet regularly; and

WHEREAS, the Cities of Banning, Beaumont and Calimesa and the County areas of Cabazon and the Morongo Band of Mission Indians share common interests in the Pass both politically and geographically and have a desire to remain in the same district to assure continued cohesiveness within these geographic areas; and

WHEREAS, the 2010 Census population has determined the population for Riverside County is such that there will be a need for redistricting among the five supervisorial districts; and

WHEREAS, the Cities of Banning, Beaumont and Calimesa and the County areas of Cabazon and the Morongo Band of Mission Indians have a desire to remain within their current Riverside County Supervisorial District; and

WHEREAS, the Riverside County Board of Supervisors will have to take on additional residents or less in order to redistrict.

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

The City Council of the City of Banning adopts Resolution No. 2011-28, "A Resolution of the City Council of the City of Banning Pertaining to any Consideration for the Pass and Redistricting."

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor
City of Banning

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. 2011-28 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held on the 12th day of April, 2011, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: April 12, 2011

TO: City Council

FROM: Phil Holder, Lieutenant

SUBJECT: Resolution No. 2011-30 Authorizing acceptance of funding from the State of California Department of General Services California 9-1-1 Emergency Communication's Office and the California Geographical Information System Services to purchase equipment to enhance the police department's communication center.

RECOMMENDATION: "Adopt Resolution No. 2011-30 authorizing acceptance of funding from the State of California Department of General Services California 9-1-1 Emergency Communication's Office in the amount of \$48,000.00 and the California Geographical Information System Services in the amount of \$7,500.00 for the purchase of new equipment and software for the police department's communication center."

JUSTIFICATION: The US Department of Technology (USDOT) believes a fundamental reexamination of the technological approach to 9-1-1 is essential as our public safety emergency service networks struggle to accommodate the challenges of wireless communications and digital devices. Cellular service and most other commercial and public safety communications systems are transitioning to IP-based networks. These technologies should enable major advances in the ability of all users and public safety responders to send or receive critical information to, from and beyond the emergency services internetwork, such as emergency calls in American Sign Language via video or medically-relevant data transmitted from a vehicle crash.

Anticipated purchases with these state funds include but are not limited to a dispatch console, computer server, computers, monitors, and GIS mapping related equipment and software.

BACKGROUND: The State of California provides Public Service Answering Points (PSAP) with allotment funds based on the amount of calls taken over an 18 month period. These funds are available to the PSAP every 5 years. This year the Banning Police Department was allotted \$48,000 for improvements to the department's 9-1-1 system in the communication center and \$7,500 for GIS related equipment and software. All State allotments are held by the State on the City's behalf. All state approved costs for the system are paid directly to the vendors.

STRATEGIC PLAN INTEGRATION: Council approval of this recommendation will help facilitate the Police Department's goal of maintaining proper safety equipment for police personnel.

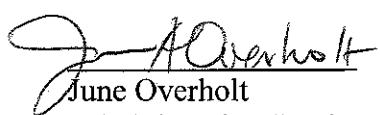
FISCAL DATA: No funds are required from the City of Banning for the purchase of the described systems.

RECOMMENDED BY:



Phil Holder
Lieutenant

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

RESOLUTION NO. 2011-30

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF STATE FUNDS IN THE AMOUNT OF \$48,000 FROM THE STATE OF CALIFORNIA DEPARTMENT OF GENERAL SERVICES AND \$7,500 FROM THE CALIFORNIA GEOGRAPHICAL INFORMATION SYSTEM SERVICES FOR THE PURPOSE OF PROCURING NEW EQUIPMENT AND SOFTWARE FOR THE DEPARTMENT'S COMMUNICATION CENTER.

WHEREAS, the City of Banning Police Department is responsible for the security and safety of the Citizens of the City; and

WHEREAS, the City of Banning Police Department operates a 24 hour a day operation; and

WHEREAS, the Police Department is responsible for internal and external communications; and

WHEREAS, state of the art technology has been incorporated into the daily operations of the Police Department; and

WHEREAS, the City's procedures requires the City Council to adopt a resolution authorizing the receipt of the new 9-1-1 dispatch equipment and software through the funded state systems.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the appropriation \$55,500.00 into Banning Police Department account 001-2210-421-9023 (Dispatch Equipment) and authorizes receipt of, but not limited to, a new 9-1-1 dispatch console, computer server, computers, monitors and GIS related equipment and software. The Finance Department is authorized to make necessary budget adjustments related to these accepted funds.

PASSED, APPROVED, AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor
City of Banning

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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-30 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April 2011, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: April 12, 2011

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: **Approve Amendment to 1st Amendment with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.**

RECOMMENDATION: "The City Council amend the current limit on compensation for services (\$60,000) with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department to \$85,000."

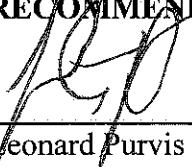
JUSTIFICATION: Amendment of this contract allows the Police Department to continue utilizing the investigative services of Norman A. Traub Associates for sensitive personnel matters.

BACKGROUND & ANALYSIS: During the course of this fiscal year the Banning Police Department has required the professional and independent services of Norman A. Traub Associates for personnel investigations involving employees of the City of Banning. Because of the number of investigations required this year, the previously amended limit on compensation for services with Norman A. Traub Associates of \$60,000 has been reached, as documented in the 1st Amendment in the City's Consultant Services Agreement between the City of Banning and Norman A. Traub Associates for FY 2010-11.

The requested increase in the spending limit for services with Norman A. Traub Associates is necessary to complete several personnel investigations that require an independent and professional review for the protection of the City and the Banning Police Department.

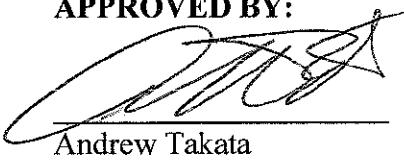
FISCAL DATA: Sufficient funds are available in the Police Department 2010-11 adopted budget professional services account number 001-2200-421.33-11.

RECOMMENDED BY: **REVIEWED BY:**


Leonard Purvis
Chief of Police


June Overholt
Administrative Services Director

APPROVED BY:


Andrew Takata
City Manager

60

AMENDMENT TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES (“Amendment”) by and between the **CITY OF BANNING** (“City”) and **Norman A. Traub Associates**, a Sole Proprietorship (“Consultant”) is effective as of the 14th day of December, 2010.

RECITALS

A. City and Contractor entered into that certain Agreement for Contractual Services dated August 3, 2010 (“Agreement”) and Amendment No. 1, dated December 14, 2010 and Amendment No. 2 dated N/A, on whereby Contractor agreed to provide Investigative Services for allegations of misconduct against an employee or employees of the City for the City of Banning.

B. City and Contractor now desire to amend the Agreement to include additional compensation for Investigative Services in an amount not to exceed \$25,000 to the amended Contract Amount (\$60,000). The original Scope of Work and tasks shall not be modified.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

- (a) Scope of Services (Exhibit A): No Changes
- (b) Compensation (Exhibit C): \$60,000 limit to \$85,000 limit
- (c) Schedule (Exhibit D): No Changes

These exhibits do not amend the existing exhibits but pertain to the additional services performed hereunder.

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

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

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

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

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

5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire, City Attorney

CONTRACTOR:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Address: _____

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

63

CITY COUNCIL AGENDA

Date: April 12, 2011

TO: City Council

FROM: June Overholt, Administrative Services Director/Deputy City Manager

SUBJECT: Report of Investments for February 2011

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

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

BACKGROUND: This report includes investments on hand at the end of February 2011. As of February 28, 2011, the City's operating funds totaled \$67,213,818. Included in operating funds is \$2,271,730 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of February 28, 2011 approximately 43% of the City's unrestricted cash balances were invested in investments other than LAIF.

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

FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.512 % in February. The average rate for all investments in February was 0.618%.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

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

	Interest	Amount
	Rate	Amount
Wells Fargo Bank	0.000%	-
Wells Fargo Bank-Investment Account	0.100%	1,924,555
Bank of America-Airport	0.300%	9,526
Bank of America-Parking Citations	0.300%	3,596
Bank of America-CNG Station	0.300%	3,370

Money Market and Bank Account Sub-Total 1,941,047

Government Pools

Local Agency Investment Fund: Account #1	0.512%	31,406,941
Account #2 Operating Amount	4,985,263	
Account #2 CRA Bond Cash Bal	2,271,730	

Local Agency Investment Fund: Account #2 0.512% 7,256,992

Government Pool Sub-Total 38,663,933

Operating Cash Balance **40,607,285**

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 1,262,236

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 25,344,297

Operating Funds Total **67,213,818**

Fiscal Agent

	Amount
BNY Western Trust Company	<u>538,762</u>
US Bank	<u>43,909,588</u>

Fiscal Agent Total **44,448,350**

City of Banning Investment Report

February 28, 2011

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Cost	Amortization	Discount or (Premium)	Market Value
<i><u>Bank Accounts</u></i>									
1,924,555	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	1,924,555	-	n/a	1,924,555
9,526	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	9,526	n/a	n/a	9,526
3,596	Bank of America-Airport	n/a	0.30%	daily	varies	3,596	n/a	n/a	3,596
3,370	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,370	n/a	n/a	3,370
	Sub-total								1,941,047
31,406,941	<i><u>Government Pools</u></i>	n/a	0.512%	daily	varies	31,406,941	n/a	31,406,941	
7,256,992	L.A.I.F. account #1	n/a	0.512%	daily	varies	7,256,992	n/a	7,256,992	
6,451,577	31,406,941 L.A.I.F. account #2								38,663,933
<i><u>Investments-US Bank/Piper Jaffray</u></i>									
2,000,000	FNMA MTN	n/a	0.750%	4/23/2013	10/5/2010	2,000,000			1,995,700
3,000,000	FNMA MTN	n/a	1.000%	10/21/2013	10/5/2010	3,000,000			2,956,650
3,000,000	Federal Home Loan Banks	n/a	1.200%	8/5/2013	8/5/2010	3,000,000			3,003,600
4,000,000	FHLMC MTN	n/a	1.150%	9/3/2013	9/3/2010	4,000,000			3,983,240
3,000,000	FHLMC MTN	n/a	1.100%	12/9/2013	12/9/2010	3,000,000			2,973,330
4,000,000	FHLMC MTN	n/a	1.200%	12/3/2014	2/3/2011	4,000,000			3,980,200
6,451,577	Money Market	n/a	0.000%	daily	varies	6,451,577	0	0	6,451,577

Average Rate All = 0.618%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 27, 2010. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 252 days and does not include Bond Reserve Fund Investments.

66

City of Banning Investment Report

February 28, 2011

Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Feb-11	Market Value
<u>BNY WESTERN TRUST COMPANY</u>								
1997 Admin Building COP's Refunding		2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.2700% 0.000%	11/1/2020 daily	522,375	*	522,562 16,200
US BANK								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.2000% 0.390%	daily daily	265,580	4.65	265,608	
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.200%	daily	188,943	32.18	189,489	3
2003 CRA Tax Allocation Bonds	2028	US Treasury Bill US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct	0.000% 0.210% 0.210% 0.025%	7/29/2010 daily daily daily	971,763	8.96	991,395	31,357
Surplus Fund						38.60		39
<u>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</u>								
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.200%	daily	2,024.95	11,923,280		
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	318.88	1,875,738		
Special Fund		US Bank Mmkt 4-Ct	0.200%	daily	93.35	93		
Surplus Fund		US Bank Mmkt 4-Ct	0.210%	daily		9		
<u>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</u>								
Bond Fund		US Bank Mmkt 4-Ct	0.140%	daily			7	
Interest Fund		US Bank Mmkt 4-Ct	0.230%	daily			9	
Principal Account		US Bank Mmkt 4-Ct	0.190%	daily			52	
		US Bank Mmkt 4-Ct	0.200%	daily				
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		US Bank Mmkt 4-Ct	0.200%	daily	0.01	44		
Interest Account		US Bank Mmkt 4-Ct	0.210%	daily	0.01	38		
Principal Account		US Bank Mmkt 4-Ct	0.200%	daily	0.02	135		
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	392.77	2,312,677		
Project Fund		US Bank Mmkt 4-Ct	0.200%	daily	712.38	4,194,610		
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	9.38	55,211		
Reliance Trust Company # 9AMGGBEZ7		Reliance Trust Company # 9AMGGBEZ7	3.650%	11/1/2011	2,961,500	3,016,509		
Acquisition & Construction		US Bank Mmkt 4-Ct	0.250%	daily	0.00	4		
		US Bank Mmkt 4-Ct	0.200%	daily	2,609.91	15,367,667		
Total							6,871.99	44,448,350
<i>*Paid Semi-Annually Deposited into Money Mkt Account</i>								

Summary Schedule of Cash and Investments

Operating Funds

Petty Cash 2,305

Bank Accounts

Wells Fargo Bank	0.000%	222,497	
Wells Fargo Bank-Investment Account	0.100%	1,135,383	
Bank of America-Airport	0.300%	5,480	
Bank of America-Parking Citations	0.300%	3,043	
Bank of America-CNG Station	0.300%	3,061	

Money Market and Bank Account Sub-Total

1,369,465

Government Pools

Local Agency Investment Fund: Account #1 0.538% 31,406.941

Account #2 Operating Amount 4,709,858

Account #2 CRA Bond Cash Bal 2,547,134

Local Agency Investment Fund: Account #2

Government Pool Sub-Total

38 663 933

Operating Cash Balance

40 035 703

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.040% **1,264,730**

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 0.629% 25,382,427

Operating Funds Total

66,682,859

Fiscal Agent

	<u>Amount</u>
BNY Western Trust Company	538,762
US Bank	44,754,598

Fiscal Agent Total

45,293,360

168

Operational Portfolio Individual Investments

Government Pools

31,406,941 L.A.I.F. account #1
7,256,992 L.A.I.F. account #2

Investments-ITS Bank/Piner Ioffray

2,000,000	FNMA MTN	n/a	0.750%	4/23/2013	10/5/2010	2,000,000	1,998,780
3,000,000	FNMA MTN	n/a	1.000%	10/21/2013	10/5/2010	3,000,000	2,966,100
3,000,000	Federal Home Loan Banks	n/a	1.200%	8/5/2013	8/5/2010	3,000,000	3,008,700
4,000,000	FHLMC MTN	n/a	1.150%	9/3/2013	9/3/2010	4,000,000	3,994,680
3,000,000	FHLMC MTN	n/a	1.100%	12/9/2013	12/9/2010	3,000,000	2,980,590
10,433,577	Money Market	n/a	0.000%	daily	varies	10,433,577	0

US Bank/Piper Jaffray Average Rate= 0.629% 25,382,427

Average Rate All = 0.564%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 27, 2010. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 217 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

January 31, 2011

Individual Investments with Fiscal Agent

TRUSTEE	Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Jan-11	Market Value
BNY WESTERN TRUST COMPANY	1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270% 0.000%	11/1/2020 daily	522,375	*	522,562 16,200
US BANK				0.200% 0.390%	daily daily	265,580	4.65 0.00	265,608 3
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct		0.000% 0.200%	7/29/2010 daily	188,943	31,13	189,457
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.200% 0.200%	971,763 daily	4,322.50		0
2003 CRA Tax Allocation Bonds	2028	US Treasury Bill US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct		0.200% 0.200% 0.025%	daily daily daily	0.02		1,013,075 251,552
Surplus Fund								8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.200%	daily	2,024.63		11,921,255
Reserve Fund		US Bank Mmkt 4-Ct		0.200%	daily	318.83		1,876,982
Special Fund		US Bank Mmkt 4-Ct		0.200%	daily	0.02		608,426
Surplus Fund		US Bank Mmkt 4-Ct		0.210%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		US Bank Mmkt 4-Ct		0.140%	daily			7
Interest Account		US Bank Mmkt 4-Ct		0.230%	daily			9
Principal Account		US Bank Mmkt 4-Ct		0.190%	daily			52
		US Bank Mmkt 4-Ct		0.200%	daily			
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Bond Fund		US Bank Mmkt 4-Ct		0.200%	daily			44
Interest Account		US Bank Mmkt 4-Ct		0.210%	daily			38
Principal Account		US Bank Mmkt 4-Ct		0.200%	daily			135
Reserve Fund		US Bank Mmkt 4-Ct		0.200%	daily	392.70		2,312,284
Project Fund		US Bank Mmkt 4-Ct		0.200%	daily	712.26		4,193,898
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct		0.200%	daily			55,202
Acquisition & Construction		Reliance Trust Company # 9AMGGBEZ7 US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct		3.650% 0.250% 0.200%	11/17/2011 daily daily	2,961,500		3,016,513
								4
								15,365,058
							Total	11,047.57
								45,293,360

*Paid Semi-Annually-Deposited into Money Mkt Account

70

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

2,305

Bank Accounts

Wells Fargo Bank

Interest

Rate

Amount

0.000% 1,870

Wells Fargo Bank-Investment Account

0.100% 1,737,690

Bank of America-Airport

0.300% 3,681

Bank of America-Parking Citations

0.300% 3,071

Bank of America-CNG Station

0.300% 3,047

Money Market and Bank Account Sub-Total

1,749,359

Government Pools

Local Agency Investment Fund: Account #1

0.462% 31,370,908

Account #2 Operating Amount

3,412,560

Account #2 CRA Bond Cash Bal

2,735,337

Local Agency Investment Fund: Account #2

0.462% 6,147,898

Government Pool Sub-Total

37,518,806

Operating Cash Balance**39,270,470**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.040%

740,510

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.939%

25,334,813

Operating Funds Total**65,345,794****Fiscal Agent**

BNY Western Trust Company

Amount

538,762

US Bank

43,884,626***Fiscal Agent Total*****44,423,388**

71

City of Banning Investment Report

December 31, 2010

Operational Portfolio Individual Investments

Government Pools

31,370,908 L.A.I.F. account #1
6,117,808 L.A.I.F. account #2

Investments, J/S Bank/Piner Laffron
0,14/098 L.A.F. account #2

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2,000,000	FNMA MTN	0.750%	4/23/2013	10/5/2010	2,000,000
3,000,000	FNMA MTN	1.000%	10/21/2013	10/5/2010	3,000,000
2,000,000	Federal Home Loan Banks	1.625%	1/7/2013	4/7/2010	2,000,000
3,000,000	Federal Home Loan Banks	1.200%	8/5/2013	8/5/2010	3,000,000
4,000,000	FHLMC MTN	1.150%	4/26/2013	7/26/2010	4,000,000
4,000,000	FHLMC MTN	1.150%	9/3/2013	9/3/2010	4,000,000
3,000,000	FHLMC MTN	1.100%	12/9/2013	12/9/2010	3,000,000

4,404,743 Money Market

US Bank/Piper Jaffray Average Rate= 0.939% 25 324 813

Average Rate All = 0.640%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on July 27, 2010. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 324 days and does not include Bond Reserve Fund Investments.

