

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

December 13, 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, the Community Redevelopment Agency and the Banning Housing Authority and a Joint Meeting of the City Council and the Banning Housing 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
- Pledge of Allegiance
- Roll Call – Councilmembers Botts, Franklin, Machisic, Robinson, Mayor Hanna

**II. REPORT ON CLOSED SESSION**

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

**III. REORGANIZATION OF CITY COUNCIL, COMMUNITY REDEVELOPMENT AGENCY AND HOUSING AUTHORITY**

- City Clerk (ORAL)

**Adjourn Joint Meeting of the Banning City Council, the Community Redevelopment Agency and the Banning Housing Authority and reconvene regular City Council Meeting.**

*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. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

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

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

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

##### PRESENTATION:

1. Stagecoach Days Committee Report (ORAL)

#### V. 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 23**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

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

1.	Approval of Minutes – Special Joint Meeting – 03/01/11 .....	1
2.	Approval of Minutes – Special Joint Meeting – 06/07/11 .....	18
3.	Approval of Minutes – Special Meeting – 11/08/11 (Study Session) .....	65
4.	Approval of Minutes – Joint Meeting – 11/08/11 (Closed Session) .....	75
5.	Approval of Minutes – Regular Meeting – 11/08/11 .....	77
6.	Approval of Minutes – Special Joint Meeting – 11/29/11 .....	103
7.	Approval of Accounts Payable and Payroll Warrants for the Month of July 2011. ....	117
8.	Approval of Accounts Payable and Payroll Warrants for the Month of August 2011 .....	120
9.	Report of Investments for September 2011 .....	123
10.	Report of Investments for October 2011 .....	134
11.	Notice of Completion for the Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake. ....	144
12.	Notice of Completion for Project 2011-01EL Replacement of City of Banning's Yard Office Building HVAC Units. ....	148
13.	Authorize staff to Enter Into the Business License Hub Software Pilot Test Agreement with E2G2, Inc. ....	152

14.	Resolution No. 2011-94, Authorizing the City Manager or His Designee to Execute For and On Behalf of the City of Banning Any Actions Necessary for the Purpose of Obtaining Financial Assistance Provided By the Governor's Office of Homeland Security. ....	174
15.	Resolution No. 2011-95, Awarding the Construction Contract for Project No. 2011-06, Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements Along Wilson Street, From Stargaze Way to Mountain Avenue to Match Corporation of San Bernardino, CA for an amount of \$1,331,000.00, and allowing a 10% construction contingency and Approving the Professional Services Agreement for Material Testing Services with Aragon Geotechnical Inc. of Riverside, CA for an Amount not to exceed \$13,465.00. ....	178
16.	Resolution No. 2011-96, Approving the Project for Fiscal Year 2012-2013 Community Development Block Grant (CDBG) Program. ....	182
17.	Resolution No. 2011-97, Authorizing an Appropriation from the Airport Enterprise Fund for the Purchase of Aviation Fuel ....	191
18.	Resolution No. 2011-98, Rejecting All Proposals for Developing 59 Acres of Industrial Zoned Land APN 532-130-011 and 532-130-018 ....	195
19.	Resolution No. 2011-99, Approving the City of Banning's RPS Enforcement Program and Renewable Energy Resource Procurement Plan ....	209
20.	Resolution No. 2011-100, Approving a Successor Memorandum of Understanding Between the San Bernardino Public Employees Association Representing the Mid-Management and Professional Unit and the City of Banning ....	215
21.	Resolution No. 2011-101, Amending its 2011-12 Fiscal Budget and Amending the Classification & Compensation Plan for the City of Banning ....	248
22.	Resolution No. 2011-102, Accepting the 2012 Supplemental Law Enforcement Services Fund Allocation and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment and Training ....	254
23.	Resolution No. 2011-103, Approving the Cancellation and Termination of the 1984 Lease Agreement Between the City of Banning and the Banning/San Gorgonio Pass Area Chamber of Commerce ....	257

- Open for Public Comments
- Make Motion

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

**VI. CONSENT ITEM**

1. City Council Resolution No. 2011-105 and Housing Authority  
Resolution No. 2011-05 HA to Participate in the Riverside  
County Mortgage Credit Certificate Program . . . . . 268

**Adjourn Joint Meeting of the Banning City Council and the Banning Housing 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. Review of Sign, CUP & Design Review Fees & Rates *(Jan 10th)*
3. Policies & Procedures for Applicant re. Projects and Applicants for  
Commissions & Committees *(Commissions & Committees)*
4. Water Resources Report *(Workshop) (Feb.)*

**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

03/01/11  
SPECIAL MEETING

A special joint meeting of the Banning City Council and the Banning Library District Board of Trustees was called to order by Mayor Hanna on March 1, 2011 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Botts

BOARD OF TRUSTEES PRESENT: Trustee Marianne Hamdorf  
Trustee Tracey Wells  
Victoria Hatch, President

BOARD OF TRUSTEES ABSENT: Trustee Jeff Ho  
Trustee Clarence Taylor

OTHERS PRESENT: Andrew Takata, City Manager  
June Overholt, Administrative Services Director  
Duane Burk, Public Works Director  
Zai Abu Bakar, Community Development Director  
Fred Mason, Electric Utility Director  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk  
Nancy Kerr, Library Director

PUBLIC COMMENTS

Mayor Hanna said as many of you know Bud Mathewson is now living at The Lakes and The Lakes has this wonderful program where they give a donation in the name of a person who referred someone to The Lakes so she talked this over with Bud and he would like a \$500 dollar donation to be made to the library for historic preservation purposes. He would also like to encourage anyone who would like to join him in making a donation for historic preservation purposes to do so.

Mayor Hanna also mentioned that Councilmember Botts is unable to be here tonight because he is in Washington D.C. with Riverside County Transportation Commission on business on behalf of the City and the region.

## DISCUSSION ITEMS

1. Expansion Plans (*parking lot issues*); and
2. Community Redevelopment Funds

President Hatch said that she passed out the Strategic Plan for Banning Library District May 2010 (Exhibit "A") but also particularly passed out a sheet that begins with Library Parking Lot Expansion Options March 2011 (Exhibit "B"). If anybody has been to the library between the hours of 3 and 5 p.m. you cannot find a parking spot either on the street or in the parking lot. We have been in conversations with Mr. Demissie and have come up with some items that we need to look at and one of this things that has come to mind was whether there were any redevelopment funds that might be available to help us in that process.

Nancy Kerr said first of all we have two options to expand the parking in the library. The first would be to expand the parking to the west of the building on to the property that the Board did purchase just prior to her arrival here. The problem with that is that there is a big drainage ditch in between the existing driveway at the library and the property in question. She knows that is an expensive proposition and they have spoken with the City a couple of times about that issue. To do the ditch remediation they have received estimates that it would cost us a minimum of \$60,000 just to put in the piping and fill in the ditch and about \$35,000 to grade and pave the parking lot and that is not including any civil engineering or moving of power poles so that is kind of a cost prohibited idea of expanding their parking. Her understanding was that when the property was originally purchased by the Board they had had some gentlemanly conversations with the City about the City helping out with the ditch and she knows that the economic situation has changed but they are still looking for some assistance in that area. The other possibility would have been to possibly expand the parking to the north of the building on property that they do not currently own but have spoken to the property owner about potentially purchasing that property but that would not initially entail the ditch remediation but probably would in the future. As you can see on this sheet we have actually had a topographical survey performed by RBF and they have counseled them on what the next steps would be if we were to expand to the west and Ms. Kerr listed those steps as listed in the Exhibit B. Since this is such an expensive proposition they have been trying to get all the information that they can about it before proceeding in any direction.

Mayor Hanna said that she knows that City staff has been involved in some discussions and are they any comments from staff.

City Manager said this has been discussed from a staff level and is in the Redevelopment Agency and the CRA Board may choose to fund part of that project. As you know we are going through some transition as to what is going to happen with the State budget and if they take redevelopment monies it is probably better to spend it than lose it to the State. Also the electrical poles were another issue and possibly Fred Mason, Electric Utility Director could address that issue but also he asked the Public Works Director about how much it would cost to do a culvert for that ditch and it was about \$60,000.

Fred Mason said that they had their planning representative look at the situation and there is one pole that is right there and to relocate that to Nicolet near the curb we would have to get a

right-of-way and talk with the library and the cost would be about \$5,000 to \$6,000 dollars to relocate that pole.

Community Development Director Zai said basically what we would be looking at in coming back to the CRA Board we are looking at the 2007 Bond Funds and she is just thinking about the Stagecoach Plaza that the Board is now moving forward with and so that would be a potential source of funds.

City Manager said one of the things that you will have to look at as we take it to you is what else you might want to spend those funds on as far as what other projects that could happen such as entry signs and those types of things that are on your radar.

Mr. Burk said the channel in question is somewhat City-owned and somewhat flood control owned. It is part of the master plan and the portion that you are talking about specifically is the area that goes through the property you bought that used to have the home on it however, the channel to the north of that would still remain open and the one consideration is that he would want direction from the Agency Board is to look at the overall impact of that channel. The channel itself even if they went in there and piped it there is still somewhat of a liability to the City. A portion of it would be piped which is on the Catholic Church property done years ago and this would be piped and then we would have this open portion of channel behind some properties between First Street or Second Street and San Gorgonio and again this would be a liability to the City. If you do pipe something like that, there is always the fear of debris blocking that pipe and then all of sudden we are washing out a parking lot that we are going to be buying with our insurance. The \$60,000 that you are talking about is just the portion that you bought however, there is further consideration to the north that may need to be looked at and he thinks that it would be imperative to not only the Agency Board but the Council for consideration as it relates with our relationship with Riverside County Flood Control and where they are kind of going with that because if we pipe it, it is something that we have to maintain and would be our liability.

Mayor Hanna asked about the property below them at Central School.

Mr. Burk said actually the Redevelopment Agency just converted that trapezoidal channel that went by the Record Gazette and on San Gorgonio Avenue and that is all piped and belongs to Riverside County Flood Control and we built that box to their master plan.

Mayor Pro Tem Machisic said one of the things that we really need to put our finger on is costs. The only numbers he sees on here are at \$60,000 and would that be acceptable to Flood Control for installing a pipe.

Mr. Burk said that Flood Control would not allow a pipe to go in there and they would not maintain the maintenance of it. That channel currently belongs to the City so it would be consideration for the City to put the pipe in and accept that liability until the master plan of the box gets built up San Gorgonio then over to Fourth Street. So it would be a temporary fix. We currently have the liability as a trapezoidal channel and what they are saying is that the better use of the property is to pipe it and pave it and he is saying he is all in favor of that except we need to look at it further.

Councilmember Franklin said that you stated that the Flood Control District actually would be partially responsible and to what degree are we responsible and to what degree are they, and how far does that go?

Mr. Burk said the City along with the Riverside County Flood Control Water Conservation District has a master plan and the City can build an improvement that meets the requirement of the master plan and then dedicate that to the Riverside County Flood Control as long as they plan check and supervise it like we did on Line D (this is also Line D).

Councilmember Franklin asked if the Flood District had any plans to actually do anything in this area or do they do any kind of contribution to getting done.

Mr. Burk said no contributions or anything that is temporary. This is part of their master plan. We had been approved here recently in 2011 for a project to go on Fourth Street north and then all the way up from 8<sup>th</sup> Street and Cottonwood which stopped but Flood Control will be starting that project all over again and that project is budgeted, designed and approved. This portion of Line D is not. However, it is on the City's wish list to the Riverside County Flood Control.

Councilmember Franklin said so they could pay for it. Mr. Burk said if we did the permanent master plan; yes, they could. Councilmember Franklin said would there be any value to doing it as temporary versus permanent.

Mr. Burk said he thinks that would be a question to the Library District Board as it relates to timing because the way he understands it they bought the house to the west in anticipation that they would have more access with the idea of just putting a steel plate over it or pipe it but he will let them speak to that but more of a temporary application as it sits now. He said he looked at the bid they received from a Mr. Weaver and his number was significantly less and his question at that time was it prevailing wage because we pay prevailing wage so the number would be a little higher. Again, it would not be part of the master plan and it would be ours to maintain and he would like to caveat that we would need to look at the whole thing and what they did on the church property and how this would all tie in.

Mayor Pro Tem Machisic said that you have a number on this sheet of \$60,000 and how did you develop that number.

Ms. Kerr said that they did have three different contractors come out and the one that Mr. Burk mentioned was the lowest of three bids. And that does not necessarily include any other extra civil engineering needed or anything like that. That bid was for basically for putting in the pipe and filling in the ditch.

Mayor Hanna said you mentioned that we would have liability for the maintenance of a temporary facility but right now don't we have a liability for the danger of it as you saw the flood conditions in effect a child or someone could be swept away so there are dangers right now.

Mr. Burk said this channel always used to go through Repplier Park and to Linda Vista at Wilson Street. It was an open channel like it is now and then Flood Control came in built the box through Repplier Park and it tied into Fourth and about George. That portion is taken care of; this is the remaining piece. What the City has done is built some lower infrastructure dedicated to them and this is kind of the piece in between that is missing. And so it is not very high on the radar and if you look at the overall flood control problems that are there, there is not a lot of surface flow that goes there. The City does still have liability and if you put a pipe in there, he thinks it would work however, at the same time it needs to be further looked at.

President Hatch said the concern that she has had along with the Board is that we knew there were bits and pieces but we didn't know the connection and we knew Flood Control had some of that because they had done earlier work in the city of Banning. The issue for them is that we see it as a liability and we also recognize that a temporary fix may or may not be the best way to go and that is their concern because they see it as a liability issue. She is rather surprised that it is not on the radar for the County Flood Control because it goes under Nicolet Street and it is open right behind Central School which to her would be a liability with children and she realizes that they fixed some of the problems up above through Repplier Park but every once in awhile the rains through the Pass area are significant.

Mr. Burk said in regards to that not being on the radar he would like to clarify. This project is on a master plan for Riverside County Flood Control and it is called Line D. And this portion may not be on today's radar however, we set aside their request on behalf of the Council on the most and highest importance along with where they may get funding. And one of the reasons we do that is because a lot of people in flood areas have to pay flood insurance and so when we get these pieces fixed then the property owners get a letter from us saying that you are no longer in the flood control area.

Mayor Hanna asked the Council if they would like this item to come back to them and look at both the limited temporary fix versus the whole situation and what kind of costs would be involved.

Mayor Pro Tem Machisic said personally he would think that you need to have accurate costs before you move ahead whether it is temporary or whatever.

Councilmember Franklin asked how many parking spaces you anticipate this would open up. Ms. Kerr said it would be at least 15 and that would be dependent on whether or not we go to the west or to the north.

Councilmember Franklin asked if they have worked with the church across the street. Ms. Kerr said that is the church's parking area and often that is full, as well as, the library parking lot.

Councilmember Robinson said that obviously you much have a priority list with Flood Control and could we have access to that list to see where this is at on that list now and if it is that important and next to an elementary school he would think the priority would be way up there somewhere and maybe we need to talk to Riverside County Flood Control and see if it could be moved up the list. If they do that, then maybe we are shortening the time frame it is going to take to get this done by Riverside County.

Mr. Burk said we can definitely look at the overall impacts and where we stand on the priority. He said that this whole thing needs to be looked at and the piece they are looking at can definitely be looked at and the numbers checked a little bit more along with the engineering. But he can tell you that it cost \$1.5 million to do Line D and you are probably looking at \$1.5 million dollars to go up San Geronio and get rid of that piece.

Mayor Pro Tem Machisic said as we look into this thing we need to put it on a time line because of the political situation in Sacramento.

Boardmember Hamdorf asked at what point does the temporary fix have to become a permanent fix.

Mayor Hanna said she thinks that Mr. Burk said it really may never be taken out. She said that she did a temporary parking lot in Riverside once and it lasted twenty years.

City Manager said that we will look at the time line and look at what it is going to take and then come back to the Agency Board. We do have in mind some projects that we will be bringing to the Board just because of the time sensitivity of redevelopment agencies right now.

Mayor Hanna opened the item for public comments.

John McQuown, City Treasurer, said he sees that there are two options here and has the second option not been pursued with Mr. Demissie. I see that you approached him with a price but it sounds to him like there would be a lot less hoops being jumped through if we thought about buying that property and I think I also hear you say 15 parking spaces.

Ms. Kerr said at least 15 spaces and actually Mr. Demissie's property is larger than the property on the other side of the ditch. We have approached him and he had been approached a couple of years ago about the same thing and did not choose to sell his property at that point. He indicated that he is interested but that he is now doing some research and looking at what property is going for given the economic climate right now. We have tried to stress to him that the property is bounded on all sides by the library, the church, etc. and probably that is not terribly interesting to most potential buyers but we do not have a firm offer.

Mr. McQuown said maybe he is reading this wrong but it would seem to him that might be the avenue to pursue because what he is hearing from Mr. Burk and the Flood Control and the liability aspect and everything like that especially in these economic times when prices are down obviously he has you a little bit but you have another option. So when he is reading this he sees that Mr. Demissie has not agreed on a price but that would be something I would certainly pursue in conjunction with the flood channel.

President Hatch said that they have actually been in touch with him recently and are in conversation but at this point he wants to do some research to find what the going rate is. We have not ruled that out my any stretch of the imagination but we have not heard anything back.

Boardmember Wells said that still wouldn't solve the liability problem. If you have seen that ditch it is very deep and narrow and if you get into it, you wouldn't be able to get out. It is not just school kids. We have a lot of kids around the library every single afternoon and that ditch is a problem.

Councilmember Franklin asked if they have talked about joint use of Mr. Demissie's parking lot; sharing it.

President Hatch said at this point it is just a field. It is blocked in by the property that he owns and he and his wife have offices there and then to the west is the Roman Catholic Church and to the north is Life Point Church and it is really land-locked.

Mayor Pro Tem Machisic said that when staff comes back with a report he would really like to see a diagram of this area.

### 3. Community Needs

Ms. Kerr said that this was really to get together to open a dialogue. ICMA has a publication called "Maximize the Potential of Your Public Library". You probably haven't had a chance to read this but library uses and affiliations with the community have really changed over the years and libraries have become much more community gathering places and community centers and day care centers and job assistance centers and just a little bit of everything and we wanted to make sure that we keep in touch with everybody about community meetings. She has been in conversation also with the director of the Beaumont Library and we are trying to look at the needs of the entire Pass. They are crowded, we are crowded and we are busier than ever as they are and library funding has diminished somewhat and we are lucky to be a special district right now and have not taken as quite a hit as some libraries have but even so we just want to make sure that there aren't needs in the community that you might be hearing of that we may not. One thing that we do hear of on a regular basis for example and would call it our "looking at future plans for potential expansion of our building" would be things like the community asking for meeting room space. So they just wanted to share their Strategic Plan with the Council and some of the assumptions. They expect their service population to grow as the economy rebounds for example we definitely now serve a diverse group of people of all ages, they help people who are technologically illiterate, they hold computer classes, and they have an amazing historical collection. They just want to make sure that the city and the City Council are aware of what the library has to offer and that you would have the chance and feel open to telling them the needs that you have identified in the community that they can help fulfill.

President Hatch said the concern that she has is that there are really a lack of computers in homes in Banning as may not be true in a lots of other places. Most applications for jobs now are paperless and the only place people can go to apply for jobs are public libraries. To her that is one of the technology parts of library boards today are sometimes not always recognized. But any job application today has to be done on a computer. She thinks that this is terrible important and she thinks that the grant that the library director applied for this year particularly for seniors for those who feel technologically challenged it is a marvelous opportunity for folks to come in and even learn how to get email and there are classes that have already begun for



that purpose. This is something they feel is very, very important on the Board of Trustees having computers available for the community.

Mayor Hanna said if she could share some idea of the numbers of people coming and when she heard these numbers in the past she has been amazed and thought that we really haven't included you in our development of revitalizing our downtown.

Ms. Kerr said that they don't have a door counter at this point and probably something that they should have because they are incredibly busy as are all libraries in the area. As President Hatch stated the more the economy goes down the busier libraries get. We have a steady flow of people who are filling out applications for employment, every afternoon they have anywhere from 35 to 100 kids that visit us and some of good reasons and some for not. Some for no other reason that there is no where else to go after school and so we have a good on-going dialogue with both schools and the police department to help us handle the flow of kids. We have had requests for more adult programming and more programming for seniors who don't necessarily live in some of the planned housing developments like Sun Lakes. That is something at this point that we are kind of bounded by space unless we start doing after hour programs. They are kind of looking at taking their show on the road so they did get grant funding to fund a laptop lab and other items that are portable so that is something they could definitely do classes at other places in the community as well. In some cases all we are looking for is space.

Councilmember Franklin said in regards to the issue of space several years back we heard a little bit of what you were thinking of in terms of expansion and can you give us a little bit more information about what are your plans are for expansion.

Ms. Kerr said we are looking at this at the same time as Beaumont's library because basically they have the exact same issues that we do. They have a small older building that is used more and more so they are getting together with them with some community members, a couple of board members from each library and some community leaders and we are trying to get together as kind of a task force to look at what are the information needs and the library needs in the community before even looking at doing something that is very costly and expanding the building. The main issues they have right now is that they are quite inaccessible. The main thing they would like to add is definitely adequate restroom facilities and community meeting space. Collection space is tight but doable for the moment and staff luckily gets along together.

Councilmember Franklin asked if they had any timeframes as to what you are looking for to move to the next step.

Ms. Kerr said that is going to depend on how great the needs are that we define first of all and we have had a joint meeting with the Beaumont Library with Richard Hall who is affiliated with the State Library and who has talked to them about timeframes with building projects. Right now funding is difficult and bond issues are not going too well in this economy and that is understandable. A part of this joint task force will probably be at some point to hire a consultant to look into how best to look at funding for any sort of expansion.

Councilmember Franklin said what impact is the County going to have on the Banning/Beaumont Library System because she is hearing they are going to build a state-of-the-art library in Cabazon so what impact will that have on you.

Ms. Kerr said that right now Cabazon is part of their library district. They have a tiny little library that is only open four afternoons a week and it is not particularly well attended because of its location. The bids have gone out for the Cabazon project and bids are not due until March 10<sup>th</sup> and they will not know at that time whether Cabazon will be part of the initial part of the project or not. The first priority there is for the daycare center at the adjacent park and the library is going to be squeezed into the first part of that redevelopment project in Cabazon only if the bids come in low enough. So they will not have any timeframe on that until after March 10<sup>th</sup>. The facility that is planned between 5,000 and 6,000 square feet but that is five times bigger than they have right now and the location would be right next door to the community center and an elementary school. What we find a lot is that people do not tend to necessarily have transportation or travel a long way for library services so we fully expect that most of what the community of Cabazon library would serve would be Cabazon.

There was some discussion in regards to the different age groups of people who come to libraries and what libraries will look like in ten years regarding books.

Mayor Pro Tem Machisic said maybe the next time we negotiate a contract with Time Warner and Verizon there maybe something in it for the library.

City Manager said that they currently could do programming actually programming now on our government access channel if they wanted us to film a session they were having or if they want to do certain things we could actually put it on the government access channel. Right now Mt. San Jacinto College is looking to expand their television studio and we are looking at getting an education channel for them. So there are things that we can do currently under the current contract.

Mayor Hanna said she went to the library website and the video clips you have of the various children's library was excellent and the type of programs certainly could be on our local access channel.

Councilmember Robinson said in looking at the first part of the library's strategic plan it said it was for twenty years so there must be milestones and is he looking at this wrong.

Ms. Kerr said that this was a short term plan that was done this year. There was a consultant that in 2007 did a twenty-year plan which frankly kind of surprised her a lot when she first got here because she had never seen a 20-year plan for a library just because information changes so quickly so they did use a lot of the information which was very valuable that the consultant's looked at when they formulated a 20-year plan but this is a very short term strategic plan based on the 20-year plan. They expect things in this little plan to be accomplished in 2 to 5 years.

Mayor Hanna said that one of our biggest goals is economic development and what we all know about our community and actually Riverside County is that we are not a highly educated workforce and so on and you are dealing with illiteracy and that is one issue that you take on

appropriately for early childhood and for adults as well and bilingual kinds of issues and it seems that we could work with Mt. San Jacinto College and the library and that you are part of the whole continuum in developing a workforce and that is something we should talk about and see how that can work together for Banning's benefit. It happens to us frequently that we have potential employers coming to talk to us and there we can work together in figuring a plan to develop employees for them.

Councilmember Franklin asked if they were working with the school district at all to offer some of the information and training that you are doing because we talked about your offering some technology classes and they are offering some. Do you partner or talk to them?

Ms. Kerr said that the high school librarian is new this year and we have had multiple conversations with her and at this point most of what she is offering are evening classes for adults and they are a little more advanced and specific than we have been able to get to so far. So there is not a lot of overlap at this point and yes, they do talk to her.

Councilmember Franklin said along with that since you sit so close to a middle school and an elementary school and one of the needs is more space have you talked to either school or the school district about maybe sharing because the time you are going to need that space is when the kids are out of school and have you talked to them maybe about expanding some of your programs at the schools?

Ms. Kerr said they haven't done a lot with that so far and some of the issues come down to finances and trying to staff two buildings. Our current staff is pretty small and we are certainly adequately staffed when everybody is there and today by a variety of reasons they were down by four people which meant a little bit of chaos and so trying to make sure that we had employees at the busiest time both at the library and in another venue would be at this point impossible but not impossible if we had adequate funding.

Mayor Hanna said that the Dorothy Ramon Center is renovating the old post office beside them and is going to be a large community room and will not serve all of our needs but its one new resource and they hope to have it ready by the Art Hop on May 7<sup>th</sup>.

4. Facility Usage
5. Developing Common Goals

Ms. Kerr said that we have kind of lumped a few of our discussion items in the same number here and in regards to common goals like she said what people might be needing from the library that they are not getting or what we could expand upon.

Mayor Hanna said in looking at this ICMA (International City Manager's Association) publication of "Maximize the Potential of Your Public Library on page 11 at the conclusion it has some ideas for the Chief Executive Officer, City, County or Town Manager, Mayor or County Executive and the third point is to include the library director in strategic discussion even when the connection is not readily apparent including such areas as public safety, emergency management, economic development, gangs, school dropouts, early childhood

education, workforce development and cultural inclusion and that is really a great list and she thinks there are some areas they could explore further in joint meetings.

President Hatch said that she would agree with that and thinks that their director has done an incredible job in introducing some things that they hadn't looked at and been open to in the past and some of that in terms particularly, the bilingual story time that is now happening which is a first at the Banning Public Library and to her that is very important and including and expanding a collection for a variety of folks that we may have not included in the past and being aware of that.

Councilmember Franklin said that we look at a list of things that we talk about are common goals one of our issues has been what can our young people do when they are not in school and that would be an area she would like to see us talk a little bit further with our summer coming up and we do not have a citywide program for our young people. You already have a lot of them actually at the library so if there was a way to develop maybe a partnership between the City, the schools and the library.

Ms. Kerr said that they do have a very popular summer reading program and are definitely looking to expand upon that and they do have hundreds of kids who sign up every year for summer reading and they read a certain amount of books and we give little prizes and incentives and at this point they are going to local businesses for some prizes and things like that but anything you can think of that we have not to advertise our summer reading program as something else to do over the summer is definitely welcomed.

Councilmember Franklin said she was thinkinh of something even more expanded because she knows that her kids went through the program and they came and checked out their books and took them home but did not spend that time at the library and some kids do but something that has the kids more hands on. She knows that you have a garden there which is a great idea and maybe more hands on at the library because when these kids are not in school or in the library they are hanging out somewhere.

Ms. Kerr said that summer reading is kind of about reading but we have many, many programs for children and families. We have a regular garden day and have both paid performers that come in that do programs that are educational with everything from wildlife to fossils to dinosaurs and things and we also have home-grown programs with crafts and activities for kids over the summer so the reading is only a part of it. It actually is an entire program that goes through June and July. The age group is from birth to high school.

Boardmember Wells said it would be nice to include more of the teenagers. We don't have as much to offer them and if we worked with the City and the schools that would be excellent.

Mayor Hanna said it would be great if we could get BPAL (Banning Police Activities League), the Boys and Girls Club, the school district, the library all together to talk especially about the summer. She is very concerned about whether children are getting food, getting a meal and so forth and it is beyond probably any one of us but maybe if we at least get together we might come up with some new ideas.

Councilmember Franklin said also healthy living. Mayor Hanna said that Michelle Obama has a program called "Let's Move" and the City Council met with the school district board and we are going to be looking at that together and that is certainly something the library could be involved in and when we have our 2 x 2 meeting with the school district we could possibly have a representative from the library to meet with us on that item.

President Hatch said she thinks that we do know that there are some children that do not get three meals a day during the summer or even one square meal because school was the only place that they did get fed and whether we can work with that in some way on those kinds of issues would be a concern for her.

Councilmember Franklin said she sees that kids use the library not only as a social place but also as a safe place so if there is a way to expand on that because she does see kids that go in the library because they don't have someplace to go and don't want to hang outside with the other kids.

Ms. Kerr said that they did have Chief Purvis come and speak with the staff this past week because like many libraries we are caught between a rock and a hard place. Most of her background is children and youth services and she is all for children using the library. But we have children who are there to use the library and we children who are there to cause trouble. We have spoken to the police chief and several of the schools about what to do with the children who are there when they are supposed to be in school. They call the police on a regular basis and child protection services on a regular basis and they are a mandated reporter. They try at the same time to offer programs which will stimulate and educate people while at the same time babysitting the kids who are just homeless after school. We are kind of in that place that most libraries are which is that we want the kids to be there but we have very, very firm rules of behavior that we are trying to crack down on as well and that is something we have been trying to be in closer contact with the school principals and deans and the police department. We figure that if all of us together try and help some of these kids who really have issues then maybe we can get something accomplished.

Councilmember Franklin commended the library for having longer hours which is really good for those people who are working that are trying to get there after work and it has been a big help.

Councilmember Robinson said it sounds like we are just an inch away from having some type of a task force that would include the library, our parks and recreation department, our Boys and Girls Club, our YAC (Youth Arts Council) group, and the high school. One person from each group sitting around the table saying look we are going to take care of this group from 8 to 13 and you have this group and we have the computers over here and let's all go over to this building for the computer work, etc. it seems like we need to get a little bit of bonding going on with all the groups in the city. Almost every meeting we go to we hear that this is one of the biggest priorities that our citizens have is what do we have for our youth to do. We also have the seniors in our city and the middle age people saying we are willing to help; give us something to do. We see that at New Horizons School where they are working with the Susan B. Coombs kids everyday and it is a successful program now if that is expanded throughout the entire city that would be a win for everybody. He thinks the hands are there and we just need

to get the groups all talking together. He said that he sees a lot of overlap. There are people getting new computer labs right now and not sharing it with the other groups and he doesn't know why we can't do that. He called for a task force of all of these groups.

Mayor Hanna said that she would be glad to do that.

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

City Manager said one of the ideas that we have been researching is if the library would come under our development fees which it does not. When they did the study you couldn't even include it under our general buildings but the Board is able to actually pass an ordinance in which you collect development fees so as these people come in and build houses they have to spend a certain amount of dollars which would go towards expansion of the library so that is another way you could actually use to get money. So that is something you should consider and our planning staff would be more than happy to sit down with you and you would also need to have a study done.

Mayor Hanna said lets do this again and we can work further together in advance or our next meeting.

City Manager said if the Council and Board would want to meet twice a year, three times a year or four times a year it would be nice to target it so that we can schedule it ahead of time because it does take a lot of time to get everybody's schedules so they match so that way you will have it ahead of time. So is there a magic number that you would like to see?

President Hatch suggested meeting a minimum of four times. City Manager said once a quarter? The Board and the Council said that would be okay. City Manager said that he would work with Nancy Kerr and they will come up with some type of dates that you can put in your calendar ahead of time.

President Hatch thanked Mayor Hanna and the City Council for inviting them and having this conversation. She thinks it is the beginning of having something important.

#### ADJOURNMENT

By common consent the meeting adjourned the meeting at 6:03 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.

3-1-11  
Spec. Jt. Mtg.

## STRATEGIC PLAN FOR BANNING LIBRARY DISTRICT MAY 2010

This Short Term Strategic Plan is an offshoot of the much longer "Twenty Year Plan" prepared by consultants for the Banning Library District in 2007. As the community climate, the advances of new technologies and the realities of a changing economy have all had their effects on any planned course of action, it was felt that a shorter term action plan was needed to modify and supplement the Twenty Year Plan. The needs, assumptions, and goals listed below will be revised on an annual basis early in the calendar year, prior to the budget planning period for the upcoming fiscal year.

### Identified Needs:

- Balancing the needs of an aging population with a large teen population
- Reaching out to non-library users or those new to the area
- Providing access to computers, internet and web resources, and using and instructing use of technology to expand library services
- Partnering with the community to increase awareness of and use of library programs and services
- Providing a larger and more efficient physical plant to serve area patrons, with space for programming, meetings, quiet study, tutoring, and reading
- Providing the best possible environment for staff by enabling creativity and rewarding innovation.

### Underlying Assumptions:

- The size of the library's service population is expected to grow when the economy rebounds.
- The library now serves, and will continue to serve, a diverse group of people of all ages.
- Materials and services should be offered in a variety of print and electronic formats.
- The use of technology has changed to way people seek information at home, at work, and at school.
- The library plays an integral role in helping people who are not technologically literate to navigate online information sources.
- The library needs to inform the public of what it offers to increase library use.
- Applying for grant funding is an important way to supplement the library's budget to help fill some of the library's needs.

### Five Main Goals

- Goal 1: Provide an excellent collection, targeted to the community's needs and interests
- Goal 2: Provide excellent customer service to all patrons and expand services to the community
- Goal 3: Employ sufficient staff, and foster a positive work environment for all staff that encourages creativity
- Goal 4: Provide user-friendly technology that supports our public service goals

14

Goal 5: Create a warm, welcoming, and fully equipped physical environment for patrons and staff through space planning, expanding, renovating, or replacing current facilities

**To meet Goal 1, (collection) the library will:**

Define and streamline the selection process, which includes determining who will select and order materials for each area, and examine past spending, re-allocating resources when necessary.  
Revise and update the collection development policy.  
Provide more materials for ESL patrons, both children and adults.  
Evaluate the collection for currency and subject area coverage, weeding outdated materials.  
Keep track of gaps in the collection, and purchase materials to fill those gaps.  
Target digital resources to community needs, and make these resources known and accessible.  
Monitor and respond to patron requests for materials.  
Display and advertise new materials both in the library and through the website.  
Organize, catalog, digitize, and advertise our extensive local history books, photographs and resources.  
Train staff in reader's advisory and reader's advisory tools to improve marketing of the current collection.

**To meet Goal 2 (Services), the library will:**

Expand programs and services to meet the needs of teens, seniors, ethnic groups, and literacy programs.  
Form a teen advisory group to better understand and serve teen patrons.  
Establish a "book babies" or similar program to attract parents of babies and small children to the library  
Evaluate current levels of services, possibly enlisting the aid of focus groups from the community or surveying.  
Explore options for self-service and remote access, as in self check-out and access to databases, etc. from home through the library website.  
Provide more literature-based programs and cultural events.  
Provide travel and training opportunities for staff and board members.  
Use "branding" to promote the library to the community, which includes developing a recognizable logo to use on the website and in all correspondence and developing a short mission statement catch phrase to use in conjunction with the logo.  
Implement an e-newsletter for patrons who provide an e-mail address.  
Look into providing outreach services to homebound patrons.

**To meet goal 3 (Work Environment), the staff and board will:**

Assess the amount and types of staff needed which is optimal for public service, evaluating levels of staffing at regularly specified intervals.  
Assess the management structure and create a flow chart.  
Establish standards and procedures for hiring and training new staff.  
Provide ongoing in-house staff training, including at least one staff in-service training day per year.  
Establish a procedure for assessing staff problems and concerns.  
Hold workshops with staff to establish and identify best practices.  
Provide opportunities for training and visits to other libraries.  
Compare salaries and benefits of similar organizations.



**To meet Goal 4 (Technology), the library will:**

Implement a new automation system.

Train all staff on use of the new automation system.

Conduct an inventory of all computers and electronic equipment, and identify items that will need to be replaced.

Provide staff training on catalog, databases, and other new technologies.

Launch a new user-friendly website and formulate a plan to make sure that the website is updated regularly.

Keep current with trends in social media (such as Facebook) and use it to promote the library.

Ensure that our electronic resources are easy to use, developing user guides for patron use.

Train staff on troubleshooting problems, and who to ask.

Establish technology competency standards for existing and new staff, offering training where needed and requested.

Evaluate and acquire new technology on a regular basis.

**To meet Goal 5, (Environment), the library will:**

Work on a plan for upgrades of the existing buildings and expansion, which includes cost estimates, expansion of parking and ditch mitigation.

Obtain staff input on all facets of possible facilities renovation and space planning.

Assess the need for community meeting space, and formulate policy for the public use of library space.

Improve signage, both inside and outside.

Evaluate inside and outside lighting.

Schedule regular safety training and earthquake safety procedures.

Develop long-range facilities plan.

Study trends in population growth, changes in technology, and demand for services.

Participate in cooperative ventures with local government and other organizations.

3-1-11  
Spec. Jt Mtg.

#### Library Parking Lot Expansion Options March 2011

- 1) Expand the parking to the west of the building, on the adjacent property already owned by the library. The ditch between the library driveway and the vacant lot presents the costly obstacle to this solution.
- 2) Expand the parking to the north of the building, on property currently owned by the neighboring landlord, Mr. Demissie. Mr. Demissie has not agreed on an acceptable price for this property.