72

City of Banning Investment Report

December 31, 2010

Individual Investments with Fiscal Agent

TRUSTEE	Bond Maturity Date	Investment Description	Current Yield	Bond Maturity Date	Minimum Reserve Requirement	Interest Dec-10	12/31/2010 Market Value
BOND ISSUE DESCRIPTION							
BNY WESTERN TRUST COMPANY							
1997 Admin Building COPs Refunding	2020	Republic Bank Investment Agreement Federated U.S. Treasury Money Mkt	6.270%	11/1/2020	522,375	*	522,562
US BANK			0.000%	daily			16,200
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market US Bank Mmkt 4-Ct	0.200%	daily	265,580	4.50	265,603
2003 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.390%	daily	0.00		3
2003 CRA Tax Allocation Bonds	2028	US Treasury Bill US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct US Bank Mmkt 4-Ct	0.880%	7/29/2010	188,943	31.13	189,425
Surplus Fund			0.200%	daily	971,763	3.41	988,504
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007							
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.200%	daily	1,958.99	11,919,231	
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	1,880,751	308.49	1,876,982
Special Fund		US Bank Mmkt 4-Ct	0.200%	daily	0.02		145
Surplus Fund		US Bank Mmkt 4-Ct	0.210%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
Bond Fund		US Bank Mmkt 4-Ct	0.140%	daily			7
Interest Account		US Bank Mmkt 4-Ct	0.230%	daily			9
Principal Account		US Bank Mmkt 4-Ct	0.190%	daily			52
Surplus Fund		US Bank Mmkt 4-Ct	0.200%	daily			9
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES							
Bond Fund		US Bank Mmkt 4-Ct	0.200%	daily	0.01		44
Interest Account		US Bank Mmkt 4-Ct	0.210%	daily	0.01		38
Principal Account		US Bank Mmkt 4-Ct	0.200%	daily	0.02		135
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	379.97		2,311,891
Project Fund		US Bank Mmkt 4-Ct	0.200%	daily	689.17		4,193,186
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES							
Reserve Fund		US Bank Mmkt 4-Ct	0.200%	daily	98.16		55,197
Acquisition & Construction		Reliance Trust Company # 9AMGGGBEZ7	3.650%	11/17/2011	2,961,500		3,016,509
		US Bank Mmkt 4-Ct	0.200%	daily	3.63		0
		US Bank Mmkt 4-Ct	0.200%	daily	1,730.49		15,362,448
		Reliance Trust Co C D #7AMCD49F7	0.500%	11/18/2010			0
Total						5,813.57	44,423,388
* Paid Semi-Annually-Deposited into Money Mkt Account							

73

**CITY COUNCIL
PUBLIC HEARING**

DATE: **April 12, 2011**

TO: **Honorable Mayor and City Council**

FROM: **Dave Aleshire, City Attorney**

SUBJECT: **PUBLIC HEARING AND RESOLUTION NO. 2011-27 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, take public comment and at the close of the hearing adopt Resolution No. 2011-27 making findings for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504.

BACKGROUND/DISCUSSION:

This is a continued public hearing from the March 22, 2011 City Council meeting. Due to the volume of information and an effort to conserve and use less paper, a complete copy of the City Council staff report dated March 22, 2011 is available for public review in the City Clerk's office.

At the March 22nd meeting, the City Council held a public hearing, considered the staff report from the City Attorney, took public comments, including comments from the applicant, discussed the findings, and directed the City Attorney to bring back the resolutions detailing the findings as discussed by the City Council for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504.

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.

As indicated earlier, the City Council held a public hearing on March 22, 2011, considered the staff report from the City Attorney, took public comments, including comments from the applicant, discussed the findings, and directed the City Attorney to bring back the resolution detailing the findings as discussed by the City Council for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504. These findings are contained in the Resolution attached to this Staff Report.

FISCAL DATA:

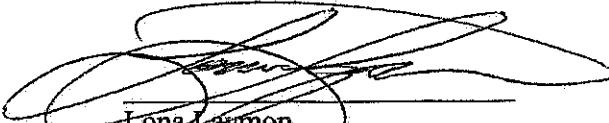
The fiscal impact related to this matter is covered under the City Attorney's contract.

APPROVED BY:



Andy Takata
City Manager

PREPARED BY:



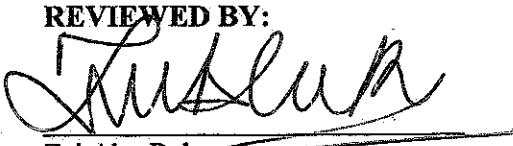
Lona Laymon
Assistant City Attorney

RECOMMENDED BY:



Dave Aleshire
City Attorney

REVIEWED BY:



Zai Abu Bakar
Community Development Director

Attachment:

1. City Council Resolution 2011-27

ATTACHMENT 1

Resolution No. 2011-27

RESOLUTION NO. 2011-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA REVOKING UNCLASSIFIED USE PERMIT 01-47501 AND TERMINATING DEVELOPMENT AGREEMENT 03-1504

WHEREAS, on August 14, 2001, the City Council ("City Council") of the City of Banning ("City") conditionally approved Unclassified Use Permit 01-47501 ("UUP") to All-American Racing, LLC ("AAR"), whose successor in interest is Banning Airport Associates ("BAA"), for the development of a drag racing facility consisting of a drag racing strip, grandstands, concession stands, restrooms, and parking spaces (the "Project") 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: (i) a 40-acre parcel with Assessor's Parcel No. 532-130-008, and (ii) a 20-acre parcel owned by the City with Assessor's Parcel No. 532-130-008 which is subject to Federal Aviation Administration ("FAA") approval for any sale, lease, or transfer of interest (collectively, the "Site") (Administrative Record ("AR") at pp. 00418-00435); and

WHEREAS, on January 28, 2008, the Planning Commission of the City conducted a public hearing regarding revocation of the UUP, and based on all public testimony and the administrative record before it, approved Resolution 2008-05 revoking the UUP on two alternative grounds: (i) the UUP was expired under Banning Municipal Code Sections 9116.8 and 9116.10 since BAA failed to commence a use or construction within the timeframe permitted, and (ii) the use that commenced, if any, was discontinued, and subject to revocation, pursuant to Banning Municipal Code Section 9116.11 (Administrative Record ("AR") at pp. 02671-02678, 02680-02698); and

WHEREAS, in Resolution 2008-05, the Planning Commission made findings that the UUP was extended four times between 2002 and 2006 and no further extensions were permitted under the Banning Municipal Code; that the four 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; that the groundbreaking ceremony was not considered construction; and that the term of the Development Agreement was concurrent with the UUP and expired upon the expiration or revocation of the UUP (AR at pp. 02675-02677); and

WHEREAS, on February 6, 2008 BAA appealed the revocation of the UUP and termination of the Development Agreement to the City Council (AR at pp. 02700); and

WHEREAS, after a public hearing on March 11, 2008, the City Council approved Resolution 2008-34 denying BAA's appeal and affirming all of the findings in Planning Commission Resolution 2008-05 to revoke the UUP and terminate the Development Agreement (AR at pp. 02703-02709); and

WHEREAS, on April 16, 2008, BAA filed a writ of administrative mandate to reverse the City's decision to revoke the UUP and terminate the Development Agreement and a

complaint for inverse condemnation in the Riverside County Superior Court (Case No. RIC 497338) (the "Court"); and

WHEREAS, after a review of the briefs each submitted by the City and BAA and the administrative record, and after oral arguments from both the City and BAA at a hearing on December 23, 2010 on the writ of mandate portion of the case, the Court granted BAA's writ of mandate because it found that the findings in City Council Resolution 2008-34 were unclear to support the revocation of the UUP, but the Court did not rule on the merits of either side's arguments; and

WHEREAS, the Court did not make other findings of fact at the hearing, but remanded the matter back to the City for the City to make proper findings to support its decision at a re-hearing to be conducted within 120 days of the Court's ruling by April 22, 2011, and further instructed that no new evidence outside the administrative record was to be considered unless pursuant to Section 1094.5(e) of the Code of Civil Procedure; and

WHEREAS, pursuant to the Court's ruling, the City Council conducted a duly noticed public re-hearing of the revocation of the UUP on March 22, 2011, permitted public comment, including comment by BAA, considered the recommendations contained in the staff report and the evidence of the administrative record; and

WHEREAS, at the March 22, 2011 hearing, BAA argued that the 2008 hearing to terminate the Development Agreement and revocation of the UUP was based on false facts and that the true facts are as follows: (i) Barbour Street improvements were paid in part by AAR, (ii) the City was involved in the groundbreaking ceremony for the Project because several City Council members went to the ceremony, (iii) Barbour street constituted commencement of use, (iv) two grading permits were issued and they initiated grading in 2006; (v) the burrowing owl issue impacted the purchase of the property; (vi) the UUP was vested because substantial work was done for the Project and grading commenced at the Site; and (vii) the Development Agreement had no timelines so was not subject to termination due to inactivity; and

WHEREAS, the City Council members discussed the evidence presented and directed the City Attorney to bring back a resolution making findings to support reaffirming the Council's prior action; and

WHEREAS, on April 12, 2011 the City Council considered findings upholding the revocation of the UUP and termination of the Development Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY FIND, DECLARE, AND RESOLVE, based upon substantial evidence taken from the existing administrative record as a whole, including the testimony contained therein, and without considering any new evidence, as follows:

SECTION 1. FINDINGS OF FACT

1. The foregoing recitals are true and correct and are incorporated by reference into the findings herein.

2. On August 22, 2000, the Banning Community Redevelopment Agency ("Agency") approved a 90-day exclusive negotiating agreement with AAR to negotiate the terms of the development of the Project. (AR at pp. 00062-00072.)
3. AAR applied for a UUP for the Project at the Site. As part of the application, AAR conducted various traffic, noise, and environmental studies. (AR at pp. 00106-00165, 00221-00247, 00248-0030000314-00331.) A Mitigated Negative Declaration was prepared for the Project in connection with the UUP. (AR at pp. 00564-00569.) On August 14, 2001 the City Council conditionally approved the UUP and notified AAR that it could challenge the UUP approval or any condition. (AR at p. 00886.) It did not.
4. The UUP contained the following conditions of approval, among others, in pertinent part:

Planning 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].)

Planning Condition of Approval 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." (AR at p. 00428.)

Engineering Condition of Approval B(1): "Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. ..." (AR at p. 00432.)

Engineering Condition of Approval C(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." (AR at p. 00433.)

Engineering Condition of Approval C(2): "Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. ..." (AR at p. 00433.)

Engineering Condition of Approval D(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.” (AR at p. 00433.)

Engineering Condition of Approval D(2): “Prepare street improvement plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. ...” (AR at p. 00433.)

5. Pursuant to Banning Municipal Code Section 9116.8, which was in effect at the time the UUP was issued, a conditional use permit¹ 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.)

6. Pursuant to Banning Municipal Code Section 9116.10, which was in effect at the time the UUP was issued, a permit may be extended up to three times only. Section 9116.10 states, 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. ...***” (AR at p. 00008 [emphasis added].)

7. Pursuant to Banning Municipal Code Section 9116.11, which was in effect at the time the UUP was issued, a permit for which construction or use already commenced may be revoked under certain circumstances. Section 9116.11 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;

¹ The City had a policy of treating unclassified use permits in the same manner as conditional use permits, per Banning Municipal Code Section 9112.

- (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. 00008-00009 [emphasis added].)

8. 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 for 5 years with options for renewal at a rate of \$12,500 per year paid to the City. (AR at pp. 000897-00903, 00905-00908.) 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.)
9. By May 2002, AAR had not commenced construction of the Project at the Site. Because the UUP was set to expire on August 14, 2002, AAR requested an extension of the UUP. The Planning Commission of the City granted a one-year extension to August 14, 2003. (AR at pp. 00913, 00916-00918, 00932-00936.)
10. On October 22, 2002, in a desire to move the Project forward and assist AAR, 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 ("Reimbursement Agreement") wherein the City would reimburse AAR for constructing offsite street improvements of Barbour Street near the Site for an amount of \$125,000.00 in two phases, \$62,500.00 each: (i) after completion of Barbour Street offsite improvements, and (ii) after completion of onsite improvements for the racing facility. (AR at pp. 00945-00946, 01009-01019.)
11. Eight months later, construction still had not begun for Barbour Street or on the Site. Nonetheless, on August 5, 2003, the Planning Commission granted a second extension of the UUP to August 14, 2004 (AR at pp. 01402-01411, 01412-01419), even though a grading permit had been issued on July 24, 2003. (AR at p. 01396.)
12. On November 26, 2003 in good faith, the City entered into Development Agreement 03-1504 ("Development Agreement") with AAR, the term of which would be concurrent with the UUP (AR at pp. 01669-016670), and with the provision that a failure to comply with any condition of approval of the UUP or a term of the Development Agreement was a default whereby the Development Agreement could be terminated. (AR at p. 01674.) As reflected in the Development Agreement, the City appreciated that the Project was an ambitious undertaking and was willing to work with AAR to make the Project a reality.

13. By April 2004, AAR completed Barbour Street improvements, per UUP Engineering Condition of Approval (B)(6). The City accepted the improvements (AR at p. 01768) and issued AAR a check for \$62,500.00, per the Reimbursement Agreement. (AR at p. 01789-01790.)
14. After Barbour Street improvements were completed, a dispute arose over whether AAR was required to install landscaping for Barbour Street. A cost support agreement ("Cost Support Agreement") was executed by the City, AAR, and the Agency, whereby the Agency would reimburse AAR up to \$25,000.00 for landscaping, in addition to the \$125,000.00 under the Reimbursement Agreement. (AR at pp. 01780-01784.)
15. On July 30, 2004, after Barbour Street improvements were completed, AAR requested another extension of the UUP. The City granted its third extension of the UUP to August 14, 2005 since, according to the City, no use or construction had commenced on the Site. (AR at p. 01786.) The City understood that AAR was encountering difficulties with acquisition of the 40-acre parcel but continued to partner with them in moving forward with the Project.
16. On January 21, 2005, AAR informed the City that it had finally entered into escrow to purchase the 40-acre parcel. (AR at p. 01811.)
- 17.
18. In August 2005, with the City's approval, AAR assigned and transferred all of its rights to the Project, including the Development Agreement and the UUP, to BAA. (AR at pp. 02010-02017.) City hoped that BAA's and Tom Searles' experience and expertise could turn the Project around and finally bring it to completion.
19. On August 9, 2005, with new ownership pending and despite not seeing any grading, use, or construction on the Site, the City granted its fourth extension of the UUP to August 14, 2006. The City understood the magnitude of the Project and knew AAR was dealing with difficult financial and site assembly issues. (AR at pp. 01820-01821.)
20. On September 22, 2005, because the grading permit from July 2003 expired, BAA applied for and was granted a new grading permit based on revised grading plans to make the drag strip below grade. (AR at p. 02188.)
21. On December 13, 2005, desiring to partner with BAA, which was allegedly more experienced with large-scale and complex development projects, the City and BAA entered into a Master Agreement, which provided for the following: (i) an agreement to enter into a purchase and sale agreement for the City to convey the 20-acre parcel to BAA; (ii) the City's assistance in property acquisition and Site assembly; (iii) BAA's purchase of additional property for a master planned business park surrounding the Site; (iv) termination of the Lease Agreement, License Agreement, Reimbursement Agreement, and Cost Support Agreement (AR at pp. 02204-02205); and (v) a requirement that BAA modify the UUP and obtain a new environmental analysis under CEQA for the additional business park to the Project. (AR at p. 02212).