We have had a topographical survey performed by RBF, and have received counsel from them on what our next steps would entail if we are to choose option #1. The steps would be as follows:

1. Submit a planning development application to the City of Banning.
2. The City routes the application to all appropriate agencies, such as flood control, for their comments.
3. We relay comments and conditions to RBF (or another company) to allow them to prepare cost estimates.
4. RBF along with library representatives schedules a pre-application conference with the city. One thing to find out there is whether or not we need a Conditional use Permit Application or a Conditional Use Permit Amendment Application, depending on how the library was initially permitted. We would also submit our site plan and topographical survey to the planner for comments.
5. RBF has given us information on the pre-application conference, the Uniform Development Application, and an Environmental Information Form. They estimate that it would take them 8-10 hours to complete those steps. The next steps will depend on how many agencies require more information after application review, to see it through the planning and permitting stages.
6. Our initial estimates of how much it will cost to take care of the ditch include a low bid of \$60,000 to install the piping and fill in the ditch, and \$35,000 to grade and pave the parking lot. These amounts do not include the above steps toward permitting, any civil engineering needed, or any potential relocation of electric poles.

If the library purchases the land to the north from Mr. Demissie, the parking could initially be expanded without taking care of the ditch, but the ditch behind both properties would eventually have to be taken care of to be able to use the property to the west.

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

06/07/11  
SPECIAL MEETING

A special joint meeting of the Banning City Council and the Planning Commission was called to order by Mayor Hanna on June 7, 2011 at 5:03 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

PLANNING COMMISSION  
MEMBERS PRESENT: Commissioner Barsh  
Commissioner Briant  
Commissioner Hawkins

PLANNING COMMISSION  
MEMBERS ABSENT: Chairman Arterberry  
Commissioner Siva

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

PUBLIC COMMENTS

There were none.

DISCUSSION ITEM

1. Pardee Homes – Butterfield Specific Plan and Draft Environmental Impact Report  
(Amendment to Deutsch Specific Plan)  
(Zai Abu Bakar, Community Development Director)

Mayor Hanna said unfortunately due to State law she lives within a block of Highland Home Road which is the easterly boundary of the Pardee Development. By the way one of our Planning Commissioners Mr. Siva lives in another neighborhood on the other side of Highland Home Road near Kingswell and he also has a conflict of interest by State law and so he chose not to come tonight and he also had another commitment as well. This is very definitive kind of law that states that she cannot speak to Planning Commissioners, her fellow City Council Members for City staff about this Pardee Home Development. Possibly at some point in time once all the major decisions are made and there are several components to this development that after Phase II she may be able to be involved in future phases that are no longer within 500 feet of her home but it is just the nature of the conflict. She does retain however first amendment rights as does Mr. Siva to speak publicly as a citizen so she must leave now as the presentation is made and she does plan to return during the public comment period and once the public comment period is completed she must leave again. She cannot influence deliberations either intentionally or unintentionally by her presence. Mr. Arterberry who is not here from the Planning Commission also has another conflict of interest because he is a realtor and may be involved in the sales of homes regarding this development.

Mayor Hanna turned the meeting over to Mayor Pro Tem Machisic.

City Manager said as you know this is called the Butterfield Specific Plan and they currently have a 5,500 home subdivision that was approved prior to his arrival and this has been work that the staff has been working with the Pardee Homes individuals and they are about to do a study session. It still has to go through all the entitlements and there will be plenty of public hearings in regard to that and he believes on Monday the EIR (Environmental Impact Report) was released also.

Director Zai, Community Development Director said as the City Manager has indicated we have been working on this project for nearly two years now and prior to her arrival. Before getting into the project she introduced members of the City staff team and also consultants for the City and she also introduced members of the Pardee Development team. Director Zai stated that Pardee Homes bought the property in 2000 and they are proposing to develop that property which is about 1,543 acres at the corner of Wilson Street and Highland Springs Avenue. The property currently has an approved Specific Plan called the "Deutsch Specific Plan" and so if they were going to move ahead today they could develop that Specific Plan with 5,400 homes including a golf course, parks and elementary school site, fire station, and things like that but since Pardee bought the property environmental laws and land use regulations have changed since the Deutsch Specific Plan was approved the City and Pardee discussed that the Specific Plan had to be updated to reflect the current regulations and also the environmental laws so that is why we are here today and the proposed amendment to that Specific Plan. Today we will go over the highlights of the project.

Director Zai said that she, Mike Taylor, Vice President of Pardee Homes and Duane Burk, Public Works Director will go over the various topics in the presentation (see Exhibit "A"). Director Zai went over the location of the project and an aerial view project site of 1,522 acres that Pardee purchased from Deutsch 2000 and an addition of 21 acres next to the golf course

will be added to the project and that will require coordination with the County of Riverside and the City of Beaumont.

Mr. Taylor clarified the reason that property has been included in the EIR and in the Specific Plan essentially the City of Banning has two options for extending Highland Home Road. Highland Home Road could extend to the west and connect to Brookside Avenue or in the future it could actually extend to the north and connect to Cherry Valley Boulevard. Those are the two options that are included in your General Plan and either could potentially happen. We have had to include that in case the City were to choose the option of wanting Highland Home Road to connect to Brookside. At that point there would have to be discussion with the landowners there which are the Highland Home Country Club people to purchase that property and to acquire the right-of-way. There is no current right-of-way acquired and that property is not in the city of Banning and in fact, it is not even in the sphere of influence of the city of Banning; it is in the sphere of influence of the City of Beaumont he believes so what would happen through this process is basically pre-zoning of the property so that it has been looked at and covered in an environmental document so that if the City chose to negotiate and discuss things with these property owners it would have already been looked at in an environmental document. So that is really the purpose of it being included in this discussion.

Director Zai went over the project history giving significant dates, the General Plan and Current Entitlement, the differences of Land Plan, Land Use Comparisons, and Requested Approvals. At this time she turned the meeting over to Mike Taylor to go over the Project Summary.

Mr. Taylor said that he has been with Pardee and working in this area for more than a decade and has been here since they acquired the property in 2000. We acquire this piece of property from the Deutsch family, as well as, the piece of property on the other side of Highland Springs Avenue in Beaumont about the same time. This piece of property had significant infrastructure challenges that really needed to be figured out in detail and we have had to work with the City for almost ten years really trying to get the details of this project figured out. So the old Specific Plan that you've seen just pictures of when we had the comparison up there usually Specific Plans and most developers that entitle specific plans although it uses the word "specific" most of the time specific plans are still extremely general and don't have a whole lot of engineering work founded behind them in that much detail at the time of their approval or at the time of the EIR they usually then require several years of detailed engineering work to decide exactly what would be developed. We have taken the time during these ten years to not just bring in an amended cartoon plan that essentially is just a picture of what we might build we have actually taken this thing all the way through real engineering documents so what you are going to see tonight is a very detailed specific look at the residential lots, where the roads are and everything that is very specifically defined as it relates to the city's future infrastructure plan, as it relates to environmental concerns, as it relates to seeing where earthquake faults are and how grading is best done. That is why there is a lot of the differences that there are is because now the project that you see is a very specific look and we wanted to really take a lot of time to let you see the details and there is nothing that we are here not to talk about. Everything is fair game for you to ask any question that you want and if we don't have the answer, we will take the time to go find out and get the answer. We have worked very hard

with the City staff to really work together so that we can come to the right decisions about how this project would ultimately be developed. Mr. Taylor went over the Project Proposal as contained in the power-point presentation giving more details in regards to total acreage, projected home total, commercial zoning, open space, schools, utility substation, and road improvements. Mr. Taylor said that this is a summary and there are Land Use Statistics available on the back tables which kind of shows the breakdown of the acreages and the units that are throughout the property, the open space area and other acreage uses. There are also more detailed statistics on the parks and open space. The zoning plan chart shows the different types of land uses and he also went over in detail the amenities, land plan, golf course plan, parks, non-golf alternatives, the different views, entry street concepts, product design styles and infrastructure and how this all fits in with overall built of the city.

Mayor Pro Tem Machisic said before we begin the questions he wanted to remind the audience, staff and everyone else that this is a real long-range project and they have been working on it for ten years and if they started the project today the project might be completed in 2031 or maybe 2041.

Councilmember Robinson wanted to know if the developer could touch on the erosion control up on the north hillside and on the eastern boundary of the project.

Mr. Taylor said it is certainly contemplated that the long-term any area that has been disturbed by grading would have to make sure it has been stabilized long-term and that those slopes have adequate growth on them. Typically there will be some defined limit of grading where the grading stops and you actually disturbed the existing ground but you may never intended to develop it. You had to disturb a piece of that ground to stabilize a hillside so that it can never slide down and it can never touch a property down that. That slope is stabilized and then it is landscaped in a natural type plant mix that usually don't require water use forever. It requires water for a short period of time until it is grown in and stabilized. There is always under fire codes brush management zones that require certain amounts of constantly irrigated areas and then there are other areas where you just have to maintain a brush clearance within 150 feet of property line so certainly all that stuff would be contemplated there. Any disturbed area would be stabilized and replanted so that you don't have any erosion of those areas.

Councilmember Botts said that this Council wants to make sure that everyone here and everyone listening knows that this is a rather significant project that impacts a lot of our neighbors and some of them here from Highland Springs Resort and Highland Springs Country Club. He wanted to say that we want to be good neighbors and we want to communicate to everyone and his questions would be to Pardee folks that you will be working with those groups.

Mr. Taylor said in the past they have talked to both the Highland Springs Resort and the Highland Springs Country Club, the homeowners association up there. It has been several years because as we have been trying to figure out the details of the project was extremely hard to contemplate what the final design or what the actual impacts could be to them several years ago. There was contemplation for the Black Bench Ranch property that could have contemplated a roadway extending beyond our property into their property. Today it doesn't

look like that would be an issue. The point of offering to have the workshop and certainly we hope to get comments from concerned people or concerned groups and we would love to come and meet with all of you. We having nothing to not want to meet with you about. We hope once we really tell you the details of the property that you end up thinking we are doing a good job with the property. We know it is a significant area and it has been open for years and it is an approved project already and he thinks that the work they have done has made it a heck of a lot better and we would certainly like to participate and work with any of the community groups out there that have a concern about it.

Councilmember Franklin said that she and probably a couple of the other Council Members have had a chance to meet once with the developers just to get an initial view of the project. For those people who are currently neighbors to the project what kind of impact will this have on them not only for the Highland Springs Resort but also those people that live within the boundaries of Banning.

Mr. Taylor said certainly the EIR that is a public document will touch on the impacts that are created by the project. They also touch on a lot of impacts created by the ultimate growth of the City's General Plan. Every time a house is built in the city or every time a house is built in a neighboring city there are different kinds of impacts that happen such as noise, transportation, and air quality. There are all of those details. He wants to assure everybody that we have looked at every single environmental impact that we can really look at here and have tried to lay all of those impacts out in front of everybody so that everybody can understand the details. If there are specific questions as it relates to any of those topics, we have the technical experts here. We have done an extensive look at transportation and traffic impacts that would certainly be a major concern to the residents he would believe. They have done a significant analysis of the traffic impacts that happen not only from their project but as the General Plan builds out in the City. We have studied more intersections in looking at this than the City has even contemplated in their General Plan. What they are thinking is going to happen here in the future and needs to happen and what we have been working on with staff is ultimately the way most cities have dealt with global traffic impacts as they build out and how it affects their neighbors, they have had traffic impact fees that cover all of the build out of the General Plan so that everybody pays their fair share. This City has a traffic signal fee that doesn't quite cover all of the traffic impacts analysis. We are looking at updating that fee with the City and the City staff and we have identified all of the intersections that need to be improved as the City builds out over its long-term growth. There certainly will be a dollar amount established for what it would cost to do that and then the City will be able to establish a new fee that would help pay for all those improvements and mitigate those improvements because his guess is that there are going to be a lot of concerns about traffic and again the technical experts are here to talk about that issue.

Councilmember Franklin said then am I hearing you say then that there will be local meetings for people in the area that they will be able to meet with your staff right close to where they are and address the issues that they have.

Mr. Taylor said absolutely. He believes that they are even scheduling an additional public workshop here at city hall that does not necessarily have to be a Council and Commission attended workshop but rather a workshop open to the citizens and community groups.

Councilmember Franklin said another question she has goes back to something he touch on earlier which is Smith Creek and we know that not only is there water on the north side of Ramsey Street that comes down through but in some of our harder weather days it really picks up a momentum as it goes south of the freeway so what impact will this project have on Smith Creek as it continues further south.

Mr. Taylor said in terms of the hydrology details of how much water when this project is ultimately developed and when the golf course or the drainage area is constructed and how it will change the down stream drainage he would actually have to ask one of his hydrology technical experts.

Greg Hohman, consultant to Pardee said in terms of the hydrology and the hydraulics and how it works we are actually hoping that we can retain as much of water as possible at the sign. It is designed so that the impacts downstream are minimal. Hopefully you will see in the future that those get better. There are basins located through the project, we are going to have recharge facilities in line, water quality basins in line and we have calculated all of that and have a hydrology study that supports that and he would be happy to go through that in detail.

Mr. Taylor said that if there is a drainage issue that currently happens south of Wilson that isn't coming from north of Wilson he is not such anything this project develops will change what happens south of Wilson if it is not coming north of Wilson. If any of that drainage impact is happening from our property when it is developed, it will be significantly improved.

Commissioner Barsh said since there is somebody here who is knowledgeable about the traffic and its affect on the community he would sure like to know what you are going to do because we are already having a lot of problems on Highland Springs Avenue that sometimes impede getting to the hospital and so forth and it is a very valuable thing to be able to note some of those things may be remediated.

Les Card with LSA Associates said that they prepared all of the traffic impact analysis for the project. That is a particular issue that we have studied in depth for many years working with your staff understanding the existing problems today on Highland Springs from the interchange at Interstate 10 all the way up through Wilson. So some of the things that we have accomplished are a significant improvement plan to address the problems you have out there today even before any traffic comes from the Butterfield Specific Plan we have been working with your staff and Caltrans for over a year on some specific improvements to improve traffic flow along there with changing some of the access to some of the adjoining properties to other things like synchronizing the signals from the freeway up north to Wilson.

Commission Barsh said it just so happened he was in an accident that happened on Highland Springs at the entry into the Food For Less area. Through no fault of his own because of the



situation at that point which is very dangerous and people are supposed to automatically stop there when there is no sign other than to say "leave this clear". That is why he is concerned.

Mr. Card said again they do have a specific plan of improvements that they have been working on with Duane Burk and his staff to actually implement even earlier than the project would cause any additional traffic. We are fully aware of that and that is addressed in the environmental document.

Councilmember Botts said that he had the privilege of working with both Beaumont and Banning and staff and Pardee who really took the lead. We all share your concerns in regards to that area and all of those issues have already begun to be addressed by both communities and he thinks that Councilmember Robinson and Councilmember Franklin are on that task force with Beaumont Council and staff and a number of consultants and engineers saying that we need to start fixing that right now long before the Pardee project starts putting houses and cars there. About a year Pardee stepped up to the plate and said that they would fund \$3 million dollars and we need to get going on this project and Beaumont has been participating.

Mayor Pro Tem Machisic said that he represents the City at WRCOG (Western Riverside Council of Governments) and through the program called TUMF (Transportation Uniform Mitigation Fee) they have allocated \$275,000 for the problem on Highland Springs for the engineering and design of any changes to be made. As Councilmember Botts has indicated they are working on the problem; it is a difficult problem. One of things that is added to it is the shopping area that you have in Beaumont and people getting on and off the freeway.

There was some further discussion in regards to that area in regards to synchronization and the ambulances getting stuck in the traffic and the study.

City Manager said that we will be going through the infrastructure issue which will include traffic, as well as, water and wastewater.

Duane Burk, Public Works Director said the infrastructure as it relates to this project is quite extensive and it is a very comprehensive but also very far out thinking as to what we are going to do within this infrastructure. We have worked with Pardee and their consultant and our consultants and we have one of our consultants Brian Villalobos with Geoscience and they have done some studies for us as it relates to the maximum perennial yield in the Cabazon Basin and we have talked about maximum perennial yield in all the basins so these documents are out for publication right now and they are also part of this document working collectively with this group of audience here basically dissecting it in his tenure for the last 18 months as it relates to water, wastewater, and traffic obviously which is a concern to everybody. In regards to the infrastructure they hired a consultant back when Pardee first came in, Carollo Engineering, and Carollo took our Master Plan for our domestic water system and kind of interfaced it into our current system. Mr. Burk started his power-point presentation going over the domestic water plan, recycled water plan, the State Water Pipeline Plan, the sanitary sewer system, offsite sewer plan, phasing, water supply, Pardee Water Supply Assessment, and the water supply assessment, future supplies and reliability. This approach looks at all of our

future development and it relates to the current General Plan and specific projects already approved so that is what is unique about this document.

Councilmember Botts said what will drive the direction we go with sewer lines and scalping plants which is a portable sewer system on site.

Mr. Burk said what he thinks drives that in his opinion is the amount of energy it costs to develop the water and how much it costs to take the water all the way to the southeast portion of our community at an elevation of 1500 feet and then pump it back to an elevation of 3000 feet and you can image the costs for the pumps and the energy to just do that. The technology has changed so much and there is technology that you could actually build a nice satellite plant but there is always the argument of what it would look like and the aesthetics and the odors and things like that that we have to work through but he thinks the dollar amount would drive it because the technology has improved so much that you could actually almost have a closed system where you take your sewer and put it in an area and pump it back and you are actually recycling the water that you are using. So he thinks that energy is a big driver for it and just the technology itself.

Mr. Burk continued his power-point presentation going over the traffic summary in regards to identifying issues with previous studies, Pardee EIR, pre-project improvements, analyzing intersections and Green House Gas Reduction summary of findings.

Mike Taylor said to clarify the situation with Joshua Palmer as much without asking too many questions what they have really looked at is to actually move the location of Joshua Palmer Ave. in its current location adjacent to the freeway actually move it north directly in alignment with the driveway that goes into the Food For Less shopping center and relocate the traffic signal to that location. The old location of Joshua Palmer would actually be closed off, vacated and given to those property owners the Denney's, Chevron, The Farmhouse and that would become part of their parking lot and the new roadway would go to the north of those businesses. This whole new project would completely eliminate the chaos that happens in that area. It is taking some time to do this because of the two cities and agencies and property owners that are involved in this process. He said that Pardee is committed to making those traffic improvements happen now and not waiting until they build houses.

Director Zai said that in Greenhouse Gas is one of the areas still to be analyzed in the environmental document. This became law on December 30, 2009 so as you can this is very new and there is no thresholds at local levels or regionally. The California Air Resources Board is still working on this and they were to come up with rules and regulations January 1, 2012. Nevertheless we have to analyze impacts for this project and what you will find in the environmental impact report is a full analysis of the matter and also includes mitigation measures based on guidance that is provided the California Air Resources Board. The California Air Resources Board referred to the guidelines that were developed by the California Air Pollution Control Association. So you will find disclosure on these matters in the draft EIR in addition to 13 other environmental issues.

Mr. Taylor said a side from the fact that we have regulations that we have to meet as it relates to greenhouse gas emissions and as Zai said nobody knows the exact details of the impacts that projects have but certainly we all know we need to do things better, more energy efficient and conserve our resources today. He thinks the technologies are certainly changing in that way in the construction industry there are a lot of things that we can do today that are not necessarily some required thing that you absolutely have to do but he can tell you that the California Energy Code what is called "California's Title 24 Code" which is the requirement of building houses has become a much, much strict document today in terms of what people have to do when they build homes. Pardee is really a leader in doing a lot of things that have been actually added to that code and we even do some more things today that are not even in the code that we just continue to do. We developed a series of things that we do in our home construction today called "Living Smart Features" and they are really founded upon four basic principals – things that are health smart, energy smart, earth smart and things that are water smart. If you come by any of their model complexes they actually demonstrate all of these features and he explained some of these features.

The meeting recessed at 6:58 p.m. and reconvened at 7:08 p.m.

City Manager reminded the Council and the audience that this is just like an introduction of what Pardee is currently proposing. No decisions are going to be made at this meeting. It is basically to get questions. There are two huge documents that the Council has not had an opportunity to go through yet and obviously there are going to be public hearings before any decisions are made. The Council cannot make any commitments for decisions until you have gone through all the issues and it has to go through the Planning Commission prior to coming to the City Council.

Mayor Pro Tem Machisic opened the item for public comments.

George Eldridge, 10921 Bel Air Drive, Cherry Valley part of the Highland Springs Country Club said he wanted to comment on what a great presentation that Pardee put on and what a great sales pitch we had for the last 15 minutes. Also, it sounds like Disneyland of the desert. In regards to the environmental impact report he has never seen one yet that didn't say everything was permit at least one that was put together by the builders. His question is why we need any of it. Why can't we keep this community small and nice like it is now? Why do we have to make it look like Orange County or LA County? This is a great place to live and we get to see a lot of really neat stuff here like the hawks, coyotes, skunks, and the mountains as they look and the beautiful pasture land out there. All we are going to get to see is a whole bunch of houses. Why do we have to grow? Why does every City Council seem to think that it is necessary for a community to get bigger and bigger and bigger? It is a great place to live now. It is not going to be when we get through building all these houses and he hopes that they keep this in mind when they start making your decision and start reading all that stuff that is in front of you.

Jerry Westholder, 1151 Elisa Dawn, Banning and Pastor of the church located at 5297 W. Wilson said he has a lot of questions. In regards to Smith Creek that runs adjacent to their property is it going to be fixed all the way down to Wilson Street? Will Wilson be widened to four lanes all the way down to Highland Springs Boulevard? If we are going to have that much more residents back

there, has the City made plans for police staffing because we are understaffed already. Will there be mello roos charged to these houses for the police department? Why is there a need for two schools? On the plus side he like the idea of you guys building there because he won't have cattle coming into his backyard anymore and the rodent problem.

Mr. Burk said in regards to Smith Creek that is part of the entire project from north to south all the way down to Wilson and the widening of Wilson Street would be from Highland Home Road to additionally out reached to different intersections as shown on the plan.

Mr. Taylor said that they will be working with the City on public financing for public services, as well as, public infrastructure. This City currently has already one of the largest developer fees for police and fire protection larger than almost any city in Riverside County today. Now there are other options and some cities choose not to just have a singular development fee that a developer pays one time at a time the house is built. They choose to have an assessment in perpetuity on the tax bill and that is different which is what you were talking about. Those are things that they would be negotiating with the City as part of their developer agreement and they have to weigh the decision about what is best for the long-term ability to pay for the protection of both fire and police.

Mr. Westholder asked there was a comment in regards to additional commercial usage along the southern boundary. Would that be along Wilson Street all the way to Highland Springs?

Mr. Taylor said yes it has the flexibility in the plan to allow for a mixture of commercial uses. It could be medical, it could be offices, could be retail. It allows for a lot of different uses in that area and there would be public hearings in regards to those uses.

Resident of Highland Springs Country Club addressed the Council stating why didn't you ever considered doing this on the east side of town and have these developers build up the entrance into Banning which looks like crap. You have a lot of property over there along with absentee owners. She doesn't understand why you picked this area. To the developers why would you want to build in Banning? They have no jobs, no entertainment, houses have never sold here until they were given away by the developers and made it attractive to people who could not afford them and now you have all these foreclosures and now you want to build 5,000 homes in an area that has no work, gas it up, people can't survive and you want to build this utopia community for people who won't be able to keep them. She doesn't need any intelligence to tell her that this won't be an impact on our community. Sundance was an impact on our community. We have three lights that we never had before. Then with all the time and intelligence you put in to figure out to do this. How much time did you put in in trying to keep our golf course? You have hundreds of acres and yet you want our little piece of property where people have lived 25 years and we are a senior community. She knows that this means crap to you young people but it is a utopia to us. She has seen old people there live longer and healthier because they can play on this golf course. Don't tell me you couldn't have made the road goes across without taking away our property. How much time did you take to figure that out?

Rosemary Peterson resident of Highland Springs Country Club said before she was a resident there probably in the late 80's the developer had stopped developing because of the market and

was planning eventually to develop on the east side of Highland Springs Ave. but at that time the residents there decided they didn't want to see any more development there so our residents go together and bought that property from the developer so that they could control it not being developed and keep it open space so that we could have our golf course and enjoy the natural habitats of the area. She was on the Board of Directors about five years ago when she approached by Pardee and we met with them about potential development here and she thought it was pretty clear at that time that we were not interested. We liked the way they have things there which is very quiet and peaceful and no traffic of course that has changed with the Sundance development. She doesn't understand why you have to include the 21 acres of our golf course into your development when you still have that north east section that you could use for your basin and open space area. You also said that the recycled water for irrigating the golf course would have to be done before opening the golf course but then you are talking also that maybe you won't even do a golf course so she doesn't know where that stands in the scope of things. With the traffic on Highland Springs Avenue what used to be a simple trip to get from their community to the Albertsons/Kmart shopping area used to take five minutes and now you are lucky to make it in 15 minutes because of the amount of traffic there and building over 5,000 homes assuming two vehicles per home that is over 10,000 vehicles and she doesn't know where you are going to put 10,000 vehicles because we can't even accommodate the traffic we have now. She said she was here years ago when you had a hearing about the Black Bench Development and at that time we also expressed we didn't want the traffic and the extra burden of the development in our area and we made it quite clear if Banning wants to develop fine but keep the traffic in your city. Then you mentioned Joshua Palmer in the first phase of improvement and she didn't see it in the specific plan that she viewed. She wanted to go on record along with many of her neighbors and those here that they would just like to be left out of this development and keep their property out of this development.

Mr. Taylor said he wanted to make sure that everyone in the audience from Highland Springs County Club understands that this piece of property is not part of their project. They don't own it. This City Council has no jurisdiction to give them any kind of development rights. Even if you sold that and even if we asked to buy that property from you and you were to sell it to us currently this governing body has no jurisdiction to allow us to develop it. All we have done in our documents to make sure that our environmental impact report covers all of the environmental consequences if that road ever went through, is that we have included that so that this Council, if ever, that property were to be sold to somebody to be developed they already contemplated it in their zoning that would allow it to be residential and a road to be contemplated. This City's General Plan has two alternatives for the roadway. One, that this roadway could someday go through the golf course property that your homeowners association owns or it could alternatively go to the north and connect to Cherry Valley Boulevard. You own your property and no one is every coming to take your property away from you. Again, we had to show this as part of an environmental impact report for the ability to bring the road through because that is what the General Plan contemplates.

Dr. Richard Berr resident of Highland Springs Country Club said he wanted to bring up his displeasure in the taking of their property and their beautiful golf course and what you are going to put there is a road and high apartment buildings. That is awful and that is not the way the world should be. If there is going to be over 5,000 homes built there that means that there is going to be

about 10,000 people that are going to need jobs and what are you guys doing to create jobs in Banning; are you doing anything? That is just as important as the roads and anything else is providing a vehicle for people to work and live there and live comfortably. His suggestion is to please think about this because it is very important that we create jobs in our community.

Again, the resident of Highland Springs Country Club addressed the Council stating you say you are not trying to take our property away but she hasn't heard an option of a road going on to just the property you own. Why does it have to come onto our property at all? The other thing is the impact of the hospital and we don't have beds available. They are building a bigger hospital but it isn't to accommodate 5,000 families. Where are these people going to go? It is going to be a big impact on the hospital and one that is totally unbelievable and totally unacceptable.

Claudia Shields resident of Highland Springs Country Club said that they did buy there because it is a beautiful place to live and not a lot of homes. We love looking out over the mountains and seeing all of the wildlife and she knows that you know that already but just wanted to reiterate that. Also, you know the saying "build it and they will come" she has a fear that if you draw it, it will happen. She would prefer that it would be drawn in a way that would be what the community would want and not because it is protocol for a study.

Don Smith, resident of Banning said in comparing the changes from this map from the 20 year old map he noticed a few things that have changed and he wonders if those changes are in the best interest of Banning because he doesn't own the 1500 acres he doesn't believe he has the right to say it has to stay vacant forever because I like to look across that view. However, he does have the right to say that any development that happens in Banning has to make Banning better. It has to make the neighborhoods around it better because we don't want to grow for the sake of growing. In the original plan we planned for a large park where they could do large activities and fields that were not under the high transmission lines. Now he knows that there is some dispute about whether or not it is safe to put a park under the high transmission lines and that in some communities parks that have been put there have developed into cancer clusters. He doesn't believe that we should take that risk. He doesn't believe putting children's parks under these transmission lines are acceptable and the park needs to be moved back to where it is not under the transmission lines and that the golf course could go back to where it was originally under the transmission lines. Also are all these parks he sees turnkey parks or are they just land and we probably don't know yet. He is also worried about a change to this plan in that there used to be a park right where Highland Home Road runs into Wilson between the existing Kingswell Tract and the Mountain Air Estates Tract. Now what sits between those two existing homes is a scalping plant. He knows that Duane likes scalping plants and he might like scalping plants too and understands that at sometime there will be a tour of one but he is not sure that is the best decision for the existing owners of those two existing tracts. Can't we move the scalping plant a little further north so it will be surrounded by new homes rather than our existing homes and have that small lower level go into our existing plant as so as to protect our current homeowners. On the transportation plan there are a couple of things that bothered him because originally under this plan the whole transportation plan didn't work unless Highland Home Road went through and apparently it is not going to and he has not had a chance to read the huge document to see what it says about the transportation element. But he is concerned once again of where Highland Home Road goes across the 15 house currently on Highland Home Road that now have a small little road

29

that they back their cars onto what is going to be turned into a major thoroughfare. At some point in time we discussed having dual streets so that one small street stays and the main one isn't part of that to solve that problem for those 15 homes. It can't tell whether that is done in this plan but he hopes it is there. Again this plan needs to make the existing neighborhoods better; not help the city by hurting our existing homeowners. So if you would consider those issues in doing this, he would appreciate it.

Mr. Eldridge addressed the Council again asking what the word annex means. The property that is the Highland Springs County Club says it needs to be annexed by the City of Banning. What does that mean to you folks?

Mr. Taylor said if a property is not in a city and typically it is in a county and a city chooses to annex that property that city's boundary grows. There is a process that has to be undertaken and a city has to go to LAFCO (Local Area Formation Commission) and ask to take an unincorporated piece of property and make it part of their city. There are county properties that border most cities and there is a line around them called a sphere of influence. The property that you are questioning is not even in the sphere of influence of this governing body. It is in the sphere of influence of the city across the street.

Mr. Eldridge asked why the City of Banning would be interested in annexing that property if we are not interested in selling that property.

Mr. Taylor said again, he is not sure that they are necessarily in annexing the property at all. As he stated the roadway is contemplated in their General Plan to either go through that property or to go north; there are two options. Because of that it had to be shown in our environmental document.

City Manager said that there is no plan for us to annex that area period.

Mr. Eldridge suggested that they take annex off all of those charts so that it doesn't confuse everyone.

Mr. Taylor said he thinks the only reason it says annex is to inform you that it is not part of the city, not part of the project and the only way it could be is if it were annexed into this particular city.

Frances Landers resident of Highland Springs Village said that she agrees with a lot of stuff that she has heard tonight but nobody has mentioned the live oak tree. The last time she came to this Pardee meeting she asked about the live oak tree and was told that a lot of people were asking about that and tonight you addressed a whole bunch of different things that came up before but nobody has addressed the live oak tree. She really thinks it is an important thing to people who live up there and she wants it to be addressed.

Barbara Hanna, 4678 W. Hoffer Street said she knows that tonight is a night for just broad strokes because the public has not had a chance to look at the specific plan much less the environmental impact report but just in terms of broad strokes she would really like to hear how

traffic circulation would work. She doesn't even know about the numbers that are being used and someone mentioned 10,000 cars and she is sure that is at least a minimum for this development. She sees this parcel as kind of being an island with little bridges to the rest of the area in terms of traffic and circulation and she thinks that it is important that we look at it not just as a development within itself but how it connects to the whole county, Beaumont and Banning. To talk about how it is going to impact San Geronimo is kind of remote and she is not saying that there is not any impact but would really like to hear broad strokes how you are going to get traffic in and out. All the focus has been on a major problem we have right now which without a doubt has to be addressed and it is good that both cities and Pardee and the county are talking about it but we are talking about the next 30 years of massive traffic impacts in this area; how can it possibly be addressed. Her second question is regarding water. The city has spoken for a number of years that major development would be permitted unless they bring new water into the city of Banning and again, in our next meetings we are going to be talking about the water plan and the EIR, etc. but for now is any new water contemplated for being brought in to the city of Banning from this development or are we just becoming more efficient with what is there. Again, she thinks all the information that she has read for years and years is that we probably have enough water for a surplus in drought years for our present residents. It is not clear at all that there is enough water for any major development much less probably the biggest one we will ever have in the city of Banning.

Mayor Pro Tem Machisic closed the item for public comments seeing no one else coming forward.

Mayor Pro Tem Machisic said that our City Manager pretty much described this meeting as providing information for you and also the developer has indicated that he would be more than happy to have meeting in your local or any groups that you might have so he is open to any suggestions and comments that you might have. He thanked City staff, Mr. Taylor and his staff and most of everyone for coming tonight and giving us your comments and ideas concerning the project.

#### ADJOURNMENT

By common consent the meeting adjourned the meeting at 7:44 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.**

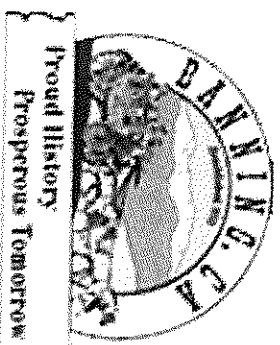


# BUTTERFIELD SPECIFIC PLAN & ENVIRONMENTAL IMPACT REPORT

Joint Planning Commission  
&  
City Council Workshop

June 7, 2011

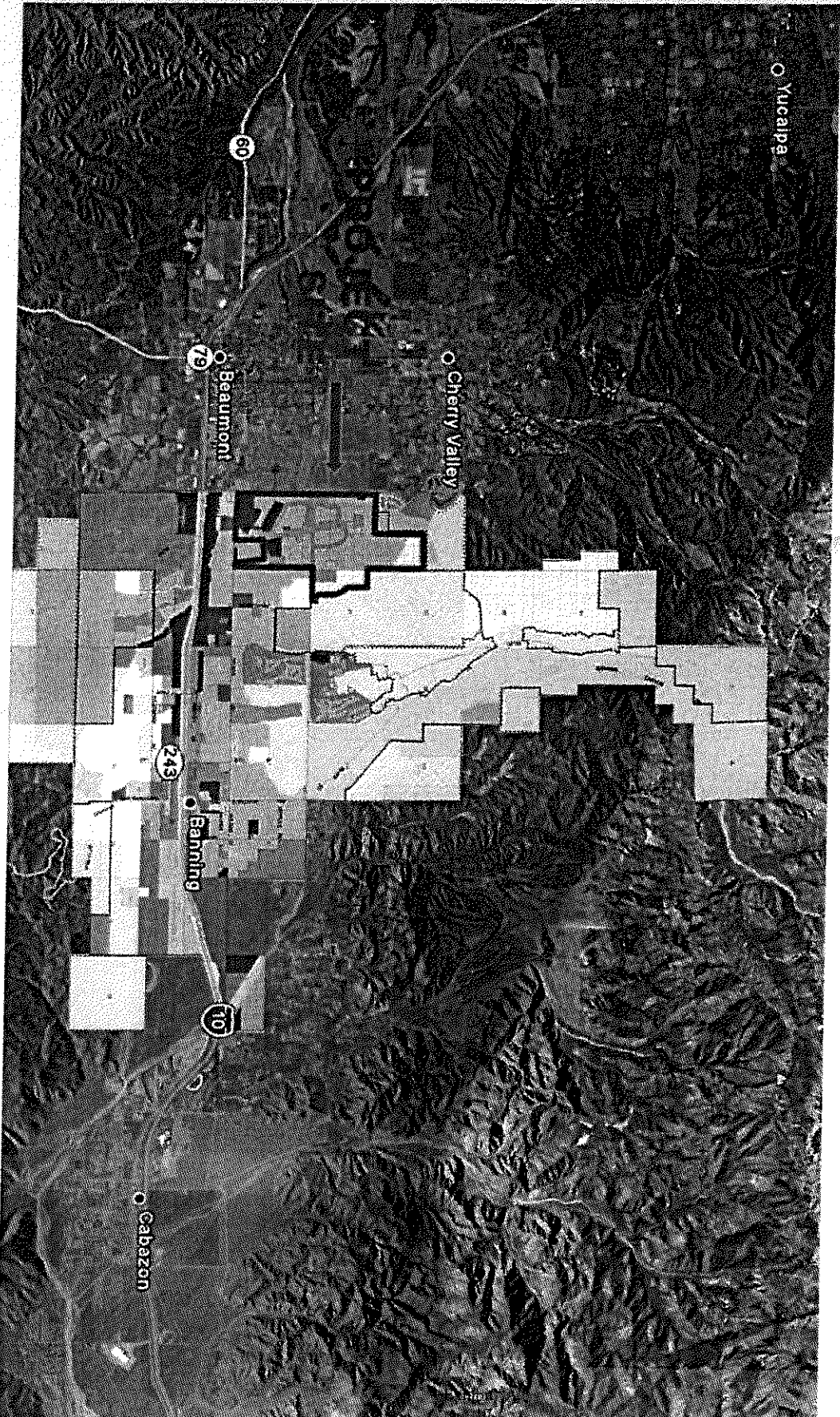
Applicant:



# Topics

- ▣ Project History
- ▣ Summary of Differences
- ▣ Project Summary
  - Amenities & Features
  - Product Design Styles
  - Infrastructure
- ▣ Water Supply
- ▣ Traffic Summary
- ▣ Green House Gas Emissions

# Location



# Location



# Project History

## ▣ Significant Dates

- 1981 – Initiation of Deutsch Specific Plan
- 1985 – Certification of Deutsch Specific Plan and Final EIR, Approval of General Plan Amendment
- 1985 – Annexation of a majority of Project into City of Banning
- 1992 – Initiation of Specific Plan Amendment
- 1993 – Certification of Final EIR, Approval of SP Amendment and Development Agreement
- 1995 – Annexation of remaining Deutsch Specific Plan into the City of Banning
- 2000 – Pardee acquires Project from Deutsch Corporation



# Project History

## ▣ Significant Dates (continued)

- 2007 – Notice of Preparation for Specific Plan Amendment and Environmental Impact Report
- 2007 – City approves Conveyance Maps – Subdividing property into 20 legal lots
- 2007 – City acquires site for Electrical Substation
- 2007-2011 – Pardee prepares both a comprehensive and engineered land plan as well the corresponding Specific Plan, supporting ELR and WSA
  - ▣ Intense review of required improvements to transportation corridors
  - ▣ Developed a systematic approach to ensuring a reliable water supply
  - ▣ Land Plan that provides more open space and respects the natural alignment of Smith Creek

# Project History

## ▣ Summary

- **General Plan** – City has planned for development on this property for the past 30 Years
- **Current Entitlement** – Property currently is approved for similar uses but due to the age of document and challenges with past projects on the reliance of some of the City's documents, Pardee elected to update the environmental analysis and engineer a land plan that respects Smith Creek, earthquake fault zones and allows alternative modes of transportation

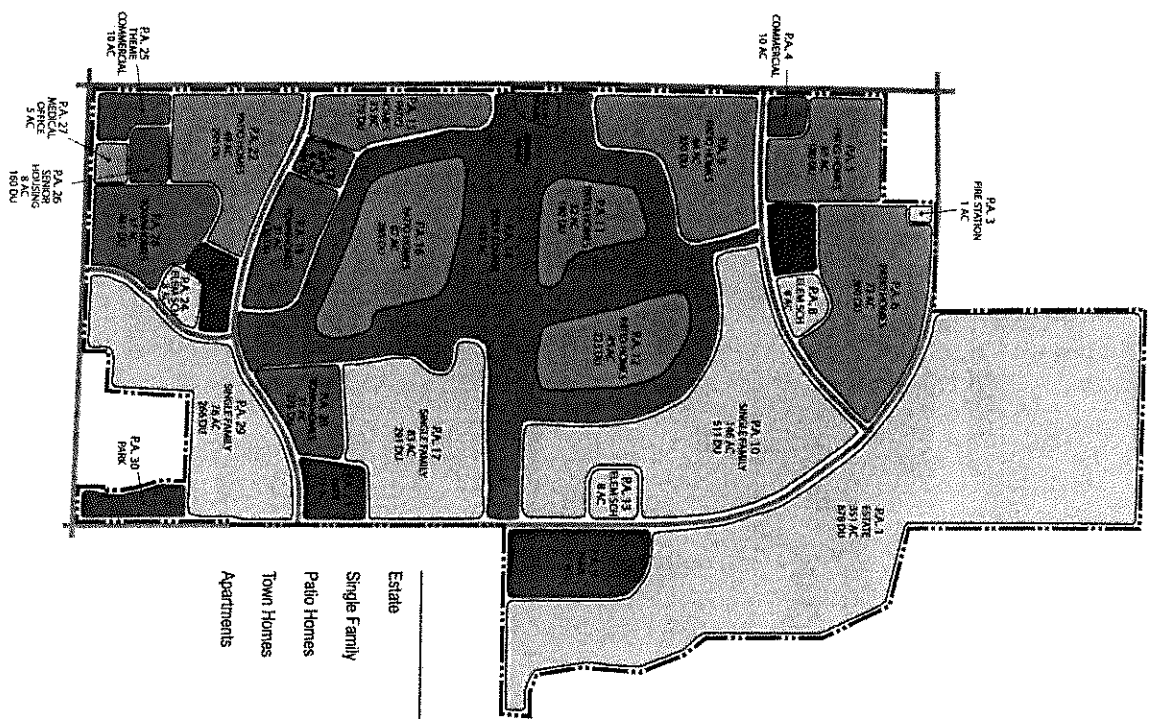
# Summary of Differences

## ▣ Land Plan

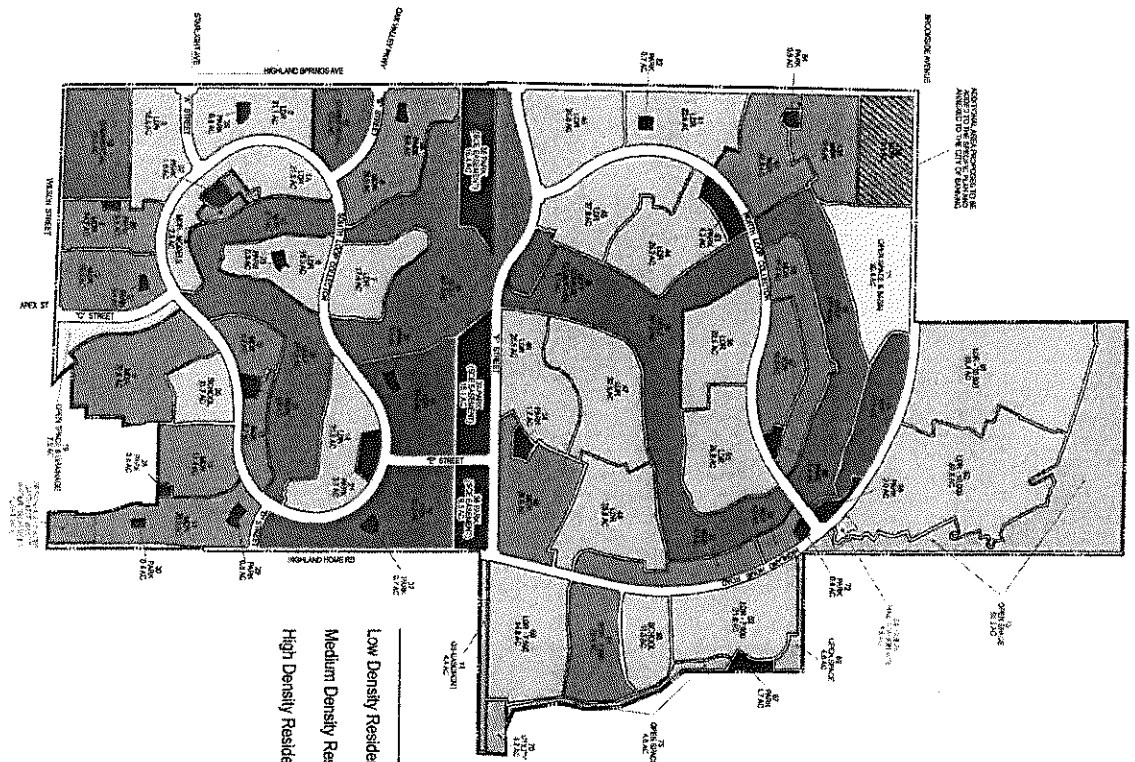
- Gross Density nearly identical at 3.5 DU/AC
- Total Number of Homes
  - ▣ 1993 Plan – 5,400 Homes
  - ▣ 2011 Plan – 5,387 Homes
- Gross Residential Acres:
  - ▣ 1993 Plan – 1,151 Acres
  - ▣ 2011 Plan – 937.4 Acres
- Open Space
  - ▣ 1993 Plan – 268 Acres
  - ▣ 2011 Plan – 428.8 Acres
- Other Uses (Com., Schools, Roads)
  - ▣ 1993 Plan – 133 Acres
  - ▣ 2011 Plan – 176.8 Acres



40



Estate	2.5 DU/AC
Single Family	3-4 DU/AC
Patio Homes	5-8 DU/AC
Town Homes	11-20 DU/AC
Apartments	11-20 DU/AC



Low Density Residential (LDR)	1-5 DU/AC
Medium Density Residential (MDR)	5-10 DU/AC
High Density Residential (HDR)	10-18 DU/AC

Exhibit "A"  
23  
cc.jt.mtg.-06/07/11

# 1993 Plan 2011 Plan Land Use Comparisons

# Project Summary

- ▣ Requested Approvals
  - General Plan Amendment (GPA)
  - Specific Plan (SP) – Comprehensive Amendment to the previously approved Deutsch SP.
  - Environmental Impact Report (EIR) – Certification of supporting EIR
  - Water Supply Assessment (WSA) – Document calculating the water supply for 30-year Project life. Exceeds requirements for City's Urban Water Management Plan
  - Development Agreement (DA) – Agreed to terms for how the Project will be implemented

# Project Summary

## ▣ Project Proposal

- **Total Acreage** – Specific Plan covers 1,543 Acres of which 1,522 Acres are within City of Banning, 21 Acres in Unincorporated Riverside County
- **Projected Home Total** – 5,387 homes on 937.2 gross acres of land
  - ▣ Predominantly Detached Single Family
  - ▣ Zoning for Detached and Attached Condominiums up to 18 DU/AC
- **Commercial Zoning** – 36.0 gross acreage of commercial zoning. Options to allow for additional acreage along the southern boundary
- **Open Space** – 428.8 gross acres dedicated to recreational and natural open space

42

# Project Summary

## ▣ Project Proposal Continued

- **Schools** – The Project overlies both the Beaumont Unified School District and the Banning Unified School District. Approximately 4,600 homes in Beaumont Unified and 800 Banning Unified. 23.0 Gross acres dedicated to schools
- **Utility Substation** – 4.2 gross acres, currently in operation
- **Roads** – 113.6 gross acreage of proposed road improvements

LAND USE	2010 BUTTERFIELD SPECIFIC PLAN				
	Gross Acres	% of Area	Dwelling Units	% of Dwelling Units	Average Gross Density
<b>Residential</b>					
Low Density 5 DU/AC (LDR)	539.2	35.0%	2,222	41.2%	4.1
Medium Density 5-10 DU/AC (MDR)	324.4	21.0%	1,960	36.4%	6.0
High Density 10-18 DU/AC (HDR)	73.8	4.8%	1,205	22.4%	16.4
<b>Residential Totals</b>	<b>937.4</b>	<b>60.8%</b>	<b>5,387</b>	<b>100.0%</b>	<b>5.7</b>
<b>Open Space</b>					
Golf Course Drainage	253.9	16.5%			
Parks	66.5	4.3%			
Natural/Landscape/Easement	70.1	4.5%			
Drainage	38.3	2.5%			
<b>Open Space Subtotals</b>	<b>428.8</b>	<b>27.8%</b>			
<b>Other</b>					
Commercial/Office **	36.0	2.3%			
Schools *	23.0	1.5%			
Utility Substation	4.2	0.3%			
Backbone Roads	113.6	7.4%			
<b>Other Subtotals</b>	<b>176.8</b>	<b>11.5%</b>			
<b>SPECIFIC PLAN TOTALS</b>	<b>1,543.0</b>	<b>100.0%</b>	<b>5,387</b>	<b>100.0%</b>	<b>3.5</b>

# Land Use Statistics

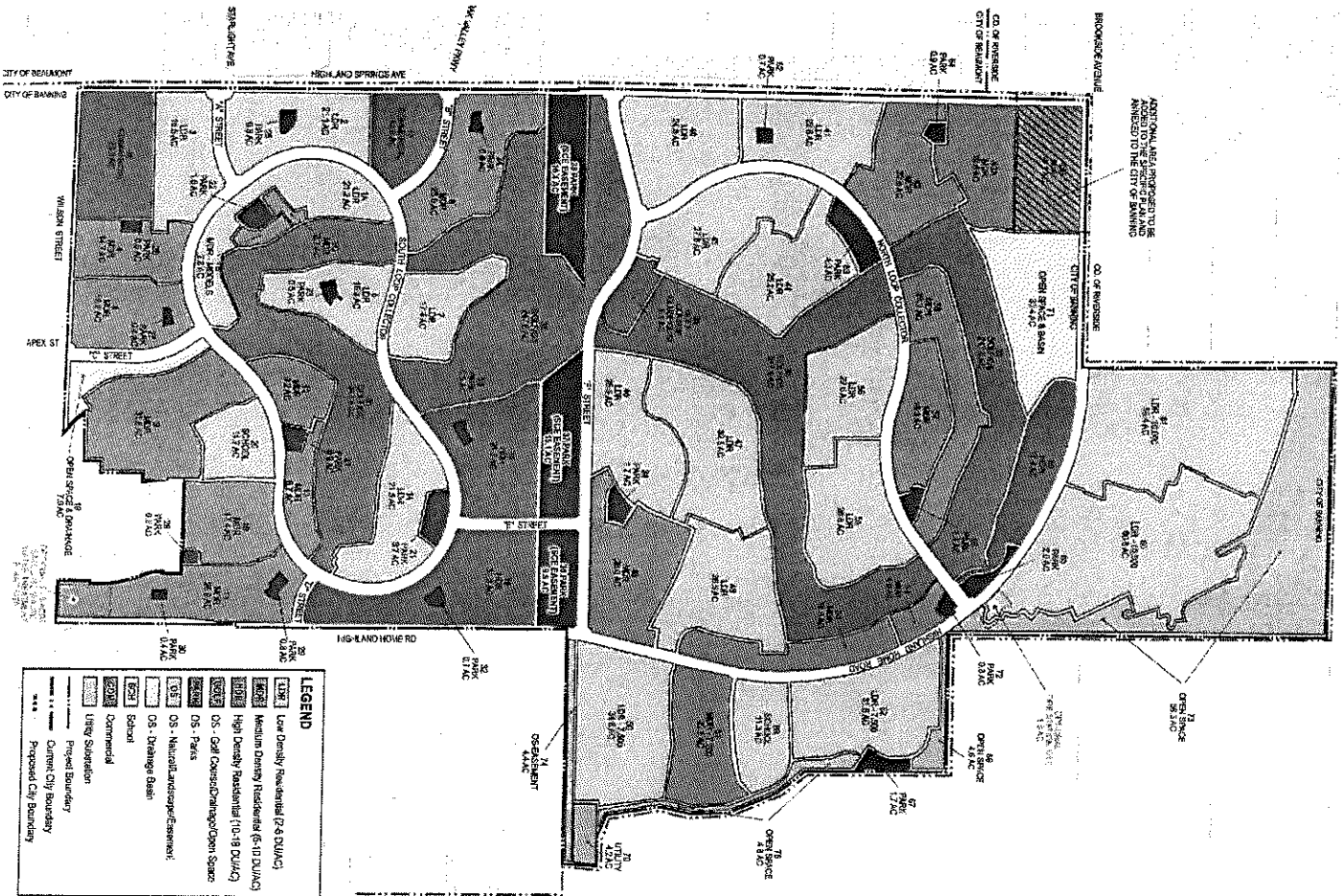
FF

# Park/ Open Space Statistics

Planning Area	Land Use	Acres	Open Space %
<b>Parks</b>			
21	Neighborhood Recreation Park	3.7	
63	Neighborhood Recreation Park	4.3	
	<b>Subtotal</b>	<b>8.0</b>	<b>1.9%</b>
36	Community Park	9.5	
37	Community Park	16.1	
38	Community Park	16.4	
	<b>Subtotal</b>	<b>41.0</b>	<b>9.6%</b>
22	Neighborhood - Mini Park	1.6	
23	Neighborhood - Mini Park	0.5	
24	Neighborhood - Mini Park	0.6	
25	Neighborhood - Mini Park	0.8	
26	Neighborhood - Mini Park	0.5	
27	Neighborhood - Mini Park	0.4	
28	Neighborhood - Mini Park	0.6	
29	Neighborhood - Mini Park	0.8	
30	Neighborhood - Mini Park	0.4	
31	Neighborhood - Mini Park	0.9	
32	Neighborhood - Mini Park	0.7	
33	Neighborhood - Mini Park	0.5	
34	Neighborhood - Mini Park	1.7	
62	Neighborhood - Mini Park	0.7	
64	Neighborhood - Mini Park	0.9	
65	Neighborhood - Mini Park	2.0	
66	Neighborhood - Mini Park	1.4	
67	Neighborhood - Mini Park	1.7	
72	Neighborhood - Mini Park	0.8	
	<b>Subtotal</b>	<b>17.5</b>	<b>4.1%</b>
	<b>PARKS Subtotal</b>	<b>66.5</b>	<b>15.5%</b>
<b>Golf Course/Drainage/Open Space</b>			
35	Golf Course/Drainage	247.8	
39	Golf Course/Clubhouse	6.1	
	<b>Subtotal</b>	<b>253.9</b>	<b>69.2%</b>
<b>Natural/Landscape/Easement</b>			
69	Open Space/Fuel Mod	4.6	
73	Northerly Open Space	56.3	
74	Landscape Easement	4.4	
75	Open Space/Fuel Mod	4.8	
	<b>Subtotal</b>	<b>70.1</b>	<b>16.3%</b>
<b>Drainage/Open Space</b>			
19	South Channel	7.9	
71	North Basin	30.4	
	<b>Subtotal</b>	<b>38.3</b>	<b>8.9%</b>
	<b>PARKS AND OPEN SPACE Total</b>	<b>428.8</b>	<b>100.0%</b>

2/5

# Zoning Plan



46

# Project Summary

## ▣ Amenities

- Land Plan designed to maximize open space
- Preserves Smith Creek
- Allows for open feel between planning areas
- (2) HOA maintained recreation centers
- Planned park uses beneath SCE Easement
- Road Striped for Neighborhood Electric Vehicles
- Trail access to existing trails to the north and east
- Neighborhood parks within nearly every planning area
- Direct Access to commercial centers
- Wide breadth of Product types, both SFD and Multi-Family

7/7

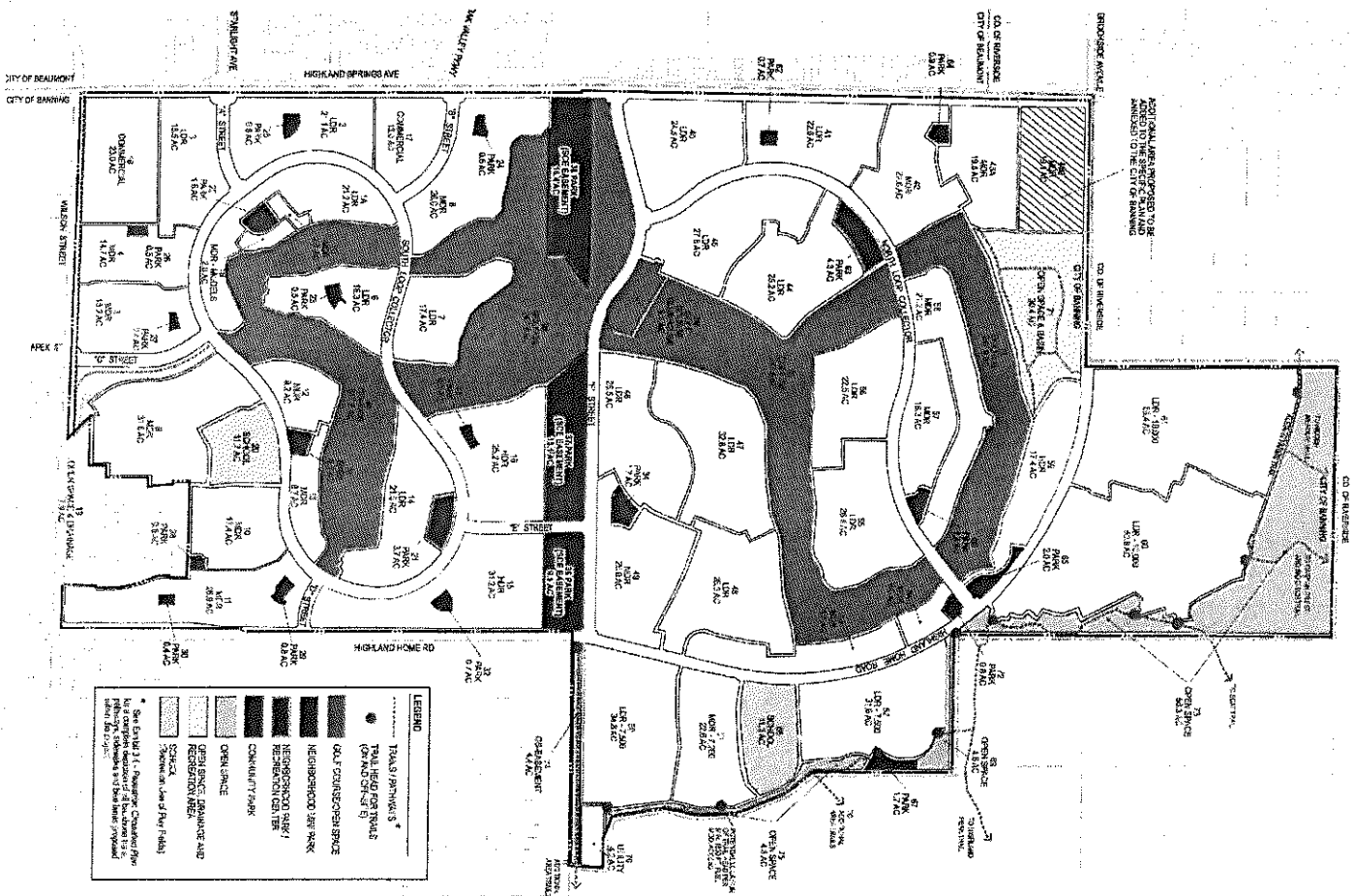


**LEGEND**

- ROADS
- GREENS
- TREES
- BUILDINGS
- WATER

48

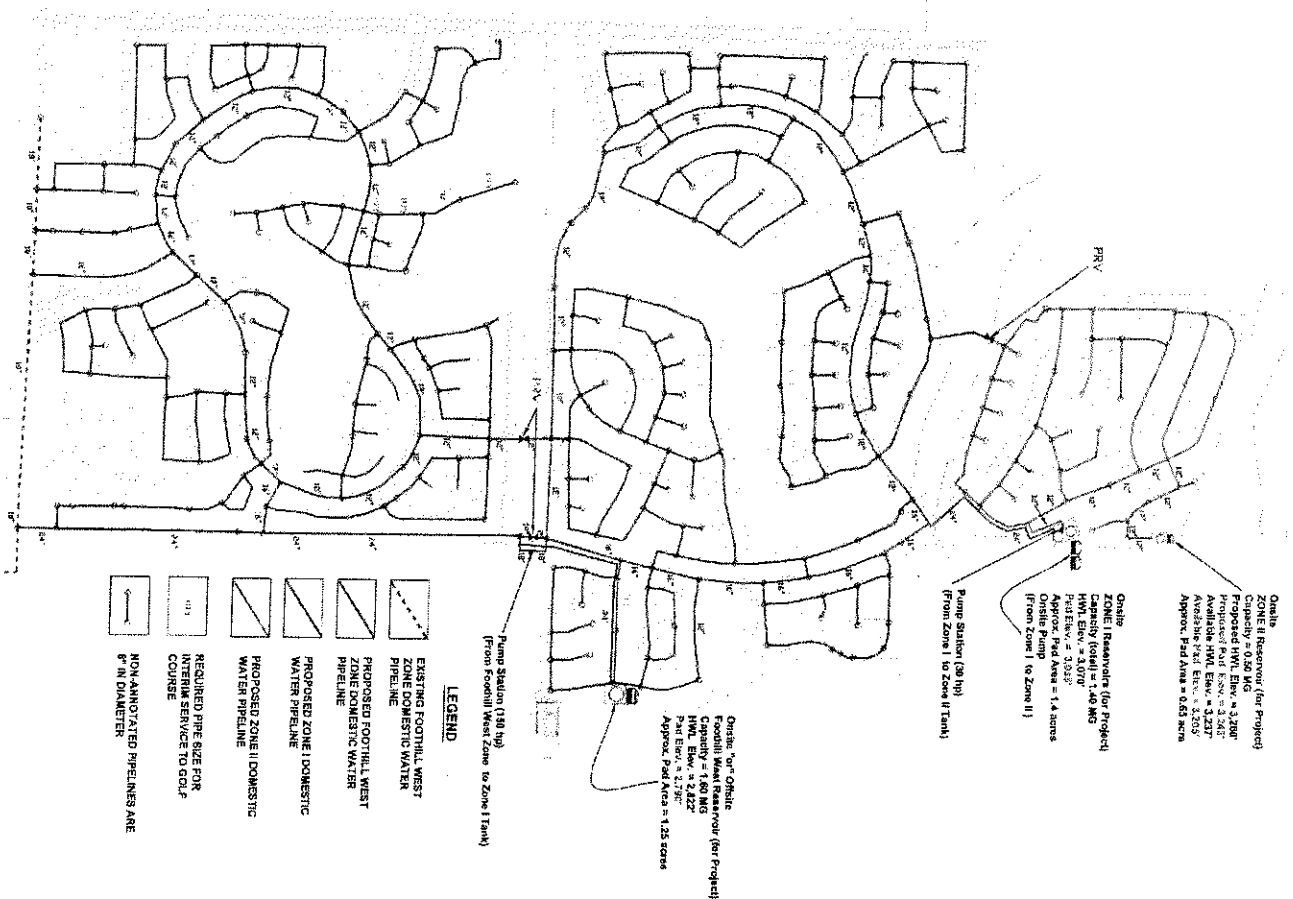
# Open Space Plan

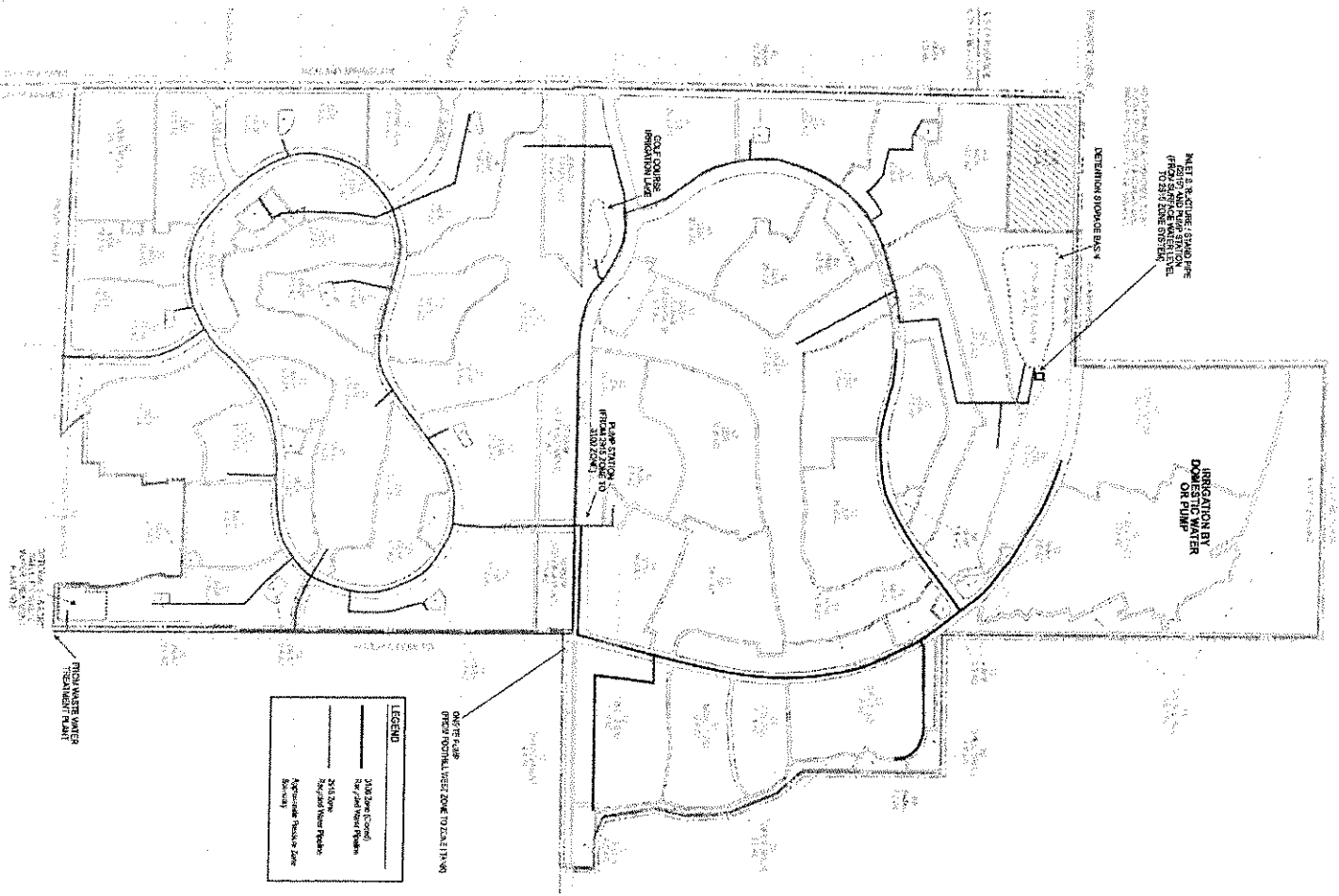


49

# Infrastructure

50



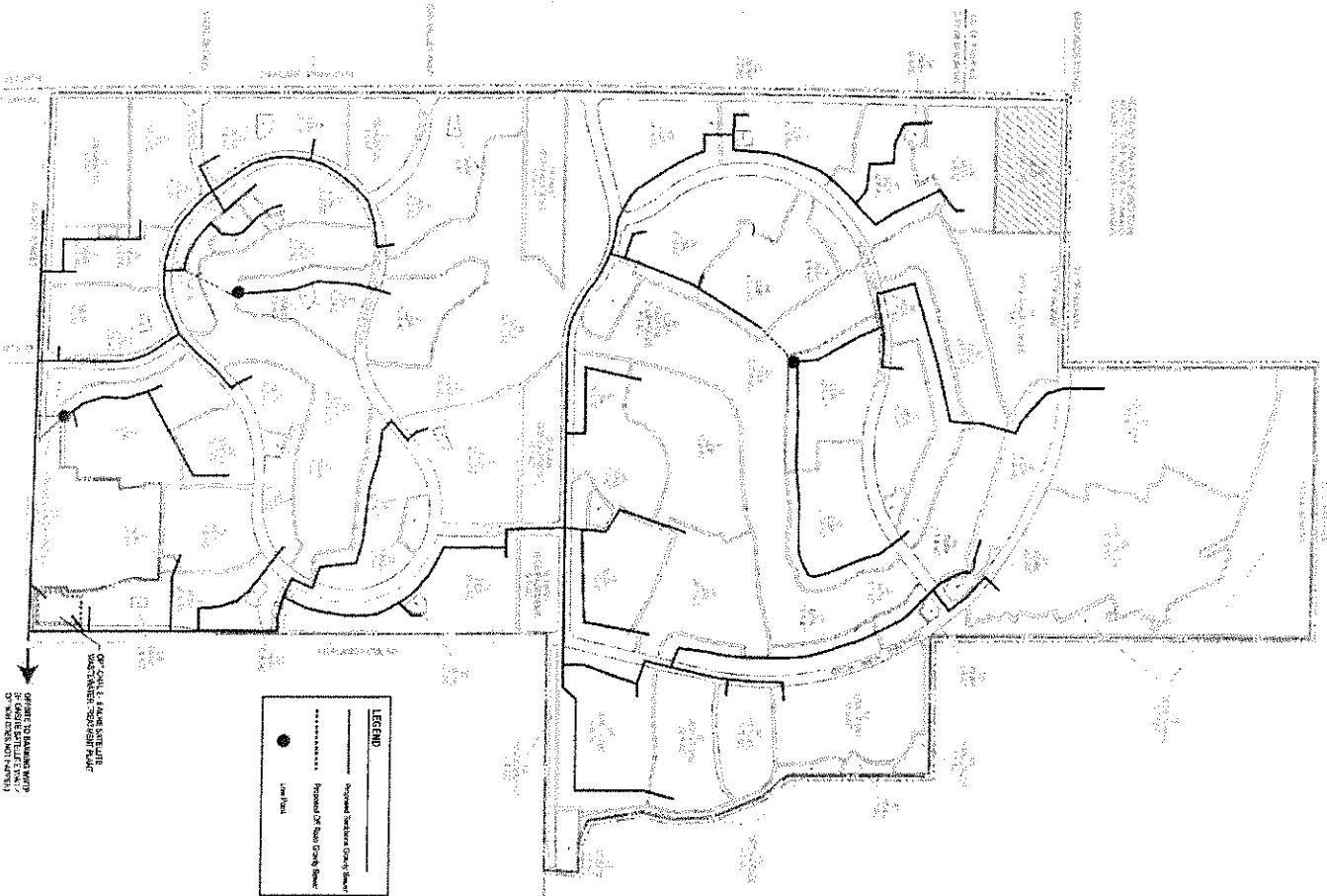




# State Water Pipeline Plan



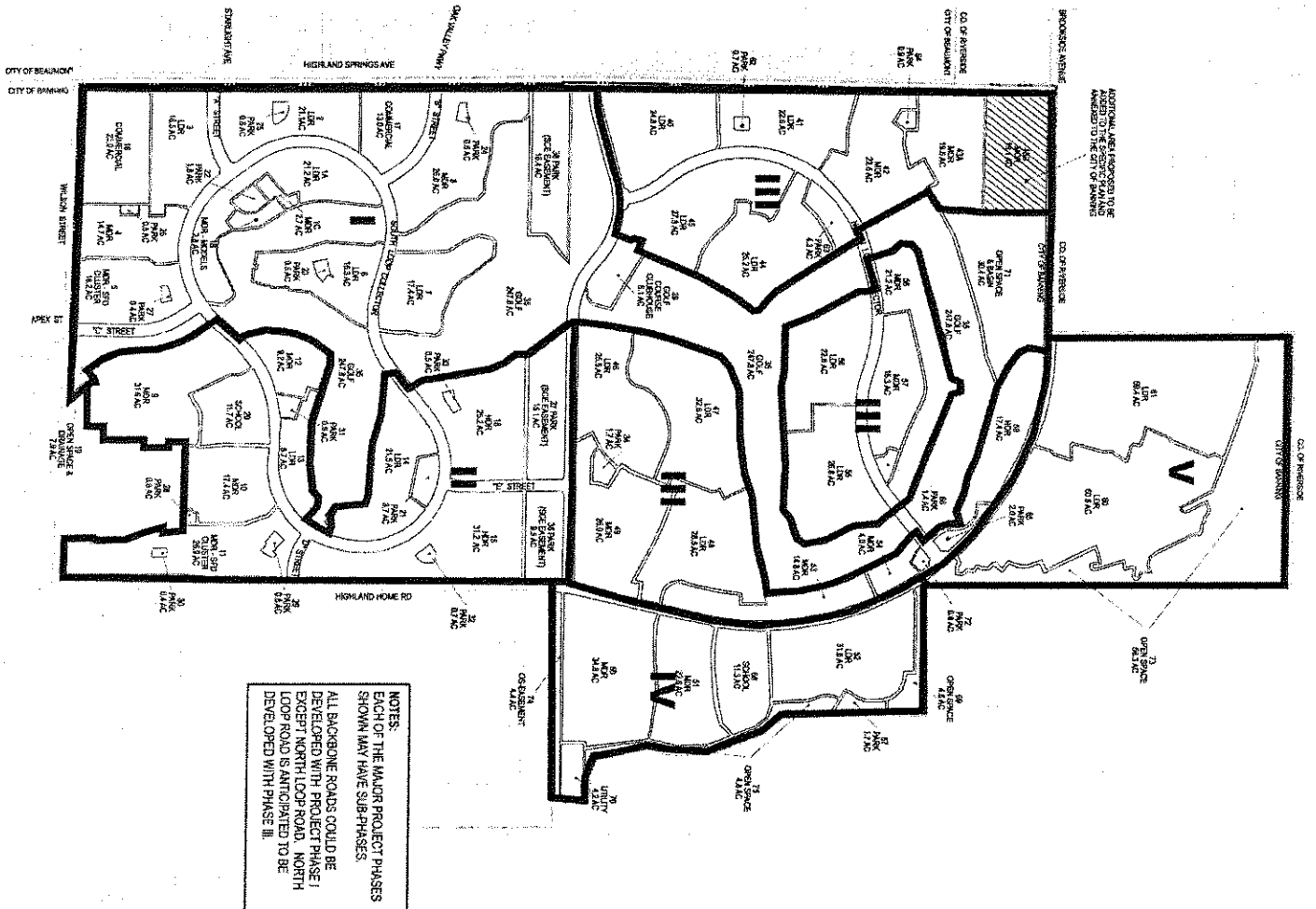
# Sanitary Sewer Plan



PARADE  
PROPOSED OFFSITE TRUNK SEWER  
PARADE • LOMA LINDA  
PROPOSED OFFSITE TRUNK SEWER  
FIVE BRIDGES  
PROPOSED TRUNK SEWER  
FIVE BRIDGES • BDS  
PROPOSED TRUNK SEWER  
EXISTING SEWER SYSTEM  
OPTIONAL, OFFSITE TRUNK SEWER ALIGNMENT IF  
FIVE BRIDGES & BDS DEVELOPMENTS DO NOT  
MOVE FORWARD  
PROPOSED OPTIONAL SEWER FORCE MAINS (IN  
PARADE, HIGHLAND HOME RD. OR OLMAR ST.  
AND WILSON ST.) AND SEWER FLOWMANS  
FROM PROPOSED LEFT EXISTING ST. AND  
OLMAR ST. TO PROPOSED BUTTERFIELD SATELLITE  
TREATMENT PLANT.  
A NEW GRAVITY SEWER FROM THE SATELLITE  
TREATMENT PLANT TO THE EXISTING SEWER DOWN-  
STREAM OF THE LEFT DIVADON WOULD FOLLOW THE  
SAME ALIGNMENT OF THE FORCE MAINS.