22. On June 2, 2006, after still seeing no progress on the Project notwithstanding the passage of 9 months since the new ownership, the City sent a letter requiring BAA to commence grading pursuant to its grading permit on the 40-acre parcel, enter into a purchase agreement for the 20-acre parcel and deposit funds into escrow, and apply for a modification of the UUP to expand the use to include a business park. (AR at pp. 02242-02243.)
23. The purchase and sale agreement for the sale of the 20-acre parcel was finally executed on July 25, 2006 (AR at pp. 02256-02277) and escrow opened on August 4, 2006. (AR at p. 02299.)
24. On July 27, 2006, BAA held a groundbreaking ceremony at the Site. (AR at p. 2285-A.)
25. Two issues stalled closing of escrow for the 20-acre parcel: (i) the FAA land release was not completed until November 30, 2006 (AR at p. 02299); and (ii) 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.)
26. The delays in the FAA land release and the burrowing owl relocation extended escrow into its eighth month. However, as the City realized the FAA land release and burrowing owls were beyond the control of BAA, the City permitted BAA's deposit of escrow funds and purchase of the 20-acre parcel to be delayed until April 13, 2007, or the City would have the right to terminate the Master Agreement. (AR at pp. 02298-02299.)
27. By April 13, 2007, escrow of the 20-acre parcel still had not closed, but the City nonetheless agreed, in good faith, to extend escrow until May 14, 2007 so that the City could obtain a final appraisal report and BAA could deposit an additional \$163,750.00 into escrow. (AR at p. 02308.)
28. On May 17, 2007, the City informed BAA that no major grading was occurring at the 40-acre parcel and that BAA was in violation of the second grading permit issued on September 22, 2005, despite being granted four extensions of the UUP. (AR at p. 02325.) According to the grading plans submitted by AAR, over 240,000 cubic yards of dirt were required to be displaced (AR at p. 01237), and there was little more than clearing, grubbing, and preliminary grading activity by May 2007.
29. By June 2007, BAA still had not deposited the required funds into escrow for the purchase of the 20-acre parcel, despite being given two extensions. 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 and gave BAA 30 days until July 26, 2007 to cure its default. (AR at p. 02333.)
30. By July 27, 2007, no deposit was made, as required in the June 26, 2007 Notice of Default. The City gave BAA one *final* chance and notified BAA that it was required to make the deposit immediately and close escrow by August 25, 2007 or the City would terminate the Purchase and Sale Agreement. (AR at p. 02345.)

31. BAA failed to make the deposit until September 11, 2007 (AR at p. 02404). Pursuant to its July 27, 2007 letter, the City issued a Notice of Termination. (AR at pp. 02405-02407.)
32. The City held a hearing for the termination of the Master Agreement and Purchase Agreement on September 14, 2007. After the City discussed ways the Project could be salvaged and provided a final opportunity for BAA to proceed forward with the Project, the hearing was continued to October 23, 2007. (AR at pp. 02422-02426.)
33. On October 23, 2007, two years after entering into the Master Agreement with BAA, over one year after entering into the purchase and sale agreement, and almost a year after the FAA's release of the 20-acre parcel, the City Council finally terminated the Master Agreement and Purchase Agreement for BAA's failure to deposit the funds into escrow. (AR at pp. 02475-02478, 02479-02482.)
34. On November 27, 2007, over six years after issuing the UUP in 2001, granting four extensions of the UUP and issuing two grading permits, entering into a Development Agreement and a Master Agreement, and partnering with two developers, little more than clearing and grubbing of the Site had been done and construction of the Project had not begun. As a result, 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 at the Site, that BAA exhausted all permissible extensions under Banning Municipal Code Section 9116.10 (AR at p. 02590), and the term of the Development Agreement was concurrent with the UUP and was therefore expired.
35. On December 10, 2007, the City provided notice to BAA that a hearing to revoke the UUP and terminate the Development Agreement would be before the Planning Commission on January 11, 2008 (AR at p. 02593), but subsequently provided notice that the hearing was continued to January 28, 2008 (AR at pp. 02645, 02647.)
36. On January 28, 2008, the Planning Commission terminated the Development Agreement and revoked the UUP. (AR at p. 02691-02698.) The Planning Commission found that not all of the conditions of approval were completed within the term of the UUP. The Planning Commission further found that no construction had occurred on the site because (i) Barbour Street improvements were constructed but were offsite, and (ii) the clearing and grubbing of brush and groundbreaking ceremony were not considered construction. No use of the UUP was commenced because no drag racing facility was built.
37. BAA appealed the Planning Commission's decision to the City Council, which affirmed the Planning Commission's decision on March 11, 2008 to terminate the Development Agreement and revoke the UUP. (AR at p. 02703-02709.)

SECTION 2. CONCLUSIONS OF LAW

1. BAA failed to complete all of the conditions of approval under the UUP by the time the UUP was revoked by the Planning Commission on January 28, 2008 and when the decision was affirmed by the City Council on March 11, 2008. Completion of the conditions did not require ownership of the 20-acre parcel. BAA had possession or

control of the 40-acre parcel, and several conditions BAA was required to complete were offsite and did not require ownership of either the 20-acre or 40-acre parcel. Also, the City urged BAA on several occasions to begin construction activity at the Site, but the conditions of approval were never completed. This finding is supported by the following facts:

- a. Some of the conditions of approval that BAA was required to complete during the term of the UUP and prior to the issuance of a certificate of occupancy included the following offsite conditions: (i) Engineering Condition of Approval B(1): Construct street improvements for Barbour Street (AR at p. 01416); (ii) Engineering Condition of Approval C(1): Prepare street improvement plans for Westward Avenue where it fronts the Site (AR at p. 01417); (iii) Engineering Condition of Approval C(2): Construct street improvements at Westward Avenue where it fronts the Site (AR at p. 01417); (iv) Engineering Condition of Approval D(1): Dedicate additional right-of-way along Barbour Street to Scott Street (AR at p. 01417) (v) Engineering Condition of Approval D(2): Prepare street improvement plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights (AR at p. 01417).
- b. BAA completed Barbour Street improvements by April 2004, thereby completing Engineering Condition of Approval B(1).
- c. By June 2006, although clearing and grubbing occurred on the Site, the City did not consider such activities as grading operations. On June 2, 2006, after seeing no progress on the Project, the City sent a letter requiring BAA to "commence grading operations on the [40-acre parcel], and proceeding diligently thereafter without extended interruption," to enter into a purchase agreement for the 20-acre parcel, and to apply for a modification of the UUP to expand the use to include a business park. (AR at p. 02243.)
- d. Other than completion of Engineering Condition of Approval B(1) for Barbour Street improvements, there is no evidence in the Administrative Record that any other offsite condition of approval listed above, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417); was completed.

2. Because BAA failed to complete all of its conditions of approval on August 14, 2006, the UUP expired on its own, as no more than three extensions of the UUP were allowed under Banning Municipal Code Section 9116.10. In its desire to work with BAA to move the Project forward, and realizing that several difficult issues arose for such a complex development, the City gave BAA four extensions to complete its conditions of approval between 2001 and 2006, but BAA failed to complete its conditions of approval

within the timeframe of the UUP. In the later stages, additional time was provided when AAR partnered with a new developer and transferred its interests to BAA, but ultimately this did not improve the records of nonperformance. This finding is supported by the following facts:

- a. Pursuant to Banning Municipal Code Section 9116.10, a permit may be extended for a period not to exceed 12 months up to a maximum of three extensions only.
- b. The City granted BAA four extensions of the UUP, one more than the three maximum extensions. (AR at pp. 00913, 00916-00918, 00932-00936, 01402-01411, 01412-01419, 01786, and 01820-01821.) The fourth and last extension provided that the UUP expired on August 14, 2006.
- c. Also, under Planning Condition of Approval 1 of the UUP, “*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].)
- d. As provided in facts supporting Finding No. 1 above, BAA failed to complete the conditions of approval under the UUP, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417).
- e. After assuming the rights and obligations of AAR under the UUP, Development Agreement, and Master Agreement, BAA was required to purchase the 20-acre parcel from the City. Although the FAA land release and burrowing owl issues stalled the purchase of the 20-acre parcel until after February 20, 2007, the City gave BAA four additional extensions between April to August 2007 to deposit funds into escrow pursuant to the Purchase and Sale Agreement, but BAA failed to do so. (AR at pp. 02298-02299, 02345.)
- f. BAA was required to commence grading on the 40-acre parcel, which BAA owned and did not have FAA or burrowing owl issues tied with it, pursuant to a grading permit issued on September 22, 2005 but BAA failed to do any substantial grading work on the 40-acre parcel except for clearing and grubbing and preliminary grading work. (AR at pp. 02344.)

3. BAA did not commence a use on the Site because a racing facility was never built and the Site was never used for drag racing.
4. BAA did not commence construction on the Site because the work done by BAA – Barbour Street improvements, clearing and grubbing of brush and other preliminary

grading activity, and the groundbreaking ceremony – was either offsite or did not constitute construction. The City urged BAA in writing to commence construction on numerous occasions, but BAA could not commence construction or otherwise move the Project forward beyond preliminary grading over the eight-year period the UUP was in existence. Under Banning Municipal Code Section 9116.8, commencement of construction or use shall be “determined by the Planning Commission or its designee.” Here, the Planning Commission or its designee, the Community Development Director, exercised discretion and determined that completion of Barbour Street, clearing and grubbing of the Site, and the groundbreaking ceremony were insufficient to constitute a use or construction of the UUP. This finding is supported is by the following facts:

- a. BAA completed Barbour Street improvements in April 2004. (AR at p. 01768.) However, the construction of Barbour Street was completely *offsite* and no construction of the Project commenced on either the 20-acre or the 40-acre parcels.
- b. Even after completion of Barbour Street improvements in April 2004, the Planning Commission granted two more extensions of the UUP because it did not consider the Barbour Street improvements as construction on the Site. (AR at pp. 01786, 01820-01821.)
- c. Two grading permits were issued: one on July 24, 2003 (AR at p. 01396), and a second on September 22, 2005 (AR at p. 02188). By October 2004, only clearing and grubbing work and “what appears to be preliminary grading or other excavation activities” occurred. (AR at p. 01794.) Per the grading plans submitted by BAA, 240,000 cubic yards of dirt were required to be moved at the Site and graded. (AR at p. 01237.) There is no evidence in the Administrative Record that any grading occurred beyond the clearing and grubbing and preliminary grading mentioned herein.
- d. By June 2006, although clearing and grubbing occurred on the Site, the City did not consider such activities as grading operations. On June 2, 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.) However, 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. There was no substantial movement of any dirt for grading purposes on the Site.
- e. The groundbreaking ceremony was held on or about July 27, 2006. (AR at p. 2285-A.)
- f. Some grading or construction equipment was stored on the Site, but no actual construction took place at the Site after the groundbreaking ceremony. 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].)

- g. No building permit was ever issued.
5. A vested right in a permit is created when there is a use, construction, or other activity (such as a building permit) showing that the permittee acted on the permit. (*Avco Community Developers, Inc. v. South Coast Reg'l Comm'n* (1972) 17 Cal.3d 785.) Because there was no use or construction on the Site, the UUP expired on its own under Banning Municipal Code Section 9116.8, which provides that a permit expires if a use or construction is not commenced within a year. BAA did not have a vested right in the UUP because there was no use or construction on the Site, no building permit was issued, and BAA did not otherwise act on the UUP. Also, assuming that a groundbreaking ceremony is considered construction (which it is not), because the construction was discontinued for at least one year since July 27, 2006, the UUP expired on its own under Banning Municipal Code Section 9116.8, which provides that a permit expires if construction is discontinued at least one year. As the construction on the Site was never completed, BAA did not have a vested right in the UUP.

Assuming either grading or the groundbreaking ceremony are considered construction at the Site (which they are not), the construction ceased or was abandoned for at least six months and the UUP is properly revoked under Banning Municipal Code Section 9116.11(c). Thus, even if BAA can argue that it has a vested right in the UUP because there is use or construction (which is not the case), the UUP is subject to revocation because the most recent evidence of any activity on the Site was in May 2007, and the UUP was originally revoked on January 28, 2008. This finding is supported is by the following facts:

- a. Pursuant to Banning Municipal Code Section 9116.8, a conditional use permit expires without further action by the City “*upon the expiration of one year without such commencement of use*” or “*if after commencement of any related construction, work is discontinued, before completion, for a period of one year.*” (AR at p. 00007 [emphasis added].)
- b. As provided in facts supporting Finding No. 4 above, BAA completed Barbour Street improvements offsite, cleared and grubbed the Site and conducted other preliminary grading. However, the City did not consider any of those activities as construction on the Site. (See *Avco, supra*, where issuance of a grading permit, construction of street improvements, and expenditures of \$2 million dollars for a development project was not considered a vested right because no building permit was issued for property which did not comply with laws requiring a permit.)
- c. BAA held a groundbreaking ceremony on July 27, 2006 at the Site. (AR at p. 02285-A.)
- d. No other construction work began within a year after the groundbreaking ceremony on July 27, 2006. 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].)

- e. Pursuant to Banning Municipal Code Section 9116.11(c), a conditional use permit can be revoked when a finding can be made “that the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months.” (AR at pp. 00008-09.)
- f. The most recent evidence of *any* activity on the Site, whether construction, grading, or otherwise, was documented in May 2007. On May 17, 2007, the City sent a letter informing BAA that it was not controlling dust from preliminary grading by watering or other approved measures in violation of the grading plan. (AR at p. 02325.)
- g. No further evidence of activity existed after May 17, 2007.
- h. The UUP was originally revoked after a public hearing on January 28, 2008, more than eight consecutive months after the most recent evidence of activity of preliminary grading ceased.

6. BAA failed to complete all of the conditions of approval within the timeframe provided under the UUP, and the UUP is properly revoked under Banning Municipal Code Section 9116.11(d). Again, even if BAA can argue that it has a vested right in the UUP because there is use or construction (which is not the case), the UUP is subject to revocation by the City because BAA did not complete one or more conditions of approval under the UUP. BAA had until August 14, 2006 to complete its conditions, including, but not limited to, construction of Westward Avenue improvements and street dedications. Even assuming BAA had until January 28, 2008 to complete its conditions, BAA failed to do so. This finding is supported is by the following facts:
 - a. Pursuant to Banning Municipal Code Section 9116.11(d), a conditional use permit can be revoked when a finding can be made “that one or more of the conditions of the Conditional Use Permit have not been met.” (AR at pp. 00008-09.)
 - b. Under Planning Condition of Approval 1, “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.” (AR at p. 00428.)
 - c. As provided in facts supporting Finding No. 1 above, BAA failed to complete the conditions of approval under the UUP, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway

approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417).