# Phasing



# Water Supply

## ▣ Identified Issues with Previous Studies

- Insufficient Evidence for Supply Sources
  - ▣ Not enough information to support use of supply sources and future needs
  - ▣ Did not adequately address Safe Yield of each basin
- Beaumont Basin
  - ▣ Did not accurately calculate rights in terms of adjudication and use of temporary surplus
- State Water Purchases
  - ▣ Did not adequately describe plans for future purchases and funding required
- Recycled Water
  - ▣ Did not demonstrate how City will carry out this program and develop this source

57

# Water Supply

- ▣ **Pardee Water Supply Assessment**
  - Consistent with 2010 City of Banning Urban Water Management Plan
    - ▣ Both 2005 and 2010 UWMP expressly identified this Project and planned for its development
    - ▣ Independent and Detailed Assessment of City's Supplies to meet Project demands
    - ▣ Planning Period – Evaluates City's Water Supply for 34 Years. Law only requires 20-year Analysis. 34-years exceeds buildout assumptions in EIR
    - ▣ Takes into account various hydrologic conditions – periods of drought, normal years and multiple dry years

# Water Supply

## ▣ Water Supply Assessment

- Existing Supplies
  - ▣ Groundwater from (5) Independent storage units or sub-basins, imported water purchased from Pass Water Agency, local surface supplies
  - ▣ Identified rights to each supply source
  - ▣ Identified quantity of water the City pumped in all (5) basins over the past 50 years
  - ▣ Takes into account any other pumping by others
  - ▣ Geoscience conducted studies of each basin to determine Safe Yield

59

# Water Supply

- ▣ **Water Supply Assessment**
  - Future Supplies
    - ▣ City Plans to Develop Recycled Supplies
    - ▣ Increase Imported Water Purchases
    - ▣ Safe Yield Analysis to determine max amount of pumping that can be realized from each of the existing (5) Basins
  - ▣ Identifies needed agreements, approvals and funding for each Future Supply
- Reliability
  - ▣ Analyzed circumstances that could affect supplies
  - ▣ Does not overestimate supplies in the future
  - ▣ City wide approach – not specific to Pardee Project

60

# Traffic Summary

- ▣ **Identified Issues with Previous Studies**
  - ▣ No fair share mechanism for funding identified for General Plan impacted intersections
  - ▣ Highland Home Road Interchange identified as a future improvement while CalTrans does not support an interchange at this location
  - ▣ Level of Service that is not consistent with neighboring City
  - ▣ Level of Service "C" throughout most of the City while Level of Service "D" is acceptable in rest of Riverside County

61

# Traffic Summary

## ▣ Pardee EIR

- Identified and working to fund study to determine fair share mechanism for funding identified for General Plan impacted intersections
- Identified Highland Home Road Interchange shortcomings and analyzed road system assuming it will not be built
- Analyzed more intersections than General Plan
- Drafted mitigation measures for both Level of Service "C" and Level of Service "D"

62

# Traffic Summary

## ▣ Pre-Project Improvements

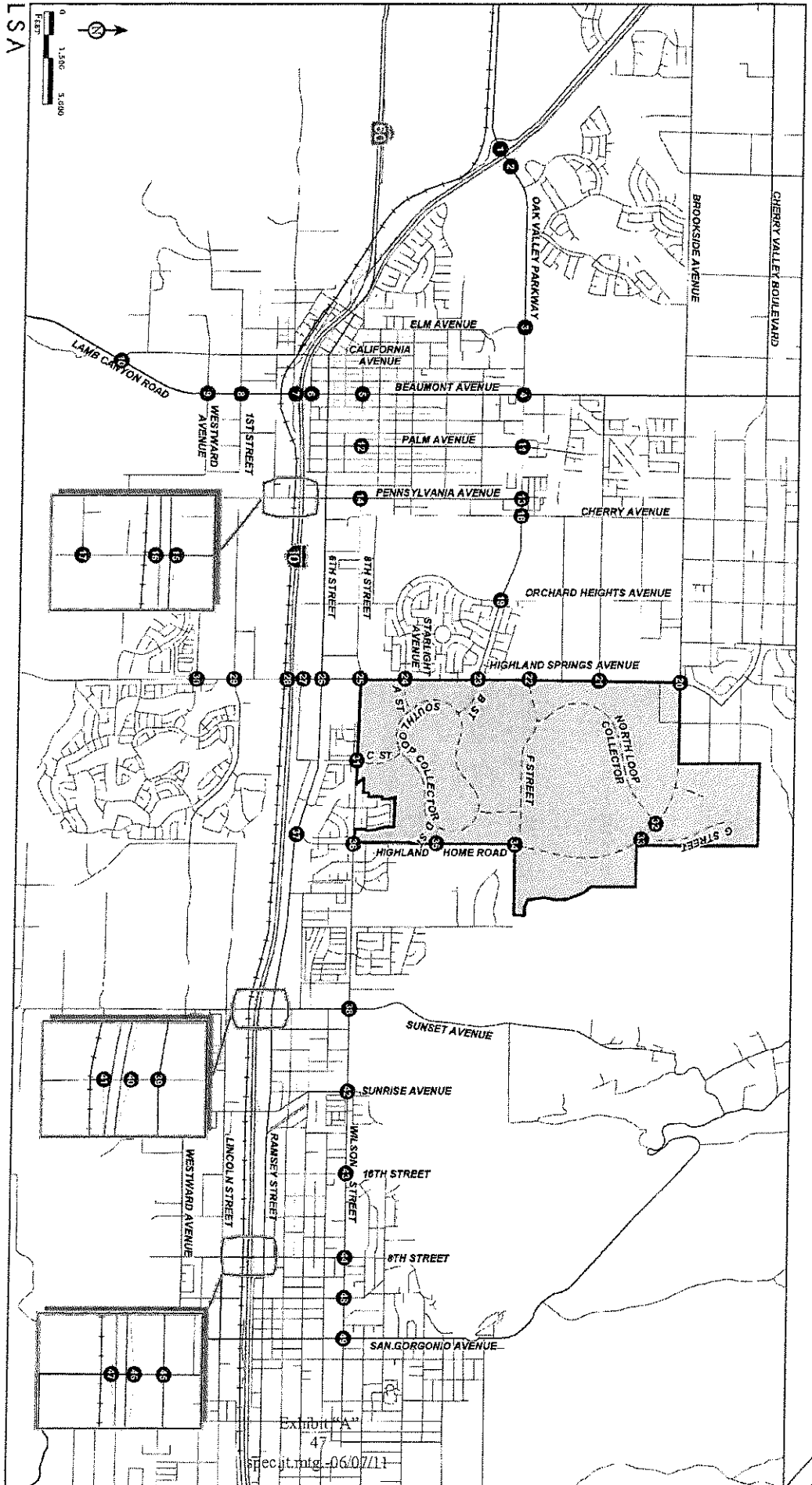
- Brought both City of Beaumont and Banning Council Members and Staff together to address common safety and traffic flow problems along Highland Springs between Sun Lakes Blvd. and Wilson Street
- Designed re-alignment of Joshua Palmer and developed strategy to improve commercial properties just north of 10 Freeway
- Initiated talks with CalTrans on signal synchronization and relocation of existing signals.
- Currently working with City Staff to hold a stakeholders meeting to determine process for improvements

62



# Analyzed Intersections

- PROJECT BOUNDARY
- STUDY AREA INTERSECTIONS



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

11/08/11  
SPECIAL MEETING

A special meeting (study session) of the Banning City Council was called to order by Mayor Hanna on November 8, 2011 at 3:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
David J. Aleshire, City Attorney  
Zai Abu Bakar, Community Development Director  
Doug Clarke, Assist. Fire Marshall  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

WORKSHOP ITEM

1. Policy Discussion on Code Enforcement  
(Staff Report – Zai Abu Bakar, Community Development Director)

City Manager said that during Zai's staff report there are some questions that we received in the last couple of days and she is going to try to answer some of those and if we didn't answer your question, please ask it again.

Director Zai said staff's recommendation is that the City Council listen to the presentation, discuss it and provide staff with direction. As you have seen in the staff report we have provided you with an overview of the current code enforcement. She will try to answer some of the more detailed questions in terms of the number of cases and things like that. During the power-point presentation she will highlight some of the key points in the staff report.

Director Zai stated that our current policy on code enforcement is reactive and basically we respond to complaints from residents. So when they call us we go out and check the location or address they referred us to plus we also check the whole block for the same violation and ask people to voluntarily comply because we don't have any other mechanism or tools to make people comply. She mentioned in the staff report that there are five different elements but basically the program components are 1) nuisance abatement and 2) abandoned vehicle

65

abatement (AVA). In regards to AVA we participate with the County of Riverside Vehicle Abatement Program and we do get revenue back into the General Fund. To give you an idea in terms of the number of complaints that we received just this year for ten months we received 535 complaints which is an average of 54 complains per month. Out of those 535 complaints received we have 202 open cases meaning that we have assigned it a number and go out there and inspect, and 333 pending complaints not yet inspected. Out of 202 open cases 70 are nuisance abatement and 37 are still open and 33 are closed. Under the abandoned vehicle abatement there are a total of 132 cases with 61 still open and 71 closed. In regards to Program Priorities if we do have health and safety complaints which is immediate threat to health and safety for example, if there is a sewer break then that is priority and typically what we would do is go out with the police department, fire and building and safety. Some of these health and safety complaints come through the police department. The other priority is AVA and that is because we do get some revenue out of that and last fiscal year we were able to get about \$68,000 dollars by participating in that program. In regards to success of code enforcement a success to us is voluntary compliance by the resident, violator or property owner. If there is non-compliance the first thing we do is to talk to the property owner and if they say they will take care of it tomorrow or the next day or within this week, then we typically don't generate a letter. If not, we will send the first letter out which would give the resident 15-days notice and after the 15 days we go back and re-inspect. If they do comply, then the case is closed. If they do not comply, then there is another 15-day notice and if there is no compliance, that is the time when we bill them for the cost of enforcement and that would include the cost of inspection, preparation of letters, mailing fees, etc. If the violator does not pay for the cost of enforcement, then a lien is recorded against the property.

Director Zai said one of the things that the City used to have was an Administrative Citation and that process stopped in 2008 because there was no full-time hearing officer. The purpose of having a hearing officer is so that residents can be heard. From her understanding the hearing officer that we used to have was a retired judge and he was a volunteer and lived at Sun Lakes and because he was a volunteer he didn't get paid and after a while we couldn't get his service. There is a way we can reactivate this Administrative Citation process by having a paid hearing officer or a collection agency. The beauty of the collection agency is that they can go get the fine if people don't pay, through income tax annually instead of putting a lien on the property and get it three to five years later. The cost of the hearing officer and the cost of having a collection agency can be funded by the fines. As she mentioned to the Council our program is reactive but there are alternatives and there are three additional alternatives in addition to what we are already doing right now and they are: 1) enforce only cases that have immediate threat to health and safety; 2) reactive and respond solely to that complaint and don't go out and look in other locations in the same block; and 3) be pro-active and check the whole block as to what we can do. If the Council desires reactive code enforcement, we would simply continue the current program and reactivate the administrative citation. If the Council desires to have a pro-active code enforcement we would need an additional 2 officers and the cost is about \$200,000.00 (salary and benefits); and also need an additional office assistant at the cost of \$85,000.00 (salary and benefits) and also reactivate the administrative citation because we can get revenues out of this administrative citation so that it can continue to fund the program and pay for the cost of code enforcement.



Director Zai said that it is staff's recommendation to the Council due to the General Fund deficit to continue with the current program, reactivate the administrative citation and the administrative citation can be used not just for code enforcement but by building and safety, fire, police, etc.

Mayor Hanna asked would you define success for code enforcement as voluntary compliance. What would the city look like if we had success? To her, if we had voluntary compliance means you are responding to, at this point, re-active complaints. She has no idea of where the complaints are coming from, are they all centered in a certain part of town or are they spread evenly all over town, what are the nature of the complaints, what are we really doing. The whole point of code enforcement is what; to make our town better and eliminate blight. So are the complaints regarding blight or are they regarding minor infraction of someone's parking or other things.

Director Zai said there are a variety of complaints received anywhere from sewer breaks and waterline breaks, weeds, trash, debris and that is common and we also get complaints especially from the police department like forty cases so far where people would squat in the houses that are vacant. People would go in the abandoned buildings and start living in there without electricity, water and things like that. When we go in there with our team what we will find out is that they will start rigging the electricity which is dangerous, etc. so it is a variety of complaints and not just like weeds in the front yard or trash in the front yard so it is a variety.

Mayor Hanna would like an analysis of that and where they are located.

Director Zai said a majority of the complaints are on the north side of the freeway. With her team they discuss trying to do this by geography or certain sections of the community and what they are finding is that a lot of the issues are in residential zones compared to industrial zones. So the focus right now is on the north side of the freeway.

Councilmember Franklin said we have talked that there are no consequences other than paying for the follow-up. It is very difficult to put together some kind of a fine schedule or is it possible to put together a fine schedule for people who might be repeat offenders or the ones that are not following-up.

Director Zai said in the current policy the reason we can't follow-up is because we don't have a hearing officer. The fines have already been set up. For example, the first offense is \$100 per count and if you have one offense in three years, you have to pay \$100 per count. For example, if we go out to the site and there is a violation for instance weeds in the front yard, that is one count and there is \$100 fine. If we find out in the backyard there is storage of equipment not permitted, that would be the second count and the fine would be \$200. The fines were actually already established by Council before she came to the City.

Councilmember Robinson said you stated that we had about 533 complaints just in 2011 and you are working about 200 some complaints right now and so the 300 outstanding what kind of priority do they have as far as getting those cleared out. Is it just a lack of manpower and then

a second part of that is, is the volunteer group helping in reducing those 300 outstanding complaints?

Director Zai said the issue with the 333 cases is lack of manpower. Just having to respond to some of the appeals that the residents have does take a lot of effort and time in being able to resolve some of those issues. What she is finding out is that when you have absentee owners those are the ones that take a lot longer to work out the details. For example, they will tell her that they didn't receive the notice and then when we check somebody did sign the certified mail and then you have to go through that and start working with them because we don't have any other tools besides working with them and gaining voluntary compliance. Sometimes they would even be willing to pay the fine but sometimes we have people that just don't comply. So manpower is one of the issues. In regards to the volunteers we can only ask them to work on special projects because they are volunteers. They have helped us a lot with cleaning up those yard sale signs and also being our representative in terms of talking to the people who have yard sale signs letting them know that they have to have a permit and the proper signage and where they are permitted. They also do special projects for us for example, we have a container issue so they would be the ones that go out in the community and find out how many containers we have and things like that. Also in terms of abandoned property we ask them to inventory all of the vacant properties that we have in the city.

Councilmember Botts said he is concerned that we make sure we understand what our policy is because he remembers for years watching previous Council and in Banning we had code compliance and no code enforcement and it kept getting worse and worse and he remembers the previous Council said we have got to get tough and got to have code enforcement and he doesn't know how that translated into an ordinance but it did and we hired a significant number of people. Now I hear you using compliance a lot and he knows that you are trying to get the person to comply but he assumes we are still enforcing and if they don't do it, we are going to enforce and try to clean up Banning.

Director Zai said that we have the Municipal Code and we have to enforce our code basically but Code Compliance Officer is a much nicer name and she would guess that is for public relations.

Councilmember Botts said he is a big believer in public relations but compliance didn't work for 30 or 40 years here and he thinks that there is a time that we need to show people we mean business. He understands compliance but he doesn't have any trouble in saying we are going to enforce things in order to have a beautified Banning.

Councilmember Botts asked where are with containers. It has been a while since he has had complaints where it appeared that we were selectively going after businesses with containers and he doesn't know if that is fair and maybe it was not selective and maybe it was by complaints. He thinks the code says you cannot have containers on your property. He asked what the code is and what are we doing about that.

Director Zai said that is a tuff issue because some of those have not been enforced for a long time. The code does provide for people to have containers while they are working on their

building. For example, if they have a building permit you can have containers for a certain amount of time and she believes that is up to one year. So you are allowed to have containers but what happened was that some of these containers were brought in and this was a huge issue so we made a decision if we need to enforce, we need to enforce it on everybody and right now we are not doing that.

Councilmember Botts said you talked about reactive versus reactive plus covering the block versus pro-active. So what are we doing now? Is it reactive or reactive plus the block?

Director Zai said it is reactive plus the block and that is staff's recommendation given our budget constraints.

Councilmember Botts said then also you want to reinstitute the administrative citations and you said it is cheaper to have a free hearing officer from Sun Lakes or from some place else versus a collection agency. You talked about those two but you didn't differentiate. What are you recommending?

Director Zai said that her recommendation is to have a paid hearing officer and also a collection agent and the funding to pay for that will come from the fines that are generated.

Mayor Pro Tem Machisic said he would like to address mission impossible. He said that a couple of things really bother him and when Councilmember Robinson hit on it that we have 550 some cases and you have approximately 337 cases open and what do you tell those 333; that we will get to them. Is that it? And then we get a complaint and then we do the whole block for violations. So that means that some of the violations in the block are maybe incidental things that we wouldn't enforce normally. He said what he is thinking about is that we should have a priority. If we are going to work on abandoned cars, then let's work on abandoned cars. If we are going to work on sewage spills, let's work on sewage spills. He doesn't know enough about the kind of cases we have put he thinks you are trying to do everything possible and you are having difficulty because we are hard pressed for money. Certainly he would like to see us increase the penalty fees but he would like to see some way of delimiting the kind of cases you go after or prioritize them so that we go after what we consider the most serious violations in the city. You are always going to be behind the proverbial eight ball because you are inconsistent and you are inconsistent for a reason; you don't have any money. He would like to see us develop some kind of a priority so that the people who are working with the limited resources that we have would be put towards solving that problem whatever that problems is as defined by you and by the staff and by the Council.

Mayor Hanna said she would really agree and in thinking of this in advance she thought it would be really difficult to change because all of sudden all those people with complaints would be told we can't deal with it but right now they are being told we can't deal with it for six months to a year or two so they can't be very happy about our existing system. She would agree with Councilmember Machisic that we should set priorities and say after health and safety what are the top issues that would really make a difference. If the complaints are primarily residential and those are important but she is really interested in the commercial areas and the public areas and if people are not really complaining about it maybe because they are

not traveling those areas or something but we are concerned about it and that is what we have been trying to do in improving the downtown so she would like to see some prioritization and say here are our priorities and we will get to anything else when we can but here is what we are going to deal with and deal with effectively.

Councilmember Franklin said she would agree with Councilmember Machisic about priorities but if there are some issues that come up that are particularly bothersome to neighbors and she will use a case in point where she has had several reports of a rooster at 3 a.m. and if people are complaining about something like that, are you saying because it is not a priority we would not do that or we would do those in addition to prioritizing.

Mayor Pro Tem Machisic said what he is saying is that he is sure that there are many of these 333 cases that haven't been responded to that are those types of complaints and so the question is how do you dilute this thing down. In other words, when he made the comment "mission impossible", that is what the staff faces because it is hard to do what everyone wants unless we have a clear, concise idea and share it with staff what we would like for them to do within the limited resources we have and certainly the hearing officer as Zai has indicated is maybe a small step in that direction.

Councilmember Franklin said she agrees with what you are saying but she would guess that her biggest concern is that there may be some issues that may not fall within basic health and safety but they could be big detractors in a particular neighborhood and she thinks what may happen too, which would be something to work out, people are going to start complaining about additional devaluation of their properties if the City is not following up. She thinks that some things may not seem like they are that big a deal but there are some things that really impact the image of our city and the other piece that she would really want to make sure we deal with, more than anything else, we are consistent and fair in anything that we do.

Mayor Hanna said she is sure everyone else hears this, as well as she does, but somebody gets told they have a violation and then they take a camera and take pictures or make a video saying that there are 5000 people with the same problem and why are you picking on me and we say well somebody complained. It would be much more satisfactory, she would think, to say and notify people also if we decide to come back with the top ten issues and maybe suggest the top three or whatever you think you could possibly handle and then we can say but these are our priorities and not that you shouldn't go after the roosters or something but on something that is really un-nerving a neighborhood or something like that but basically you are going to be focused 90% or 95% on these top issues and deal with them across the board fairly and equally.

Mayor Pro Tem Machisic said he would be supportive of Zai asking about a hearing officer and also thinks that we should revisit the fines. Nothing stings worse than paying money out of your pocket and particularly in times like this. But if we are going to be effective, unfortunately we have to back it up with a real lesson and that is unfortunate but sometimes that is what you have to do.

Councilmember Botts said he would agree with both of his colleagues and would like to ask staff to hear what we are saying and develop some kind of priority but would agree with

Councilmember Franklin that we all have complaints and he happens to carry a camera in his car and if we set a priority and you can't complain, then he would assume the Council can't complain about something they think is significant and what we might think is not significant at 4:00 a.m. and maybe a rooster is and he thinks the last thing we need is to say sorry, we don't deal with that we have other priorities and then we start having our constituents complain about the fact that they cannot complain. So what he is saying is set a priority as Councilmember Machisic has said and that is going to be based upon what your availability of time and hours are but also not to shut off the availability for the complaint driven portion of it. We need to be able to have our constituents, if they feel there is a significant issue, still be able to make a complaint.

Councilmember Robinson said he sees that our Fire Marshall is here and possibly we can get some input on how many of these 500 originally are commercial complaints and how is the fire department dealing with these. Do they feel like they are getting a handle on them? So how much of that is commercial complaints and does that get a higher priority in light of the oil spill we are going to talk about a little later because if that was looked at more that would have been remedied before it was an oil spill.

Doug Clarke, Assistant Fire Marshall said that most of the complaints that he deals with come straight over to his office and most of them do not come through code enforcement. But the complaints out of the commercial side we have quite a few going on over there. We have a lot of stuff dealing with the container issue. We have one over on Lincoln where we have a container sitting over dumpsters which is not a smart way of doing storage containers so we are dealing with those types of issues. We are dealing with different types of hazmat issues of storage containing and how we are going to store stuff and get in and get out.

Councilmember Robinson said so those numbers are not included in the 500 and some we are looking at so the issue is actually larger than what we are talking about.

Mayor Hanna asked where he gets his complaints.

Mr. Clarke said by people calling into his office and he goes out and inspects and also while out on his inspections he will come across these problems.

Mayor Hanna asked whether there was communication between Code Enforcement and Fire. Mr. Clarke said that they talk two to three times per week and they know what he is working on. Mayor Hanna said so they know what you are working on and you are working on containers and Director Zai said that they were not working on containers.

Mr. Clarke said he works on containers when he comes across one and he deals with it and he gets it taken care of before he leaves the property because that is a life safety issue.

Councilmember Robinson asked about the annual inspection side of it because it is in our report here that Station 89 and the Fire Marshall is working on an annual inspection.



Mr. Clarke said that annual inspections are mandated inspections that are due and they are getting backed up because of the weed abatement that is going on in the city right now. We have tackled that quite hard so we can get most of these properties weed abated and it takes a lot of time and takes most of his time in fact, right now he has about 900 hours invested in just dealing with weed abatement. So his annual inspections have been pushed back so he has not gotten to all of them and he will probably not get all of them finished this year.

Councilmember Franklin said that she is also in favor of looking at the fine piece of it to see if it will help pay for the program or at least offset some of the costs, as well as, utilizing the administrative officer or person that can hear some of the cases that could be maybe readily resolved but she does like the idea of looking at the fines to make sure it is effective so that people may not feel it is so easy to just let the thing go and just pay \$100 dollars a year but really take notice.

Mayor Hanna said that the City Council to her knowledge was never notified that the administrative citations stopped. She knows that was before current staff's time but the previous City Attorney was taking things to court and is that still happening.

City Attorney said yes and not having this administrative process eventually we would go to court. However, he thinks that in their two years he doesn't think that they have had a case which got taken to court. We have met with staff and talked about the process but for whatever reason no cases have gotten to the stage where staff asked us to take it to court. He said that in communities that he has been in before where over a period of time there was no code enforcement whether lack of resources, etc. a very important thing is if there is going to be a new level of attention, a new process it is important to make sure people are aware of that and to follow through on some cases. We found in some communities that were kind of trying to jump-start their program again that actually following through on a couple of cases and getting some attention for that caused everybody else to start becoming more compliant. We also found that sometimes designating particular areas also helps in getting compliance.

Mayor Hanna said we did have a priority and that was Ramsey and Lincoln as our priority focus areas and it was not to end there but that is where we started.

Councilmember Botts said he would like to piggyback on what the City Attorney said and ask staff and the City Manager to not only look at a priority but look at some other ways of doing this. To take a section and you bring in code enforcement, police and fire and they descend on an area and you get a lot of attention but simply not to just a priority but lets talk about are there some areas that we really ought to focus on. He added that we had an attorney who did nothing but stay in court on code enforcement issues but we had more money and more code enforcement officers but we had dozens and dozens and he would suggest that we haven't fixed them all but we ought to look at that subject to the dollar amount if we are going to be serious and push through so we would ask the City Manager and staff to at least look at that and say how best we can help beautify Banning.

City Manager said that we do that in certain cases. There was a mobile home park with a triple homicide happened and there was some issues with code enforcement so both the police, Zai

and code enforcement went out there to canvas that area and try to do certain things. So we do try to do spot ones when that does happen and obviously our first priority is always health and safety and then we can create a priority list for the Council after that.

Councilmember Botts said he would like to see all this just firmed up a little bit and he would agree with the Mayor that this is no reflection on current staff but he didn't know that we didn't have a citation program and we didn't have hearing officers and so if we have a little more defined program and maybe a little more feedback it would help for the Council to be a little more informed.

Mayor Hanna said and of course we want to educate people. We wouldn't just want to slam down on them. We would say for instance starting in three months we are going to begin in this area and enforce the following three things and notify everyone in that area that that is going to be going on so that they can prepare if they have the opportunity.

Mayor Pro Tem Machisic asked if the Fire Department's set of fines the same as the City of Banning.

Mr. Clarke said that he does not have fines; he has inspection fees. When he goes out and makes an inspection the cost is \$134 dollars an hour and either they pass the inspection or he writes a compliance notice and they have 15 days to comply and he will come back for a follow-up inspection and charge them again for \$134 dollars an hour and he inspects to make sure all is in compliance.

Mayor Pro Tem Machisic said when we were talking about fees or inspection fees or whatever and the City Attorney was talking about going to court and if we get to the point where we have to go to court couldn't we add the attorney's fees to the fee.

City Attorney said yes. If you go to court you can recover the cost. One of the issues being pointed out is that sometimes those will end up getting recorded against a property and it still could be a period of time before you actually collect it.

Mayor Hanna opened the item for public comments.

Ingle Schular, resident of Banning said regarding this prioritization she thinks that some of it will also be seasonal because there are no weed abatement issues in the rainy season so the emphasis in the high fire times should be vigorously enforced. She knows that we have had a lot of areas in town that really were a potential danger. Regarding the increase of penalties she knows that she and Councilmember Franklin walked her neighborhood and one gentleman was fined \$500 dollars for having a fifth-wheel trailer not on cement (in an RA zone) and the complaint was that the oil from a non-existing engine was spilling on to the dirt and he could not resolve that amicably with the City and she thinks some of this needs to be attended to. It is definitely unjust; there is no engine in a trailer. She thinks the administrative citation process which she was also unaware of is a way to deal with that and keep it in-house and keep it localized and that way people will trust it more than getting a lien on their property ultimately and nasty grams, etc. Also as Zai suggested that maybe some of the owners or the perpetrators

can be talked to and if this can be resolved, she thinks would be a lot better in the community than passing an ordinance that every horseman has to remove their manure as he rides down the streets. In regards to the roosters crowing if somebody is actually in an RA zone or moves in to it unknowing that it is an RA (residential agricultural) zone, there will be roosters and sometimes a lot of them. So they need to know maybe in an RA zone this is not an offense that can be penalized by a violation of the code. Then again, if they are talked to reasonably, maybe they can resolve that issue with a real estate person who sold them the property. These are some issues that need to be examined too; we all live in this community.

John McQuown, City Treasurer said that on any of these legal situations maybe the City Attorney can address this but most of these claims would probably be under \$7,000 or \$8,000 dollars and that can be handled in small claims court so he thinks that you can't even have an attorney represent you so we can have somebody from the City go to small claims but he does think the upper limit now is \$7,000 dollars so he thinks a lot of this can be handled without an attorney.

Mayor Hanna recommended that we at least make an effort to advertise in the community to see if there are volunteers. It wouldn't surprise her at all if we had retired judges in the community and it is always possible that one might be willing to volunteer for some period of time or under certain conditions.

Mayor Hanna said she thinks that the Council has given direction that we are interested in administrative citations, in agreement with going forward in setting priorities and coming back to us with a list of what you propose the priorities would be and possibly geographic issues/priorities as well and also interested in using a collection agency.

Councilmember Botts said he wanted to make sure that we are not eliminating the ability for a citizen to complain.

#### ADJOURNMENT

By common consent the meeting adjourned the meeting at 3:48 p.m.

---

Marie A. Calderon, City Clerk

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

11/08/2011  
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on November 8, 2011 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
June Overholt, Administrative Services Director  
David J. Aleshire, City Attorney/Agency Counsel  
Marie A. Calderon, City Clerk/Secretary

PUBLIC COMMENTS

Al Lopez and Miriam Lopez of the Hispanic Chamber of Commerce addressed the Council regarding their 9<sup>th</sup> Annual Christmas event. They said that they had sent a couple of letters to the Council this year asking for support. Last year they had over 2000 children and they gave a package of a meal to the head of each family of which there was about 500. This year the way the economy is they expect to see more children and every year it increases about 400 to 500 children. Mrs. Lopez said if everything works out good this year they are preparing 1,200 meals for each head of the family. They will be distributing toys, hot dogs, beverages, churros and have crafts and jumpers. This is free of charge to each of the families. For the kids this is the only opportunity for them to have a toy for Christmas and it is very sad but a reality. This is the reason they are here and they are asking for a contribution from the City of Banning and the City has been always been very helpful. This is something for the community and no one receives a penny. She knows that times are tough and the City like everyone else is going through a bad time.

Mayor Hanna said that in previous years you said you were getting children from all over the Pass Area so are you going to other governmental agencies such as the City of Beaumont to get any donations.

Mrs. Lopez said that she has tried everywhere and the responses are not so good. She said that Supervisor Marion Ashley helps every year and she has other companies that help but it is a big event. She said that if you cannot help us with money, come and help us with your time or anything else you can do.

Councilmember Botts asked who they turned their request into and what are you asking for.

Mrs. Lopez said that they turned it into the City Manager's Office. This event will be taking place on December 11<sup>th</sup> from 12 to 4 p.m. and is open to the public. They have been working on this event for about two months already. They are asking for support in the amount of \$2,500. Mr. Lopez said that the amount they spend is about \$13,000 and it is always increasing.

#### CLOSED SESSION

City Attorney said the closed session items involve two matters of potential litigation pursuant to Government Code Section 54956.9; a matter concerning real property negotiations pursuant to Government Code Section 54956.8 for property located at 260 W. Ramsey, 60 S. Third Street and 33 S. San Geronio. There was also an addendum to add Banning Airport Associates, et al. v. City of Banning, et al: (Riverside Superior Court Case No. RIC 497338) pursuant to the provisions of Government Code Section 54956.9(a).

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

Meeting went into closed session at 4:10 p.m.

#### ADJOURNMENT

By common consent the meeting adjourned at 4:45 p.m.

---

Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

11/08/11  
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Hanna on November 8, 2011 at 5:03 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  
June Overholt, Administrative Services Director  
David J. Aleshire, City Attorney  
Zai Abu Bakar, Community Development Director  
Leonard Purvis, Police Chief  
Heidi Meraz, Community Services Director  
Bill Manis, Economic Development/Redevelopment Director  
Fred Mason, Electric Utility Director  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk

Mayor Hanna said that last week we lost a wonderful member of the Morongo Reservation, Dr. Katherine Siva Saubel and we will close this City Council Meeting in memory of her. The invocation was given by Mayor Hanna reciting from Psalms 8. Councilmember Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney Aleshire stated that the City Council and Agency Board met in closed session to consider three matters. There were two cases of potential litigation and a status report was given and there was no reportable action taken. The other matter involved real property negotiations concerning the property at 260 W. Ramsey, 60 S. Third Street and 33 S. San Geronio and a status report was given on those matters and no action was take. There was also an addendum to the agenda adding an item regarding a litigation matter of Banning Airport Associates, et al. v. City of Banning, et al: (Riverside Superior Court Case No. RIC 497338) and a status report was given and there was no reportable action taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Charlene Sakurai, 4985 Bermuda Dunes gave a report on a couple of real important items that came up at the Passcom meeting today. There was a report on the Nationwide Emergency Alert System. This is basically something that grew out of 9/11 where there was no way to address the nation all at one time. Tomorrow, November 9<sup>th</sup>, FEMA (Federal Emergency Management Agency) is coordinating a nationwide test. This is a media communications based system and although departments such as Homeland Security and the FCC (Federal Communications Commission) and National Weather Service and the National Oceanic and Atmospheric Administration (NOAA) are all involved FEMA is coordinating it. It is supposed start at 2 p.m. Eastern Standard Time. There is also going to be a statewide drill on November 17<sup>th</sup> and the theme will be loss of water in a disaster. Every hospital and medical facility is participating in this so they can assess how much water they have in order to do what they need to do. They will all participate, as well as, RACES (ham operators). Mrs. Sakurai said that in regards to CERT (Community Emergency Response Team) classes it is really important that we all become certified or trained in what to do in an emergency or disaster. There will be a local CERT class in May 2012 at Serrano Del Vista and more information will be forthcoming. Also for the first time they will have a Teen CERT Class and also for the second year they will have a Spanish speaking CERT class and also one for the hearing impaired. These CERT classes are free.

Yvonne Lathrop, President of the Banning Teachers Association addressed the Council stating that Banning teachers believe in giving back to our community and for this year she is glad to present on behalf of BTA a check to Debbie Franklin for the Holiday Wish Program in the amount of \$2,000.

Councilmember Franklin said she does not get the check personally. This check is for Holiday Wish which is a program that is a part of the Banning Chamber of Commerce and it is run completely by volunteers and none of the money is spent on any operating costs. It all goes to the children and the families and so far they have 103 families that have been selected by the school district. The schools look to see who are in the most need of these items and then we provide the necessities for the children such as jacket, socks, toothbrush and toothpaste and also try to provide a meal and a toy or an item valued up to \$50.00 per child. This year they are looking at probably about 400 children. They also try very hard to make sure if anyone else is doing a similar program so that there is no overlap or duplication.

CORRESPONDENCE - Nothing at this time.

PRESENTATIONS:

1. "Zorro" Retirement Presentation – Police Chief Purvis

Chief Purvis said it is a sad day today in that they are losing probably the most recognized employee of the Banning Police Department in the City of Banning. Chief Purvis introduced Zorro's handler and dad, Officer Rick Youngblood and introduced Zorro's mother, Lead Dispatcher, Chelse Youngblood and the Zorro fan club which is his immediate family. He said

that Zorro is a black Labrador Retriever and is currently nine and half years old. Zorro started his career with the Banning Police Department on February 6, 2006 as a Narcotic Detection Canine. Zorro was donated to the Banning Police Department by Danny LaMaster from Master K-9 in Cherry Valley. The average cost for a canine and subsequent schooling is approximately \$11,000. Zorro and his handler, Officer Rick Youngblood, attended a 200 hour course through Master K-9 to learn the ins and outs of narcotic detection and enforcement and completed their class on March 10, 2006 and made their first narcotic arrest on March 12, 2006. Since then Zorro has been instrumental in numerous narcotic arrests while on patrol. Over Zorro's career he made 702 cocaine finds, 748 methamphetamine finds, 251 heroine finds, and 1,188 marijuana finds. These finds resulted in the seizure of hundreds of pounds of illegal narcotics and those are narcotics that didn't end up hitting our streets in our local communities. Even though Zorro is not a suspect apprehension canine he is credited with four surrenders of fleeing suspects. The arrival of the K-9 and Zorro's barking coming from the unit made these four suspects give up without a fight. Zorro has assisted several of our Southern California law enforcement partners throughout the years. Officer Youngblood and Zorro have helped educate our children about the dangers of illegal drugs through school programs, special events and our previous DARE (Drug Abuse Resistance Education) programs. Zorro also attended Red Ribbon Week every year since 2006. We are going to miss Zorro. He has done a great job representing the department and being a friend to many. At this time a video was shown highlighting Zorro's career.

## 2. Banning High School Solar Boat Team Presentation

Fred Mason, Electric Utility Director stated that before you is the boat that the team put together for last year and in attendance are the faculty representatives Mark Kline and Larry Ellis and their students who will give the presentation.

Bryant Tran and Ricardo Orozco, seniors at Banning High School addressed the Council at this time giving a power-point presentation (see Exhibit A) on the Banning High School Solar Boat Challenge that took place from May 13<sup>th</sup> to 15<sup>th</sup> at Yucaipa Regional Park. They gave information about the Inland Empire Solar Challenge, the schools involved, what the event focuses on, the events that took place, the building of the boat, what they learned and who was involved. Mr. Tran said basically the solar challenge was an opportunity for the AP Physics students and AP Chemistry students at Banning High to have a hands-on engineering experience. This gives them the opportunity to take what they have learned in books and actually apply it to a real life schematic. Mr. Orozco explained each of the images of the students working on the boat. Mr. Tran said a side from building the boat they had to make a presentation on the California Water Project teaching them about effective water management and other limits on how to properly use our water. All the work was stationed at Mr. Ellis's house and it was a good experience because Banning High does not have a metal shop class and it is an invaluable skill to work with all these tools. Special thank you to the City of Banning and Banning Electric because we would not have been able to do this without them.

Mayor Pro Tem Machisic said that sometimes people have a lot of negative comments about young people and he thinks that this is a prime example of what our young people are like. They are inventive, they have initiative and they learn a great many skills. He is proud of these



young people and all the people who participated. He thanked the faculty members for taking their time and effort and that is the sign of an outstanding teacher.

### 3. Central School Mandarin Chinese Class Recognition – Mayor and Council

Mayor Hanna asked the Council to join her at the podium and asked the students and the parents to also come up to the front at this time. She said here are two demonstrations of the incredible Banning Unified School District. These children all go to Central Elementary School on San Geronio and this school also has a Dual Immersion Program and we just had our first class of kids who had gone all the way through school learning English and Spanish simultaneously. This group of children is learning Mandarin Chinese after school and at they went to Los Angeles and competed in a Chinese Poetry Contest and the students placed first and third in that contest on July 24, 2011 and they were the only non-Chinese, native Chinese language speaking people to compete and to win. We are incredibly proud of them and would like to honor them with a Certificate of Congratulations to: Katherine Farfan-Magana, Savanna Douglas, Gisselle Farfan-Magana, Lynda Salgado, Ana Celina Girard, Brianna Topete, Jerrilyn Campos, Jessica Ramirez, Gabriela Sandoval, Chaise Jordan, Isabella Renteria-Mazanilla, Jasani Seymour, Lupita Girard, Teacher and Dr. Tina Tian, Teacher.