7. At the March 22, 2011 hearing, BAA argued that the City relied on “false facts” from its assistant City Attorney at the 2008 hearing to terminate the Development Agreement and revocation of the UUP, including: (i) Barbour Street improvements were paid by the Agency; (ii) the City had no involvement in the groundbreaking ceremony for the Project; (iii) Barbour street did not constitute commencement of use; (iv) no grading occurred; and (v) the burrowing owl issue did not impact the purchase of the 20-acre parcel. The facts BAA alleged were false facts that the City considered at the hearing on January 28, 2008 are irrelevant in determining whether the UUP should be revoked. Some costs for Barbour Street improvements were paid by the City or Agency and that the remaining costs were paid by AAR. A groundbreaking ceremony at the Site was held, some preliminary grading occurred between 2006 and 2007 and that the burrowing owl issue delayed the purchase of the 40-acre parcel until after February 20, 2007. However, no construction activity occurred after the groundbreaking ceremony, no grading activity occurred after May 2007, and the purchase of the 20-acre parcel was never completed because BAA failed to timely deposit funds into escrow, even after the City gave BAA several months of extensions from April 2007 to August 2007. These findings are supported by the following facts:
 - a. The City paid \$62,500.00 as reimbursement to AAR for Barbour Street improvements. (AR at p. 01789-01790.) The Agency paid up to \$25,000.00 for the landscaping costs of Barbour Street improvements. (AR at p. 01780-01784.) AAR paid the remainder of the costs of Barbour Street improvements.
 - b. An invitation to the groundbreaking ceremony suggested that the City and BAA were involved in the ceremony, but the groundbreaking ceremony was sponsored by the City of Banning’s Chamber of Commerce. Although some members of the City Council were present in their individual (but unofficial) capacity, the City did not sponsor the event. (AR at p. 2285-A.)
 - c. No other construction work began after the groundbreaking ceremony on July 27, 2006. (AR at pp. 02344 [emphasis added].)
 - d. The most recent evidence of any grading activity on the Site was in May 2007, when the City sent a letter informing BAA that it was not controlling dust from preliminary grading by watering or other approved measures in violation of the grading plan. (AR at p. 02325.) No further evidence of onsite activity exists after May 2007.
 - e. The California Department of Fish and Game authorized the parties to proceed with the sale of the 20-acre parcel upon completion of the relocation of the burrowing owls on February 20, 2007. (AR at pp. 02290, 02297.)
 - f. After resolution of the burrowing owl and FFA-land release issues, the City gave BAA until April 13, 2007 to deposit funds into escrow for the sale of the 20-acre

parcel. (AR at pp. 02298-02299.) However, when funds were not deposited, the City extended the deadline for BAA to deposit escrow funds to May 14, 2007. (AR at p. 02308.) Again, when funds were not deposited, the City for a third time extended the deadline for BAA to deposit escrow funds to July 26, 2007. (AR at p. 02333.) A fourth and final extension was given by the City for BAA to deposit the funds by August 25, 2007. (AR at p. 02345.) The funds were not deposited until September 11, 2007. (AR at p. 02404).

8. In good faith and with expectations that the Project would successfully generate economic development for the community, the City entered into the Development Agreement. However, because the term of the Development Agreement is concurrent with the UUP under Section 4.2, the expiration or revocation of the UUP serves to terminate the Development Agreement. This finding is supported by the following facts:
 - a. Section 4.2 of the Development Agreement provides: “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. 01669-01670 [emphasis added].)
 - b. If the UUP is revoked, the term of the Development Agreement ends, and the Development Agreement is terminated.

SECTION 3. CONCLUSIONS

Based on the whole record, including the March 22, 2011 Staff Report, the comments of BAA at the March 22, 2011 hearing, the recommendations of the City Attorney and Community Development Director, the summary of factual data above, the findings above, and the Administrative Record, the City Council hereby revokes the UUP based on the following grounds:

- 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, the UUP 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, the UUP expired on its own terms because, assuming that construction commenced on the Site, said construction activity was discontinued for at least one year after approval or extension thereof.

- d. Pursuant to Banning Municipal Code Section 9116.11(c), use of the Site ceased or was abandoned for six or more consecutive months.
- e. The City acted in good faith giving the developer numerous extensions, even beyond the three extensions permitted by Code, but when the new developer could not accomplish anything more than the old, the City Council lost confidence in the Project.
- f. Because BAA did not have a vested right and pursuant to Banning Municipal Code Section 9116.11(d), BAA failed to meet one or more of the conditions of approval within the timeframe provided under the UUP, the City Council had the discretion to revoke said UUP.

In revoking the UUP, the City Council further determines and finds that BAA did not have vested rights in the UUP because no use or construction commenced on the Site. The various studies and reports completed by AAR or BAA, the issuance of grading permits, the clearing and grubbing of brush, and the groundbreaking ceremony did not amount to a vested right under the UUP, such that the UUP expired on its own terms, per Banning Municipal Code Sections 9116.8 and 9116.10. Even assuming, *arguendo*, such activities are considered use or construction that gave BAA a vested right in the UUP, the UUP is revoked because BAA failed to complete one or more conditions of approval and use of the Site was abandoned for six or more consecutive months, per Banning Municipal Code Section 9116.11.

Furthermore, the City Council hereby terminates the Development Agreement based on Section 4.2 of the Development Agreement, which provides that the term of the Development Agreement is concurrent with the UUP. Because the UUP is revoked, the Development Agreement is also terminated and no longer in force or effect.

SECTION 4.

Any challenge to this Resolution, and the findings set forth therein, must be filed within the 90-day statute of limitations set forth in Code of Civil Procedure § 1094.6 and Section 4708(c) of the Carson Municipal Code.

PASSED, APPROVED and ADOPTED this 12th day of April 2011.

Barbara Hanna, Mayor

APPROVED AS TO FORM AND LEGAL CONTENT:

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

ATTEST:

Marie Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-27, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of April 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**JOINT MEETING AGENDA
REPORTS OF OFFICERS**

Date: **April 12, 2011**

TO: **City Council and Redevelopment Agency Board**

FROM: **June Overholt, Administrative Services Director**

SUBJECT: **Auditor's Reports for Fiscal Year 2009-2010**

RECOMMENDATION: "The City Council and Agency Board accept and place on file the auditor's reports from Lance, Soll & Lunghard, LLP for the fiscal year ended June 30, 2010."

JUSTIFICATION: The annual audit of the City's and Redevelopment Agency's financial statements and annual compliance audit of the Agency by an independent audit firm satisfies the legal requirement for such a periodic review and report.

BACKGROUND/ANALYSIS: The audit firm of Lance, Soll & Lunghard, LLP has issued an unqualified opinion on the financial statements for the fiscal year ended June 30, 2010. This means that their examination, testing and review process lead them to believe that the financial statements present fairly both the financial position of the City and the Agency as of June 30, 2010 and the results for the City's and Agency's operations for that year.

The auditors issued a compliance letter regarding internal controls of the City. During their audit they noted several areas needing improvement. A copy of the compliance letter is included with the audit report. All of the areas mentioned have been observed by the auditors as corrected by the time the final field work was completed or have been addressed through the management response as an item that will be a part of the processes during the next audit cycle. Limited staffing was a factor in achieving some of the requirements.

State law requires that redevelopment agencies undergo a two-part audit; a financial audit and an audit of Agency compliance.

In the audit of Agency compliance the auditors issued an unqualified opinion on the compliance of the Agency with State laws, regulations and administrative requirements governing the activities of redevelopment agencies for the same fiscal year. However, they did note an issue of noncompliance related to the Agency Five-year Implementation Plan which was resolved in November 2010 with the adoption of the updated Plan.

The third report prepared by Lance, Soll & Lunghard, LLP is the single audit report. This is a compliance audit on federal awards received and is required when the expenditure of federal funds exceeds \$500,000 in any given fiscal year. The auditors issued an unqualified opinion on

this audit as well however; they noted the same noncompliance issues as in the previous audit reports.

The reports are on file at the City Clerk's office.

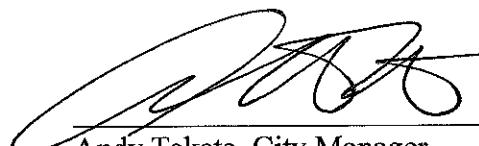
FISCAL DATA: None

RECOMMENDED BY:



June Overholt, Administrative Services
Director/Deputy City Manager

APPROVED BY:



Andy Takata, City Manager

96

**JOINT MEETING
REPORT OF OFFICERS**

DATE: **April 12, 2011**

TO: **Mayor and Members of the City Council
and the Redevelopment Agency Board**

FROM: **June Overolt, Administrative Services Director / Deputy City Manager**

SUBJECT: **FY 2010/11 Mid-Year Budget Review**

RECOMMENDATION: That the City Council approve Resolution No. 2011-31 and Banning Utility Authority Resolution No. 2011-07UA authorizing the Administrative Services Director to make necessary budget adjustments to implement the mid-year analysis. Furthermore, that the Redevelopment Agency Board approves CRA Resolution No. 2011-13 authorizing budget adjustments to implement the mid-year analysis for Redevelopment Agency accounts.

BACKGROUND: The budgets for City, Banning Utility Authority and Redevelopment Agency for FY 2010/2011 were adopted on June 21st, 2010. Adjustments to the approved budgets typically occur during the fiscal year as a result of unforeseen changes in revenue or expenditure requirements (i.e. award of grants, emergencies). These changes require City Council or Agency Board action for approval.

The purpose for the mid-year review is to make adjustments that have become necessary as operations have progressed during the first six months of the year. The fund balance projections, determined after mid-year adjustments, become the starting point for use in updating the next budget plan. A complete list of the affected accounts is contained in the detail attachments for each of the three resolutions presented for your approval. The primary focus of the mid-year review presentation will be to highlight revenue and expenditure changes that materially affect the projected year end position of major funds.

General Fund

The original General Fund budget was adopted with a projected year end operating deficit of \$(674,810). The estimated deficit has increased to \$(695,668). The following table provides a summary of the net changes to the General Fund. Adjustments made during the first six months of the year include Council approval of the continuing appropriations (typically grants awarded in the prior year that were not received or fully spent), new grants and the action to continue to fund various community programs.

General Fund Status		
FY 11 - Original Deficit	\$	(674,810.00)
Adjustments during first 6 months:		
Revenues		973,436.00
Expenditures		847,648.00
Adjusted Deficit		(549,022.00)
Midyear Adjustments:		
Revenues		56,566.00
Expenditures		203,212.00
Revised Deficit after Midyear review	\$	(695,668.00)

Regarding the midyear revenue review, the net impact is a positive increase in the estimates of \$56,566. The area of significant decline was with property tax trends. As a result, a reduction of approximately \$312,000 is being recommended. This reduction has been offset by an increase in sales tax of \$63,000, and increases in various other revenues (i.e. fines, plan checks). Two types of revenues have increased but also have an increase in expenditures. The new agreement with the BUSD for police services was approved after the budget was adopted. The related revenues and expenditures were adjusted during midyear. The other area relates to the contract for building safety services. The budget for the revenues and the cost for the services were not included in the original budget and have been adjusted at midyear.

Regarding expenditures, the major adjustments are in the area of personnel costs. The adjustments of approximately \$203,212 include over \$100,000 for the BUSD contract mentioned above. In addition, due to a year-end accrual error from the prior year, certain payroll costs that related to the prior year have been reported in the current year. The other area of adjustment relates to the cost of those employees who were a part of the reduction in staff strategy last year but continued employment for a few days or weeks into the new fiscal year. Budget was not established for that possibility. Finally, in the prior year one of the cost saving measures included limiting employee leave cash outs to 50% of the authorized amount. Negotiations with the bargaining groups continued past the approval of the budget. The limitation was removed which increased some personnel costs. There is a benefit to removing the limitation; it reduces the accumulation of the liability to the employees.

Another increase in the General Fund expenditures related to weed abatement. In the past, the revenue collected for this program was recorded in the General Fund and the expenditure in the CRA. The expenditure should be recorded in the General Fund along with the revenue. Both the revenue and expenditure will be recorded with the Fire budget since they manage this program. The overall increases in the expenditures were offset by a reduction in the animal control budget of \$200,000. The contract with the City of Beaumont provides significant savings that help minimize the impact of the budget increases.

The estimated deficit of \$695k will be funded through the use of General fund reserves. Not reflected in the midyear are potential savings that are expected based on current trends. In an

effort to be conservative, potential savings of approximately \$400,000 may reduce the need to use reserves. These savings typically come from vacant positions and areas of fluctuating costs (i.e. more savings in legal this year than in prior years), but because they cannot be guaranteed, they were not assumed as a budget reduction.

Utility Funds

In October 2010, Council approved an emergency ordinance to increase the water and wastewater rates. The consultants recently updated the study with the final approved rates.

Water –

The study projections for revenue far exceed what is actually occurring. The most likely explanation for the actual revenues not achieving the projections is due to the wet winter and the lack of anticipated development or housing activity due to the economy. These factors impact consumption which impacts revenues. In order to stay within the rate study proposed deficit budget, significant reductions have been recommended for the Water Fund.

The Water fund started the year with an operational deficit of (\$1,172,343). The proposed reductions in revenue estimates and appropriations bring the deficit down to (\$164,058). The area impacted by the reductions is capital maintenance and capital projects. The impact to the deficit must be managed since available reserves at the beginning of the year were only \$1,725,904. Staff will be reviewing the rates and capital projects during the FY12 budget review process.

Wastewater –

The Wastewater rates do not fluctuate with consumption in the same way that Water revenues fluctuate. However, actual trends and estimates do not reach the same level as projected in the rate study. The good news is that there is a recommendation to increase some of the revenue estimates. Similar to the Water Fund, the expenditure budget will be reduced primarily in the capital area in order to reduce the projected deficit.

The Wastewater fund included a structural deficit of (\$616,172) at the time the budget was approved. Due to continuing appropriations, the deficit increased to (\$787,384). Adjustments are recommended that will reduce the projected deficit to (\$275,141) per the rate study. Managing the deficit is critical in the wastewater fund since the available reserves at the beginning of the year were \$1,768,356. Staff will be reviewing the rates and capital projects during the FY12 budget review process.

The operational funds for the utilities should be structurally balanced. Costs & operations should be funded through rates and fees collected from customers. The other utility related funds may function with a deficit since these typically are funded through revenue sources collected in prior years (i.e. development fees, bond funds) and are intended for major projects.

Electric –

The Electric Fund began the year without an operational deficit. Between Council approved appropriations and the midyear requests there is an operational deficit of (\$1,582,530). The increase in operational costs is related to a combination of issues. In the 2006 and 2008 time

frame the Electric Utility entered into contracts to meet State of California requirements to achieve renewable energy goals and to meet demands of anticipated development. Shortly after, the housing market crashed postponing the demand needs. The Utility already has contracts and ownership agreements that adequately meet the City's demands. Now the Electric Utility has commitments to purchase energy above its demands. Staff diligently pursues selling excess energy to mitigate this impact but is unable to resell the energy at the same rate it was originally purchased. The midyear adjustments are similar in magnitude to the actual activity and budget for FY10.

The deficit will be funded using existing operational fund balance reserves. The Electric Utility is better situated financially in that it has operational reserves of over \$7 million and rate stabilization reserves of approximately \$5 million. Hopefully the use of these reserves is temporary. Staff is working on options to reduce the existing obligations.

Other Funds

The other funds have been reviewed and adjusted as needed to reflect actual trends or to resolve deficit fund balances. Revenue estimates, for example, have been reduced for the Development Impact fee related funds since there has been limited activity in that area this fiscal year. The Fund Summary Schedule has been updated to reflect the midyear recommendations. Column 4 of the Fund Summary Schedule (Attachment A) indicates the expected annual effect of FY 2010/2011 activity. Most of the deficits are in capital funds that utilize existing fund balance to complete budgeted projects.

Council has taken significant action with the CRA since December 2010. Those adjustments will not be reflected in this report but will be included in a future Interim Financial Report.

FISCAL DATA: The proposed resolutions will enable the Administrative Services Director to post budget adjustments to the accounts for the City of Banning, Banning Utility Authority and the Banning Redevelopment Agency. The effects of these adjustments will be to change estimated revenues, expenditures and ending fund balances as shown on the Fund Summary Schedule (Attachment A).

RECOMMENDED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andy Takata
City Manager

CITY OF BANNING
Fund Summary Status
FY11 Mid Year Projections
FY 2010-2011

#	FUND NAME	(1) Audited Balance @ July 1, 2010	(2) FY 2010-11 Projected Revenue	(3) FY 2010-11 Projected Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2011 (Col. 1+4)
<i>Governmental & Special Revenue Fds</i>						
001	General	4,683,506	13,161,261	13,856,929	(695,668)	3,987,838
002	Developer Deposits - Community Dev.	-	123,131	123,131	-	-
003	County of Riverside - Police MOU	288,410	302,500	451,598	(149,098)	139,312
100	Gas Tax	250,818	1,085,644	939,732	145,912	396,730
100	Gas Tax - AB 2928	499,927	450	-	450	500,377
100	Gax Tax - Prop 1B	5,206	75	-	75	5,281
101	Measure A Street	1,357,859	359,000	984,080	(625,080)	732,779
103	SB300 Street Improvement	146,617	725	-	725	147,342
104	Article 3 - Sidewalk Construction	(75,705)	542,860	447,925	94,935	19,230
110	C.D.B.G.	-	241,517	241,517	-	-
111	Landscape Maintenance Assmt. Dist.#1	195,036	134,003	133,930	73	195,109
132	Air Quality	106,240	35,353	3,225	32,128	138,368
140	Asset Forfeiture	2,475	10	-	10	2,485
148	Supplemental Law Enforcement	105,864	100,400	205,864	(105,464)	400
149	Public Safety - Sales Tax	3,311	180,000	170,000	10,000	13,311
150	State Park Bond Act	924	-	-	-	924
200	Special Donations	20,045	6,260	1,575	4,685	24,730
201	Senior Center Activities	71,874	6,650	16,752	(10,102)	61,772
202	Animal Control Reserve	4,850	30	-	30	4,880
203	Police Volunteer	5,698	30	2,905	(2,875)	2,823
204	D.A.R.E./Great Grant	46,737	48	46,785	(46,737)	-
300	City Hall COP Debt Service	43,478	517,130	517,130	-	43,478
360	Sun Lakes CFD #86-1	34,630	250	250	-	34,630
365	Assessment Dist - #91-1 Wilson St. Debt	344,309	268,845	268,845	-	344,309
370	Area Police Computer	13,399	48,835	50,615	(1,780)	11,619
375	Fair Oaks 2004-1 Debt Service	183,666	231,393	221,485	9,908	193,574
376	Cameo Homes	45,271	225	-	225	45,496
Subtotal		8,384,445	17,346,625	18,684,273	(1,337,648)	7,046,797

* Columns (2) and (3) include FY11 Mid Year Adjustments, continuing appropriations and add'l Council approved appropriations through 3/31/10

100

CITY OF BANNING
Fund Summary Status
FY11 Mid Year Projections
FY 2010-2011

#	FUND NAME	(1) Audited Balance @ July 1, 2010	(2) FY 2010-11 Projected Revenue	(3) FY 2010-11 Projected Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2011 (Col. 1+4)
<i>Capital Improvement Funds</i>						
400	Police Facilities Development	19,090	150	-	150	19,240
410	Fire Facility Development	916,249	4,500	-	4,500	920,749
420	Traffic Control Facility	383,609	2,000	225,000	(223,000)	160,609
421	Ramsey & Highland Home Traffic Signal	79,791	400	-	400	80,191
430	General Facilities	462,687	2,500	-	2,500	465,187
441	Sunset Grade Separation Fund	373,366	2,796,715	2,838,154	(41,439)	331,927
444	Wilson Median	41,385	1,850	-	1,850	43,235
451	Park Development	179,469	1,900	159,161	(157,261)	22,208
470	Capital Improvement Funds	699,195	20,000	19,294	706	699,901
Subtotal		3,154,841	2,830,015	3,241,609	(411,594)	2,743,247
<i>Banning Utility Authority</i>						
660	Water Operations	1,725,904	7,341,315	7,505,373	(164,058)	1,561,846
661	Water Capital Facility Fee	4,683,163	79,000	617,330	(538,330)	4,144,833
662	Irrigation Water	2,985,750	2,334,302	3,090,600	(756,298)	2,229,452
663	BUA Water Capital Project Fund	2,539,838	25,000	2,478,804	(2,453,804)	86,034
669	BUA Water Debt Service Fund	95,933	2,295,130	2,294,630	500	96,433
Water Subtotal		12,030,588	12,074,747	15,986,737	(3,911,990)	8,118,598
680	Wastewater Operations	1,768,356	2,516,000	2,791,141	(275,141)	1,493,215
681	Wastewater Capital Facility Fees	10,991,950	1,471,488	396,380	1,075,108	12,067,058
683	BUA Wastewater Capital Project Fund	3,636,125	5,000	2,925,817	(2,920,817)	715,308
685	State Revolving Loan	762,779	306,000	304,295	1,705	764,484
689	BUA Wastewater Debt Service Fund	90,135	532,560	532,060	500	90,635
Wastewater Subtotal		17,249,345	4,831,048	6,949,693	(2,118,645)	15,130,700
Subtotal		29,279,933	16,905,795	22,936,430	(6,030,635)	23,249,298

* Columns (2) and (3) include FY11 Mid Year Adjustments, continuing appropriations and add'l Council approved appropriations through 3/31/10

101

CITY OF BANNING
Fund Summary Status
FY11 Mid Year Projections
FY 2010-2011

#	FUND NAME	(1) Audited Balance @ July 1, 2010	(2) FY 2010-11 Projected Revenue	(3) FY 2010-11 Projected Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2011 (Col. 1+4)
<u>Enterprise Funds</u>						
600	Airport	167,593	723,650	665,530	58,120	225,713
610	Transit Operations	-	2,900,597	2,900,597	-	-
690	Refuse	313,991	3,033,750	2,998,647	35,103	349,094
	Subtotal	481,584	6,657,997	6,564,774	93,223	574,807
670	Electric Operations	7,793,804	27,967,150	29,549,680	(1,582,530)	6,211,274
672	Rate Stability	4,894,559	40,000	-	40,000	4,934,559
673	Electric Improvement	11,008,293	143,045	1,130,214	(987,169)	10,021,124
674	Electric Bond Project Fund	21,064,627	76,950	-	76,950	21,141,577
675	Public Benefit Fund	1,008,963	694,000	1,458,637	(764,637)	244,326
678	Electric Debt Service Fund	120,340	2,647,650	2,647,150	500	120,840
	Electric Subtotal	45,890,586	31,568,795	34,785,681	(3,216,886)	42,673,700
	Subtotal	46,372,170	38,226,792	41,350,455	(3,123,663)	43,248,507
<u>Internal Service Funds</u>						
700	Insurance	1,274,236	2,061,314	2,265,459	(204,145)	1,070,091
702	Fleet Maintenance	510,846	962,481	1,195,006	(232,525)	278,321
703	Information Systems Services	234,994	398,753	534,431	(135,678)	99,316
761	Utility Billing Services	567,323	941,914	1,418,097	(476,183)	91,140
	Subtotal	2,587,399	4,364,462	5,412,993	(1,048,531)	1,538,868
<u>Community Redevelopment Agency Funds</u>						
810	Low\Mod Housing	2,460,821	900,852	409,848	491,004	2,951,825
830	Debt Service Fund	937,086	4,635,910	5,560,730	(924,820)	12,266
850	Administration Fund	29,467	814,600	777,300	37,300	66,767
855	Tax Allocation Bonds-2007 Tabs	14,234,142	40,000	5,487,880	(5,447,880)	8,786,262
856	Tax Allocation Bonds-2003 Tabs	1,679,616	10,000	1,250,626	(1,240,626)	438,990
857	Low\Mod Tax Alloc Bonds-2003 Tabs	1,510,004	10,000	1,335,285	(1,325,285)	184,719
860	Project Fund	4,067,689	15,000	1,341,114	(1,326,114)	2,741,575
	Subtotal	24,918,825	6,426,362	16,162,783	(9,736,421)	15,182,404
GRAND TOTAL ALL FUNDS						
		114,697,613	86,100,051	107,788,543	(21,688,492)	93,009,121

* Columns (2) and (3) include FY11 Mid Year Adjustments, continuing appropriations and add'l Council approved appropriations through 3/31/10

102

RESOLUTION NO. 2011-31

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING REVENUE AND EXPENDITURE LINE ITEM
ADJUSTMENTS REFLECTED IN THE FISCAL YEAR 2010-11 MID-
YEAR REVIEW**

WHEREAS, the City of Banning adopts a fiscal year budget prior to July 1st each year; and

WHEREAS, the City Council desires to have a timely Mid-Year Review performed annually; and

WHEREAS, the City Council desires to take the formal action of adjusting the current fiscal year's budget based on the Mid-Year Review;

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

1. City Council approves the Mid-Year Budget Adjustments for the City's Funds as detailed, by account number, in Attachment A.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

Barbara Hanna, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, City Clerk

103

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-31 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of April, 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

104

RESOLUTION NO. 2011-07UA

**A RESOLUTION OF THE UTILITY AUTHORITY OF THE CITY OF
BANNING AUTHORIZING REVENUE AND EXPENDITURE LINE ITEM
ADJUSTMENTS IN THE WATER AND WASTEWATER ENTERPRISES
AS REFLECTED IN THE FISCAL YEAR 2010-11 MID-YEAR REVIEW**

WHEREAS, the Banning Utility Authority adopts a fiscal year budget prior to July 1st each year; and

WHEREAS, the Authority Board desires to have a timely Mid-Year Review performed annually; and

WHEREAS, the Authority Board desires to take the formal action of adjusting the current fiscal year's budget based on the Mid-Year Review;

NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority Board as follows:

1. The Banning Utility Authority Board approves the Mid-Year Budget Adjustments for the Water and Wastewater Funds as detailed, by account number, in Exhibit A.

PASSED, APPROVED AND ADOPTED this 12th day of April 2011.

Barbara Hanna, Chairman
Banning Utility Authority

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, Secretary
Banning Utility Authority

105

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2011-07UA was duly adopted by the Board of the Banning Utility Authority at a regular meeting thereof held on the 12th day of April, 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, Secretary
Banning Utility Authority
Banning, California

106

CRA RESOLUTION NO. 2011-13

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AUTHORIZING REVENUE AND EXPENDITURE LINE ITEM ADJUSTMENTS REFLECTED IN THE FISCAL YEAR 2010-11 MID-YEAR BUDGET REVIEW

WHEREAS, the Community Redevelopment Agency of the City of Banning adopts a fiscal year budget prior to July 1st each year; and

WHEREAS, the Agency Board finds that planning and administrative expenditures are necessary for the production, improvement or preservation of low-and-moderate income housing; and

WHEREAS, the Agency Board desires to have a timely Mid-Year Review performed annually; and

WHEREAS, the Agency Board desires to take the formal action of adjusting the current fiscal year's budget based on the Mid-Year Review;

NOW, THEREFORE, BE IT RESOLVED by the Agency Board as follows:

1. Agency Board approves the Mid-Year Budget Adjustments for the Agency's Funds as detailed, by account number, in Exhibit A.

PASSED, APPROVED AND ADOPTED this 12th day of April, 2011.

Don R. Robinson, Chairperson
Community Redevelopment Agency

APPROVED AS TO FORM AND
LEGAL CONTENT:

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

ATTEST:

Marie A. Calderon, Secretary

107

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-13 was duly adopted by the Agency Board at a regular meeting thereof held on the 12th day of April, 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

EXHIBIT "A"
TO THE
FOLLOWING RESOLUTIONS

- **City Council Resolution No. 2011-31**
- **Utility Authority Resolution No. 2011-07**
- **CRA Resolution No. 2011-13**

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
General Fund			
001-VARIES	PAYROLL	(339,664)	
001-0001-302.11-01	SALES & USE TAXES	19,021	
001-0001-302.11-08	SALES TAX BACKFILL	43,979	
001-0001-306.12-04	FRANCHISE TAX	12,000	
001-0001-306.12-07	BUSINESS LICENSE TAX	(30,000)	
001-0001-306.12-11	FRANCHISE FEE - VERIZON	23,000	
001-0001-306.12-12	PUB EDUC GRNT FEE-VERIZON	1,400	
001-0001-321.18-01	CVC FINES	74,500	
001-0001-331.20-15	INTEREST - W.F. SWEEP ACC	(676)	
001-0001-341.31-14	REIMB MANDATED COSTS	(4,700)	
001-0001-361.41-01	CASH OVER/SHORT	100	
001-2060-306.12-06	FRANCHISE TAX-CTV SERVICE	7,000	
001-2200-306.12-10	FRANCHISE FEE-TOWING SVC	(40,000)	
001-2200-341.31-18	STATE AID-P.O.S.T.	(10,000)	
001-2200-344.33-17	REIMB ADA RECOVERY/ARCNET	13,000	
001-2200-351.35-99	FINGERPRINTING	2,000	
001-2200-361.41-24	SALE OF SURPLUS PROPERTY	1,525	
001-2200-361.41-61	MI&SC. RECEIPTS/REVENUE	2,000	
001-2200-361.42-02	COST REIMBURSMENT: BUSD	126,299	
001-2279-331.20-01	INVESTMENT INTEREST	150	
001-2300-311.16-01	ANIMAL LICENSES	6,000	
001-2400-321.18-09	PASS ZONE NONCOMPLIANCE	5,400	
001-2400-351.35-11	BLDG PERMIT INSP-FIRE	2,000	
001-2400-351.35-12	BLDG PLAN CHECK FEES-FIRE	(2,000)	
001-2400-351.35-83	WEED ABATEMENT FEE	12,500	
001-2700-311.16-03	BUILDING PERMITS	55,800	
001-2700-311.16-04	PLUMBING PERMITS	5,400	
001-2700-311.16-05	ELECTRICAL PERMITS	13,100	
001-2700-311.16-06	MECHANICAL PERMITS	7,700	
001-2700-351.35-15	NUISANCE ABATEMENT FEE	(30,000)	
001-2700-351.35-16	CONSTRUCTION PLAN CK FEE	40,440	
001-2700-351.35-17	PLAN STORAGE/COMP DATA	500	
001-2700-351.35-18	S M I P FEES	(500)	
001-2700-351.35-20	CODE CONFORMANCE INSPEC	5,000	
001-2700-351.35-21	DEMO SITE CLEARANCE	400	
001-2700-351.35-83	WEED ABATEMENT FEE	(10,000)	
001-2700-351.35-97	MISC BUILDING DEPT FEES	(9,428)	
001-2700-351.36-06	ABAND PROP REGIST FEE	7,000	
001-2800-311.16-11	CONDITIONAL USE PERMIT	(10,000)	
001-2800-311.16-12	AMEND COND'L USE PERMIT	(7,215)	
001-2800-311.16-14	HOM&E OCCUPATION PERMIT	205	
001-2800-351.35-27	ZONE CHANGE FEES	(8,525)	
001-2800-351.35-30	GENERAL PLAN AM&ENDMENT	(6,195)	
001-2800-351.35-40	ENVIRONMENTAL ASST REVIEW	(12,495)	
001-2800-351.35-45	MISC PLANNING DPT FEES	1,100	
001-2800-351.35-48	SERVICE LETTER	320	
001-2800-351.35-52	STR/ALLEY/ESMNT ABANDMNT	(1,810)	
001-2800-351.35-56	LNDSCP/IRRIG PLAN CHECK	(2,030)	
001-3000-311.16-15	ENCROACHMENT PERMIT	3,000	
001-3000-311.16-16	PUBLIC WORKS PERMIT/INSPT	5,000	
001-3000-311.16-17	DEVELOPMENT PERMIT	(500)	
001-3000-311.16-18	EXCAVATION PERMIT/INSPECT	(6,000)	
001-3000-311.16-22	INDUST WASTE DISCH PERMIT	(500)	
001-3000-351.35-47	RECORD OF SURVEY	620	
001-3000-351.35-54	IMPROVEMENT PLAN CHECK	19,000	
001-3000-351.35-55	SUBDIV'N PLAN CHECK/INSPT	14,000	
001-3000-351.35-57	PARCEL MAP REVIEW	3,142	
001-3000-351.35-59	MISC ENGINEERING FEES	653	
001-3000-351.35-61	CONSULTANT PLAN CK REV	68,000	
001-3000-351.36-03	INDUSTRIAL WASTE INSPECT	350	
001-4000-351.35-95	RECREATION CLASS FEES	(4,500)	