### Introduction of New Employee

City Manager Takata said as you are aware during this fiscal time we took positions that were in Redevelopment and Economic Development and created one which is the Economic and Redevelopment Director position and this actually saved us some money in the long run as far as that goes per year. He introduced Bill Manis who has received that position and comes to us from Cypress. Prior to that he worked in Corona, as well as, Santa Ana where he specialized in the downtown. City Manager said that he knows that Council's concentration has been in the downtown and we wanted somebody who was actually a downtown specialist and has a certificate for that. In addition to that he worked in Cerritos and while there part of his main job was working with the auto dealerships and as you know Cerritos has probably one of the most successful auto dealerships there. His wife's name is Judy and his in-laws have lived in Banning for 17 years and they are George and Patty Underhill. He graduated from Cal Poly Pomona in Urban Planning. He has a daughter who went to USC and graduated and a son who is a senior at USC. As part of his hobbies he loves to run. Bill has just started this week and we look forward to great things with him.

Mr. Manis said it is his privilege as far as being here today. It was about a three month process and a great process and staff really screened him quite well and he is very excited about working here for the City. He has a lot of great ideas, programs and projects that he would like to start and he looks forward to getting knee deep in all these projects and doing some really wonderful things here. He looks forward to working with the Council and staff.

### CONSENT ITEMS

Councilmember Robinson pulled Consent Item No. 3 for discussion.

1. Approval of Minutes – Joint Meeting – 10/25/11 (Closed Session).

Recommendation: That the minutes of the joint meeting October 25, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 10/25/11

Recommendation: That the minutes of the regular meeting of October 25, 2011 be approved.

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

3. Resolution No. 2011-93, Amending Its Fiscal Budget Regarding the Purchase of Equipment for Utility Billing Services.

June Overholt, Administrative Services Director gave an overview of this item stating that what she has observed since being here is that we have some significant manual processes and it causes backups in being able to provide better customer service for our residents and one of the manual processes that she has come across is that we manually process the checks that are given to the City to pay the utility bills. So that takes many hours to accomplish if someone is out sick or on vacation then it gets backed up further. If the lines are long and we are at the counter helping customers then processing the checks gets back up so we looked at several possibilities for a solution including a lock box and the cost of doing that on annual basis is practically the cost of an employee so rather than go that avenue we looked at what it would cost to bring some equipment in-house. This has been considered in the past but no action was taken so now we are bringing it forward to the Council and hopefully that will bring down our time to just a couple of hours a day.

Councilmember Robinson said that this is for checks that are mailed in, dropped off at the drop box or brought in by customers at the counter. How about the bank-drafted checks and does this affect that at all.

Ms. Overholt said no, it does not help that. Councilmember Robinson said so it would just give you more time to work on those. Ms. Overholt said that was correct.

There was some discussion about making payments on-line and working on some of the problems with that program.

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

**Motion Botts/Machisic that the Council approve Consent Item No. 3 adopting Resolution 2011-93, Amending Its Fiscal Budget Regarding the Purchase of Equipment for Utility Billing Services authorizing the purchase of equipment and software from Creditron for the purpose of implementing a remittance processing system; authorize the purchase of computers needed for compatibility with new scanning capabilities and the purchase of chairs to replace aging or damaged chairs, and authorizing the Administrative Services**

**Director to amend the budget and make any necessary budget adjustments and appropriations from the Utility Billing Services Fund 761 in the amount of \$38,500.**

REPORTS OF OFFICERS

1. Resolution No. 2011-92, Appropriating Funds and Amending the Project Budget for the Emergency Oil Spill Cleanup that originated from 553 E. Ramsey Street for a total amount not to exceed \$1,814,291.  
(Staff Report - Andy Takata, City Manager)

City Manager gave a power-point presentation on this item (see Exhibit B). He said that this oil spill happened on a Sunday night and the City did not become aware of it until that Monday morning. He went over the process of this cleanup and the agencies involved and the technical review of the overall project. It is staff's recommendation to pay for this cleanup and go aggressively after those parties who caused this spill.

Mayor Hanna opened the item for public comments.

Henri De Roule, 3424 W. Nicolet said it was said that the parties were unknown who did this and how are we going to go after them.

City Manager said that we do know who they are.

**Motion Machisic/Botts that the City Council adopt Resolution No. 2011-92, Amending the project budget for the Emergency Oil Spill Cleanup that originated from 553 East Ramsey Street for a total amount "Not to Exceed" \$1,814,291.00; and authorizing the Administrative Services Director to make the necessary budget appropriations from General Fund Reserves and transfers in an amount "Not to Exceed" \$1,314,291.00 in order to cover expenses related to the emergency cleanup. Motion carried, all in favor.**

City Attorney said he wanted to make sure that the Council is aware that we have had an extensive police investigation and the investigation revealed the property owners where the property is located, the person that created the oil situation and also identified the party that spilled the oil and we will be proceeding to take legal action against those parties to try to recover for our damages.

2. Draft - Manual of Procedural Guidelines for the Conduct of City of Banning Legislative Body and Constituent Body/Commission Meetings.  
(Staff Report – David J. Aleshire, City Attorney)

City Attorney said that this is kind of a workshop format. He said that the way this evolved was that we established a Housing Authority and during the process of the different variations of the State trying to take our money away from us it appeared that we would be able to protect our housing money and housing programs by creating a Housing Authority which we did and in the process of that once we had done that we had to start looking at procedural guidelines as to how the Housing Authority will conduct its business. In doing that we actually went back

and looked at the Council's rules of procedure and found that they were a little out of date and also the various commissions had not adopted rules of procedure. So it kind of started with one issue and by the time we were done we realized what we probably ought to try to do is something comprehensive so that it was consistent. One of the things through the years is that the City of Banning has adopted a civility code and it has adopted a set of procedures in the past and there is a set of Agency procedures and now we are coming in with a new set of procedures so the idea was to create something consistent and something that would also apply in terms of the commissions and how they conduct their business. There are a number of gaps in terms of changes in the Brown Act through the years so we tried to fill in those gaps. We have tried to make things more consistent. The draft before you tonight is not a completed document. We decided that it would be a good idea before we finalized everything to kind of have a little run through as to where this thing is going and to give you a chance to talk about various issues and give direction. That is really the purpose tonight and why you referred to it as a workshop. We kind of wanted to give you something that was fairly complete so that you know exactly what we are talking about but then have an opportunity to talk about various issues.

City Attorney said that besides the staff report they also prepared a summary which tries to summarize the major changes from your past procedural guidelines. He said that will not go into detail things like for example your old rules don't tell about doing affidavits of posting. There are a lot of technical things that are covered and summarized in the memo. There are some significant issues that are identified in here that you don't have prior rules on for example we have an extensive section that talks about the difference between ordinances, resolutions and minute actions so trying to clarify when it is okay to do something by minute action versus having a resolution. One of the things talked about in here is extra meeting contacts and this is something that we have talked about in the past to some degree. If you have a project that is coming forward, when is it appropriate to go out there and talk to community groups or talk to the developer. If you have a project that is going to go through a hearing process, you are acting kind of as a judge in making a decision about that so we realized that as Council Members you are going to run into people at the grocery store and they are going to give you opinions about things and that is perfectly fine. We have language that talks about when people do contact you that way. The proper way of dealing with it is of course is to be polite. We encourage you to tell them that it is a hearing and that all Council Members ought to be able to hear what they have to say and they ought to get informed about it and come when the public hearing is being held and express their opinion so that everybody can see it or prepare written comments. The idea is to make sure that all of that gets into the record. The same is true with the developer. The idea is to make sure that if you have a development project that we are going to have a hearing and that everybody will be aware of what is going on and if you did come across information, that should be brought forward to the public hearing and disclosed and your prior rules did not talk about that at all. There is a section here that talks about that. There is a section about legal opinions that basically says that any Council Member has the right to request a legal opinion of the City Attorney. In our experience that is not necessarily the norm. We encourage being able to talk to council members and give them advice however especially where the City Attorney is in a contract situation where what we do is billable by the time spent. We have inserted language that talks about us following-up on things and kind of answer questions but if it is going to involve extensive amounts of time, then

instead of just doing it we would talk to the City Manager or get it on an agenda so that the entire Council can give that direction instead of spending extensive legal time on something maybe only one Council Member wants.

City Attorney said that he was just highlighting those because the one about the City Attorney is a little different and the one about the extra meeting contacts was not in the prior rules. There is a due process consideration language in here that says you shouldn't give your opinions on matters before they are heard and this kind of comes up in Council meetings. There is a procedure in the new rules that talks about what is proper hearing procedure especially in cities where there is a lot of direct contact between Council Members and the public. Someone will come forward and testify and they will be talking about something and Council Members have a natural desire to respond promptly to what they hear and so when somebody finished testifying a Council Member might have a question or might have a question of staff and they ask that question and then they proceed to express an opinion that this either is a great project or a bad project and we haven't closed the public hearing. So there is language that talks about its okay to ask staff factual questions but we don't want to start talking about the project whether we like it or don't like it until the public hearing is closed and we are at that part of the meeting where we are having Council dialogue about your reaction to the testimony. We have a process in here about the censure and how that would work. One thing that is in the rules and we have left it in because that is kind of what your old rules said but it is something to think about and it basically says that a Council Member should not abstain unless you have a conflict of interest. So in other words a Council Member who just doesn't have a financial conflict of interest could participate but for whatever reason feels it is really not appropriate. The way your rules are set up it says that you should participate and you can only abstain if you have a legally sufficient cause to do that. A lot of our cities don't have that type of rule. There could be situations where you really don't fit the legally required requirement not to participate but there might be a reason. Maybe you were not involved in a financial way with a group but it's a group you belong to so it wouldn't fit the FPPC (Fair Political Practices Commission) definition to abstain but the Council Member just feels it would look inappropriate and they want to abstain. Under the old rules that might be a question mark so if you want him to make that a little bit broader standard he could.

City Attorney said one area that he would highlight is the public comments period and how that all works. Under the Brown Act you are only required to allow public comment before an agenda item is discussed. You don't necessarily have to have a general public comment period at the beginning of the meeting. You could actually do it at the very end of the meeting. The requirement is that before you can act on something there has to be a public comment opportunity with regards to that item. So you could either do that by having a public comment period at the very beginning of the meeting where people can comment on all the agenda items but then subsequently you cannot comment on the agenda items or you can actually permit the comment with respect to each agenda item. Cities vary very greatly in how they do this. He is just raising it because if there is any reason you want to change the process, this would be the time to talk about it in terms of revising these rules. Also the issue of the time periods we permit three minutes on general comments but five minutes for public hearings and those are fairly standard time periods as we work in most of our cities.

City Attorney said that he just wanted to kind of give you a little orientation as to things that might be issues and again, he thinks the main thing he is here to do is to hear what you have to say so we can fine tune this draft to be something that not only you are willing to work with but then the Housing Authority, the Redevelopment Agency and the commissions would be under the same rules.

Mayor Hanna asked the City Attorney to comment on the speaker cards.

City Attorney said that people have different ideas about speaker cards and obviously there are many cities that don't have speaker cards at all. Many city clerks kind of like speaker cards because the person comes forward and they start to talk and you don't get their name or spell their names and then you go do the minutes and you don't get the spelling correct so in many of our cities they like the idea of speaker cards and having them filled out and this just helps the accuracy of the minutes. Communities that haven't had speaker cards in the past there can sometimes be a reaction as if the speaker card is an effort to control who can speak and who cannot speak. So sometimes the public when they are not use to the process has a little bit of a negative reaction. He said the one reason to do speaker cards again, when we have the person come forward, some people might not want to actually identify themselves and if they have given the speaker card to the clerk we actually then have it so they don't necessarily have to say it publically who they are. That sometimes is a concern but the flip side can be a concern also because there are people who don't want to fill out a speaker card, they don't want to give their name and the question is if you don't fill out the speaker card, are you prohibited from speaking. We put a provision in here providing for speaker cards but if you read it, you will notice that there is a provision that says the filling out the speaker card is voluntary. So you wouldn't be required to do it. Those are kind of the pros and cons and how they work.

Councilmember Botts said on written page 36, Article XI, Section 1. – Conflict of Interest, he thinks he understands what is being said here but what he doesn't understand is the next paragraph where you talk about the conflict of interest and you can't participate and can't be in the room and so forth and then you say, "Where the Legislative Body member seeks to abstain from voting because of a financial interest in the contract under consideration, such contract shall be null and void and the Legislative Body shall not have the authority to enter into any such contract." He is not sure he understands that statement and then it is a subsection under Conflict of Interest

City Attorney said that is referring to the requirements under Government Code Section 1090 where if you have a financial interest and he thinks what the confusion is, is the way the term financial interest is being used here. It is not a financial interest in the exact same sense that you are thinking about of a financial conflict of interest under the Political Reform Act. Under the Political Reform Act if you have a financial interest in a matter, then you are required to abstain from participating in the decision of that matter. However, under 1090 if you have a financial interest in a contract, the City is barred from entering into that contract and if the Council voted to approve the contract, that is null and void. It could probably be written a little bit more clearly in that section that we don't have the ability to enter into a contract with a Council Member and if we attempted to do so, it would be null and void under 1090.

Councilmember Botts said he has another item that he is conflicted by that deals with talking to a developer, and why we call out a developer and don't call out everybody else who has some interest coming before us and you were saying being careful on any issue that is coming before us if we are going to be the hearing officers, the judge and the jury at hearings that you cannot give your opinion and he remembers an instance, and he thinks you were the City Attorney, where you opined that as we had an EIR and public hearings and a Council Member took a very visible position even though it was going to come through the Planning Commission and ultimately to the City Council, it seems to be a conflict here where you opined that that person could in fact take a position publicly.

Mayor Hanna said that was a previous attorney.

Councilmember Botts continued saying if it going to come before this body in some fashion for our decision a Council person cannot publicly take a position in advance of that hearing.

City Attorney said on the matter that is coming forward. This is definitely a complex matter. He thinks it is advisable to have a rule on this because it is a question that comes up all the time. The Council as a part of considering this could say you don't want this in your overall manual and will deal with it on a case by case basis. The advice that he would give is that again, this section as written doesn't just apply to developers, it says developers, applicants or other persons who will be the subject of a matter to be heard and it talks about should avoid extra meeting contacts. The rule clearly is that it does apply equally to anybody who is interested in the matter and so you could have homeowners who are next door to the project who obviously have an interest also. The issue is that you should not pre-judge the matter by taking a position on it. That potentially creates the issue that there is then lack of due process when the particular project comes forward. One of the things that makes this complicated is that we are talking about matters where you are serving in a quasi-judicial role. So that doesn't mean that everything that comes to the City Council. The easiest way to try and make the distinction is whether it is a public hearing matter or not a public hearing matter. The simple advice from the lawyer is that you should stay away from it and the way this is written we recognize that you are going to get phone calls. A developer is going to call, the neighbor is going to call, you are going to see them in the store and they are going to express an opinion. What we are saying here is just because that happens doesn't mean something illegal has happened. What you should refrain from is expressing an opinion and you should explain the public hearing process and you should encourage the person to go through that process. This is being proposed as a rule in your procedural handbook so that everybody here on out would know kind as a matter of policy how we intend to deal with these things.

Councilmember Franklin said when you talked about abstaining and whether or not if we are deciding we should abstain because of perception, do you have to leave the room.

City Attorney said no. You only have to leave the room for the FPPC (Fair Political Practices Commission) financial interest conflict. Because again, the other part is more of a judgment call and you would not be required to leave the room.

Councilmember Franklin said so it would be still appropriate, if we deem there is an issue for us through a perception or whatever issue, to go ahead and abstain.

City Attorney said right now the way this is drafted it says, "That you can't abstain except in the narrow circumstance because". That is what your old rules say and he is bringing it up because there are a lot of cities where this would be a little too restrictive for them and if you felt that way, he would take it that out.

Councilmember Franklin said she would like to see that taken out mainly because there are associations that she is involved with and she does not think it is appropriate for her to be voting on something when she knows she is actively involved with an agency even though there is no financial piece involved in it at all.

Mayor Hanna said in terms of the abstention would you like to leave it as the City Attorney as proposed in this draft or the way that Councilmember Franklin is recommending.

Councilmember Robinson said he would like more clarification on that issue. Obviously we have spouses that are involved and there are some very famous cases in California that involved spouses of Council Members and where do we stand on that where one of our spouses may be on a commission or a committee or part of group and we are voting to either give that group money or not give them money or allow them to use a facility or whatever does that still hold the same criteria.

City Attorney said under the FPPC concerning financial interest there are clear rules if your spouse has a financial interest, you have a financial interest and so we do have clear rules and in that circumstance you would have to abstain and you have to leave the room. Under the scenario that Councilmember Franklin is talking about let's say that your spouse is on a board and they get no financial compensation for being on that board where then under the FPPC no abstention would be required and the way this is written there is no financial interest then you wouldn't be permitted to abstain. Councilmember Franklin is suggesting that the Council Member in their judgment feels that there might be a perception of conflict the Council Member should have the right to abstain. If the Council Member felt because of their spouses involvement in the board there might be this perception, then what Councilmember Franklin is proposing is you would be able to abstain in that circumstance. Again, he thinks there are some good reasons for that it is just that your old rules don't say that and he is not changing the old rules unless you tell him to.

Councilmember Robinson said he would agree but he is extending it to the spouses.

Mayor Hanna said in regards to the abstention issue she doesn't like random abstentions and thinks that our votes are very important and we should vote unless there is really something significant like we are on a board right now of an organization receiving funds and we shouldn't vote but because we had been on a board she does see how it is relevant to continue to abstain from these important decisions. She does agree that we need to have a little greater allowance. This is a very small town and we may know people who eventually get involved in some kind of decision that comes before the Council when we have no knowledge of that prior



to it and it wasn't something we could say okay we are not going to be your friend because you may have something going before the Council some day. She likes the idea of just having alternatives to just financial interests in being able to abstain from time to time.

City Attorney said so what you would like is some language that discourages abstaining unless you are legally required or there are circumstances where in your judgment the public perception is an issue and there is good cause for it and not just because you can't make your mind up.

Councilmember Franklin said that we should be able to state it is not just that we abstain but I am abstaining and this is the reason why so it is on record this is the reason for the abstention.

**There was Council consensus.**

Mayor Hanna said in going back to the comments of Councilmember Botts in terms of not speaking to people involved in the development process (written page 33, Section 4 – Extra-Meeting Contacts on Matters Set for Public Hearing) her concern is that we don't always know what is going to result in a public hearing. Again, if Pardee is a land developer that is going to be a public hearing obviously you shouldn't have extracurricular meetings and so forth but there are many, many situations that we can encounter with things at some point in time that might develop a public hearing and that is going to be hard. We can't know in advance so how can we handle that.

City Attorney said it is a policy. If you have this policy, then if you were having a contact with somebody you would try and figure out what it is and obviously use your best judgment based on your experience on the Council as to whether that sounds like something that would become a public hearing matter or not. Obviously staff is available to answer questions about the status of things and there are relatively a small number of things that we deal with as public hearings.

Mayor Pro Tem Machisic said that he tries to develop criteria on which way he would support and basically he is concerned from the public's point of view of their perception. If they think you are being fair and honest, that is the point of view he would protect. But if there is the least bit of uncertainty on whether we should be voting or discussing, he would support that the public has a good perception of the Council and how we operate and we operate openly. That is the only criteria he would use.

Mayor Hanna said the problem is that the public does not always know that you are having meetings with Pardee or whomever. Councilmember Machisic said except that there are people who watch these meetings and they report on them and they talk about this Council Member or that Council Member. He thinks that it is important that we remain open so the public knows if we have an interest in something or your wife or your husband is a part of a program. He thinks that is important and that is the openness of government as he sees it.

Councilmember Botts said if we adopt Section 4, then it says if in fact you have any contact for whatever reason you have to publicly state that at the meeting so we have the transparency. Obviously we want to avoid it but for whatever reason you meet with somebody or bump into



them and there is some discussion or you go look at the site with no discussion you still have to report it according to this

City Attorney said a good example of that obviously the advantage that we have over someone in Sacramento is we are right here so you see something coming up you can just drive past the property and you can look at it. So to communicate the intent behind this the intent would be that during the staff report before the public hearing if you went to the site and you observed something on the site that you thought was relevant to the hearing after the staff report is given, you would say and again, you are not going to express your opinion on the project but you would say you know I drove past the other day and I noticed x, y, z concerning this and it is dilapidated and I would like staff to comment more about this thing that I observed. Well now everybody knows what you observed. You brought the issue up and kind of brought why you think it is relevant and staff responds and you did it before the hearing so if anybody in the audience in their testimony wants to make a comment when Councilmember Botts you observed this but I live next door and really it works and this is what the consequence of that is and I am shaded by that or whatever. It is okay to get information and for Council people to develop information you need to do your job to bring it forward in a way so that it can become a subject of the hearing and the audience gets to see how that factors into things and give their opinion about what that observation is.

Councilmember Robinson said he kind of see us as a salesmen of the City and of the region and sometimes even staff will pull us into a meeting and say listen to this developer and this is what he is thinking about for this area. Isn't that already under this new rule where we have already created a problem.

City Attorney said under this rule we are discouraging that if this is a project that is going to be coming forward to a public hearing. There can be things that you come in and ask staff about again, just collecting factual information. The staff works for the City and the things that they are coming forward with that is fair game. It is the situation where you are being encouraged to meet with and consult with the developer that is sensitive.

Mayor Hanna said she remembers one meeting where the City Manager invited her in and said in advance to be sure not to make any comments about this one way or the other so if that comes before us at some point in the future, I should say I was in a meeting and listened to a presentation.

City Attorney said yes if that was concerning a project that then comes forward in a public hearing context and there has been a meeting that is a good way to deal with that situation.

Mayor Hanna said she doesn't hear anything to be changed in this section; we are just getting to understand it better.

Councilmember Franklin said in regards to extra meetings if we are out in the public and a topic may come up where people are having a general discussion, is there any issue with listening or people giving their opinion or even if people are emailing you their opinion about something.

City Attorney said again, it all ends up being a judgment call you are going to get emails. Hypothetically there is a development project out there and if somebody sends an email saying this is a terrible project because and you send an email back that says yes, I agree it is a terrible project because, well then we could be sitting there at a public hearing and emails get around and somebody says two months ago you agreed with people that this is a terrible project and you haven't even listened to us. There are people who have had those lawsuits and there are cities that have paid damages because of the perception of the lack of a fair hearing. You could get an email and you could ignore it. You could respond to the email by saying these things that I have said that this is going to come forward in a public hearing and I think it is going to be in two months and I will put you on the list to be sure you get a notice and I would encourage you to have input. But you don't say I agree it is a terrible project. So he is certainly not discouraging that sort of contact with the public. The question that becomes a hard one is that there is a homeowners association next to the developer's project and the homeowners association invites you to come and have a talk about it. If you were going to participate in that the best thing would be to say do you mind if I bring the developer and then everybody gets to have their say. Then I am listening but I am listening to both sides. There is the potential that there are going to be some people in that group and they are not going to all think the same way and some of them will go talk to the developer and say the Council Member was here and they said these things and the developer goes to their lawyer so you are creating a difficult situation. If you have homeowner groups that are doing that a way of dealing with that is to say lets have a workshop and invite the public and the homeowners group and the invite the developer to the workshop and Council would be just facilitating everybody talking.

Councilmember Franklin said her concern is more towards just being able to listen if you know that this is a topic that is going to come up.

City Attorney said but the developer doesn't know that you were just listening. Unless the developer is there and there are fifty people in the room there is going to be fifty versions of what occurred in the room. Again, at the end of the day I can't tell you not to do it but I can warn you that anything that gets said in there can be misconstrued at a later point in time.

Mayor Hanna asked if there were any issues about speaker cards.

Councilmember Botts said he would simply say if it isn't broken, we don't need to fix it. He doesn't have a problem if it is in there just innocuous if we want to use it later. We have been down this path before and at the time the public reacted rather negatively and perceived it as a control issue.

Mayor Hanna said personally she is not interested in it and thinks we can deal with the issue of a name by the Mayor asking at some point to give us your name.

Councilmember Franklin said we should leave it in because it is not saying we have to use it; it is an option if we want it. We may have an issue come up where there are a lot of people that want to voice an opinion and she likes the part of where the person may use a speaker card in

lieu of speaking and that is an option available to them. The broader we have it that gives us more latitude of what we can do in the future.

City Attorney said it can, if you have a huge hearing, a way of trying to organize things in terms of the pros and the cons and most speaker cards do have a little place where people can actually write down there comment.

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

City Attorney said in terms of the public comment are you happy with the current process. The Council was okay with the current process.

City Manager said on written page 28 in regards to Citizen Boards, Commission, and Committees currently you don't appoint commissioners individually; you interview and appoint as a group.

City Attorney said your existing rules are inconsistent because there are some places where it says you do it one way and in some places you do it a different way. Also, Councilmember Botts pointed out to him that in the first paragraph in Section 4. – Appointments, we say, "Presiding Officer after consultation with the Legislative Body" will appoint and then under Council Committees we say, "Presiding Office shall appoint subject to approval of the Council." He thinks that those are probably intended to be the same thing and again, there is that same complexity if you go back to your old resolutions it is used in two different ways. He would say that we should just go with "shall appoint subject to approval of the Council" and use that phraseology consistently. But then the other issue that the City Manager is bringing up is that the way you do it is this "Presiding Officer with the approval of" but there is one place in your rules where it suggests that members appoint individually and he thinks that is probably something that just never got cleaned up from when it was done before and when Lona Laymon was putting this together she wasn't quite sure and put both in so we will just go with the first process. The Council was okay with going with the first process.

Councilmember Botts said that there was some language but he could not find it but it dealt with the City Attorney and Council that said something like we would vote on something say a contract and approve it but you didn't have to have the contract here and he doesn't want to dredge up old issues just sensitive to the issues that have gone on where we vote on something and maybe it gets changed later and can you speak to that.

City Attorney said the language actually says that if there is any contract it is supposed to be on your agenda. So you are not going to approve a contract in theory and the City Attorney is supposed to go write it up later; the document is supposed to be there. There can be times where that is a challenge where you are trying to get something done and we actually don't have the contract done. City Attorney said that is on written page 26, Section 6. – Contracts and Agreements it says, "When any contract or agreement is to be considered by the Legislative Body, the complete contract and agreement, if complete in form or execution, shall be made a part of the agenda package presented to the Legislative Body and shall be made available for viewing by the public..." so on one hand it is saying that if we got the contract it

has to be in the agenda packet and the staff report wouldn't be complete if the contract was not included in the agenda report. The only question is what if we had a circumstance where it was kind of an urgency to move forward and the contract was not available would we not put the item on the agenda, should there be a little bit of a broader amount of discretion for the City Manager or something like that.

Mayor Hanna said she didn't read it that way. It says, "...the complete contract and agreement, if complete in form or execution, shall be made a part of the agenda package..." so if the contract and agreement isn't complete, then it doesn't have to be there.

Councilmember Botts said that is the way he is read it and why he was raising the question. He said we have emergencies and get shorted on time all the time and he would rather have us make it clear that we have to have everything in place but certainly if something comes up we are going to say we will approve this based upon your final agreement with the City Manager.

City Attorney said so you are basically okay with it then the way is written. In other words he would guess it is saying that the intent is the completed document is there but if it isn't, it isn't.

Councilmember Botts said the norm would be the completed document and would be the exception rather than the rule.

Councilmember Franklin said on written page 23 it says that any Council Member or any Legislative person can put anything on the agenda and she thinks that we have changed that to it has to be a consensus of the Board before it is actually placed on the agenda.

City Attorney said that is a little bit of problem because then we would have to have a meeting to decide whether it can be on the agenda.

Councilmember Franklin said like now when we bring up things for future agendas and we either say yes that is something we want on a future agenda or no we don't.

City Attorney said you couldn't bring it up because if the Council had to decide whether it was going to be on a future meeting then we just did something that wasn't on the agenda. What you could do is ask that it be listed under pending matters and then if it was listed there on that agenda then you could talk about whether there should actually be a staff report and bring it up at a future meeting. In other words you can't bring something up that wasn't listed on the agenda and then say to the rest of the Council are you okay with this being on an agenda because we didn't have it on the agenda to have that discussion about whether it should be on an agenda.

Councilmember Botts and the rest of the Council said but we do that now on future agenda items. Councilmember Botts said someone brings it up and we either all agree or don't agree and we do that at almost every meeting.

City Attorney said but actually that is not how it is happening. The City Manager is deciding to go do it. The Council can't be giving that direction. When we have that list of items on the

agenda for Future Agenda Items it is listed there for our deciding whether it can be on a future agenda and you talk about it and you decide what you want to do with it. He said what Councilmember Franklin is saying is that you have to get a consensus. In other words if one Council Member brings up I want this on the agenda, that is okay because one person is asking that it be on a future agenda but if it takes three people to direct it then we just had a decision about something that wasn't on the agenda. That is potentially a Brown Act violation because you are making a decision about something not on the agenda.

Mayor Hanna said to resolve it anyone that has a potential future agenda item needs to tell the City Manager to put it on the agenda where we can talk about it and discuss it. We are trying to prevent staff from doing work that a majority of the Council is not interested in.

City Attorney said a way to do that is if the Council Member wants something it can go on that little list and then at the end of the meeting we can get the three person consensus.

City Attorney asked Councilmember Franklin what page was that on and she said it was on written page 23 – Preparation of Agendas, second paragraph.

Mayor Hanna said it is fine until the last sentence and that could be dropped.

City Attorney said if the Council Member wanted something discussed it would be a good idea if the City Manager could dialogue about what would really be involved and what is wrong is the implication that he is just going to go forward and work on a staff report.

City Manager said what he thinks the Council is trying to do is that when we come to future agenda items we will put whatever those items are that they give to him and they will determine if staff should put it on the list of things to do.

City Attorney said that is true but this sentence is saying that you can tell the Council how much staff work would be necessary to do that agenda item and that would be a good thing to tell the Council.

Councilmember Robinson said almost in the same part of that in Section 2. – Description of Matters he has had a couple of calls this week about their closed session items and people don't know what they are and they say well it looks like you don't talk about some of these items that are of concern to us when in fact we may have thirty some pages of information on it and talked about it four times. All it shows up as is potential litigation and yet in the Description of Matters it seems like there is going to be a brief description telling them what we are going to talk about and can you please clarify that.

City Attorney said this isn't the fine-tuned final language. For the general agenda we have to have a description of the matter which we do have and the general format is fine. For the closed session we just put what the Brown Act requires which is not really a brief description of the matter. It will be a matter of employment or pending litigation. It doesn't go into the nature of what is being discussed. So really the description of the matter for closed session it is a much more limited description. We just comply with the Brown Act requirement and if it is a

litigation matter we just give the name of the case and don't provide a description of what the case is about.

City Manager said if it is potential litigation there are some issues and do you really want to know that we are thinking about suing Joe Smith or Joe Smith is thinking about suing us so that is why you put potential litigation when you don't have a suit going on but there is a potential for that suit.

City Attorney said he thinks what Councilmember Robinson is talking about is that there is a lot of work that goes on in closed session. We have subjects that are difficult subjects and we actually come back over a period of several months talking about different strategies or different ways of dealing with it and the public isn't really aware of all that behind the scenes and he doesn't really know any good way of solving that problem because of the nature of it being a closed session item. Once we start providing descriptions then there would be more questions and then you would want to give more information and then pretty soon we won't be able to keep our confidentiality.

Councilmember Robinson said just the way it is written seems to be in conflict of what you just said.

City Attorney said no because it says it shouldn't include closed sessions and the draft that he has where he has been making edits he has taken out the reference to closed session.

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

##### City Council

Councilmember Franklin –

- Friday is Veteran's Day and in honor of that Coombs Middle School is having an assembly and they are inviting veterans to actually come out and they will be recognizing them at that time. It will be held on Thursday, Nov. 10<sup>th</sup> at 8:30 a.m.
- Last week she attended the Annual Luncheon for Transportation NOW which is the grassroots part of transportation for each area and she is happy to announce that out of five different Transportation NOW groups, our group won the much coveted "Table Decoration". It was really well done by a couple of ladies and that was the highlight of the day.
- Yesterday she attended the Foreign Trade College that was hosted by the County and within two and half hours they heard over eight speakers talk about different facets of foreign trade and found out that we are part of a foreign trade zone along with Beaumont and Palm Springs. They talked about how 85% of future commerce is going to be through foreign countries and not through the United States and what that means to us. We are not the largest consumer and in fact they said that the United States is going to be less than 5% of all consumers worldwide. They also talked about how there are opportunities for public/private partnerships and that may help in the area of redevelopment dollars because they are looking at ways such as "EB5" and how this going to be something we can look forward to helping hopefully, our economy in the future.

94

Councilmember Botts –

- He wanted to alert everyone about a very, very misleading mailer that many of you may have already received. A lady in Sun Lakes presented this mailer to him that says, “Our records indicate that the address below is not protected by water line insurance protection. You are responsible for the maintenance and repair of water lines at your above address, etc.” and it has your name and address on it. They ask you to sign and accept this and for \$4.95 they will insure the piece of pipe from your house to the curb and not inside your house; just one water line. It also says that you don’t want to have to worry about this so sign up on easy pay and you sign up after you send your first check and they simply draft your account for the next 20 years or forever. It is called “Home Emergency Insurance Solutions” which apparently is a business in California and the insurance company is a company in Florida that is promoting this and it clearly has a map of Banning. People have asked him if the City sent this, do I need this, etc. and the bottom line is that the City did not send this out; it is very, very misleading. In talking to our water department and looking on the internet with others who have investigated this rarely if ever are you going to be able to use the insurance because they happen to exclude any “acts of God”. It is important that everyone knows that this did not come from the City. He has also asked the police department and our staff to look at it, as well as, our district attorney and also consumer fraud was interested in it. Again, it seems to be legitimate but very misleading particularly for seniors.

Mayor Pro Tem Machisic –

- He stated that he gave each of the Council Members an announcement about SCAG (Southern California Association of Government) releasing the draft “2012 Regional Transportation Plan Sustainable Communities Strategy” and it is taking place December 1st in Los Angeles.
- The County of Riverside has authorized a study by La Jolla Institute on the indicators in Riverside County and the reason they developed this is because sometimes they have difficulty in measuring success. This is the first effort in trying to compare it year by year by year. It will give it to the City Clerk for circulation to the Council.
- Last month he told the Council that the Superintendent of Schools of Riverside County joined WRCOG (Western Riverside Council of Governments) and he gave a presentation about the extent of Riverside County Schools. One of the things he passed out was a book on “Division of Educational Services Career Technical Education and Regional Occupation Programs.” It was surprising the number of programs they have which if students are not going to college or if they are, these programs are vocationally oriented and certainly would lead to jobs. He gave the book to the City Clerk for circulation to the Council.
- Dave Wellmon who is the representative of the League of California Cities gave a report and said that this Thursday the judge will hear the last oral arguments on the redevelopment case and then we will get the results in January.
- In regards to AB 811 concerning energy efficiency, etc. another step in it is that they are going to have an orientation for contractors and subcontractors. They will have one in Banning on Nov. 14<sup>th</sup> at 4:00 and 6:00 p.m. He would encourage anyone who knows anyone who does electrical, plumbing, any kind of energy efficiency projects to come to this program. He set out flyers on the back table. They will get items of eligibility because once they get on the list they will be certified that they have liability insurance and state licenses



and so on. This is a big project of \$320 million dollars and so there will be a lot of money for construction. So if you know of someone give them the date or pick up one the flyers.

Councilmember Robinson –

- As everyone is aware the bonds went out for the mid-county courthouse on Nov. 2<sup>nd</sup> and the sale of those should be November 9<sup>th</sup> and will close shortly thereafter. He said that he spoke to the State and the latest thing is that everything is going very smoothly and the bonds that went out on October 1st have already closed and the work is proceeding on those. He also talked to the contractor, Gilbane Construction, and they plan on putting a shovel in the ground March 1st.
- In regards to RTA (Riverside Transportation Agency) we got a \$3.6 million dollar grant for new buses and they are still waiting for a \$33 million dollar grant to replace all their old big buses.
- In regards to the release of the RTPSCS (Regional Transportation Plan Sustainable Communities Strategy) there have been a lot of meetings on that from SCAG's point of view and we have four months to review that so you will see that coming out to this area for review. He said as the WRCOG representative to SCAG we will have a little traveling show explaining this regional transportation plan and how we are going to make up \$76 billion dollars.
- He thanked Fred Mason and his electric crew for their work in regards to a major outage that occurred in east Banning during the storm this last weekend. He happened to be working at Renaissance that night installing new lights and when you have 50 some dogs down there hearing all that lighting and thunder it is quite un-nerving to them because they play radios and stereos, etc. very loud in the building so that the animals don't hear that noise and this time they did and the crew got out there within two hours and during the peak of the storm they replaced the transformers which he learned took a direct hit and they were back on within two to two and a half hours which is outstanding.

Mayor Hanna –

- During her remarks at the State of the City she threw out the concept what if we had someone volunteer to do a bicycle and pedestrian trails master plan for the City of Banning and we have a company that is coming forward and they have self-interest in mind but they are willing to go meet with City staff and the Parks and Recreation Commission who might appoint a sub-committee on this to advise them to do an initial component of a master plan for bicycling and pedestrian trails because with that then you can go out for funds. If at some point in time we actually get the funds we would of course go out to bid because they don't actually get anything; we would follow all procedures. She thinks this is exciting to at least have the hope of taking that first step of getting a master plan for bicycling and pedestrian trails. You have to ask in order for it to come.

City Committee Reports - None

Report by City Attorney – Nothing at this time.

Report by City Manager

- Family Dollar went through the Planning Commission and today we have actually received two big set of plans to check from both Dollar General and Family Dollar. Dollar General is going east of Johnny Russo's and the Family Dollar is taking over the old tire place between the Ford Dealership and Johnny Russo's.
- We received our first applicant for our 25% discount on electricity and it was San Geronio Memorial Hospital on their new part of the building.

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

##### Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Review of Fees and Rates *(Jan.)*
3. Policies & Procedures for Applicant re. Projects and Applicants for Commissions & Committees
4. Report on the Five-Year Water Plan *(Feb.)*

#### ADJOURNMENT

By common consent the meeting adjourned at 7:22 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.