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
001-4010-331.25-02	FACILITY RENTAL	(1,500)	
001-4010-351.35-67	SWIMMING POOL ADMISSIONS	(5,000)	
001-4010-351.36-02	SNACK BAR CONCESSIONS	(2,000)	
001-4050-331.25-02	FACILITY RENTAL	100	
001-4050-351.35-74	SENIOR CITIZEN PROGRAMS	(900)	
Allocations			
001-VARIES	PAYROLL	70,771	
001-1300-412.25-04	VEHICLE ALLOWANCE	400	
001-1900-412.25-04	VEHICLE ALLOWANCE	400	
001-2200-421.25-01	UNIFORM ALLOWANCE	102	
001-2200-421.54-21	POLICE SERVICES	175,762	
001-2300-424.33-90	ANIMAL CONTROL SVCS	(200,000)	
001-2400-422.23-39	WEED ABATEMENT SERVICES	68,000	
001-2700-442.33-11	PROFESSIONAL SERVICES	85,000	
001-2800-441.56-13	TSFR-AIR QUALITY IMP FUND	2,778	
001-3000-442.25-04	VEHICLE ALLOWANCE	(2)	
001-4000-461.25-04	VEHICLE ALLOWANCE	1	
Fund #001 Total:		56,566	203,212
Riverside County MOU			
Revenue			
003-2289-331.20-01	INVESTMENT INTEREST	(1,000)	
Allocations			
003-2289-421.10-10	PAYROLL-REGULAR	(11,127)	
003-2289-421.10-51	INCENTIVE PAY	3,871	
003-2289-421.10-70	COMP TIME PAYOFF	(2,072)	
003-2289-421.10-71	VACATION PAYOFF	4,253	
003-2289-421.10-72	SICK LEAVE PAYOFF	2,335	
003-2289-421.10-73	HOLIDAY PAYOFF	(1,198)	
003-2289-421.15-10	FICA	(3,134)	
003-2289-421.15-15	PERS	(3,025)	
003-2289-421.15-20	WORKERS COMP	(2,762)	
003-2289-421.15-30	UNEMPLOYMENT INSURANCE	(36)	
003-2289-421.15-40	LIFE INSURANCE	(34)	
003-2289-421.15-80	BENEFIT ALLOWANCE	(6,050)	
003-2289-421.25-01	UNIFORM ALLOWANCE	(441)	
Fund #003 Total:		(1,000)	(19,420)
Gas Tax Street Fund			
Revenue			
100-4900-341.31-05	GAS TAX-SEC 2106	8,566	
100-4900-341.31-06	GAS TAX-SEC 2107	10,826	
100-4900-341.31-07	GAS TAX-SEC 2107.5	1,000	
100-4900-341.31-09	ST. GASOLINE TAX-2105	4,665	
100-4900-341.31-62	GAS TAX-SEC 2103	287,752	
Allocations			
100-4900-431.10-10	PAYROLL-REGULAR	6,596	
100-4900-431.10-40	DEFERRED COMP	66	
100-4900-431.10-41	MANAGEMENT INCENTIVE	(4)	
100-4900-431.10-51	INCENTIVE PAY	109	
100-4900-431.10-70	COMP TIME PAYOFF	526	
100-4900-431.10-71	VACATION PAYOFF	1,863	
100-4900-431.10-72	SICK LEAVE PAYOFF	537	
100-4900-431.10-73	HOLIDAY PAYOFF	42	
100-4900-431.15-10	FICA	(1,193)	
100-4900-431.15-15	PERS	1,324	
100-4900-431.15-20	WORKERS COMP	209	
100-4900-431.15-30	UNEMPLOYMENT INSURANCE	19	
100-4900-431.15-40	LIFE INSURANCE	92	
100-4900-431.15-80	BENEFIT ALLOWANCE	(187)	
Fund #100 Total:		312,809	9,999

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
Article 3 - Sidewalk Construction			
Allocations			
104-4900-431.93-11	SIDEWALK IMPROVEMENTS		(153,912)
		Fund #104 Total:	(153,912)
Landscape Mainenance Assmt. Dist. #1			
Allocations			
111-4900-432.26-01	UTILITIES-BANNING		(11,300)
		Fund #111 Total:	(11,300)
Air Quality Improvement Fund			
Revenue			
132-4900-381.55-01	TRANSFER-GENERAL FUND	2,778	
132-4900-381.56-73	TRNSFR-FLEET MAINT FUND	575	
Allocations			
132-4900-446.41-13	JOINT AGENCY ASSESSMENTS		3,225
		Fund #132 Total:	3,353
			3,225
Supplemental Law Enforcement			
Revenue			
148-2210-331.20-01	INVESTMENT INTEREST	400	
		Fund #148 Total:	400
			-
Special Donations			
Revenue			
200-9100-361.41-73	DONATIONS-SENIOR CENTER	2,010	
200-9100-361.42-18	DONAT'N RECREATION FEES	2,750	
Allocations			
200-9100-446.36-68	HOLIDAY LUNCHEON		75
		Fund #200 Total:	4,760
			75
Senior Center Activities			
Allocations			
201-4050-446.42-08	CHRISTMAS DINNER FUND		82
		Fund #201 Total:	-
			82
D.A.R.E. Donation			
Revenue			
204-2209-331.20-01	INVESTMENT INTEREST	48	
204-2210-347.34-26	G.R.E.A.T. GRANT	(42,593)	
Allocations			
204-2210-446.42-14	SPCL PROG EXP-POLICE DEPT		211
		Fund #204 Total:	(42,545)
			211
Area Police Computer			
Allocations			
370-2200-421.26-05	TELEPHONE SVC		343
370-2200-421.30-17	REPAIR/MAINT-SOFTWARE		820
370-2200-421.30-19	REPAIR/MAINT-HARDWARE		867
		Fund #370 Total:	-
			2,030
Fair Oaks 2004-1 Debt Service			
Revenue			
375-4900-306.15-01	SPECIAL BENEFIT ASSMT	16,886	
375-4900-306.15-05	TAX ASSMT SERVICE CHARGE	(120)	
Allocations			
375-4900-431.33-19	ADMINISTRATION SERVICES		500
375-4900-431.61-12	PRINCIPAL-LIMIT OBL BONDS		15,000
		Fund #375 Total:	16,766
			15,500
Police Facilities Development			
Revenue			
400-2200-361.41-33	POLICE FACIL DVLP FEE		(1,500)
		Fund #400 Total:	(1,500)
			-

1080

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
Fire Facility Development			
410-2400-361.41-34	F/FACIL DVLP FEE	(5,000)	
Fund #410 Total: (5,000)			
Traffic Control Facility			
420-4900-361.41-42	TRAFFIC CONTROL FACIL FEE	(500)	
Fund #420 Total: (500)			
General Facilities			
430-2900-361.41-43	GENERAL FACILITIES FEES	(2,000)	
Fund #430 Total: (2,000)			
Airport			
600-5100-331.25-10	HANGAR RENTS-CITY	(30,000)	
600-5100-331.25-13	TIEDOWNS-PERMANENT	(500)	
600-5100-331.25-15	OTHER AIRPORT RENTALS	(107,400)	
600-5100-331.27-03	ACCESS FEES	(2,200)	
600-5100-351.35-76	AVIATION FUEL SALES	(50,000)	
600-5100-351.35-77	OTHER SALES/SERVICES	(150)	
Allocations			
600-5100-435.10-10	PAYROLL-REGULAR	1,773	
600-5100-435.10-41	MANAGEMENT INCENTIVE	(4)	
600-5100-435.10-51	INCENTIVE PAY	2	
600-5100-435.10-70	COMP TIME PAYOFF	102	
600-5100-435.10-71	VACATION PAYOFF	(9)	
600-5100-435.10-72	SICK LEAVE PAYOFF	(9)	
600-5100-435.15-10	FICA	518	
600-5100-435.15-15	PERS	(118)	
600-5100-435.15-20	WORKERS COMP	75	
600-5100-435.15-30	UNEMPLOYMENT INSURANCE	5	
600-5100-435.15-40	LIFE INSURANCE	(6)	
600-5100-435.15-80	BENEFIT ALLOWANCE	(1)	
Fund #600 Total: (190,250) 2,328			
Transit Operations			
610-5800-351.35-81	BUS PASSES	(8,700)	
610-5850-351.35-79	DIAL-A-RIDE RECEIPTS	(2,000)	
Allocations			
610-5800-434.10-10	PAYROLL-REGULAR	(47,350)	
610-5800-434.10-41	MANAGEMENT INCENTIVE	4	
610-5800-434.10-51	INCENTIVE PAY	43	
610-5800-434.10-55	STANDBY PAY	2,163	
610-5800-434.10-70	COMP TIME PAYOFF	671	
610-5800-434.10-71	VACATION PAYOFF	935	
610-5800-434.10-72	SICK LEAVE PAYOFF	(3,423)	
610-5800-434.15-10	FICA	(7,061)	
610-5800-434.15-15	PERS	(7,752)	
610-5800-434.15-20	WORKERS COMP	(4,323)	
610-5800-434.15-30	UNEMPLOYMENT INSURANCE	(148)	
610-5800-434.15-40	LIFE INSURANCE	29	
610-5800-434.15-70	UTILITY CREDIT	300	
610-5800-434.15-80	BENEFIT ALLOWANCE	158	

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
610-5800-434.23-01	ADVERTISING/PUBLISHING		(1,500)
610-5800-434.23-02	PRINTING/BINDING		(2,118)
610-5800-434.23-05	TRAVEL/CONFERENCES		(1,000)
610-5800-434.23-06	STAFF TRAINING		(2,700)
610-5800-434.25-02	UNIFORM PURCHASE/MAINT		(361)
610-5800-434.25-04	VEHICLE ALLOWANCE		1
610-5800-434.36-00	DEPARTMENTAL SUPPLIES		(1,847)
610-5850-434.10-10	PAYROLL-REGULAR		(13,798)
610-5850-434.10-70	COMP TIME PAYOFF		192
610-5850-434.15-10	FICA		(1,398)
610-5850-434.15-15	PERS		(1,754)
610-5850-434.15-20	WORKERS COMP		(228)
610-5850-434.15-30	UNEMPLOYMENT INSURANCE		(41)
610-5850-434.15-80	BENEFIT ALLOWANCE		(1)
610-5850-434.25-02	UNIFORM PURCHASE/MAINT		(1,000)
610-5850-434.30-08	REPAIR/MAINT-RADOS		(300)
610-5850-434.36-00	DEPARTMENTAL SUPPLIES		(587)
Fund #610 Total:		(10,700)	(94,194)

Water Operations

Revenue		
660-6300-356.38-01	METERED SALES	(179,604)
660-6300-356.38-06	TURN ON CHARGES	3,000
660-6300-356.38-08	DELINQ RECONNECT FEE	(10,000)
660-6300-356.38-09	BACKFLOW CHARGES	(8,000)
660-6300-361.41-24	SALE OF SURPLUS PROPERTY	4,500
660-6300-361.41-53	RESTITUTION/SUBROGATION	7,000
660-6300-361.41-61	MISC. RECEIPTS/REVENUE	19,100
Allocations		
660-6300-471.10-10	PAYROLL-REGULAR	(38,879)
660-6300-471.10-40	DEFERRED COMP	44
660-6300-471.10-41	MANAGEMENT INCENTIVE	(231)
660-6300-471.10-51	INCENTIVE PAY	(1,209)
660-6300-471.10-58	EDUCATION INCENTIVE BONUS	(868)
660-6300-471.10-70	COMP TIME PAYOFF	3,215
660-6300-471.10-71	VACATION PAYOFF	2,209
660-6300-471.10-72	SICK LEAVE PAYOFF	6,104
660-6300-471.10-73	HOLIDAY PAYOFF	42
660-6300-471.10-80	WORKERS COMP-REIMBURSEMT	(91)
660-6300-471.15-10	FICA	(9,929)
660-6300-471.15-15	PERS	(9,589)
660-6300-471.15-16	RETIREMENT-WATER CO. EMPL	(1,449)
660-6300-471.15-20	WORKERS COMP	(1,149)
660-6300-471.15-30	UNEMPLOYMENT INSURANCE	(132)
660-6300-471.15-40	LIFE INSURANCE	(8)
660-6300-471.15-50	HEALTH INSURANCE	(19)
660-6300-471.15-51	SECTION 14.2A BENEFIT	198
660-6300-471.15-70	UTILITY CREDIT	42
660-6300-471.15-80	BENEFIT ALLOWANCE	(10,936)
660-6300-471.23-32	LABORATORY SERVICES	(9,000)
660-6300-471.25-11	BOOT ALLOWANCE	(200)
660-6300-471.26-01	UTILITIES - BANNING	(177,502)
660-6300-471.45-06	WELLS/PUMP EQUIP EXPENSE	(50,000)
660-6300-471.45-11	METERS EXPENSE	(5,103)
660-6300-471.45-17	AGGREGATE/ASPHALT	(20,000)
660-6300-471.45-19	WATER REG, VALVES, ETC.	(10,000)
660-6300-471.89-15	BUILDING IMPROVEMENTS	(25,000)
660-6300-471.89-46	OFF FURN/EQUIP/FIXTURES	(1,000)
660-6300-471.89-48	COMPUTER HARDWARE	(1,968)
660-6300-471.89-56	MACHINERY/EQUIPMENT	(5,000)
660-6300-471.90-18	PLANT IMPROVEMENTS	(25,000)
660-6300-471.95-10	WATER MAINS	(257,500)
660-6300-471.95-11	WATER REG, VALVES, ETC	(15,000)

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
660-6300-471.95-16	WTR SERVICE CONNECTION		(5,000)
660-6300-471.95-17	METERS		(448,660)
660-6300-471.95-18	HYDRANTS		(10,000)
660-6300-471.95-27	SCADDA/TELEMETRY		(75,000)
	Fund #660 Total:	(164,004)	(1,203,568)
Water Capacity Fee			
Revenue			
661-6300-366.44-04	CAPITAL FACILITIES FEE	50,000	
	Fund #661 Total:	50,000	-
Electric Operations			
Revenue			
670-7000-356.38-05	STREET LIGHTING	5,000	
670-7000-356.38-06	TURN ON CHARGES	20,000	
670-7000-356.38-08	DELINQ. RECONNECT FEE	(10,000)	
670-7000-356.38-12	MISCELLANEOUS REVENUES	15,000	
670-7000-361.41-24	SALE OF SURPLUS PROPERTY	1,500	
670-7000-361.41-53	RESTITUTION/SUBROGATION	10,000	
670-7000-366.44-07	IN AID OF CONSTRUCTION	70,000	
Allocations			
670-7000-473.10-10	PAYROLL-REGULAR	36,548	
670-7000-473.10-40	DEFERRED COMP	86	
670-7000-473.10-41	MANAGEMENT INCENTIVE	(39)	
670-7000-473.10-51	INCENTIVE PAY	1,375	
670-7000-473.10-70	COMP TIME PAYOFF	4,437	
670-7000-473.10-71	VACATION PAYOFF	6,854	
670-7000-473.10-72	SICK LEAVE PAYOFF	20,924	
670-7000-473.10-80	WORKERS COMP-REIMBURSEMENT	(15,224)	
670-7000-473.15-10	FICA	(10,016)	
670-7000-473.15-15	PERS	4,633	
670-7000-473.15-20	WORKERS COMP	1,334	
670-7000-473.15-30	UNEMPLOYMENT INSURANCE	85	
670-7000-473.15-40	LIFE INSURANCE	247	
670-7000-473.15-50	HEALTH INSURANCE	(19)	
670-7000-473.15-51	SECTION 14.2A BENEFIT	198	
670-7000-473.15-70	UTILITY CREDIT	42	
670-7000-473.15-80	BENEFIT ALLOWANCE	(55)	
670-7000-473.25-04	VEHICLE ALLOWANCE	45	
670-7000-473.56-94	TRNSF-07 ELEC DBT SVC	(312,650)	
670-7010-473.10-10	PAYROLL-REGULAR	(2,924)	
670-7010-473.10-40	DEFERRED COMP	(40)	
670-7010-473.10-51	INCENTIVE PAY	(148)	
670-7010-473.10-70	COMP TIME PAYOFF	4,277	
670-7010-473.10-71	VACATION PAYOFF	3,410	
670-7010-473.10-72	SICK LEAVE PAYOFF	(774)	
670-7010-473.10-73	HOLIDAY PAYOFF	1,740	
670-7010-473.15-10	FICA	(195)	
670-7010-473.15-15	PERS	(630)	
670-7010-473.15-20	WORKERS COMP	(35)	
670-7010-473.15-30	UNEMPLOYMENT INSURANCE	(6)	
670-7010-473.15-40	LIFE INSURANCE	118	
670-7010-473.15-80	BENEFIT ALLOWANCE	(1)	
670-7010-473.15-95	FICA REIMB-BENEFIT ALLOW	(1,345)	
670-7010-473.25-04	VEHICLE ALLOWANCE	1	
670-7010-473.27-50	CAPACITY	1,250,000	
670-7010-473.27-60	ENERGY - LOCAL	500,000	
	Fund #670 Total:	111,500	1,492,253
Public Benefit Fund			
Allocations			
675-7020-473.10-10	PAYROLL-REGULAR	3,638	
675-7020-473.10-70	COMP TIME PAYOFF	918	
675-7020-473.10-72	SICK LEAVE PAYOFF	1,826	

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
675-7020-473.15-10	FICA		(636)
675-7020-473.15-15	PERS		561
675-7020-473.15-20	WORKERS COMP		23
675-7020-473.15-30	UNEMPLOYMENT INSURANCE		4
675-7020-473.15-80	BENEFIT ALLOWANCE		(4)
675-7020-473.42-28	PUB BEN- LOW INCOME- LISC	4,000	
675-7020-473.42-36	PUB BEN-LOW INCOME - MMR		6,000
675-7020-473.42-42	PUB BEN-LOW INCOME-BEAR		21,200
675-7020-473.42-61	PUB BEN-RESI PHOTOVOLT		(7,000)
675-7020-473.42-62	PUB BEN-COMM PHOTOVOLT		3,000
Fund #675 Total:			33,530