# Banning High School Solar Boat Challenge

May 13- May 15, 2011  
Yucaipa Regional Park

## What Schools were involved?

- Banning High of course.
- Long Beach Poly
- Redlands East Valley
- Yucaipa High
- Rialto High
- Cajon High
- Cathedral City High

## What is the

## Inland Empire Solar Challenge?

- The IESC is a solar boat competition for high schools within or around the Inland Empire area.
- It is an event where high school students and advisors get the chance to build a 16 foot boat from scratch to race in the yearly competition at Yucaipa Regional Park.
- Program started to give high school students a hands-on experience in engineering and boat building.

## What does this event focus on?

- Science and Math
- Water Conservation
- Team Building
- Electrical and Mechanical Engineering
- Problem Solving

## What events took place?

- All schools competed in the following races:
  - Two 90 minute endurance races
  - Two Sprint Races
  - Although cut from the event, teams were also supposed to participate in 2 slalom races.
- A water conservation report by each school to report how to preserve water and not be wasteful with it.

5

## Who was Involved?

- Advisors: Mr. Ellis and Mr. Kline
- Students: Bridget Benhar, Carina Avila, Marisol Fernandez, Malika Yang, Dohna Yang, Wang Yang, Peter Young, Marco Santana, Bobby Naus, Jonathan Farris, Ricardo Orozco, Bryant Tran, Ben Lor, Tonkai Yang, Kevin Yang, Alex Aguirre Lara.

7

## What Did We Learn?

- Teamwork
- Leadership Skills
- How to wire electrical equipment
- How to build a boat
- And so much more.

8

## Our Thanks Go to:

- Mr. Kline and Mr. Ellis on their many hours of dedication and the time to set up days to go and work on the boat for the kids.
- The kids for their hard work on fixing up the boat at Mr. Ellis's house.
- The City of Banning for helping us to pay to be a part of this program.
- The Banning Unified School District for allowing us to participate and use the school vans to transport us.

6

99

3



## CITY OF BANNING

### EMERGENCY OIL SPILL CLEANUP 553 EAST RAMSEY STREET

NOVEMBER 8, 2011



### Emergency Oil Spill Cleanup

- On July 25, 2011 it was discovered that approximately 300 gallons of used oil was spilled at 553 East Ramsey Street
- Oil was stored by an unknown party on vacant property
- Environmental response and cleanup was necessary in order to preserve property, infrastructure and public safety
- Cleanup mandated by local, state, and federal agencies

2

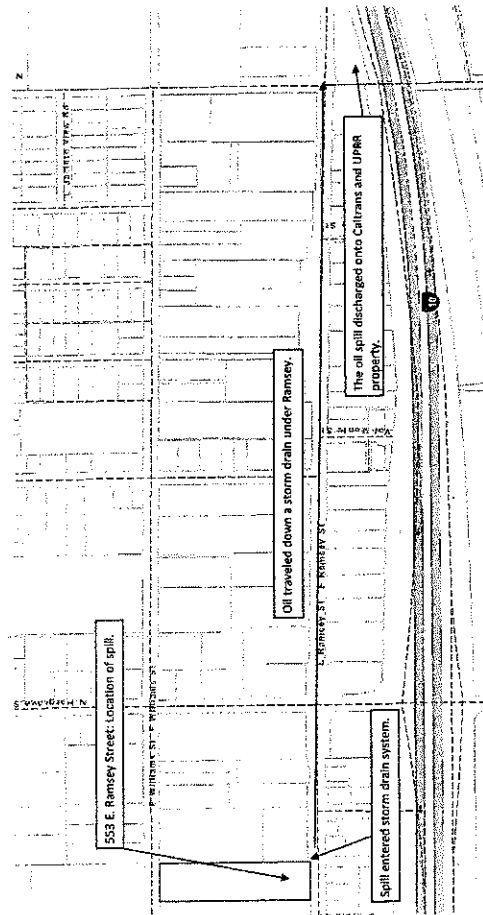


### Agencies Notified

- California Department of Fish and Game
- County of Riverside Department of Environmental Health
- California Regional Water Quality Control Board Colorado River Basin Region
- Fire Department
- Union Pacific Railroad

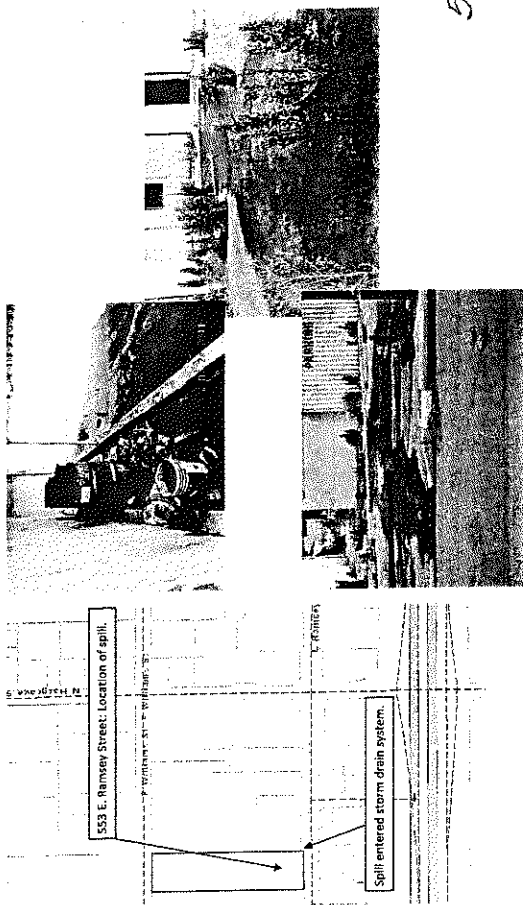


### Oil Spill Emergency Site Location



4

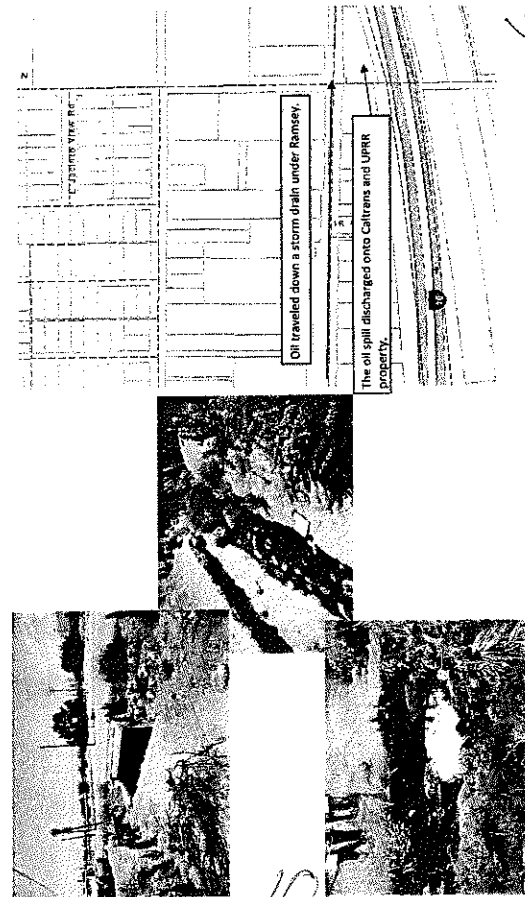
## Oil Spill Emergency Site Location



5

Exhibit "B"  
25  
reg.mtg.-11/08/11

## Oil Spill Emergency Site Location



6

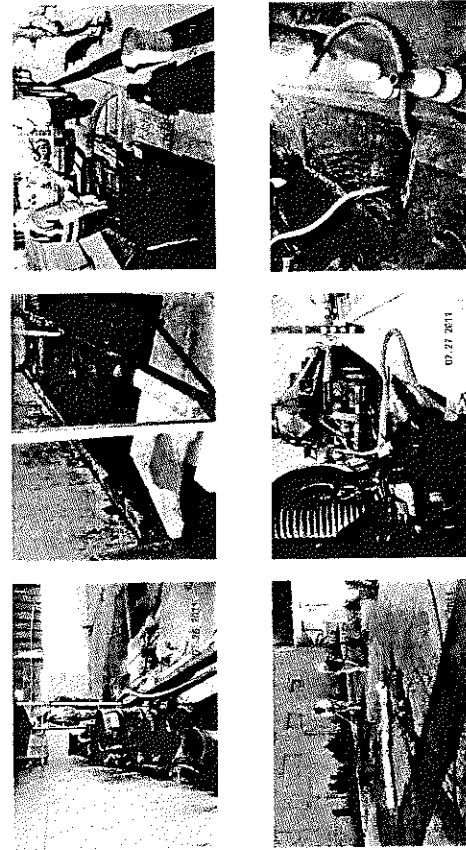
## Emergency Oil Spill Cleanup



- Staff solicited HCI to assess the damages caused by the oil spill, provide oversight, cleanup, remediation and repairs.
- Resolution No. 2011-69 was approved on July 26, 2011 declaring a local emergency.
- Resolution No. 2011-70 was approved on July 26, 2011 awarding the project to HCI for an amount up to \$500,000 based on time and materials.

7

## Emergency Cleanup Operation



8

## Emergency Cleanup Operation



9

Exhibit "B"

26

reg.mtg.-11/08/11

## Emergency Oil Spill Cleanup



- Cleanup cost based on time and materials amounted to \$1,809,791
- Staff solicited EKI to provide a technical review of the overall project for reasonability; contract awarded in the amount of \$4,500
- Total project cost amounted to \$1,814,291

10

102

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

11/29/11  
SPECIAL MEETING

A special joint meeting of the Banning City Council and the Morongo Band of Mission Indians Tribal Council was called to order by Mayor Hanna on November 29, 2011 at 10:25 a.m. at the Casino Morongo Resort & Spa Ballroom, 49500 Seminole Drive, Cabazon, California.

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

COUNCIL MEMBERS ABSENT: None

TRIBAL COUNCIL MEMBERS  
PRESENT: Council Member Charles Martin  
Council Member Brian Lugo  
Council Member Charles Martin  
Vice Chairman Mary Ann Andreas

TRIBAL COUNCIL MEMBERS  
ABSENT: Council Member Tom Linton  
Council Member Ann Robinson  
Chairman Robert Martin

OTHERS PRESENT: Andrew Takata, City Manager  
June Overholt, Administrative Services Director  
Zai Abu Bakar, Community Development Director  
Leonard Purvis, Police Chief  
Jeff Stowells, Battalion Chief  
Duane Burk, Public Works Director  
Bill Manis, Economic Development/Redevelopment Director  
John McQuown, City Treasurer  
Marie A. Calderon, City Clerk  
Roger Meyer, Chief Executive Officer (Tribe)  
Michael Milhiser, Chief Administrative Officer (Tribe)  
Eric Haley, Consultant (Tribe)

PUBLIC COMMENTS

Lloyd Fields addressed the City Council and Tribal Council commenting that this was an illegal meeting under Government Code 54954 of the Brown Act and the question arises as to who the proper authority is for this meeting. Is it Mayor Barbara Hanna, is it the Chairman Robert



Martin, is it a junta comprised of the Morongo and Banning Council collectively and why did the Banning Council and the Morongo Council call this session as a special meeting rather than as a regular joint meeting and is it possible that the reason is that the Council's wanted to limit attendance. He said that he did not receive notice for this meeting and was advised by associates that this meeting was taking place. He said that he wanted to give some history as a property owner in Banning and his connections with some of the people who are in this room. Mr. Fields explained his grazing agreement on his two land parcels with Chairman Martin and his son Ryan and why did they stop renewing their grazing leases. Is it because you hold him in contempt as a helpless private land owner who's properties are targeted for acquisition by the Morongo Tribe for pennies on the dollar. At the end of June of this year Banning's Deputy City Attorney, Anthony Taylor, asked his lawyer Rick Friess for a 45-day hiatus in my lawsuit against Banning. He is seeking a court order to compel Banning to order the Tribe to remove its barriers on the west side of Fields Road.

Mayor Hanna let Mr. Field his three minutes were up and to please conclude his statement.

Mr. Fields said that five months have passed since late June and he has still not received a settlement and during that time the Banning City Council sublimely submitted to a Tribal request to change the name of Fields Road to Malki Road despite objections from merchants in fear that the name change will create confusion and cost them business. The Tribe's rational for the name change is that it would encourage the public to patronize the Malki Museum. If the Tribe really does desire to attract the public to the Malki Museum on the rename Malki Road, why does the Tribe want to continue to maintain a barrier line on Malki Road? A barrier line on Malki Road will only discourage visits to the Malki Museum.

Nicholas Shantar with the law firm of Allen Matkins stated that he was here on behalf of Mr. Fields and he mentioned that the meeting violates the Government Code and he wanted to point out to the Council that Government Code Section 54954, subdivision (b) states very clearly, "Regular and special meetings of the legislative body (City Council) shall be held within the boundaries of the territory over which the local agency (the City of Banning) exercises jurisdiction..." Today's meeting is being held in the ballroom of the Casino Morongo Resort & Spa located at 49500 Seminole Drive, Cabazon, California and obviously that location is not within the city of Banning and finds that this meeting should be immediately adjourned for that reason. Mr. Shantar submitted a letter that he would like included in the record of proceedings today.

A property owner in Millard Canyon addressed the Council stating that he had a theft a week ago and one of the members of the Tribe took pictures of it and this is located at 8249 Millard Canyon Road and there was about \$20,000 dollars worth of damage. They tore down the back of his house and he has had previous damage where they torn down his tower and other damages. Now the cows and everything else has urinated on the floor and have just ruined the house and everything. He has not been able to sell his property and when he has they have rejected his offers and he has been trying to sell his property for ten years.

Councilmember Botts asked Mayor Hanna if the City Clerk could clarify how we notify the people about how this meeting was called.

City Clerk said that the meeting was notice on Wednesday of last week and you only need 24 hours notice for a special joint meeting. It was noticed on the City's website and also went out to the newspapers as we usually notify the newspapers and it also went to the City Council Members and posted on our bulletin board as usually so all the correcting noticing was done.

## DISCUSSION ITEMS

### 1. Joint Development Opportunities

City Manager Takata said that staff has been working on development opportunities with the Tribe and in fact, the City of Banning has recently hired Bill Manis as our Economic Development/Redevelopment Director. We are looking at different things such as the bypass road and what kind of development could happen along that road and also some different options where some of our property meets against the reservation where those opportunities could actually happen with the City and the Tribe.

Michael Milhiser, Chief Administrative Officer said that they have been working for several years on this at the staff level and Roger Meyer, Chief Executive Officer and himself meet monthly with the City Manager. They have talked also with the Tribal Council a little bit about the airport and some Tribal Council Members have an interest in looking at development of the airport for possible use and incorporating MCRS in trying to get activity and folks who want to come and use the golf course and the gaming. They have also talked at one meeting with Michael DiGirolamo who is a retired six months ago as Deputy Executive Director of Los Angeles Department of Airports and they have also talked briefly to Bob Cable who runs a general aviation airport in Upland and they would be willing to come out and meet with the Tribal Council and the City Council and discuss what they think is a possibility to increase activity at the airport. Mr. DiGirolamo feels as general aviation that there are a lot of pilots in the city of Banning that want to come and fly airplanes and refuel but they want something to do so they think there is perhaps an opportunity for the short term to increase activity if you folks are willing to give an indication if you are interested.

Councilmember Member asked for a clarification of what the I-10 bypass road is for the rest of the group because there are a lot of people that don't even remember that this started three years ago and what it involves.

Mr. Milhiser said that Eric Haley, consultant retained by the Morongo Band of Mission Indians has been working on that issue and he will give a few comments on that issue.

Mr. Haley said that the bypass road has been in public comment for several years now and in 2009 we had a joint declaration of the Tribe, the City of Banning and the County of Riverside to work collectively to create a safe bypass on the south side of the freeway. There have also been discussions very preliminary about improvement on the north side but not involving the original Measure A Ramsey Street extension. This comes out of the two or three major incidents on the I-10 freeway that forced tens of thousands of vehicles to spend up to 14 hours stationary on the freeway causing unpredictable problems and stressing the whole transportation capacity of the reservation. The program is being headed up by the County of Riverside and they have expended close to \$600,000 and the Tribal Council has also made a commitment to this process of about \$2.1 million and there will be another \$6 million or so that

has been garnered from the federal government to work on this issue and there have been three different alternatives with that road. Things have slowed down but we are going get a new manager through the County of Riverside to head this up either by the middle of this month or early in January and then we can get back to monthly meetings. There is minimum conflict with tribal held lands and when they looked at the additional cuts of the cost of the bypass the bypass ranged from \$16 million to \$92 million and obviously you know which direction we went but fortunately in regards to the previous comment about the airport the \$16 million approximately will improve the access to the airport rather substantially and will actually bind the two communities, as well as, provide the value that the highway patrol and law enforcement have been saying they need now for well over a decade.

Councilmember Botts said he wanted to credit Caltrans and he doesn't know how many people know this but we have been working hard with the Tribe and the County on that bypass road but the California Highway Patrol (CHP) has major concerns, as well as most law enforcement and Caltrans and Dr. Wolfe said about after the third incident to put in some portable k-rails dividing the freeway out in this area so in the event we have not built the bypass yet they could simply pick up and remove the k-rails and redirect traffic. He thinks that we appreciate the fact that Caltrans and the CHP are concerned about it and they don't have that power that we do in working together actually to get a bypass road. Also in his observation we, the City Council, obviously have issues with the Brown Act as to how we can talk with each other and also as to how we talk with the Tribe but this gives us a chance to say that our City is very interested in economic development. We have retail coming as the economy comes back and we have a lot of land out at the airport and we are very interested in commercial/industrial development and we have a plan and obviously we are working on retail to produce jobs and we are very excited to have a director onboard to really augment what we have been doing. As one Councilmember he looks forward to working with the Tribe on any and every kind of project that could come our way to discuss it and see where we can work together.

Councilmember Robinson asked if the Director of Public Works could give an update on the airport because we have put a lot of money into the airport

Duane Burk, Director of Public Works stated that one of his duties is the airport and the City Council adopted an Airport Layout Plan and an Airport Master Plan about three years ago in accordance with the FAA (Federal Aviation Administration) and we have received a tremendous amount of grants to upgrade the airport as it relates to general aviation. We are applying for a \$2 million dollar grant for the upgrade of the taxiway because it doesn't currently meet the standards. We have put in an all weather operating system called AWOS. We are also trying to get someone in the hanger to do general aviation and have been talking to some helicopter people. Currently those are the things we are working on and there are more things to come.

Mayor Hanna addressed Mr. Milhiser stating that the City would be very interested in any help and support and expertise from folks to put our heads together to figure out how to make the airport more vibrant. She heard from a pilot that our fuel costs are down now so it is more competitive and more of an incentive and she thinks that is an important issue to get people to land at our airport. We had gone out to bid for a fixed based operator in the past several times with no response so obviously something has to change.

Mr. Milhiser said that he thinks that Tribal Council Member Lugo was interested in some discussions that we had on the airport as far as trying to develop it and use it to our joint benefit and would be happy to include some of our Tribal Council Members, if Vice Chairperson Andreas directs them to do that with the staff, and continue to meet with Mr. Burk and Mr. Takata and move forward to see if there is interest because as he said in a preliminary meeting with Banning staff we were told that there would be some interest and it wouldn't be real expensive to get more traffic to the airport and then obviously over to the needs that the Tribe would have to service the golf course and the casino.

Councilmember Botts said as a suggestion at the staff level that is fine but if you want to meet at the elected level there is a sub-committee of Councilmember Franklin and himself that could meet with the Tribe rather than come back and meet as a total Council. He just wanted to remind them that this sub-committee does exist.

Mayor Hanna said that the Council would be reorganizing the committees in January potentially so we have the 2 x 2 committees (sub-committees) that will be looked at.

Tribal Council Member Martin said that this is a project that is still in the works; it is a big project. It requires a huge commitment not only from us but from the City of Banning. He knows that there have been preliminary conversations on the concept and the airport, just how that functions, kind of doesn't fit.

City Manager said what we should do is to have the sub-committee talk about all the uses as to what the airport could be used for so if there is no objection that is what the staff and the sub-committee would concentrate on.

Tribal Council Member Martin said he just wanted to say that there is no real commitment at this time to any project. It is just in the preliminary stages and we have a lot of work to do and we would be trying to put something together that would benefit not only the Tribe but also the cities of Banning and Beaumont.

Eric Haley said that this is very preliminary and hasn't had the benefit of the kind of input it obviously needs but there has been an expression of interest from the County of Riverside from Supervisor Ashley to make a significant investment in Seminole Drive which in this case most likely would need a minimal financial commitment of both the Tribe and City and with the County picking up the lions share of the costs. They have a lot of public interest out at the far east of the reservation and obviously there is some sensitivity in terms of land ownership and the like but if we could add to that basket of issues related to mobility in the Pass Area and the Seminole Drive issue, he thinks Supervisor Ashley would respond very favorably. Mr. Haley also said that the big elephant in the room is the remaining \$27 million plus on paper that the State owes us and they owe a lot of people a lot of money on paper but we are in tier three of the money that was allocated by then Governor Davis for major regional projects and an interchange in the vicinity of the area including and between Haugen-Lehmann and Main Street. So there are many moving parts here and they all have to be connected together and this is one of the complexities of the issue.

Mr. Milhiser said it sounds like it takes a lot of time but in the world of transportation the horizon of ten years is a short time frame but it is important to plan ahead. Everything stopped

essentially four years ago but when you are in an economic boom you never think anything is going to stop. When you are in the dull drift that we have been in the last four years you never think it is going to get better but the good thing is that it will and development will occur and this is giving us the time for the Tribe and also the cities along the Pass to get the timing done for projects in the future.

City Manager Takata said added that within the last month we had the signing of the bonds for the courthouse in Banning and they will hopefully have groundbreaking sometime in February. So that is what the current plans are and we believe that is going to help our downtown and hopefully it will spin off and help the Tribe at the same time.

Mayor Hanna opened the item for public comments.

Lloyd Fields said in regards to joint development opportunities concerning the two land parcels that he owns in Banning both of them either overly or are adjacent to water, natural gas and power transmission easements and they are ideally located for 50 megawatt gas turbine generators which could each produce 400 million kilowatt hours of electricity a year and the joint venture between him and Banning where he would produce the electricity and sell it to Banning where Banning could mark it up and resell it and we both make a fortune. You should give that some thought. There are not very many properties that have all the ingredients for the production of electricity, aquifer for water and natural gas pipeline and two power line transmission easements.

## 2. City of Banning Projection for 2012-2013 Budget

City Manager Takata said that last year we passed a budget that was \$460,000 dollars in the red and because of that we went to the table with our employees in trying to get some concessions from them in order to balance our budget coming up. As we go through this exercise we think that there are some ways that we can balance the budget and hopefully it will come that way but we have a structural deficit of \$460,000 dollars right now. We believe that there are some good things that have happened in Banning besides the courthouse in that we have had several new stores approved through our Planning Commission and they are not big stores but small stores but for us \$30,000 in sales tax here and there is a great benefit to us. As the Tribe may be aware we received roughly one cent to every dollar that is spent. Our General Fund budge is totally separate from our Electric Budget and Street Budget because there are certain tax monies that have to put into those funds. The General Fund has our fire and police and basically your general services for the City. Currently we went from \$22 million dollars about three and a half years ago to currently \$13 million dollars and during that time the Council had to go through the suffering and the pain of laying off many employees that were very valuable in our community and many members who are neighbors. But we believe with June Overholt, Director of Administrative Services, we will be able hopefully, to take care of that issue in 2012/2013. In regards to RDA (Redevelopment Agency) as you know that is currently being challenged as far as them taking all the redevelopment money. We decided to buy-in to what they call the "pay-to-play" which means if you give them roughly \$1.9 million dollars, they will let you continue redevelopment. His personal belief from listening to some of the Supreme Court Judges ask questions during the hearing he thinks that Assembly Bill 27 will probably be found unconstitutional and Assembly Bill 26 will be found okay and we will probably lose redevelopment and that is what we are gearing up for. We probably would have had less of a

deficit this year but we actually took a lot of our redevelopment money that had certain services like code enforcement and actually placed it in the General Fund so essentially we did better than the year before because of that and so we are in a situation with redevelopment going away and it is really going to hurt us in our ability to do some of the good things that we have done downtown which is really going to help, he thinks, with the courthouse coming in those storefronts will start renting out.

Mayor Machisic asked the City Manager to explain about a slight reduction in our reserve.

City Manager Takata said that we had an oil spill of about 125 gallons and because of some State agencies it cost us \$1.8 million dollars to actually clean up the oil spill and it could have been worse if it had gone beyond the railroad right of way. We had to clean it up once with Simple Green and water and that water had to be carted off to a place in Nevada because it was hazardous and then had to clean it again with hot water so they actually made us do it twice so obviously we are not very happy and that \$1.8 million dollars makes up roughly half of our General Fund reserve at that point.

Vice Chairman Andreas said it was very gratifying to learn that our lands were not contaminated in any way at all as a result of it.

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

### 3. Malki Road

Mr. Milhiser said that from the standpoint of the Tribe this was a very comprehensive plan beginning at Tukwet Canyon Golf Course to the reservation identifying the museum which is historic and filled with information on Native American Culture down to the roundabout with identifying signage on the freeway for the casino, as well as the outlet stores. They also worked with the cities of Beaumont, Banning, Calimesa, the County, and Caltrans. It was very comprehensive and he wanted to make sure that everyone in the room knows that and understands the program that the Council undertook to try to identify and help our neighbors, as well as, what they felt was the Tribe's interest. He said on behalf of the Tribal Council Members and the staff we appreciate all of the staff from Calimesa, Beaumont, Banning, the County and the elected officials who assisted in getting their project done in approximately seven months that sometimes would have taken several years so they appreciate the assistance.

Mayor Hanna opened the item for public comments.

Lloyd Fields said he would like to know what the Tribe's plans are to encourage attendance at the Malki Museum. He would like to know what history of attendance there has been to date and also why they want to maintain a barrier line on Malki Road which can only discourage public attendance at the museum and would pose the question as to whether the Malki Museum was used a pretext to justify the renaming of Fields Road with no serious plan to increase attendance at the Malki Museum.

Vice Chairperson Andreas said that it was not solely for the attendance at Malki Museum. The original name of the reservation was Malki and it was to pay honor to that.

#### 4. Fire and Police Support – Appreciation and Use of Monies

City Manager Takata said as you know through the Tasin process we received grants from the Tribe from the first pact that was signed and he wanted to thank the Tribe for those monies.

Chief Stowells said that the money was started and funded for paramedic services on both the fire engines in 2005 and along with that you also provided two new fire engines with one in 2005 and one in 2006. So we continue to use those and they provided emergency services to the City of Banning, City of Beaumont and the County area and also the Tribal lands. We had several fires on Tribal land this year but not as many as in years past and we attribute putting out those small fires by the ability of having those engines staffed with people and the current equipment on those engines. We also have saved a lot of lives with the paramedic services on those two fire engines. Unfortunately not everybody can be saved and people do pass away at the hospitals and that kind of thing but the earlier we can get to those people they have a much better chance of survival so your monies have certainly helped the communities.

Chief Purvis said that this last year the Morongo Tribe approved and recommended awarding the Banning Police Department approximately \$565,000 dollars. First off they hired a Tribal Liaison Police Officer and this is the first time that the Banning Police Department has been able to do that and they modeled this after the Sheriff's Department. We wanted to have our own officer at your availability to answer questions and to be available to interact with the Tribal Members and just be that resource for you. Two months ago they did introduce Officer Lorea to the Tribal Council and he has also been introduced to Chief Levine and has not only been working with Chief Levine but we plan to have Officer Lorea attend the Public Safety Meeting here on the Morongo Reservation on December 12<sup>th</sup>. It is a work in progress and they hope to have success. Our goal is to have Tribal Members feel comfortable reaching out to this police officer. Another thing that the funds have paid for is overtime for Banning Police Officers to work along the I-10 business corridor. What we want is for not only residents to feel safe when they shop and go to restaurants and fill up their gas tanks but also for people who are maybe stopping by Morongo Casino to eat and visit the casino. We want to provide a higher level of safety so we actually pay officers overtime to provide that extra safety and visibility along I-10 and that is a direct result of the Morongo Tribe paying for that overtime. Also this last year you approved four marked police vehicles and three unmarked police vehicles. To give you a quick idea as to how your grant funds have been spent if you come by and visit the station and go out to our police parking lot you will notice your sticker. It is a SDF sticker that we put on every car and he would say that 75% to 80% of our vehicles have your sticker on them and we are proud to have your stickers on our cars. You have supported our police department for many, many years and not only are they on our police vehicles, they are on our motorcycles and mobile command post that you helped pay for many years ago. Lastly, you also provided funding, \$30,000 dollars, this last year for an upgrade to our camera system. We did have a horrible crime that occurred earlier this year when a child was rapped at Roosevelt Williams Park and we have been visiting with Redlands Police Department because they have one of the best surveillance systems in the country and what we are trying to do is to model our system on their model and hopefully install, at least preliminarily, some cameras at not only Roosevelt Williams Park but Repplier and a few other areas in the city so that we can provide that higher level of security for our residents. We are in the process now and trying to gather enough grant funds to get that off the ground. He wanted to thank the Tribal Council for what they have been doing for the Banning Police Department and just today there was a check

in their P. O. Box from Morongo for the Banning Police Activities League (BPAL) and thank you, it will be used very wisely and we appreciate the support because year after year you have been a great supporter of BPAL.

Vice Chairperson Andreas stated that the Special Distribution Funds (SDF) are funds that we collect as a result of our gaming and they are sent to the State and the State sends them back and we are to use them to mitigate the impacts that our gaming operations cause. We are very happy to support our fire department, our police station and our Sheriff's Department and the hospital. Every time the ambulance is called they take people to the hospital and we really don't wait. We have one more round of those Special Distribution Funds that all seven tribes have paid into and the amount is around \$14 million dollars so start preparing your proposals and we are very happy to help in that way and she knows that every Tribal Member is happy that we can give back to the community in that way.

Councilmember Robinson said that he is very grateful for the funds coming from the Tribe. He wanted to make you aware that there is an alignment change coming. State prisoners will be coming back to local county jails. We don't know the impact of that yet and we are definitely going to be hearing about that so as that comes forward we may see the need for some more help around this county jail. He knows that staff is probably working on that now but he wanted to make the public and the Tribe aware of that this could be a situation that everybody in the state of California is going to have to deal with.

Vice Chairperson Andreas asked how that would be a mitigating factor in gaming.

Councilmember Robinson said not in gaming just the fact that we have a County prison here we are going to see more prisoners coming back and being released on probation and things like that where they would normally be serving out their term in a State prison.

Tribal Council Member Sandoval said that they have met about a month ago with the Sheriff and the District Attorney's office on this issue and would be meeting with the County on these impacts.

Vice Chairperson Andreas said that Supervisor Ashley has asked that we since those funds are going away that we now enter into a major governmental agreement that we will kick in when they do that so that we can make everybody as whole as we can. She knows that a lot of people have come to depend on those funds.

Councilmember Franklin said that the Fire Department from Morongo met with them in regards to their fire preparation and safety protection for the entire community and this year they are hoping to have more involvement from not only having the smokehouse come over but also working with more reservation residents in trying to see how we can help everybody be better prepared for emergencies in this area. They did meet last year and exchanged ideas and they will try to do it again this year.

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

## 5. Water Master Chairpersonship



City Manager Takata said that our Public Works Director is now the Water Master Chairperson of the committee and this does impact the Tribe because of the overlying rights you have with the golf course.

Mr. Burk stated that one of his hats is water and if you don't much about water the county unites all of us from Yucaipa to Cabazon and the far reaches because basically what you are seeing is 100% of our water from the ground. In 2004 there was a friendly adjudication of the Beaumont Management Zone and this zone goes from Yucaipa to Highland Home Road about a mile east of Highland Springs and that is how big the basin is. It includes the Beaumont Management Zone, Yucaipa, South Mesa Water, City of Beaumont, Beaumont Cherry Valley Water District and the City of Banning. We all extract water out of that basin. The extractions out of that basin in 2004 were agreed upon by the five retailers to limit their extractions in 2014. What that means to the City of Banning and to the region specifically is that we have to create a safe yield out of that basin of around 8,650 acre feet per year between all five agencies. That does not impact the overlie. The overlie being your golf course Tukwet has an overlying right of that Beaumont Basin of about 2,200 acre feet. The five agency members meet quarterly but their next meeting is December 7<sup>th</sup> at the Beaumont Cherry Valley Water District office and they talk about extractions out of the basins and how we manage those water quality issues within the basins. The City of Banning receives around 3,000 acre feet annually to supply water to the residents of Banning but in 2014 it goes to 500 acre feet so we have to make up the difference of 2,500 acre feet or we have to pay the Water Master to import the additional water. He said he is open to meet with anyone as it relates to the overlying right or the appropriated right.

Mayor Pro Tem Machisic asked Mr. Burk to mention a little bit about the program we have going with the Bench and the San Gorgonio Water line.

Mr. Burk said the first issue is the flume and this is the water for the Banning Heights Water Company. The flume was built as an irrigation canal for the railroad and also used for irrigation. It had to go through the Banning Water Canyon and to serve water and irrigation up on the Bench so basically 100% of this water that serves the Bench is flume water. In the year 2000 Edison who used to generate power from the 1960's to 2000 had decided to decommission their FERC (Federal Energy Regulatory Commission) use to generate power up there. What this means is that we are in 2011 and they still have not been able to decommission the license with FERC and the idea behind that was who was going to be the beneficiary of the flume or the repairs of the flume. There is an Ad Hoc Committee of the City Council, Banning Heights, Pass Water Agency (which is the State Water Project Importer) and Edison to talk about how they would decommission it and then build the flume back to a conveyance system acceptable to continue serving water up on the Bench. The caveat of that is that whatever they don't use on the Bench spills into the Banning Water Canyon so we are a beneficiary. We are actually working through a four-party agreement with the four entities he talked about and they all signed the agreement and they all agreed that they would repair the flume in an acceptable manner and basically we are in the final environmental assessments as relates to how big that footprint will be to put in a new pipeline and that will probably start construction in 2013.

Mr. Burk said in regards to the State Water Project the San Gorgonio Pass Water Agency is our State Water Contractor located on Beaumont Avenue but they serve a sphere of influence from

County Line Road to Cabazon and their job is to import water from the Delta. Currently that water is spread and delivered to Beaumont Avenue and Brookside and the Pass Water Agency, the State Water Contractor, receives around 2000 acre feet of water for that Beaumont Management Zone, the Beaumont Cherry Valley Water District receives around 3000 acre feet and we are getting around 1200 acre feet to reach those basins he talked about in the Beaumont Management Zone specifically. The State Water Contractor will be doing a project which has actually started now on Highway 38 going up to Big Bear and it is called EBX 2 and how that impacts everybody in the area is that they fund those projects by your ad valorem tax and that project will be moving forward and currently there is pipeline being put in the ground and an expansion of the reservoir and some pipe will be installed by 2014. The goal behind the 2014 construction date is to import more water to that spreading area for the citizens of that sphere of influence.

Mayor Pro Tem Machisic said that water is important to the City of Banning because as all of you know if you build 500 houses you have to guarantee water for 20 years and that is a large order so we have to keep looking for other sources and through conservation and that is important for us down range 5 to 20 years from now.

Councilmember Botts said that Mr. Burk touched on the San Geronio Pass Water Agency and he wanted to thank the Tribe but also encourage your continued participation. He thinks he understands all of our water districts, the basins, the sovereign nation and what you have to do or not do but in his mind we are in this all together when it comes to water. We recently had some disagreements, our City, with the San Geronio Pass Water Agency as did some other agencies and we came out very strong and took a position and sort of changed the direction of this temporary and your representatives were there and we were expressing that we were all in this and need to work together. We felt that maybe the San Geronio Pass Agency was marching off in a direction that we disagreed with, in fact, it was 5/0 that said let's take a position on this. It is important that you have been there and that you participate and defend those regional needs.

Vice Chairperson Andreas said that is their direction to staff to continue to reach out and make contract with all the agencies that are involved.

Roger Meyer, Chief Executive Officer congratulated Mr. Burk on his appointment as Water Master Chairman. He said that they have dealt into that world and have watched this with the purchase of that golf course over in Beaumont and have requested to use that water and make the highest and best use of that water that has been made available to them. It has been an interesting year for the Tribe and they look forward to future relations.

Councilmember Robinson said we may want to speak to the importance of the water that we are going to recondition and this definitely has an affect on the golf course.

Mr. Burk said we receive 100% of our water from the ground and it sounds like it is meaningless but the fact is really that is what it is and we are always out trying to find more water. The only way we can develop new water is for reclamation. For the demands of the irrigation of the greenbelt areas and golf courses the City of Banning has undertaken an idea of putting in a drop-in plant or a reclamation facility somewhere within the center part of our community to take the sewer water we have and develop tertiary stage water for use in our golf

courses. It would save around 1.5 million gallons of water per day that we are currently using out of the ground for irrigation uses. He added that one issue that the City of Banning has undertaken which we just shared with some of your staff is our Urban Water Management Plan and along with that we developed a document called the Perennial Safe Yield for the Cabazon Storage Unit and the idea behind that is that we are planning on drilling wells in the Cabazon Basin and before we ever undertake that the City Council would want to make sure that through the environmental process that you are aware of that because we are partners in all of that.

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

Mayor Hanna said that in regards to her term as mayor we are now beginning an annual rotation of the mayor so each Councilperson will eventually be a mayor but she wanted to share her appreciation that we are meeting and talking and working together and hopes that we will do this periodically or at lease semi-annually would be a great idea. She thanked the Tribe for hosting this and we really appreciate this opportunity.

Vice Chairperson Andreas said we appreciate the opportunity as well and thinks it is beneficial to your citizens and our members that we continue to talk and work through issues and grow together. They are very proud to be an economic engine for the City of Banning and for our region.

#### ADJOURNMENT

By common consent the meeting adjourned the meeting at 11:32 a.m.

---

Marie A. Calderon, City Clerk

114

# Allen Matkins

*Re: 11/29/11  
jt meeting*

Allen Matkins Leck Gamble Mallory & Natsis LLP  
Attorneys at Law  
1900 Main Street, 5<sup>th</sup> Floor | Irvine, CA 92614-7321  
Telephone: 949.553.1313 | Facsimile: 949.553.8354  
www.allenmatkins.com

Nicholas S. Shantar  
E-mail: nshantar@allenmatkins.com  
Direct Dial: 949.851.5406 File Number: 371011-00002/OC943121.01

## Via Hand Delivery

November 29, 2011

Mayor Barbara Hanna  
Mayor Pro Tem John Machisic  
City Councilmember Robert Botts  
City Councilmember Debbie Franklin  
City Councilmember Don Robinson  
City of Banning  
99 E. Ramsey St.,  
Banning, CA 92220

**Re: Objections of Lloyd Fields to November 29, 2011 Special Joint  
Meeting of the Banning City Council and Morongo Band of Mission  
Indians Tribal Council, Located in the Ballroom of the Casino  
Morongo Resort & Spa, 49500 Seminole Drive, Cabazon, California  
92230**

Dear Ladies and Gentlemen:

As you know, this office represents Mr. Lloyd Fields in connection with litigation brought against the City for its willful failure to address the illegal obstructions installed on and around Malki Road (formerly known as Fields Road) by the Morongo Band of Mission Indians.

On behalf of Mr. Fields, we hereby object to the above-referenced special meeting. First, the meeting was not noticed until November 23, 2011, immediately before the Thanksgiving Holiday. Notably, the matters identified in the agenda for the meeting include a discussion of Malki Road, which was previously named Fields Road; however, the City recently voted to change the name, in an obvious attempt to retaliate against Mr. Fields for pursuing his constitutional right to petition the government for relief through the courts. The last-minute notice of the hearing, coupled with the decision to hold the meeting at a location outside the City's jurisdiction, can only be interpreted as a concerted effort by the City and the Tribe to minimize the public's participation in the matters discussed here today. The meeting should be immediately adjourned for this reason alone.

Exhibit "A"

13

spec.jt.mtg.-11/29/11

Mayor Barbara Hanna, Mayor Pro Tem John Machisic, City Councilmember Robert Botts, City Councilmember Debbie Franklin, City Councilmember Don Robinson  
November 29, 2011  
Page 2

Second, the decision to hold the meeting outside the City's jurisdiction violates the Ralph M. Brown Act, and specifically Government Code section 54954, subdivision (b). That section provides, in pertinent part:

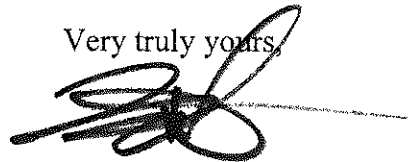
"Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction . . . . [emphasis added]."

The City of Banning is a "local agency," as defined in Government Code section 54951, and the Banning City Council is a "legislative body" within the meaning of Government Code section 54952. Furthermore, although section 54954, subdivision (b), is subject to several exceptions, none of those exceptions applies to the meeting, including the exception in subdivision (b)(3), which applies only to multiagency meetings which must still be held "within the jurisdiction of one of the participating local agencies." The only "local agency" at the meeting, as that term is defined in the Brown Act, is the City of Banning. Accordingly, the meeting must be held "within the boundaries" of the City of Banning, the "territory over which" the Banning City Council "exercises jurisdiction."

To state the obvious, the Ballroom of the Casino Morongo Resort & Spa, located at 49500 Seminole Drive, Cabazon, California 92230, is not within the boundaries of the City of Banning. The meeting is therefore in clear violation of the Brown Act, and should be immediately adjourned for that reason as well.

Mr. Fields continues to object to the City's failure to address the illegal obstructions on Malki Road, its decision to rename Fields Road, and its decision to hold the November 29 meeting in a remote location on short notice given immediately before a national holiday. Please be advised Mr. Fields expressly reserves all rights and remedies available to him, whether at law or in equity. Furthermore, Mr. Fields respectfully requests that this letter and the objections herein be made a part of the official record of the November 29 meeting.

Very truly yours,



Nicholas S. Shantar

NSS

cc: Mr. Lloyd Fields  
K. Erik Friess, Esq.

116

## CITY COUNCIL AGENDA

**Date:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of July 2011

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

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of July 2011.

The reports are:

Expenditure approval lists

July 7, 2011	583,462.28
July 15, 2011	1,574,642.07
July 21, 2011	162,642.23
July 29, 2011	451,837.83
December 5, 2011	4,441,411.13 (July Month End)

Payroll check registers

July 1, 2011	6,848.56
July 15, 2011	8,918.93
July 29, 2011	8,332.17

Payroll direct deposits\*

July 1, 2011	308,423.45
July 15, 2011	309,156.39
July 29, 2011	329,419.65

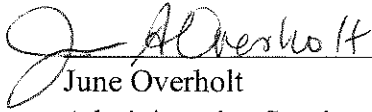
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

\* Included on the July month end expenditure approval list of November 30, 2011.

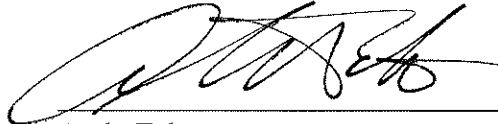
<sup>(1)</sup> Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Jenna Harrell, Accounts Payable

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager

## **Fund/Department Legend:**

### General Fund – 001

#### Departments

0001 – General	2400 – Fire
1000 – City Council	2700 – Building Safety
1200 – City Manager	2740 - Code Enforcement
1300 – Human Resources	2800 – Planning
1400 – City Clerk	3000 – Engineering
1500 – Elections	3200 – Building Maintenance
1800 – City Attorney	3600 – Parks
1900 – Fiscal Services	4000 – Recreation
1910 – Purchasing & A/P	4010 – Aquatics
2060 – TV Government Access	4050 – Senior Center
2200 – Police	4060 – Sr. Center Advisory Board
2210 – Dispatch	4500 – Central Services
2279 - TASIN - SB621	4800 – Debt Service
2300 – Animal Control	5400 – Community Enhancement

#### All Other Funds


003 - Riverside County MOU	470 – Capital Improvement Fund
100 – Gas Tax Street Fund	475 – Fair Oaks #2004-01 Assessment District
101 – Measure A Street Fund	600 – Airport Fund
103 – SB 300 Street Fund	610 – Transit Fund
104 – Article 3 Sidewalk Fund	660 – Water Fund
110 – CDBG Fund	661 – Water Capital Facilities
111 – Landscape Maintenance	662 – Irrigation Water Fund
115 - E.E.C.B.G. Fund	663 – BUA Water Capital Project Fund
132 – Air Quality Improvement Fund	669 – BUA - Water Debt Service
140 – Asset Forfeiture-Police Fund	670 – Electric Fund
146 – San Geronio Gang Task Force	672 – Rate Stability Fund
148 – Supplemental Law Enforcement	673 – Electric Improvement Fund
149 – Public Safety Sales Tax Fund	674 - '07 Elec Revenue Bond Project Fund
150 - State Park Bond Fund	675 – Public Benefit Fund
200 – Special Donation Fund	678 - '07 Elec Revenue Bond Debt Service Fund
201 – Sr. Center Activities Fund	680 – Wastewater Fund
202 – Animal Control Reserve Fund	681 – Wastewater Capital Facility Fund
203 – Police Volunteer Fund	683 – BUA Wastewater Capital Project Fund
204 – D.A.R.E. Donation Fund	685 – State Revolving Loan Fund
300 – City Administration COP Debt Service	689 – BUA Wastewater Debt Service Fund
360 – Sun Lakes CFD #86-1	690 – Refuse Fund
365 – Wilson Street #91-1 Assessment Debt	700 – Insurance Fund
370 – Area Police Computer Fund	702 – Fleet Maintenance
375 – Fair Oaks #2004-01 Assessment Debt	703 – Information Systems Services
376 – Cameo Homes	761 – Utility Billing Administration
400 – Police Facilities Development	810 – CRA – Low/Mod Fund
410 – Fire Facility Development	830 – CRA – Debt Service Fund
420 – Traffic Control Facility Fund	850 – CRA - Administration Fund
421 – Ramsey/Highland Home Road Signal	854 – CRA Low/Mod Bond Fund
430 – General Facilities Fund	855 - 2007 TABS Bond Proceeds
441 - Sunset Grade Separation Fund	856 – 2003 TABS Bond Proceeds
444 - Wilson Median Fund	857 – 2003 TABS Bond Proceeds Low/Mod
451 – Park Development Fund	860 – CRA - Project Fund



## CITY COUNCIL AGENDA

**Date:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of August 2011

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

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of August 2011.

The reports are:

Expenditure approval lists

August 4, 2011	364,996.11
August 11, 2011	650,334.87
August 18, 2011	365,848.73
August 25, 2011	281,606.55
December 5, 2011	2,894,039.15 (August Month End)

Payroll check registers

August 12, 2011	8,172.95
August 26, 2011	9,571.95

Payroll direct deposits\*

August 12, 2011	285,723.35
August 26, 2011	280,773.14

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

\* Included on the August month end expenditure approval list of December 5, 2011.

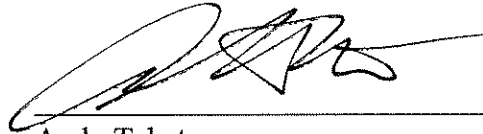
<sup>(1)</sup> Due to Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

Report Prepared by: Jenna Harrell, Accounts Payable

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager

## **Fund/Department Legend:**

### General Fund – 001

#### Departments

0001 – General	2400 – Fire
1000 – City Council	2700 – Building Safety
1200 – City Manager	2740 - Code Enforcement
1300 – Human Resources	2800 – Planning
1400 – City Clerk	3000 – Engineering
1500 – Elections	3200 – Building Maintenance
1800 – City Attorney	3600 – Parks
1900 – Fiscal Services	4000 – Recreation
1910 – Purchasing & A/P	4010 – Aquatics
2060 – TV Government Access	4050 – Senior Center
2200 – Police	4060 – Sr. Center Advisory Board
2210 – Dispatch	4500 – Central Services
2279 - TASIN - SB621	4800 – Debt Service
2300 – Animal Control	5400 – Community Enhancement

#### All Other Funds

003 - Riverside County MOU	470 – Capital Improvement Fund
100 – Gas Tax Street Fund	475 – Fair Oaks #2004-01 Assessment District
101 – Measure A Street Fund	600 – Airport Fund
103 – SB 300 Street Fund	610 – Transit Fund
104 – Article 3 Sidewalk Fund	660 – Water Fund
110 – CDBG Fund	661 – Water Capital Facilities
111 – Landscape Maintenance	662 – Irrigation Water Fund
115 - E.E.C.B.G. Fund	663 – BUA Water Capital Project Fund
132 – Air Quality Improvement Fund	669 – BUA - Water Debt Service
140 – Asset Forfeiture-Police Fund	670 – Electric Fund
146 – San Geronio Gang Task Force	672 – Rate Stability Fund
148 – Supplemental Law Enforcement	673 – Electric Improvement Fund
149 – Public Safety Sales Tax Fund	674 - '07 Elec Revenue Bond Project Fund
150 - State Park Bond Fund	675 – Public Benefit Fund
200 – Special Donation Fund	678 - '07 Elec Revenue Bond Debt Service Fund
201 – Sr. Center Activities Fund	680 – Wastewater Fund
202 – Animal Control Reserve Fund	681 – Wastewater Capital Facility Fund
203 – Police Volunteer Fund	683 – BUA Wastewater Capital Project Fund
204 – D.A.R.E. Donation Fund	685 – State Revolving Loan Fund
300 – City Administration COP Debt Service	689 – BUA Wastewater Debt Service Fund
360 – Sun Lakes CFD #86-1	690 – Refuse Fund
365 – Wilson Street #91-1 Assessment Debt	700 – Insurance Fund
370 – Area Police Computer Fund	702 – Fleet Maintenance
375 – Fair Oaks #2004-01 Assessment Debt	703 – Information Systems Services
376 – Cameo Homes	761 – Utility Billing Administration
400 – Police Facilities Development	810 – CRA – Low/Mod Fund
410 – Fire Facility Development	830 – CRA – Debt Service Fund
420 – Traffic Control Facility Fund	850 – CRA - Administration Fund
421 – Ramsey/Highland Home Road Signal	854 – CRA Low/Mod Bond Fund
430 – General Facilities Fund	855 - 2007 TABS Bond Proceeds
441 - Sunset Grade Separation Fund	856 – 2003 TABS Bond Proceeds
444 - Wilson Median Fund	857 – 2003 TABS Bond Proceeds Low/Mod
451 – Park Development Fund	860 – CRA - Project Fund

## CITY COUNCIL AGENDA

**Date:** December 13, 2011  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Report of Investments for September 2011

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

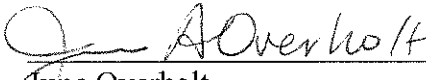
**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

**BACKGROUND:** This report includes investments on hand at the end of September 2011. As of September 30, 2011, the City's operating funds totaled \$63,612,027. Included in operating funds is \$1,567,340 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of September 30, 2011 approximately 47% of the City's unrestricted cash balances were invested in investments other than LAIF.

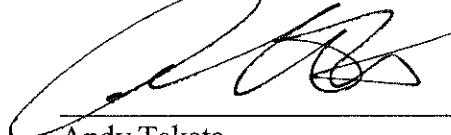
Presented are three months of Investment Reports. September is a first issue, while July and August are included to provide multiple months of statements for comparison.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) decreased to 0.378 % in September. The average rate for all investments in September was 0.307%.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

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

	<u>Amount</u>
<u>Petty Cash</u>	2,305

	Interest Rate	Amount
<u>Bank Accounts</u>		
Wells Fargo Bank	0.000%	22,110
Wells Fargo Bank-Investment Account	0.100%	3,234,867
Bank of America-Airport	0.300%	4,321
Bank of America-Parking Citations	0.300%	3,099
Bank of America-CNG Station	0.300%	<u>3,502</u>

*Money Market and Bank Account Sub-Total* 3,267,899

Government Pools

Local Agency Investment Fund: Account #1 0.378% 31,483,553

Account #2 Operating Amount 902,628

Account #2 CRA Bond Cash Bal 1,567,340

Local Agency Investment Fund: Account #2 0.378% 2,469,967

*Government Pool Sub-Total* 33,953,520

**Operating Cash Balance** **37,223,725**

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund 0.000% 797,092

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2 0.240% 25,591,210

***Operating Funds Total*** 63,612,027

**Fiscal Agent**

	<u>Amount</u>
US Bank	<u>43,982,139</u>

***Fiscal Agent Total*** 43,982,139

# City of Banning Investment Report

September 30, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase 40,695	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
22,110	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	22,110	n/a	22,110
3,234,867	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	3,234,867	n/a	3,234,867
4,321	Bank of America-Airport	n/a	0.30%	daily	varies	4,321	n/a	4,321
3,099	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,099	n/a	3,099
3,502	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,502	n/a	3,502
Sub-total								
								3,267,899
<u>Government Pools</u>								
31,483,553	L.A.I.F. account #1	n/a	0.378%	daily	varies	31,483,553	n/a	31,483,553
2,469,967	L.A.I.F. account #2	n/a	0.378%	daily	varies	2,469,967	n/a	2,469,967
Sub-total								
								33,953,520
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		1,000,100
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,990
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,002,360
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,001,740
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,001,360
18,581,660	Money Market	n/a	0.000%	daily	varies	18,581,660	0	18,581,660
US Bank/Piper Jaffray Average Rate=								
			0.240%					25,591,210

Average Rate All= 0.307%

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 August 23, 2011. 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 96 days and does not include Bond Reserve Fund Investments.

125

# City of Banning Investment Report

September 30, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Sep-11	9/30/2011 Market Value
US BANK								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market		0.200%	daily	265,580	0.00	0
		US Bank Mmkt 4-Ct		0.070%	daily		0.53	14
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.500%	daily	188,943	9.44	188,033
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill		75.00%	7/28/2011	971,763		983,070
		US Bank Mmkt 4-Ct		0.500%	daily		0.86	20,300
		US Bank Mmkt 4-Ct		0.300%	daily			29
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.500%	daily		506.63	11,930,861
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	1,880,751	79.63	1,875,336
Special Fund		US Bank Mmkt 4-Ct		0.400%	daily		47.29	47
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.000%	daily			8
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		2.87	67,514
		US Bank Mmkt 4-Ct		0.500%	daily		156.60	3,687,948
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.400%	daily			44
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		15.18	357,574
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	2,310,710	98.15	2,311,460
Project Fund		US Bank Mmkt 4-Ct		0.500%	daily		178.23	4,197,277
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct		0.600%	daily			90
		Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011	2,961,500		2,931,509
		US Bank Mmkt 4-Ct		0.500%	daily			53,569
Acquisition & Construction		US Bank Mmkt 4-Ct		0.500%	daily		652.99	15,377,438
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	43,982,139

126

**Summary Schedule of Cash and Investments**

<b>Operating Funds</b>		<u>Amount</u>
<u>Petty Cash</u>		2,305
<u>Bank Accounts</u>	Interest Rate      Amount	
Wells Fargo Bank	0.000%      18,619	
Wells Fargo Bank-Investment Account	0.100%      2,316,208	
Bank of America-Airport	0.300%      13,735	
Bank of America-Parking Citations	0.300%      4,202	
Bank of America-CNG Station	0.300%      4,337	
<i>Money Market and Bank Account Sub-Total</i>		2,357,102
<u>Government Pools</u>		
Local Agency Investment Fund: Account #1	0.408%      31,483,553	
Account #2 Operating Amount	804,976	
Account #2 CRA Bond Cash Bal	1,664,991	
Local Agency Investment Fund: Account #2	0.408%      2,469,967	
<i>Government Pool Sub-Total</i>		<u>33,953,520</u>
<b>Operating Cash Balance</b>		<b>36,312,927</b>
<u>Restricted Operating Funds at Riverside Public Utilities</u>		
Highmark U.S. Government Money Market Fund	0.000%	710,415
<u>Other Investments</u>		
Investments-US Bank/Piper Jaffray - See Page 2	0.205%	25,595,640
<i>Operating Funds Total</i>		<u><u>62,618,982</u></u>
<hr/>		
<b>Fiscal Agent</b>		<u>Amount</u>
US Bank		<u>44,548,909</u>
<i>Fiscal Agent Total</i>		<u><u>44,548,909</u></u>



# City of Banning Investment Report

August 31, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Price	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
18,619	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	18,619	n/a	18,619
2,316,208	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,316,208	n/a	2,316,208
13,735	Bank of America-Airport	n/a	0.30%	daily	varies	13,735	n/a	13,735
4,202	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,202	n/a	4,202
4,337	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,337	n/a	4,337
Sub-total								
								2,357,102
<u>Government Pools</u>								
31,483,553	L.A.I.F. account #1	n/a	0.408%	daily	varies	31,483,553	n/a	31,483,553
2,469,967	L.A.I.F. account #2	n/a	0.408%	daily	varies	2,469,967	n/a	2,469,967
								33,953,520
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		1,000,870
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,005,250
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,003,740
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,002,340
1,000,000	FHLMC MTN	n/a	0.100%	4/11/2014	7/11/2011	1,000,000		1,001,780
18,581,660	Money Market	n/a	0.000%	daily	varies	18,581,660	0	18,581,660
	US Bank/Piper Jaffray Average Rate=		0.205%					25,595,640

Average Rate All= 0.313%

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 August 23, 2011. 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 101 days and does not include Bond Reserve Fund Investments.

128

# City of Banning Investment Report

August 31, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Jul-11	8/31/2011 Market Value
Bond Issue Description					Bond Maturity Date			
BNY WESTERN TRUST COMPANY								
US BANK								
1991 Wilson St. Assessment District	2012	Federated U.S. Treasury Money Mkt		0.000%	daily	0		0
		AIM U.S. Treasury Money Market		0.200%	daily	265,580	8.85	9
		US Bank Mmkt 4-Ct		0.050%	daily		4.78	497,099
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.500%	daily	188,943	9.31	312,285
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill		75.00%	7/28/2011	971,763		983,728
		US Bank Mmkt 4-Ct		0.500%	daily		6.34	20,300
		US Bank Mmkt 4-Ct		0.300%	daily		28.70	29
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.500%	daily		506.61	11,930,354
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	1,880,751	79.70	1,875,257
Special Fund		US Bank Mmkt 4-Ct		0.400%	daily		47.29	47
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.000%	daily			8
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		2.87	67,511
		US Bank Mmkt 4-Ct		0.500%	daily		156.60	3,687,791
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.400%	daily			44
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		15.18	357,559
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	2,310,710	98.15	2,311,361
Project Fund		US Bank Mmkt 4-Ct		0.500%	daily		178.22	4,197,099
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct		0.600%	daily			90
		Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011	2,961,500		2,931,509
		US Bank Mmkt 4-Ct		0.400%	daily			26
Acquisition & Construction		US Bank Mmkt 4-Ct		0.500%	daily		652.96	15,376,785
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	44,548,909

129

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

	<u>Amount</u>
<u>Petty Cash</u>	2,305

	Interest	
	Rate	Amount
<u>Bank Accounts</u>		
Wells Fargo Bank	0.000%	126,446
Wells Fargo Bank-Investment Account	0.100%	2,239,511
Bank of America-Airport	0.300%	21,211
Bank of America-Parking Citations	0.300%	3,054
Bank of America-CNG Station	0.300%	<u>3,358</u>

<i>Money Market and Bank Account Sub-Total</i>	2,393,581
--	-----------

Government Pools

Local Agency Investment Fund: Account #1	0.381%	31,483,553
--	--------	------------

Account #2 Operating Amount	751,554
-----------------------------	---------

Account #2 CRA Bond Cash Bal	1,718,414
------------------------------	-----------

Local Agency Investment Fund: Account #2	0.381%	<u>2,469,967</u>
--	--------	------------------

<i>Government Pool Sub-Total</i>	<u>33,953,520</u>
----------------------------------	-------------------

<b>Operating Cash Balance</b>	<b>36,349,406</b>
-------------------------------	-------------------

Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund	0.010%	<b>926,722</b>
--	--------	----------------

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2	0.680%	<b>25,532,973</b>
--	--------	-------------------

<b><i>Operating Funds Total</i></b>	<b><u>62,809,101</u></b>
-------------------------------------	--------------------------

**Fiscal Agent**

	<u>Amount</u>
US Bank	<u>46,135,794</u>

<b><i>Fiscal Agent Total</i></b>	<b><u>46,135,794</u></b>
----------------------------------	--------------------------

130

# City of Banning Investment Report

July 31, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Price	Discount or (Premium) Amortization	7/31/2011 Market Value
<u>Bank Accounts</u>								
126,446	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	126,446	n/a	126,446
2,239,511	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,239,511	n/a	2,239,511
21,211	Bank of America-Airport	n/a	0.30%	daily	varies	21,211	n/a	21,211
3,054	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,054	n/a	3,054
3,358	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,358	n/a	3,358
Sub-total								
								2,393,581
<u>Government Pools</u>								
31,483,553	L.A.I.F. account #1	n/a	0.381%	daily	varies	31,483,553	n/a	31,483,553
2,469,967	L.A.I.F. account #2	n/a	0.381%	daily	varies	2,469,967	n/a	2,469,967
33,953,520								

## Investments-US Bank/Piper Jaffray

3,000,000	Federal Home Loan Banks	n/a	1.000%	10/21/2013	10/5/2010	3,000,000		3,000,060
3,000,000	Federal Home Loan Banks	n/a	1.200%	8/5/2013	8/5/2010	3,000,000		3,000,270
4,000,000	FHLMC MTN	n/a	1.375%	2/3/2014	2/3/2014	4,000,000		4,000,200
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		998,610
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,570
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,001,360
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,001,160
1,000,000	FHLMC MTN	n/a	0.100%	4/11/2014	7/11/2011	1,000,000		1,000,250
8,527,493	Money Market	n/a	0.000%	daily	varies	8,527,493	0	8,527,493
US Bank/Piper Jaffray Average Rate=								
			0.680%					25,532,973

Average Rate All= 0.493%

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 August 23, 2011. 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 216 days and does not include Bond Reserve Fund Investments.

131

## City of Banning Investment Report

July 31, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Bond Issue Description	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Jul-11	7/31/2011 Market Value
BNY WESTERN TRUST COMPANY									
US BANK					0.000%	daily	0		0
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market		0.200%	daily	265,580	4.50	265,609
			US Bank Mmkt 4-Ct		0.400%	daily		4.62	112,545
2005 Fair Oaks Ranch Estates		2035	US Bank Mmkt 4-Ct		0.500%	daily	188,943	11.55	219,309
2003 CRA Tax Allocation Bonds		2028	U S Treasury Bill		0.500%	7/28/2011	971,763	21,021.68	
			US Bank Mmkt 4-Ct		0.500%	daily		0.88	1,013,368
			US Bank Mmkt 4-Ct		0.500%	daily			675,933
Surplus Fund					0.000%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund		2037	US Bank Mmkt 4-Ct		0.500%	daily		490.25	11,929,847
Reserve Fund			US Bank Mmkt 4-Ct		0.500%	daily	1,880,751	77.12	1,876,771
Special Fund			US Bank Mmkt 4-Ct		0.500%	daily		0.00	1,113,714
Surplus Fund			US Bank Mmkt 4-Ct		0.000%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Interest Account			US Bank Mmkt 4-Ct		0.000%	daily			8
Principal Account			US Bank Mmkt 4-Ct		0.500%	daily		2.77	67,508
			US Bank Mmkt 4-Ct		0.500%	daily		151.54	3,687,635
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Interest Account			US Bank Mmkt 4-Ct		0.400%	daily			44
Principal Account			US Bank Mmkt 4-Ct		0.500%	daily		14.69	357,544
Reserve Fund			US Bank Mmkt 4-Ct		0.500%	daily	2,310,710	94.98	2,311,263
Project Fund			US Bank Mmkt 4-Ct		0.500%	daily		172.47	4,196,921
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund			US Bank Mmkt 4-Ct		0.600%	daily			90
			Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011	2,961,500		2,931,509
			US Bank Mmkt 4-Ct		0.400%	daily			26
Acquisition & Construction			US Bank Mmkt 4-Ct		0.500%	daily		631.87	15,376,132
*Paid Semi-Annually-Deposited into Money Mkt Account								Total	46,135,794

132

# City of Banning Investment Report

July 31, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Bond Maturity Date	Minimum Reserve Requirement	Interest Jul-11	7/31/2011 Market Value
Bond Issue Description									
BNY WESTERN TRUST COMPANY									
US BANK									
1991 Wilson St. Assessment District	2012	Federated U.S. Treasury Money Mkt		0.000%	daily		0		0
		AIM U.S. Treasury Money Market		0.200%	daily		265,580	4.50	265,609
		US Bank Mmkt 4-Ct		0.400%	daily			4.62	112,545
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.500%	daily		188,943	11.55	219,309
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill		0.500%	7/28/2011		971,763	21,021.68	
		US Bank Mmkt 4-Ct		0.500%	daily			0.88	1,013,368
		US Bank Mmkt 4-Ct		0.500%	daily				675,933
Surplus Fund				0.000%	daily				8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007									
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.500%	daily			490.25	11,929,847
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily		1,880,751	77.12	1,876,771
Special Fund		US Bank Mmkt 4-Ct		0.500%	daily			0.00	1,113,714
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily				9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Interest Account		US Bank Mmkt 4-Ct		0.000%	daily				8
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily			2.77	67,508
		US Bank Mmkt 4-Ct		0.500%	daily			151.54	3,687,635
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES									
Interest Account		US Bank Mmkt 4-Ct		0.400%	daily				44
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily			14.69	357,544
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily		2,310,710	94.98	2,311,263
Project Fund		US Bank Mmkt 4-Ct		0.500%	daily			172.47	4,196,921
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES									
Reserve Fund		US Bank Mmkt 4-Ct		0.600%	daily				90
		Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011		2,961,500		2,931,509
		US Bank Mmkt 4-Ct		0.400%	daily				26
Acquisition & Construction		US Bank Mmkt 4-Ct		0.500%	daily			631.87	15,376,132
								Total	46,135,794
*Paid Semi-Annually-Deposited into Money Mkt Account									

133

## CITY COUNCIL AGENDA

**Date:** December 13, 2011  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Report of Investments for October 2011

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

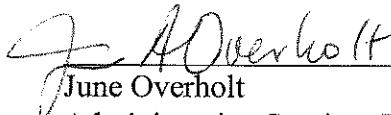
**JUSTIFICATION:** State law requires that a monthly report of investments be submitted to the Chief Executive Officer and the Legislative Body.

**BACKGROUND:** This report includes investments on hand at the end of October 2011. As of October 31, 2011, the City's operating funds totaled \$62,383,437. Included in operating funds is \$1,566,441 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of October 31, 2011 approximately 47% of the City's unrestricted cash balances were invested in investments other than LAIF.

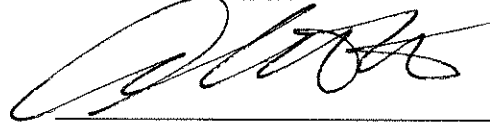
Presented are three months of Investment Reports. October is a first issue, while August and September are included to provide multiple months of statements for comparison.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.385 % in October. The average rate for all investments in October was 0.314%.

**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 Cash

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

-

Wells Fargo Bank-Investment Account

0.100%

2,281,036

Bank of America-Airport

0.300%

16,183

Bank of America-Parking Citations

0.300%

4,551

Bank of America-CNG Station

0.300%

5,879

*Money Market and Bank Account Sub-Total*

2,307,649

Government Pools

Local Agency Investment Fund: Account #1

0.385%

31,513,738

Account #2 Operating Amount

405,894

Account #2 CRA Bond Cash Bal

1,566,441

Local Agency Investment Fund: Account #2

0.385%

1,972,335

*Government Pool Sub-Total*

33,486,074

**Operating Cash Balance****35,796,028**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.000%

995,449

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.240%

25,591,960

*Operating Funds Total*62,383,437**Fiscal Agent**

Amount

US Bank

45,333,855*Fiscal Agent Total*45,333,855

135



# City of Banning Investment Report

October 31, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Price	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
-	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	-	n/a	-
2,281,036	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,281,036	n/a	2,281,036
16,183	Bank of America-Airport	n/a	0.30%	daily	varies	16,183	n/a	16,183
4,551	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,551	n/a	4,551
5,879	Bank of America-Parking Citations	n/a	0.30%	daily	varies	5,879	n/a	5,879
Sub-total								
								2,307,649
<u>Government Pools</u>								
31,513,738	L.A.I.F. account #1	n/a	0.385%	daily	varies	31,513,738	n/a	31,513,738
1,972,335	L.A.I.F. account #2	n/a	0.385%	daily	varies	1,972,335	n/a	1,972,335
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		1,000,370
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,550
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,001,560
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,001,420
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,000,900
18,584,160	Money Market	n/a	0.000%	daily	varies	18,584,160	0	18,584,160
US Bank/Piper Jaffray Average Rate=								
			0.240%					25,591,960

Average Rate All= 0.314%

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 August 23, 2011. 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 95 days and does not include Bond Reserve Fund Investments.

136

# City of Banning Investment Report

October 31, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-11	10/31/2011 Market Value
BANK								
1991 Wilson St. Assessment District		2012	AIM U.S. Treasury Money Market	0.200%	daily	265,580		
			US Bank Mmkt 4-Ct	0.070%	daily		0.53	
2005 Fair Oaks Ranch Estates		2035	US Bank Mmkt 4-Ct	0.500%	daily	188,943	7.90	188,041
2003 CRA Tax Allocation Bonds		2028	U S Treasury Bill	75.00%	7/28/2011	971,763		982,540
			US Bank Mmkt 4-Ct	0.500%	daily		0.83	20,301
			US Bank Mmkt 4-Ct	0.300%	daily			29
Surplus Fund			US Bank Mmkt 4-Ct	0.000%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund		2037	US Bank Mmkt 4-Ct	0.500%	daily		490.31	11,931,351
Reserve Fund			US Bank Mmkt 4-Ct	0.500%	daily	1,880,751	77.07	1,875,414
Special Fund			US Bank Mmkt 4-Ct	0.400%	daily			47
Surplus Fund			US Bank Mmkt 4-Ct	0.000%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account			US Bank Mmkt 4-Ct	0.500%	daily			196,594
Principal Account			US Bank Mmkt 4-Ct	0.500%	daily		2.77	67,517
			US Bank Mmkt 4-Ct	0.500%	daily		151.56	3,688,100
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account			US Bank Mmkt 4-Ct	0.500%	daily			1,154,072
Principal Account			US Bank Mmkt 4-Ct	0.500%	daily		14.69	357,589
Reserve Fund			US Bank Mmkt 4-Ct	0.500%	daily	2,310,710	94.99	2,311,555
Project Fund			US Bank Mmkt 4-Ct	0.500%	daily		172.49	4,197,449
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund			US Bank Mmkt 4-Ct	0.600%	daily			90
			Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500		2,931,509
			US Bank Mmkt 4-Ct	0.500%	daily		1.17	53,570
Acquisition & Construction			US Bank Mmkt 4-Ct	0.500%	daily		631.95	15,378,070
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	45,333,855

137

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

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000% 22,110

Wells Fargo Bank-Investment Account

0.100% 3,234,867

Bank of America-Airport

0.300% 4,321

Bank of America-Parking Citations

0.300% 3,099

Bank of America-CNG Station

0.300% 3,502

*Money Market and Bank Account Sub-Total*

3,267,899

Government Pools

Local Agency Investment Fund: Account #1

0.378% 31,483,553

Account #2 Operating Amount 902,628

Account #2 CRA Bond Cash Bal 1,567,340

Local Agency Investment Fund: Account #2

0.378% 2,469,967

*Government Pool Sub-Total*

33,953,520

**Operating Cash Balance****37,223,725**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.000%

**797,092**Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.240%

**25,591,210*****Operating Funds Total*****63,612,027****Fiscal Agent**

Amount

US Bank

43,982,139

***Fiscal Agent Total*****43,982,139**

138

# City of Banning Investment Report

September 30, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Price	Discount or (Premium) Amortization	Market Value
<i>Bank Accounts</i>								
22,110	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	22,110	n/a	22,110
3,234,867	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	3,234,867	n/a	3,234,867
4,321	Bank of America-Airport	n/a	0.30%	daily	varies	4,321	n/a	4,321
3,099	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,099	n/a	3,099
3,502	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,502	n/a	3,502
Sub-total								
<i>Government Pools</i>								
31,483,553	L.A.I.F. account #1	n/a	0.378%	daily	varies	31,483,553	n/a	31,483,553
2,469,967	L.A.I.F. account #2	n/a	0.378%	daily	varies	2,469,967	n/a	2,469,967
<i>Investments-US Bank/Piper Jaffray</i>								
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		1,000,100
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,990
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,002,360
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,001,740
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,001,360
18,581,660	Money Market	n/a	0.000%	daily	varies	18,581,660	0	18,581,660
US Bank/Piper Jaffray Average Rate= 0.240%								
Average Rate All= 0.307%								
25,591,210								

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 August 23, 2011. 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 96 days and does not include Bond Reserve Fund Investments.

139

# City of Banning Investment Report

September 30, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Sep-11	9/30/2011 Market Value
US BANK								
1991 Wilson St. Assessment District	2012	AIM U.S. Treasury Money Market		0.200%	daily	265,580	0.00	0
		US Bank Mmkt 4-Ct		0.070%	daily		0.53	14
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct		0.500%	daily	188,943	9.44	188,033
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill		75.00%	7/28/2011	971,763		983,070
		US Bank Mmkt 4-Ct		0.500%	daily		0.86	20,300
		US Bank Mmkt 4-Ct		0.300%	daily			29
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct		0.500%	daily		506.63	11,930,861
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	1,880,751	79.63	1,875,336
Special Fund		US Bank Mmkt 4-Ct		0.400%	daily		47.29	47
Surplus Fund		US Bank Mmkt 4-Ct		0.000%	daily			9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.000%	daily			8
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		2.87	67,514
		US Bank Mmkt 4-Ct		0.500%	daily		156.60	3,687,948
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct		0.400%	daily			44
Principal Account		US Bank Mmkt 4-Ct		0.500%	daily		15.18	357,574
Reserve Fund		US Bank Mmkt 4-Ct		0.500%	daily	2,310,710	98.15	2,311,460
Project Fund		US Bank Mmkt 4-Ct		0.500%	daily		178.23	4,197,277
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct		0.600%	daily			90
		Reliance Trust Company # 9AMGGBEZ7		3.650%	11/17/2011	2,961,500		2,931,509
		US Bank Mmkt 4-Ct		0.500%	daily			53,569
Acquisition & Construction		US Bank Mmkt 4-Ct		0.500%	daily		652.99	15,377,438
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	43,982,139
							1,748.40	

140

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

Amount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000% 18,619

Wells Fargo Bank-Investment Account

0.100% 2,316,208

Bank of America-Airport

0.300% 13,735

Bank of America-Parking Citations

0.300% 4,202

Bank of America-CNG Station

0.300% 4,337

*Money Market and Bank Account Sub-Total*

2,357,102

Government Pools

Local Agency Investment Fund: Account #1

0.408% 31,483,553

Account #2 Operating Amount 804,976

Account #2 CRA Bond Cash Bal 1,664,991

Local Agency Investment Fund: Account #2

0.408% 2,469,967

*Government Pool Sub-Total*

33,953,520

**Operating Cash Balance****36,312,927**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.000%

710,415

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.205%

25,595,640

*Operating Funds Total***62,618,982****Fiscal Agent**

US Bank

Amount

44,548,909*Fiscal Agent Total***44,548,909**

141

# City of Banning Investment Report

August 31, 2011

## Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Purchase Price	Discount or (Premium) Amortization	Market Value
<i>Bank Accounts</i>								
18,619	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	18,619	n/a	18,619
2,316,208	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,316,208	n/a	2,316,208
13,735	Bank of America-Airport	n/a	0.30%	daily	varies	13,735	n/a	13,735
4,202	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,202	n/a	4,202
4,337	Bank of America-Parking Citations	n/a	0.30%	daily	varies	4,337	n/a	4,337
Sub-total								2,357,102
<i>Government Pools</i>								
31,483,553	L.A.I.F. account #1	n/a	0.408%	daily	varies	31,483,553	n/a	31,483,553
2,469,967	L.A.I.F. account #2	n/a	0.408%	daily	varies	2,469,967	n/a	2,469,967
								33,953,520
<i>Investments-US Bank/Piper Jaffray</i>								
1,000,000	FHLMC MTN	n/a	0.600%	6/28/2013	6/16/2011	1,000,000		1,000,870
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,005,250
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,003,740
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,002,340
1,000,000	FHLMC MTN	n/a	0.100%	4/11/2014	7/11/2011	1,000,000		1,001,780
18,581,660	Money Market	n/a	0.000%	daily	varies	18,581,660	0	18,581,660
US Bank/Piper Jaffray Average Rate=								25,595,640
Average Rate All=								0.313%

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 August 23, 2011. 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 101 days and does not include Bond Reserve Fund Investments.