2007 Elec Rev Bond Debt Service

Revenue		
678-7000-381.56-59	TRANSFER-ELECTRIC FUND	(312,650)
Allocations		
678-7000-473.62-02	INTEREST ON REV BONDS	
Fund #678 Total:		(312,650)
		(312,650)

Wastewater Operations

Revenue		
680-8000-356.38-02	USER FEES	35,063
Allocations		
680-8000-454.10-10	PAYROLL-REGULAR	7,352
680-8000-454.10-40	DEFERRED COMP	82
680-8000-454.10-41	MANAGEMENT INCENTIVE	(231)
680-8000-454.10-51	INCENTIVE PAY	259
680-8000-454.10-58	EDUCATION INCENTIVE BONUS	(68)
680-8000-454.10-70	COMP TIME PAYOFF	13
680-8000-454.10-71	VACATION PAYOFF	2,927
680-8000-454.10-72	SICK LEAVE PAYOFF	1,581
680-8000-454.10-73	HOLIDAY PAYOFF	42
680-8000-454.10-80	WORKERS COMP-REIMBURSEMENT	(2,478)
680-8000-454.15-10	FICA	(1,905)
680-8000-454.15-15	PERS	1,198
680-8000-454.15-20	WORKERS COMP	359
680-8000-454.15-30	UNEMPLOYMENT INSURANCE	17
680-8000-454.15-40	LIFE INSURANCE	(2)
680-8000-454.15-51	SECTION 14.2A BENEFIT	198
680-8000-454.15-60	DENTAL INSURANCE	5
680-8000-454.15-70	UTILITY CREDIT	42
680-8000-454.15-80	BENEFIT ALLOWANCE	(34)
680-8000-454.23-05	TRAVEL/CONFERENCES	(750)
680-8000-454.23-06	STAFF TRAINING	(500)
680-8000-454.23-27	CONTRACT EMPLOYMENT SVCS	(45,000)
680-8000-454.23-36	SLUDGE HAULING	(5,000)
680-8000-454.23-37	NPDES STORM WATER EXPENSE	(10,000)
680-8000-454.25-04	VEHICLE ALLOWANCE	(2)
680-8000-454.26-01	UTILITIES-BANNING	(10,000)
680-8000-454.30-02	REPAIR/MAINT-BUILDINGS	(5,150)
680-8000-454.30-04	REPAIR/MAINT-PLANT	(26,050)
680-8000-454.30-06	REPAIR/MAINT-EQUIPMENT	(2,400)
680-8000-454.30-07	REPAIR/MAINT-FENCING	(3,500)
680-8000-454.33-11	PROFESSIONAL SERVICES	(50,000)
680-8000-454.33-53	ENGINEERING SERVICES	(10,000)
680-8000-454.41-04	LICENSES/PERMITS/FEES	(20,000)
680-8000-454.41-86	COMMUNITY PROMOTION	(15,000)
680-8000-454.45-09	SEWER COLL SYSTEM EXPENSE	(63,000)
680-8000-454.89-48	COMPUTER HARDWARE	(4,468)
680-8000-454.89-56	MACHINERY/EQUIPMENT	(5,000)
680-8000-454.90-56	MACHINERY/EQUIPMENT	(45,000)
680-8000-454.95-12	TREATMENT PLANT IMPROV	(77,250)
680-8000-454.95-14	SEWER MAINS & COLL SYSTEM	(88,467)

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
		Fund #680 Total:	35,063
Wastewater Capital Facility Fees			
Revenue			
681-8000-366.44-04	CAPITAL FACILITIES FEE	(300,000)	
681-8000-366.44-20	CAPITAL FRONTAGE FEE	55,000	
681-8050-356.38-16	SURCHARGE-TERTIARY RESERV	(25,000)	
		Fund #681 Total:	(270,000)
Refuse			
Revenue			
690-9600-306.12-05	DIRECT FRANCHISE REVENUE	6,000	
690-9600-331.25-04	RENTS/LEASES	12,000	
690-9600-356.38-03	REFUSE MONTHLY BILLING	(100,000)	
690-9600-356.38-06	TURN ON CHARGES	(1,000)	
		Fund #690 Total:	(83,000)
Allocations			
690-9600-453.10-10	PAYROLL-REGULAR	3,779	
690-9600-453.10-40	DEFERRED COMP	79	
690-9600-453.10-41	MANAGEMENT INCENTIVE	(14)	
690-9600-453.10-51	INCENTIVE PAY	27	
690-9600-453.10-70	COMP TIME PAYOFF	(272)	
690-9600-453.10-71	VACATION PAYOFF	(592)	
690-9600-453.10-72	SICK LEAVE PAYOFF	(15)	
690-9600-453.15-10	FICA	(358)	
690-9600-453.15-15	PERS	806	
690-9600-453.15-20	WORKERS COMP	181	
690-9600-453.15-30	UNEMPLOYMENT INSURANCE	12	
690-9600-453.15-40	LIFE INSURANCE	(9)	
690-9600-453.15-80	BENEFIT ALLOWANCE	449	
690-9600-453.23-10	CONTRACTED REFUSE SERVICE	(79,000)	
690-9600-453.41-46	COMMUNITY PROMOTIONS	5,000	
		Fund #690 Total:	(69,927)
Insurance			
Revenue			
700-5020-361.41-53	RESTITUTION/SUBROGATION	6,300	
700-5020-361.41-61	MISC. RECEIPTS/REVENUE	6,100	
700-5020-361.42-39	EXCESS W.C. PREMIUMS RFND	129,400	
700-5020-374.51-01	WORKERS COMP-GENERAL FUND	3,914	
700-5020-374.51-02	WORKERS COMP-OTHER FUNDS	(3,097)	
700-5030-374.51-21	UNEMPLOYMENT-GENERAL FUND	147	
700-5030-374.51-22	UNEMPLOYMENT-OTHER FUNDS	(195)	
700-5040-361.41-02	MISC REIMBURSEMENTS	5,500	
700-5040-361.42-01	INSURANCE DIVIDEND	7,100	
		Fund #690 Total:	(1,850)
Allocations			
700-5020-480.10-10	PAYROLL-REGULAR	(125)	
700-5020-480.10-41	MANAGEMENT INCENTIVE	41	
700-5020-480.10-51	INCENTIVE PAY	(181)	
700-5020-480.10-70	COMP TIME PAYOFF	883	
700-5020-480.10-71	VACATION PAYOFF	(1,079)	
700-5020-480.10-72	SICK LEAVE PAYOFF	70	
700-5020-480.10-73	HOLIDAY PAYOFF	(315)	
700-5020-480.15-10	FICA	(1,967)	
700-5020-480.15-15	PERS	(69)	
700-5020-480.15-20	WORKERS COMP	(7)	
700-5020-480.15-30	UNEMPLOYMENT INSURANCE	(45)	
700-5020-480.15-40	LIFE INSURANCE	(1,269)	
700-5020-480.15-80	BENEFIT ALLOWANCE	301	
700-5020-480.25-04	VEHICLE ALLOWANCE	324	
700-5030-480.10-10	PAYROLL-REGULAR	37	
700-5030-480.10-70	COMP TIME PAYOFF	69	
700-5030-480.10-71	VACATION PAYOFF	17	
700-5030-480.10-73	HOLIDAY PAYOFF		

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
700-5030-480.15-10	FICA	2	
700-5030-480.15-15	PERS	67	
700-5030-480.15-20	WORKERS COMP	7	
700-5040-480.10-10	PAYROLL-REGULAR		(1,410)
700-5040-480.10-41	MANAGEMENT INCENTIVE		(120)
700-5040-480.10-51	INCENTIVE PAY	47	
700-5040-480.10-70	COMP TIME PAYOFF		(146)
700-5040-480.10-71	VACATION PAYOFF	1,472	
700-5040-480.10-72	SICK LEAVE PAYOFF		(1,079)
700-5040-480.10-73	HOLIDAY PAYOFF	87	
700-5040-480.15-10	FICA		(321)
700-5040-480.15-15	PERS		(1,873)
700-5040-480.15-20	WORKERS COMP		(59)
700-5040-480.15-30	UNEMPLOYMENT INSURANCE		(6)
700-5040-480.15-40	LIFE INSURANCE		(58)
700-5040-480.15-80	BENEFIT ALLOWANCE		(1,268)
700-5040-480.25-04	VEHICLE ALLOWANCE	301	
Fund #700 Total:		155,169	(9,522)

Fleet Maintenance

Revenue		
702-3800-351.35-91	FUEL FACILITY SALES	(20,000)
702-3800-351.36-07	EXCISE TAX ON FUEL	(7,000)
702-3800-361.41-61	MISC. RECEIPTS/REVENUE	500
Allocations		
702-3800-480.10-10	PAYROLL-REGULAR	5,500
702-3800-480.10-40	DEFERRED COMP	75
702-3800-480.10-70	COMP TIME PAYOFF	487
702-3800-480.10-71	VACATION PAYOFF	(554)
702-3800-480.10-72	SICK LEAVE PAYOFF	28
702-3800-480.15-10	FICA	
702-3800-480.15-15	PERS	(1,074)
702-3800-480.15-20	WORKERS COMP	239
702-3800-480.15-30	UNEMPLOYMENT INSURANCE	15
702-3800-480.15-40	LIFE INSURANCE	(32)
702-3800-480.15-80	BENEFIT ALLOWANCE	(118)
702-3800-480.36-16	STATE FUEL TAX	(202)
702-3800-480.56-13	TSFR-AIR QUALITY IMP FUND	575
Fund #702 Total:		(26,500)
		6,025

Information Systems Services

Allocations		
703-3700-480.10-10	PAYROLL-REGULAR	222
703-3700-480.10-41	MANAGEMENT INCENTIVE	(121)
703-3700-480.10-51	INCENTIVE PAY	44
703-3700-480.10-56	WORKING OUT OF CLASS	14
703-3700-480.10-70	COMP TIME PAYOFF	(435)
703-3700-480.10-71	VACATION PAYOFF	(439)
703-3700-480.10-72	SICK LEAVE PAYOFF	28
703-3700-480.15-10	FICA	
703-3700-480.15-15	PERS	(771)
703-3700-480.15-20	WORKERS COMP	(52)
703-3700-480.15-30	UNEMPLOYMENT INSURANCE	(2)
703-3700-480.15-40	LIFE INSURANCE	(51)
703-3700-480.15-80	BENEFIT ALLOWANCE	(1,329)
703-3700-480.25-04	VEHICLE ALLOWANCE	300
Fund #703 Total:		-
		(4,322)

Utility Billing Services

Revenue		
761-3100-356.38-07	DELINQUENT PROCESSING FEE	5,000
761-3110-361.41-27	GAIN ON SALE OF ASSET	500
Allocations		
761-3100-480.10-10	PAYROLL-REGULAR	(14,762)

1085

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
761-3100-480.10-41	MANAGEMENT INCENTIVE	(121)	
761-3100-480.10-51	INCENTIVE PAY	44	
761-3100-480.10-56	WORKING OUT OF CLASS	39	
761-3100-480.10-70	COMP TIME PAYOFF	387	
761-3100-480.10-71	VACATION PAYOFF	(35)	
761-3100-480.10-72	SICK LEAVE PAYOFF	403	
761-3100-480.10-73	HOLIDAY PAYOFF	62	
761-3100-480.15-10	FICA	(3,630)	
761-3100-480.15-15	PERS	(5,998)	
761-3100-480.15-20	WORKERS COMP	(323)	
761-3100-480.15-30	UNEMPLOYMENT INSURANCE	(54)	
761-3100-480.15-40	LIFE INSURANCE	(51)	
761-3100-480.15-70	UTILITY CREDIT	563	
761-3100-480.15-80	BENEFIT ALLOWANCE	(8,016)	
761-3100-480.23-02	PRINTING/BINDING	(2,500)	
761-3100-480.23-13	DÉLINQUENT COLLECTION SVC	4,000	
761-3100-480.23-43	COURIER SERVICES	1,200	
761-3100-480.23-46	RETURNED CHECK/BANK FEES	10,540	
761-3100-480.25-04	VEHICLE ALLOWANCE	300	
761-3100-480.30-06	REPAIR/MAINT-EQUIPMENT	500	
761-3100-480.30-08	REPAIR/MAINT-RADOS	(200)	
761-3100-480.30-17	REPAIR/MAINT-SOFTWARE	(500)	
761-3100-480.33-11	PROFESSIONAL SERVICES	(5,000)	
761-3110-480.10-10	PAYROLL-REGULAR	(9,943)	
761-3110-480.10-40	DEFERRED COMP	(6)	
761-3110-480.10-41	MANAGEMENT INCENTIVE	8	
761-3110-480.10-51	INCENTIVE PAY	(23)	
761-3110-480.10-70	COMP TIME PAYOFF	1,826	
761-3110-480.10-71	VACATION PAYOFF	1,007	
761-3110-480.10-72	SICK LEAVE PAYOFF	3,017	
761-3110-480.10-73	HOLIDAY PAYOFF	307	
761-3110-480.15-10	FICA	(2,293)	
761-3110-480.15-15	PERS	(2,073)	
761-3110-480.15-20	WORKERS COMP	(450)	
761-3110-480.15-30	UNEMPLOYMENT INSURANCE	(29)	
761-3110-480.15-40	LIFE INSURANCE	(25)	
761-3110-480.15-70	UTILITY CREDIT	(900)	
761-3110-480.15-80	BENEFIT ALLOWANCE	(1,587)	
761-3110-480.25-04	VEHICLE ALLOWANCE	1	
Fund #761 Total:		5,500	(34,315)

Low/Mod Housing

Revenue	
810-9700-381.56-82	TRANSFER-CRA DEBT SVC FD
810-9700-381.56-83	TRNSFR-CRA DWNTWN DBT SVC
810-9700-381.56-84	TRNSFR-CRA MIDWAY DBT SVC
Allocations	
810-9700-490.10-10	PAYROLL-REGULAR
810-9700-490.10-40	DEFERRED COMP
810-9700-490.10-41	MANAGEMENT INCENTIVE
810-9700-490.10-70	COMP TIME PAYOFF
810-9700-490.10-71	VACATION PAYOFF
810-9700-490.10-72	SICK LEAVE PAYOFF
810-9700-490.15-10	FICA
810-9700-490.15-15	PERS
810-9700-490.15-20	WORKERS COMP
810-9700-490.15-30	UNEMPLOYMENT INSURANCE
810-9700-490.15-40	LIFE INSURANCE
810-9700-490.15-51	SECTION 14.2A BENEFIT
810-9700-490.15-70	UTILITY CREDIT
810-9700-490.15-80	BENEFIT ALLOWANCE
810-9700-490.25-04	VEHICLE ALLOWANCE
Fund #810 Total:	
	(80,649)
	(25,341)

108K

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
Debt Service Fund			
Revenue			
830-9200-306.14-02	TAX INCREMENT	(352,400)	
830-9200-306.14-05	SUPPLEMENTAL TAX INCREMENT	(5,000)	
830-9300-306.14-01	TAX INCREMENT-DOWNTOWN	(48,952)	
830-9300-306.14-06	SBE APPORTIONMENT	27,000	
830-9400-306.14-03	TAX INCREMENT-MIDWAY	(23,894)	
Allocations			
830-9200-490.56-79	TRNSFR-CRA-LW/MD SETASIDE	(71,480)	
830-9200-490.56-87	TRSNFR-CRA ADMIN FUND	(331)	
830-9200-490.56-92	TRNSFR-CRA PROJECT FUND	(130,923)	
830-9300-490.56-79	TRNSFR-CRA-LW/MD SETASIDE	(4,390)	
830-9300-490.56-87	TRSNFR-CRA ADMIN FUND	33,139	
830-9300-490.56-92	TRNSFR-CRA PROJECT FUND	(85,444)	
830-9400-490.56-79	TRNSFR-CRA-LW/MD SETASIDE	(4,779)	
830-9400-490.56-87	TRSNFR-CRA ADMIN FUND	12,192	
830-9400-490.56-92	TRNSFR-CRA PROJECT FUND	(33,633)	
Fund #830 Total:			(403,246)
			(285,649)
Administration Fund			
Revenue			
850-9200-361.41-61	MISC. RECEIPTS/REVENUE	10,100	
850-9200-381.56-82	TRANSFER-CRA DEBT SVC FD	45,000	
Allocations			
850-9200-490.10-10	PAYROLL-REGULAR	(17,283)	
850-9200-490.10-40	DEFERRED COMP	(629)	
850-9200-490.10-41	MANAGEMENT INCENTIVE	(937)	
850-9200-490.10-51	INCENTIVE PAY	43	
850-9200-490.10-70	COMP TIME PAYOFF	4,558	
850-9200-490.10-71	VACATION PAYOFF	2,648	
850-9200-490.10-72	SICK LEAVE PAYOFF	(5,670)	
850-9200-490.10-73	HOLIDAY PAYOFF	338	
850-9200-490.15-10	FICA	(3,468)	
850-9200-490.15-15	PERS	(4,370)	
850-9200-490.15-20	WORKERS COMP	(597)	
850-9200-490.15-30	UNEMPLOYMENT INSURANCE	(59)	
850-9200-490.15-40	LIFE INSURANCE	3	
850-9200-490.15-50	HEALTH INSURANCE	(36)	
850-9200-490.15-51	SECTION 14.2A BENEFIT	1,740	
850-9200-490.15-70	UTILITY CREDIT	(324)	
850-9200-490.15-80	BENEFIT ALLOWANCE	(2,380)	
850-9200-490.25-04	VEHICLE ALLOWANCE	(999)	
Fund #850 Total:			55,100
			(27,422)
Tax Alloc Parity Bonds-2007 Tabs			
Revenue			
855-9500-331.20-01	INVESTMENT INTEREST	15,000	
855-9500-331.20-03	INT. EARNED-FISCAL AGENT	(25,000)	
Fund #855 Total:			(10,000)
Project Fund			
Revenue			
860-9200-381.56-82	TRANSFER-CRA DEBT SVC FD	(250,000)	
Allocations			
860-9200-490.42-77	SERAF PAYMENT	377	
860-9250-490.10-10	PAYROLL-REGULAR	(3,983)	
860-9250-490.10-51	INCENTIVE PAY	(1,207)	
860-9250-490.10-70	COMP TIME PAYOFF	(1,324)	
860-9250-490.10-71	VACATION PAYOFF	1,259	
860-9250-490.10-73	HOLIDAY PAYOFF	(1,456)	
860-9250-490.15-10	FICA	(634)	
860-9250-490.15-15	PERS	(2,069)	
860-9250-490.15-20	WORKERS COMP	(323)	

FY 2010-11 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
860-9250-490.15-30	UNEMPLOYMENT INSURANCE	(12)	
860-9250-490.15-80	BENEFIT ALLOWANCE	(3,586)	
860-9270-490.10-10	PAYROLL-REGULAR	1,168	
860-9270-490.10-56	WORKING OUT OF CLASS	106	
860-9270-490.10-70	COMP TIME PAYOFF	(113)	
860-9270-490.10-72	SICK LEAVE PAYOFF	759	
860-9270-490.15-10	FICA	(357)	
860-9270-490.15-15	PERS	265	
860-9270-490.15-20	WORKERS COMP	57	
860-9270-490.15-30	UNEMPLOYMENT INSURANCE	3	
860-9270-490.15-80	BENEFIT ALLOWANCE	(3)	
860-9270-490.23-39	WEED ABATEMENT SERVICES	(68,000)	
Fund #860 Total:		(250,000)	(79,073)



Proud History
Prosperous Tomorrow

INTERIM FINANCIAL REPORT – EXECUTIVE SUMMARY

DECEMBER 2010

(50% OF THE YEAR COMPLETE)

This executive report provides a summary by fund of the revised budget and actual activity as of December 31, 2010. The beginning available balance has been updated to reflect the final available balances after year end close. The revenue and expenditure revised budget reflects a combination of the original budget, the continuing appropriations, encumbrances, and any Council action between July and December to increase estimated revenues or appropriations. The continuing appropriation is comprised mostly of projects in progress.

The City Budget is prepared conservatively utilizing internal and external resources available to estimate revenues and expenditures. At mid-year, an additional review of the budget is presented to council with recommended adjustments. The adjustments for this year's midyear report consider the ongoing economic conditions, current trends and the State and Government Agencies' budget projections.

This report also provides a useful tool for staff and Council to identify funds that require closer attention. Any funds that have projected deficit ending balances will be addressed through midyear reductions in expenditures to avoid deficit spending.



This report will be expanded in the future to provide highlights of areas of concern or expanded explanations and information.

It is important to note that one of the challenges with evaluating the status of revenues is that the funds that rely on property taxes or sales taxes (i.e. General fund, CRA) do not receive the majority of these funds until January, April or May. Past State actions have restricted how and when Cities receive several revenues (i.e. Triple Flip, VLF SWAP).

Good to know: *Government Accounting and Budgeting*

Most government funds and budgets are managed using a method called "modified accrual" accounting. This method basically means that the governmental funds are managed on a cash basis throughout the year. At year end, accruals are made to ensure that revenues and expenditures are recorded in the applicable fiscal year in which the transactions occurred. This method applies to the General Fund, Special Revenue funds, capital funds, internal service funds and redevelopment funds.

To illustrate, revenue is recorded as it is received throughout the year (cash basis). The majority of General Fund revenues come in sporadically throughout the year and most of it is received in the last 6 months of the fiscal year. Meanwhile, the expenditures are continuing each month regardless of when the revenues are received. This circumstance highlights the importance of maintaining a reserve that allows for cash flow needs during the lean months when there are no revenues.

There are funds that are considered like a business. These are called "Enterprise Funds". The "accrual" method of accounting is used for these funds. These business type funds charge customers a fee to cover all or most of the cost of certain services that are provided. Consistent with accrual accounting, the revenues reported on the interim report reflect revenues based on what was billed the customer rather than the cash payments collected. This method applies to the Airport, Transit, Refuse, Electric, Water and Wastewater funds.

CITY OF BANNING
Fund Summary Status

Month Ending December 31, 2010
FY 2010-2011 50% Complete

Fund #	Fund Name	Estimated Balance @ July 1, 2010	FY 2010-11 Adjusted Revenue	Year To Date Revenue	% complete	FY 2010-11 Adjusted Expenditures	Year To Date Expenditures	% complete	Budget Gain/(Loss)	Projected Balance @ 6/30/2011
<u>Governmental & Special Revenue Fds</u>										
001 General	4,683,506	13,104,695	4,221,299	32%	13,653,717	6,433,955	47%	(549,022)	4,134,484	
002 Developer Deposit Fund	-	123,131	27,898	23%	123,131	31,948	26%	-	-	
003 Riverside County MOU	288,410	303,500	376	0%	471,018	195,393	41%	(167,518)	120,892	
100 Gas Tax	755,951	773,360	362,426	47%	929,733	372,308	40%	(156,373)	599,578	
101 Measure A Street	1,357,859	359,000	150,481	-	984,080	-	0%	(625,080)	732,779	
103 SB300 Street Improvement	146,617	725	228	-	-	-	0%	725	147,342	
104 Article 3 - Sidewalk Construction	(75,705)	542,860	-	0%	601,837	1,537	0%	(58,977)	(134,682)	
110 C.D.B.G.	-	241,517	53,765	22%	241,517	53,765	22%	-	-	
111 Landscape Maintenance Assmt. Dist.#1	195,036	134,003	3,509	3%	145,230	58,056	40%	(11,227)	183,809	
132 Air Quality	106,240	32,000	8,792	27%	-	6,000	0%	32,000	138,240	
140 Asset Forfeiture	2,475	10	4	40%	-	-	0%	10	2,485	
148 Supplemental Law Enforcement	105,864	100,000	145	0%	205,864	5,618	3%	(105,864)	-	
149 Public Safety - Sales Tax	3,311	180,000	76,897	43%	170,000	84,996	50%	10,000	13,311	
150 State Park Bond Act	924	-	1	-	-	-	-	-	924	
200 Special Donations	20,045	1,500	4,758	317%	1,500	75	5%	-	20,045	
201 Senior Center Activities	71,874	6,650	3,211	48%	16,670	4,770	29%	(10,020)	61,854	
202 Animal Control Reserve	4,850	30	8	27%	-	-	-	30	4,880	
203 Police Volunteer	5,698	30	9	30%	2,905	-	0%	(2,875)	2,823	
204 D.A.R.E. Donation	46,737	42,593	17	0%	46,574	6,817	15%	(3,981)	42,756	
300 City Hall COP Debt Service	43,478	517,130	421,277	81%	517,130	408,335	79%	-	43,478	
360 Sun Lakes CFD #86-1	34,630	250	54	22%	250	-	0%	-	34,630	
365 Assessment Dist - #91-1 Wilson St. Debt	344,309	268,845	373	0%	268,845	244,009	91%	-	344,309	
370 Area Police Computer	13,399	48,835	43	0%	48,585	7,453	15%	250	13,649	
375 Fair Oaks 2004-1 Debt Service	183,666	214,627	9,005	4%	205,985	136,871	66%	8,642	192,308	
376 Cameo Homes	45,271	225	70	31%	-	-	0%	225	45,496	
Sub-Total	8,384,445	16,995,516	5,344,646	31%	18,634,571	8,051,906	43%	(1,639,055)	6,745,390	

110

CITY OF BANNING
Fund Summary Status

Attachment A

Month Ending December 31, 2010
FY 2010-2011 50% Complete

Fund #	Fund Name	Estimated Balance @ July 1, 2010	FY 2010-11 Adjusted Revenue	Year To Date Revenue	% complete	FY 2010-11 Adjusted Expenditures	Year To Date Expenditures	% complete	Budget Gain/(Loss)		Projected Balance @ 6/30/2011
									Year To Date	Year To Date	
<u>Capital Improvement Funds</u>											
400 Police Facilities Development	19,090	1,650	30	2%	-	-	-	-	1,650	20,740	
410 Fire Facility Development	916,249	9,500	1,427	15%	-	-	-	-	9,500	925,749	
420 Traffic Control Facility	383,609	2,500	597	24%	225,000	-	-	0%	(222,500)	161,109	
421 Ramsey & Highland Home Traffic Signal	79,791	400	124	31%	-	-	-	-	400	80,191	
430 General Facilities	462,687	4,500	720	16%	-	-	-	-	4,500	467,187	
441 Sunset Grade Separation Fund	373,366	2,796,715	185	0%	2,838,154	-	-	0%	(41,439)	331,927	
444 Wilson Median	41,385	1,850	581	31%	-	-	-	-	1,850	43,235	
451 Park Development	179,469	1,900	279	15%	159,161	8,636	5%	(157,261)	22,208		
470 Capital Improvement Fund	699,195	20,000	2,108	11%	19,294	19,294	100%	706	699,901		
Sub-Total	3,154,841	2,839,015	6,051	0%	3,241,609	27,530	1%	(402,594)	2,752,247		
<u>Banning Utility Authority</u>											
660 Water Operations	1,725,904	7,505,319	4,052,404	54%	8,708,941	3,359,671	39%	(1,203,622)	522,282		
661 Water Capital Facility Fee	4,683,163	29,000	14,522	50%	617,330	76,834	12%	(58,330)	4,094,833		
662 Irrigation Water	2,985,750	2,334,302	4,649	0%	3,090,600	-	0%	(756,298)	2,229,432		
663 BUA Water Capital Project Fund	2,539,838	25,000	2,837	11%	2,478,804	11,693	0%	(2,453,804)	86,034		
669 BUA Water Debt Service Fund	95,933	2,295,130	1,228,456	54%	2,294,630	1,225,713	53%	500	96,433		
Water Subtotal	12,030,588	12,188,751	5,302,868	44%	17,190,305	4,673,911	27%	(5,001,554)	7,029,034		
680 Wastewater Operations	1,768,336	2,480,937	1,158,595	47%	3,268,321	1,414,273	43%	(787,384)	980,972		
681 Wastewater Capital Facility Fees	10,991,930	1,741,488	1,160,006	67%	396,380	-	0%	1,345,108	12,337,058		
683 BUA Wtr Capital Project Fund	3,636,125	5,000	3,692	74%	2,925,817	113,881	4%	(2,920,817)	715,308		
685 State Revolving Loan	762,779	306,000	151,324	49%	304,295	254,388	84%	1,705	764,484		
689 BUA Wastewater Debt Service Fund	90,135	532,560	354,302	67%	532,060	354,164	67%	500	90,635		
Wastewater Subtotal	17,249,345	5,065,985	2,887,919	56%	7,426,873	2,136,706	29%	(2,360,888)	14,888,457		
Sub-Total	29,279,933	17,254,736	8,130,787	47%	24,617,178	6,810,617	28%	(7,362,442)	21,917,491		

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CITY OF BANNING
Fund Summary Status
Month Ending December 31, 2010

FY 2010-2011 50% Complete

Fund #	FUND NAME	Estimated Balance @ July 1, 2010	FY 2010-11 Adjusted Revenue	Year To Date Revenue	% complete	FY 2010-11 Adjusted Expenditures	Year To Date Expenditures	% complete	Budget Gain/(Loss)	Projected Balance @ 6/30/2011
									%	
<i>Enterprise Funds</i>										
600 Airport		167,593	913,900	85,471	9%	663,202	89,170	13%	250,698	418,291
610 Transit Operations		-	2,911,297	1,483,418	51%	2,994,791	1,379,539	46%	(83,494)	(83,494)
690 Refuse		313,991	3,116,750	1,524,379	49%	3,068,574	1,491,674	49%	48,176	362,167
Subtotal		481,584	6,941,947	3,093,268	45%	6,726,567	2,960,383	44%	215,380	696,964
670 Electric Operations		7,793,804	27,855,650	13,905,132	50%	28,057,427	11,740,343	42%	(201,777)	7,592,027
672 Rate Stability		4,894,559	40,000	8,023	20%	-	-	#DIV/0!	40,000	4,934,559
673 Electric Improvement		11,008,293	143,045	53,671	38%	1,130,214	275,448	24%	(987,169)	10,021,124
674 2007 Elec Rev Bond Proceeds		21,064,627	76,950	60,973	79%	-	12,400	#DIV/0!	76,950	21,141,577
675 Public Benefit Fund		1,008,963	694,000	352,141	51%	1,425,107	1,112,361	78%	(731,107)	277,856
678 2007 Elec Rev Bond Debt Service		120,340	2,960,300	762,104	26%	2,959,800	764,645	26%	500	120,840
Electric Subtotal		45,890,586	31,769,945	15,142,044	48%	33,572,548	13,905,197	41%	(1,802,603)	44,087,983
Sub-Total		46,372,170	38,711,892	18,235,312	47%	40,299,115	16,865,580	42%	(1,587,223)	44,784,947
<i>Internal Service Funds</i>										
700 Insurance		1,274,236	1,906,145	1,144,102	60%	2,274,981	1,324,539	58%	(368,836)	905,400
702 Fleet Maintenance		510,846	988,981	475,455	48%	1,188,981	429,454	36%	(200,000)	310,846
703 Information Systems Services		234,994	398,753	198,940	50%	538,753	187,449	35%	(140,000)	94,904
761 Utility Billing Services		567,323	936,414	477,457	51%	1,452,412	662,635	46%	(515,998)	51,325
Sub-Total		2,587,399	4,230,293	2,295,954	54%	5,455,127	2,604,477	48%	(1,224,834)	1,362,565
<i>Community Redevelopment Agency Funds</i>										
810 LowMod Housing		2,460,821	981,501	3,811	0%	435,189	55,844	13%	546,312	3,007,133
830 Debt Service Fund		937,086	5,039,156	19,507	0%	5,846,379	2,076,884	36%	(807,223)	129,863
850 Administration Fund		29,467	759,500	334,600	44%	804,722	334,817	42%	(45,222)	(15,755)
855 Tax Alloc Parity Bonds-2007 Taps		14,234,142	50,000	15,595	31%	5,487,880	2,180,021	40%	(5,437,880)	8,796,262
856 Tax Allocation Bonds-2003 Taps		1,679,616	10,000	2,701	27%	1,250,626	447,735	36%	(1,240,626)	438,990
857 LowMod Tax Alloc Bonds-2003 Taps		1,510,004	10,000	2,293	23%	1,335,285	220,064	16%	(1,325,285)	184,719
860 Project Fund		4,067,689	265,000	6,388	2%	1,420,187	226,673	16%	(1,155,187)	2,912,502
Sub-Total		24,918,825	7,115,157	384,895	5%	16,580,268	5,511,438	33%	(9,465,111)	15,453,714
GRAND TOTAL ALL FUNDS		114,697,613	87,146,609	34,397,645	39%	108,827,868	39,901,548	37%	(21,681,259)	93,016,354

112