142

## City of Banning Investment Report

August 31, 2011

## Individual Investments with Fiscal Agent

TRUSTEE		Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Minimum Reserve Requirement	Interest Jul-11	8/31/2011 Market Value
Bond Issue Description								
BNY WESTERN TRUST COMPANY								
US BANK								
1991 Wilson St. Assessment District	2012	Federated U.S. Treasury Money Mkt	0.000%	daily	0			0
		AIM U.S. Treasury Money Market	0.200%	daily	265,580		8.85	9
		US Bank Mmkt 4-Ct	0.050%	daily			4.78	497,099
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.500%	daily	188,943		9.31	312,285
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	75.00%	7/28/2011	971,763			983,728
		US Bank Mmkt 4-Ct	0.500%	daily			6.34	20,300
		US Bank Mmkt 4-Ct	0.300%	daily			28.70	29
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily				8
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007								
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.500%	daily			506.61	11,930,354
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	1,880,751		79.70	1,875,257
Special Fund		US Bank Mmkt 4-Ct	0.400%	daily			47.29	47
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily				9
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct	0.000%	daily				8
Principal Account		US Bank Mmkt 4-Ct	0.500%	daily			2.87	67,511
		US Bank Mmkt 4-Ct	0.500%	daily			156.60	3,687,791
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES								
Interest Account		US Bank Mmkt 4-Ct	0.400%	daily				44
Principal Account		US Bank Mmkt 4-Ct	0.500%	daily			15.18	357,559
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	2,310,710		98.15	2,311,361
Project Fund		US Bank Mmkt 4-Ct	0.500%	daily			178.22	4,197,099
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES								
Reserve Fund		US Bank Mmkt 4-Ct	0.600%	daily				90
		Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500			2,931,509
		US Bank Mmkt 4-Ct	0.400%	daily				26
Acquisition & Construction		US Bank Mmkt 4-Ct	0.500%	daily			652.96	15,376,785
*Paid Semi-Annually-Deposited into Money Mkt Account							Total	1,795.56
								44,548,909

143



**CITY COUNCIL AND BANNING UTILITY AUTHORITY  
AGENDA**

**DATE:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Notice of Completion for "The Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake"

**RECOMMENDATION:** City Council accept "The Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake" as complete and direct the City Clerk to record the Notice of Completion.

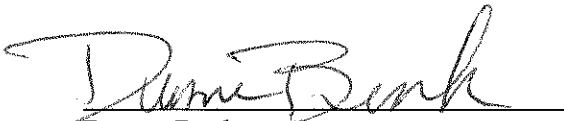
**JUSTIFICATION:** The contractor has completed the work as per the approved plans and specifications.

**BACKGROUND:** On June 14, 2011, the City Council and the Banning Utility Authority adopted Resolution No. 2011-04UA, "Approving the Maintenance and Services Agreement with Pascal and Ludwig Constructors for the Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake and Approving the Purchase of All Parts & Materials for the Repair". The agreement was for an amount not to exceed \$18,985.00 and the purchase order for the parts and material was for an amount of \$66,755.12.

The scope of work for the project included the repair and installation of the rake guides, drive unit and rake arm.

**FISCAL DATA:** The total project cost, as approved by City Council, was for an amount of \$85,740.12. The project was completed within budget with a final project cost of \$85,126.28 and was funded by the Wastewater Capital Facility Fund.

**RECOMMENDED BY:**



Duane Burk  
Director of Public Work

**APPROVED BY:**



Andy Takata  
City Manager

**REVIEWED BY:**



June Overholt  
Administrative Services Director

1 WHEN RECORDED MAIL TO:

2  
3 The Office of the City Clerk  
4 of the City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 "REPAIR OF THE CITY OF BANNING'S WASTEWATER TREATMENT PLANT  
15 BAR SCREEN RAKE"  
16

17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the  
18 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of  
19 the Civil Code of the State of California, and is hereby accepted by the City of Banning,  
20 pursuant to authority conferred by the City Council and the Banning Utility Authority  
21 this December 13, 2011, and the grantees consent to recordation thereof by its duly  
22 authorized agent.  
23

24 That the OWNER, the City of Banning, and Pascal and Ludwig Constructors of City of  
25 Ontario, California, the vendee, entered into an agreement dated June 15, 2011, for  
26 Construction of the "The Repair of the City of Banning's Wastewater Treatment Plant  
27 Bar Screen Rake". The scope of work included the repair and installation of rake guides,  
28 a drive unit and a rake arm all in accordance with the City of Banning Standard  
29 Specifications.

30 (1) That the work of improvement was completed on October 4, 2011.

31 (2) That the City of Banning, a municipal corporation, whose address is  
32 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work  
33 of improvement.

34 (3) That said work of improvement was performed at the Banning Wastewater  
35 Treatment Plant, located at 2242 E. Charles Street in Banning, California 92220.

145

1 (4) That the original contractor for said improvement was Pascal and Ludwig  
2 Constructors, State Contractor's License No. 373525.

3 (5) The nature of interest is in fee.  
4

5 Dated: December 13, 2011

6 CITY OF BANNING  
7 A Municipal Corporation  
8  
9

10  
11 By \_\_\_\_\_  
12 Andy Takata  
13 City Manager  
14

15 APPROVED AS TO FORM:  
16  
17  
18

19 \_\_\_\_\_  
20 David J. Aleshire, Aleshire & Wynder, LLP  
21 Agency Counsel  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

1  
2  
3  
4 **JURAT**  
5

6 State of California  
7 County of Riverside  
8

9 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
10 \_\_\_\_\_, 2011 by \_\_\_\_\_ proved to me on this basis of  
11 satisfactory evidence to be the person(s) who appeared before me.  
12

13 (S e a l)

\_\_\_\_\_  
14 Notary Public in and for said County  
15 and State  
16  
17

18 STATE OF CALIFORNIA)

19 ) ss

20 COUNTY OF RIVERSIDE)  
21  
22

23 MARIE A. CALDERON, being duly sworn, deposes and says:  
24

25 That I am the City Clerk of the City of Banning, which City caused the work to be  
26 performed on the real property hereinabove described, and is authorized to execute this  
27 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
28 know the contents thereof, and that the facts stated therein are true based upon  
29 information available to the City of Banning, and that I make this verification on behalf  
30 of said City of Banning. I declare under perjury that the forgoing is true and correct.

31 Executed on \_\_\_\_\_, 2011 at Banning, California.  
32  
33

\_\_\_\_\_  
34 City Clerk of the City of Banning  
35

147

## CITY COUNCIL AGENDA

**Date:** December 13, 2011  
**TO:** Honorable Mayor and City Council  
**FROM:** Fred Mason, Electric Utility Director  
**SUBJECT:** Notice of Completion for "Project 2011-01EL Replacement of City of Banning Yard Office Building HVAC Units"

**RECOMMENDATION:** The City Council accept the Project 2011-01EL "Replacement of City of Banning Yard Office Building HVAC Units" as complete and direct the City Clerk to record the Notice of Completion.

**JUSTIFICATION:** The contractor has completed the work as per the plans and specifications.

**BACKGROUND:** The City Council awarded the construction contract for said project to Arrowhead Mechanical, Inc. of San Bernardino, at its regular meeting held on April 12, 2011.

The scope of work for the project included installation of an HVAC system consisting of four (4), four (4) ton, 18 SEER units along with required structural work, electrical runs and/or connections to HVAC units, installation or connection of water, gas and condensation lines, installation of any needed electrical outlets, roof repairs as needed, weather proofing around HVAC units; and removal of existing HVAC units.

**FISCAL DATA:** The original/final contract price for the entire project was \$ \$37,900.00.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

148

1 WHEN RECORDED MAIL TO:

2  
3 City Clerk's Office  
4 City of Banning  
5 City Hall, 99 E. Ramsey Street  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13  
14 NOTICE OF COMPLETION

15 PROJECT NO. 2011-01EL REPLACEMENT OF CITY OF BANNING YARD  
16 OFFICE BUILDING HVAC UNITS  
17

18  
19 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
20 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
21 the State of California, and is hereby accepted by the City of Banning pursuant to  
22 authority conferred by the City Council this December 13, 2011, and the grantees consent  
23 to recordation thereof by its duly authorized agent.  
24

25 (1) That the OWNER, the City of Banning and Arrowhead Mechanical, Inc.,  
26 entered into a written Agreement dated April 28, 2011, for the Replacement of City of  
27 Banning Yard Office Building HVAC Units. The scope of work for the project  
28 included the removal and replacement all the installation of an HVAC system consisting  
29 of four (4), four (4) ton, 18 SEER units along with required structural work, electrical  
30 runs and/or connections to HVAC units, installation or connection of water, gas and  
31 condensation lines, installation of any needed electrical outlets, roof repairs as needed,  
32 weather proofing around HVAC units; and removal of existing HVAC units.  
33

149

34 (2) That the Work of Improvement was substantially completed on September  
35 3, 2011, and the Nature of Interest is in fee simple owner.

36  
37 (3) That the City of Banning, a municipal corporation, whose address is  
38 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is the owner of said  
39 Work of Improvement.

40  
41 (4) That the said Work of Improvement was performed at the City Yard  
42 Office Building, 176 E. Lincoln St., in the City of Banning.

43  
44 (5) That the original contractor for said improvement was Arrowhead  
45 Mechanical, Inc., State Contractor's License No. 334422.

46  
47 (6) That the corporate surety on the performance and payment bonds is First  
48 National Insurance Company of America.

49  
50 Dated: December 13, 2011

51  
52 CITY OF BANNING  
53 A Municipal Corporation

54  
55  
56  
57 By \_\_\_\_\_  
58 Fred Mason  
59 Director of Electric Utility

60  
61 APPROVED AS TO FORM:

62  
63  
64 \_\_\_\_\_  
65 David Aleshire, Aleshire & Wynder, LLP  
66 City Attorney

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

4

5

6 MARIE A. CALDERON, being duly sworn, deposes and says:

7

8 That I am the City Clerk of the City of Banning, which City caused the work to be  
9 performed on the real property hereinabove described, and that I am authorized to verify  
10 this Notice of Completion on behalf of said City; that I have read the foregoing Notice  
11 and knows the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning I declare under penalty of perjury that the foregoing is true and  
14 correct.

15

16

17

18

19

20

21

22

23 Executed on \_\_\_\_\_, 2011 at Banning, California.

24

25

26

27

28

29

30

\_\_\_\_\_  
Marie A. Calderon  
City Clerk of the City of Banning



## **CITY OF BANNING**

**DATE:** December 13, 2011

**TO:** Mayor and Members of the City Council

**FROM:** Bill R. Manis, Economic Development/Redevelopment Director  
June Overholt, Administrative Services Director/Deputy City Manager

**SUBJECT:** Business License Hub Software Pilot Test Agreement with E2G2, Inc.

**RECOMMENDATION:**

That the City Council:

- (1) Authorize staff to enter into the Business License Hub Software Pilot Test Agreement with E2G2, Inc.
- (2) Direct staff to bring back a final contract if the test results are positive and the City is satisfied with the results.

**BACKGROUND/ANALYSIS:**

The City currently uses the Business License services of HdL Companies, which it has for a number of years. The City recently became aware of a start-up company called "E2G2" which stands for "Easy To Get To" that provides a unique and effective platform for business license services. Specifically, the E2G2 platform provides a "Virtual Hub" that will organize, integrate and link the City, its businesses, service organizations, residents, consumers, visitors and other community stakeholders and their various activities.

E2G2 offers a unique and effective public-private partnership that is anticipated to provide both short and long-term benefits. In exchange for being a pilot City, Banning would not incur any cost other than staff time. In addition, E2G2 has agreed to reimburse the City for any overtime that might be incurred relating to testing the product and services being offered.

The City's Finance and Economic Development Department staff has reviewed the interactive product and spoken in detail with representatives from E2G2. Staff has found that the web based product, which is being tested at the Cities of Hawaiian Gardens and Baldwin Park, is a very interactive product and easy to use. From a Finance Department perspective, the program could ultimately enhance our existing business license services at a time when we are understaffed and unable to dedicate additional staff time to this function. From an Economic Development Department perspective, the program will supplement our business retention goals by encouraging local commerce and business to business interaction.

The first phase of the program includes the creation of an online Business Directory that will be provided to all businesses that have an active business license with the City. This online directory will

152

be linked to the City website. It will not be hosted by the City. Banning businesses will have an opportunity to promote and market themselves while simultaneously providing the community basic information via the website, such as hours of operations, a map of their locations, and contact information. In addition to the basic listing, businesses will have an option to enhance information provided in the Business Directory for an additional cost. E2G2 has agreed to share some of the proceeds (currently at 20%) it receives, thus increasing the additional revenues for the City.

Some of the immediate E2G2 benefits include:

- Business License Directory that will offer businesses options to promote and market themselves;
- Bilingual (English & Spanish) online Licensed Business Directory;
- No cost to the City of Banning and no annual maintenance fee; and
- Potential for generating additional revenues.

The second phase of the program is to pursue the online business line capabilities including the interactive processing processes. A final contract is necessary before full implementation of this option.

Some of the second phase E2G2 benefits include:

- Enhanced customer service by providing an online business renewal system with 24-hour a day/7 days a week accessibility via the web;
- Increased efficiency for business license processing;
- Online access by our code enforcement officers while in the field;
- Interactive use of information by departments thus increasing effectiveness; and
- The ability to customize the product based on our specific needs.

Based on the benefits of the product, the zero cost, and the potential to generate revenues for the City, staff recommends the City investigate the program by entering into the Pilot Agreement, Attachment 1. The City has the ability to cancel services at any time, and not move forward, if the services provided are less than satisfactory. If City staff is satisfied with the Pilot Test Agreement results, the City has the option to enter into a Final Agreement with E2G2, again at no cost to the City.

#### **FISCAL DATA:**

There is no cost associated with the proposal outlined in this report. Ultimately, the City could save annual maintenance costs that it currently pays and potentially increase its revenues from the revenue sharing agreement that will be in place. Specifics of the savings and revenue enhancements would be presented to City Council should the City move forward with the Final Agreement.

*(signatures on next page)*

**RECOMMENDED BY:**

Bill R. Manis

Bill R. Manis  
Economic Development /  
Redevelopment Director

**REVIEWED BY:**

June Overholt

June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

Andy Takata

Andy Takata  
City Manager

**Attachments:**

1. Business Licensing HUB Software Pilot Test Agreement

## **ATTACHMENT 1**

### **BUSINESS LICENSING HUB SOFTWARE PILOT TEST AGREEMENT**

## **BUSINESS LICENSING HUB SOFTWARE PILOT TEST AGREEMENT**

THIS AGREEMENT is made effective this \_\_\_\_ day of December, 2011 (the "Effective Date"), by and between E2G2, Inc., a Nevada Corporation, ("E2G2"), located at 1822A East Rte 66, Glendora, CA 91740 and the City of Banning ("Licensee") having a principal place of business at 99 E. Ramsey St., Banning, CA 92220.

### **RECITALS**

- A. E2G2 has developed the Business and Licensee Licensing System (BOLS), including modifications, enhancements, improvements, updates, additions, derivative works, documentation and related material ("Software") and the parties desire that E2G2 provide the key components to the Licensee, all of which are more fully described in Exhibit 1.
- B. E2G2 desires that the Software be tested prior to general release.
- C. Licensee wishes to serve as a pilot test ("Pilot Test") site for such Software.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and premises herein contained, the parties hereto agree as follows:

1. Grant of License. E2G2 grants to Licensee, at no cost to Licensee, a non-exclusive, non-transferable license to use the Software on computers with Internet access at Licensee's business location solely for testing use from the effective date of the Agreement to 15 days after official release date of the products(s), subject to the term and conditions below.

2. Licensee Obligations.

(a) In consideration for receiving copies of the Software for testing, Licensee agrees to serve as a "Test Site" for the Software and will notify E2G2 of all problems and ideas for enhancements which come to Licensee's attention during the period of this Agreement, and hereby assigns to E2G2 all right, title and interest to such ideas for enhancements and all property rights therein including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights associated thereto.

(b) The Licensee, upon completion of the Pilot Test, agrees to provide material, statistics, or information that is not deemed confidential to Licensee's business for use in press releases, customer testimonials, and as a reference in marketing and sales initiatives by E2G2.

3. Confidentiality. Licensee agrees that Software is the sole property of E2G2 and includes valuable trade secrets of E2G2. Licensee agrees to treat Software as confidential and will not without the express written authorization of E2G2:

- (a) Demonstrate, copy, sell or market Software to any third party; or
- (b) Publish or otherwise disclose information relating to performance or quality of the Software to any third party; or
- (c) Modify, reuse, disassemble, decompile, reverse engineer or otherwise translate the Software or any portion thereof.

#### 4. Warranties.

(a) General Disclaimer. Software is prerelease code and is not at the level of performance or compatibility of a final, generally available product offering. Software may not operate correctly and may be substantially modified (based on Licensee's input and input from other Licensees as well) prior to first commercial shipment, or withdrawn. Software is provided "AS IS" without warranty of any kind. Except as otherwise provided for herein and except for the gross negligence or willful misconduct of E2G2, Licensee agrees and acknowledges that it shall have no claim for any damages against E2G2 arising out of the use or performance of Software. Except as otherwise provided for herein, in no event shall E2G2 be liable for any damages whatsoever arising out of the use of or inability to use Software, even if E2G2 has been advised of the possibility of such damages.

(b) Virus Protection Warranty. E2G2 hereby warrants and represents that, any time the Software or any maintenance releases are delivered to Licensee, whether delivered via electronic media or the Internet, no portion of the Software, or the media upon which it is stored or delivered, will contain any computer programming code that damages or otherwise improperly affects data files or hardware without the knowledge or consent of the user, including but not limited to self-replicating and self-propagating program instructions commonly referred to as "viruses" or "worms" to the extent such viruses or worms are detectable by commercially available detection software. E2G2 warrants that the Software shall be free from any back door, time bomb, drop dead-devise, or other software routing designed to disable a computer program automatically with the passage of time or under the positive control of persons other than the Licensee's personnel.

(c) Support Services Warranty. E2G2 hereby warrants and represents that each of its employees, independent contractors or agents assigned to perform any services or provide any technical assistance in configuration, development and implementation, training, use and related services in the use of the Software shall have the skill, training, and background reasonably commensurate with the level of performance or responsibility required, so as to be able to perform in a competent and professional manner.

(d) Corrections. E2G2 covenants that it shall use commercially reasonable efforts to correct any program malfunctions which are reported to E2G2 during the term of this Agreement and which are necessary for the Software to function as intended.

(e) Warranty of Law. E2G2 hereby warrants and represents that, to the best of E2G2's knowledge: (i) there is no claim, litigation or proceeding pending or threatened against E2G2 with respect to the Software or any component thereof alleging infringement of any patent or copyright or any trade secret or any proprietary right of any person; (ii) the Software complies in all material respects with applicable laws, rules and regulations; (iii) E2G2 has full authority to enter into this Agreement and to consummate the transactions contemplated hereby; and (iv) E2G2's performance under this Agreement is not materially impaired or prohibited by any other agreement to which E2G2 is a party or by which it may be bound.

(f) Warranty of Title. E2G2 hereby warrants and represents that: (i) the Software is an original work of authorship and does not infringe the intellectual property rights of others; (ii) it has all rights, title or interest to the Software necessary to grant Licensee the use rights herein; (iii) it has the right to grant to Licensee the licenses granted hereunder and (iv) E2G2 has and shall have full authority to license all proprietary and/or third party software modules that are incorporated into the Software.

5. Effect of Breach of Warranty. If, at any time during the term of this Agreement, E2G2 breaches any warranty under Section 4, Licensee shall promptly notify E2G2 in writing of such alleged breach of warranty. E2G2 shall correct any deficiency in the Software in accordance with the Service Level criteria set forth in Exhibit 2 until such time as the non-conformance is corrected or the Parties otherwise agree in writing. All work by E2G2 to remedy or correct a breach of warranty shall be performed at E2G2's sole cost and expense. If after reasonable efforts E2G2 is unable to correct any breach of warranty, in the manner described in this section within thirty (30) days following notice of breach by Licensee, and the resulting non performance or deficiency materially affects the ability of Licensee to utilize the Software, then Licensee may terminate this Agreement immediately, subject to all remedies available at law or equity.

6. Effect of Breach of Intellectual Property Rights.

(a) If the breach relates to the warranty under Section 4(e) or (f), then E2G2 shall promptly: (i) procure for Licensee the right to continue use of the Software at no charge to Licensee, (ii) modify such Software to avoid any claimed infringement (provided that such modification does not adversely affect Licensee's intended use of the Software) at no additional charge to Licensee, or (iii) replace said Software with an equally suitable, compatible and functionally equivalent non-infringing software, including installation and configuration as required, at no additional charge to Licensee. If none of the foregoing alternatives are reasonably available to E2G2, then Licensee shall return the Software in question to E2G2, whereupon this Agreement shall terminate.

(b) Furthermore, if promptly notified in writing of any action brought against the Licensee based on a claim that the Software infringes intellectual property rights, such as a patent, copyright or trademark right of a third party, E2G2 will defend such action at its expense and will pay any and all fees, costs or damages that may be finally awarded in such action or any settlement resulting from such action, provided that the Licensee shall permit the E2G2 to control the defense of such action and shall not make any compromise, admission of liability or settlement

or take any other action impairing the defense of such claim without the E2G2's prior written approval.

7. Insurance. On or before Licensee beginning any use of the Software, E2G2, at its own cost and expense, shall carry, maintain for the duration of this Agreement, and provide proof thereof that is acceptable to the Licensee, the insurance specified below with insurers and under forms of insurance satisfactory in all respects to the Licensee.

(a) Insurance required herein shall be provided by insurers in good standing with the State of California and having a minimum Best's Guide Rating of A- Class VII or better.

(i) Comprehensive General Liability coverage in an amount not less than one million dollars per occurrence (\$1,000,000.00), combined single limit coverage for risks associated with the work contemplated by this agreement. If a Commercial General Liability Insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this agreement or the general aggregate limit shall be at least twice the required occurrence limit.

(ii) Comprehensive Automobile Liability coverage, including owned, hired and non-owned vehicles in an amount not less than one million dollars per occurrence (\$1,000,000.00).

(iii) Worker's Compensation. If E2G2 intends to employ employees to perform services under this Agreement, E2G2 shall obtain and maintain, during the term of this Agreement, Worker's Compensation Employer's Liability Insurance in the statutory amount as required by State law.

(b) Proof of Insurance Requirements/Endorsement. E2G2 shall submit the insurance certificates, including the deductible or self-retention amount, and an additional insured endorsement naming Licensee, its officers, employees, agents, and volunteers as additional insureds as respects each of the following: Liability arising out of activities performed by or on behalf of E2G2; products and completed operations of E2G2; or automobiles owned, leased, hired, or borrowed by E2G2. The coverage shall contain no special limitations on the scope of protection afforded Licensee, its officers, employees, agents, or volunteers.

(c) Notice of Cancellation/Termination of Insurance. The above policy/policies shall not terminate, nor shall they be cancelled, nor the coverage reduced, until after thirty (30) days' written notice is given to Licensee, except that ten (10) days' notice shall be given if there is a cancellation due to failure to pay a premium.

8. Indemnity. Each party shall indemnify and save harmless the other, its successors and assigns together with its officers, directors, employees, agents and those for whom it is in law responsible, only from and against any and all liabilities, damages, costs, expenses, causes of action, claims, suits, proceedings and judgments (collectively "Claims") which each party may incur or suffer or be put to by reason of or in connection with or arising from any breach, violation or non performance by the other of any obligation contained in this Agreement to be observed or performed by the respective party, or any wrongful act or negligence of the



respective party or its agents or employees which relates to this Agreement, howsoever arising. Each party acknowledges and agrees that this indemnity shall survive any termination of this Agreement.

9. Force Majeure. Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the Licensee's computer (unless by reason of the negligence of a party to this Agreement) or failure or inoperability of any software other than the Software. Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

10. Independent Contractors. The Parties expressly acknowledge and agree that each is an independent contractor and nothing contained in this Agreement or which otherwise exists shall be construed by any Party or any third person or entity to create a relationship of joint ventures, partners, or employer and employee.

11. Entire Agreement. This Agreement constitutes the entire and only agreement between the parties for Software and all other prior negotiations, representations, agreements, and understandings are superseded hereby. No agreements altering or supplementing the terms hereof may be made except by means of a written document signed by the duly authorized representatives of the parties.

12. Notices. Any notice required by this Agreement shall be given by prepaid, first class, certified mail, return receipt requested to above address or such other address as may be given from time to time under the terms of this notice provision.

13. Governing Law. This Agreement shall be governed by the laws of the State in which Licensee is located and shall be deemed to have been entered into in that State for purposes of venue no matter where actually executed.

14. Invalidity. The invalidity or unenforceability of any provision or covenant contained in this Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be deemed to be severable.

15. Waiver. A term or condition of this Agreement may be waived or modified only by written consent of both parties. Forbearance or indulgence by either party in any regard shall not constitute a waiver of the term or condition to be performed, and either party may evoke any remedy available under the Agreement or by law despite such forbearance or notice.

16. Covenants. The parties covenant and agree to the following: (a) after completion of the Pilot Test, the Licensee shall not incur any costs; and (b) the final contract executed between the parties will also stipulate that there will be no out of pocket costs to Licensee, and that revenue sharing will be on substantially the same terms as set forth in Exhibit I Section 11 below.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, parties hereto have caused their duly authorized representatives to execute this Agreement.

E2G2  
E2G2, Inc., a Nevada Corporation

LICENSEE  
City of Banning

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Attest: \_\_\_\_\_

\_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

**EXHIBIT 1**  
City of Banning

**KEY COMPONENTS - DETAILS**

The key components of this project are:

1. **Set-up.** E2G2 will provide and work closely with the City to configure a web-based interactive Point-of-License (POL) system incorporating all the City's required information to process a business license application. The current manually downloaded PDF application process will be replaced with an out-facing interactive online POL that can be completed by business users for new and renewing licensees. BOLS will track, as necessary, licenses requiring special handling approval.
2. **Deliverables.** E2G2 will provide the following minimum deliverables in two phases. The Phase I roll out begins 90-120 days from the date of approval of this agreement or as mutually agreed upon by parties. Phase II deliverables will be released as they are tested, accepted and approved by the City.

**Phase I - Deliverables**

- Implementation of a English and Spanish Licensed Business Directory
- Implementation of a Clubs and Organizations Registry
- Businesses can subscribe and pay for value-added services (Enhanced Listings and organization sponsorships)
- Online, interactive processing of new business licenses
- Implementation of a web-based, City configured, business license payment processing and reporting system (scheduled to run in parallel with its annual renewal)

**Phase II – Deliverables – Other proposed future services**

- Other value-added services for businesses (Business-to-business Welcome Wagon, site sponsorships – via the City Business Directory, City bidding)
  - Other license / permitting applications (Yard / Garage sales)
3. **Integration.** Integration with existing City systems will be determined by working closely with the City. E2G2 is a stand-alone web-based platform and is designed such that data can be extracted and imported. It will be the responsibility of the City to integrate the imported data into its existing platforms.
  4. **Business and Organization Licensing System (BOLS).** The E2G2 software-as-a-service BOLS platform will allow the city to process licenses, manage all its businesses licensing processes, select special options and features offered to businesses, set and

maintain security access levels and generate management reports (the “Software”). Back up, security, software updates and off-site software and hardware will be provided by E2G2. E2G2 will perform all necessary work to implement the BOLS platform. On-site Internet access and hardware shall be the responsibility of the City.

5. **On-going Services.** E2G2 will provide all ongoing service required to update and maintain the BOLS platform. It is agreed that if E2G2 is unable to perform its service involuntarily, E2G2 will furnish the necessary code data necessary for the City to continue operating. The most current license database will be accessible and available for downloading by the City at any time. The parties agree that if either E2G2 or the City withdraws from this program, where practical, a 90 day written notice shall be provided.
6. **Business License Directory.** E2G2 will create and maintain an online License Business Directory. The directory will be in English and Spanish. E2G2 will work with the City to convert the existing Business License database into the new directory. E2G2 will work with the City along with the licensees in a best effort to verify the accuracy of the existing information such as sending a notice to businesses asking them to confirm their data online. The new City online directory, where appropriate, will list *all* licensed businesses. Businesses will be searchable by name, category, keyword, address and hours of operation. Provisions will be made for businesses requiring special handling, e.g., not listing the addresses of home-based businesses. In addition, when the directory is launched, E2G2 will provide a “pop –up” window to clearly inform users that they will be leaving the official City website to a site hosted by E2G2.
7. **Non-Licensed Data.** Non-licensed data is defined to be that information that is not required for licensing, but is voluntarily provided by the business, about the business, that is displayed publicly. E2G2 will expand the business licensing process to acquire “non-licensed” content, i.e., hours of operation, special offers, and other content useful to consumers. The businesses will be given the choice to “opt-in” in providing this information. The non-licensed content will be reorganized into other useful formats and made available to residents, consumers, visitors and businesses. The Non-Licensed data will be acquired under E2G2’s Terms of Use (TOU) – an agreement directly between E2G2 and the licensed businesses. Upon opting in a “pop-up” window will be displayed to inform businesses that they will leaving the official City website and re-directed to a site hosted by E2G2.
8. **Ownership of public data – Non-Licensed Data - furnished by businesses and organizations.** E2G2 will request that businesses “opting in” to furnish data and information that is collected and displayed publicly for marketing and promotion to accept, sign, approve and allow E2G2 to possess, own and use this collected and processed information (the “Data”), without limitations, in any manner E2G2 chooses. E2G2 shall grant to the City a license to use this Data; provided, however, that the City shall have no right to transfer, sublicense or allow any other party to use such Data without the prior written consent of E2G2. All businesses, clubs and organizations will be required to accept and approve E2G2’s Terms of Use (TOU).

9. **Controlling “inappropriate content.”** E2G2 will clearly notify all users when they are exiting the City’s website and entering E2G2’s site. All postings on E2G2’s website will be governed by its Terms of Use (“TOU”). The TOU expressly sets forth unacceptable user conduct and provides E2G2 broad flexibility in removing or refusing to post content. E2G2 will work with the City to make sure that no inappropriate content is posted. E2G2 will (i) screen all text and graphics content electronically. Anything questionable can be forwarded to the City, and the City would have a certain period of time to deny it or the content automatically gets posted, and (ii) incorporate user at-large feedback whereby anything questionable will be automatically reviewed and removed if necessary.
10. **Organizations registry.** E2G2 using BOLS will create an online registry for clubs, organizations and non-profit service groups. There is no cost to the clubs and associations to register and maintain their web listings.
11. **New source of revenues.** E2G2, working closely with the City, will offer businesses a variety of options, where appropriate, to advertise, promote and market themselves via the online Business License Directory. At a minimum, in the initial roll-out, E2G2 will offer an Enhanced Listing option at an additional cost to individual businesses. E2G2 will provide added features such as links to websites, testimonials, special offers, graphics, logos and detailed descriptions of businesses, etc. E2G2 will use the revenues generated by these special options (Enhanced Listings) to provide its services. In addition, and in recognition of the City’s participation in the pilot test of the Program, E2G2 agrees to share twenty percent (20%) of the Gross Revenues with the City, payable quarterly. “Gross Revenue” shall exclude: (1) any revenues generated from collection of licensing/permit fees, (2) any third party fees associated with collection of the licenses fees, (3) any fees paid to third parties, i.e., clubs, associations, organizations and / or non-profits as part of sponsorships, or (4) fees generated by E2G2 through aggregating Non-Licensed data from multiple cities. Funds and fees collected for business licenses on behalf of the City will be placed in a segregated account controlled by the City and distributed directly to the City.
12. **Business License Fee Processing.** E2G2 will process the City’s fees, where applicable, using the City’s credit card service provider. Depending on compatibility, E2G2 will integrate the fee processing using the City’s existing credit card service provider. If there are compatibility issues, E2G2 will work with the City to find a mutually acceptable payment processor. Where appropriate, applicable and agreed upon by the City, E2G2 will set up payment by check, e-checks or other services. The cost of processing will be incurred by the City and / or offset by a charge to the business.
13. **System integration.** BOLS is a stand-alone, interactive, web-based application. It has been designed to easily provide extracted data that can be imported into other systems. The extent of any integration with existing City systems will be determined by working closely with City.
14. **System acceptance.** BOLS will run parallel to the City’s existing business license system until the City agrees to approve and accept a final switch over.

**15. Security, Recovery, and Back-up plan.** E2G2 will provide the necessary security (authentication, encryption, provisioning) to ensure secure access to the system.

- E2G2 will put the software in an escrow account - if something were to happen to E2G2 as a supplier the software and the City's data would be released to the City. E2G2 will establish a parallel or mirrored site that upon the City's request, under specified instructions, the City will have, if required, exclusive access to E2G2's operating software and the City's data. E2G2 will work with the City to finalize the triggering events.
- Back-up the data every 24 hours - although there is continuous back-up E2G2 will have an additional daily back-up. If E2G2 were down at any time or for a period of time E2G2 would be able to recover and redeploy very quickly without loss of data.
- Store data on the Internet cloud – data is not stored in E2G2's or the City's offices but on the internet cloud. In this case, E2G2 uses and leverages Amazon's infrastructure via a private cloud. This insures best practices as well as SAS70 Audit compliant (meeting SEC public reporting requirements).
- The City's data is transmitted to the City on request or on a scheduled timetable in various formats – the City will have access to its data at all times. The City's access will be designed as a self-service format without E2G2 involvement.
- E2G2 will insure that all data transmissions involving financial and sensitive data will adhere to best practices in terms of encryption and security.

**16. Non-Internet business users.** E2G2 will work closely with the City to address the needs of businesses having little or no Internet experience during the period of transitioning the manual licensing system to a web based system. Some, possibilities include, access to a City kiosk and / or teaming high school, college students and volunteers with computer experience to work with businesses.

**17. Promotion & Marketing roll out.** During the pilot period, E2G2 will provide personnel and resources to actively promote, engage and involve businesses, organizations, residents and the community to become actively involved with the virtual hub. This activity includes, but is not limited to, direct offline contact with participants.

**18. Co-marketing.** Where applicable and appropriate, E2G2 and the City will work cooperatively, as well as separately, to market and cross-promote traffic to the City's website for the benefit of the local businesses, organizations and community.

**19. Other Considerations.** It is understood between the parties this is a new platform and it is agreed that there will be great deal of "give and take", collaboration and best effort to meet the needs of both parties. As the platform will be actively under development, the City agrees to provide active feedback and guidance during the pilot test period.

20. **Compliance.** E2G2 agrees to comply with insurance, licensing and other requirements for doing business as set forth by the City.

## **EXHIBIT 2**

### **Standard Guidelines for Support**

These guidelines provide information on E2G2's standard support coverage, the services which are included as part of software support, a listing of call priorities, an outline of escalation procedures and other important details.

The services listed below are services that are included as part of software support.

- 800 Toll Free Telephone support
- Scheduled assistance for installations, upgrades & other special projects
- Technical troubleshooting & issue resolution
- E-mail support call logging and notification
- Free eSupport access 24 x 7 with the following on-line benefits:
  - Log & close calls
  - View & update calls
  - Update contact information
  - Access published documentation
  - Access available downloads
  - Access Support knowledge base
  - Participate in Discussion Forums
  - Report on metrics
- Standard software releases and updates
  - Defect corrections (as warranted)
  - Planned enhancements
  - State and/or Federal mandated changes
  - Release notes
- Limited training questions (15 minute guideline)
- Customer Care Program
  - Quarterly Newsletter with support tips
  - Technical support bulletins
  - Communication on new products and services
  - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Outstanding Calls Report with conference call (as required)

### **HelpDesk Hours**

Standard hours of support shall be the same as Licensee's open public hours, excluding designated statutory holidays.

### **Call Priorities**

In an effort to assign resources to incoming calls as effectively as possible, three types of call priorities, 1, 2 & 3, have been identified. A Priority 1 call is deemed by support staff to be an Urgent or High Priority call, Priority 2 is classified as a Medium Priority and Priority 3 is



deemed to be a Low Priority. The criteria used to establish guidelines for these priorities are as follows:

### **Priority 1 – High**

High priority issues consist of errors for which there is no means of workaround, causing (i) unrecoverable “crashes” of the Software, (ii) ongoing unrecoverable loss or corruption of data or (iii) loss of essential Software functionality that prevents Licensee processing for which there is no means of workaround. Examples of high priority issues include:

- System Down
- Inability to process business licenses
- Security issues
- Inability to process bills
- Program errors without workarounds
- Incorrect calculation errors impacting a majority of records
- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes

### **Priority 2 – Medium**

Medium priority issues consist of errors that may be causing (i) ongoing recoverable loss or corruption of data for which there is no workaround, (ii) loss of essential Software functionality that prevents Licensee processing that has a workaround, or (iii) loss of non-essential Software functionality that does not have a workaround. Examples of medium priority issues include:

- System errors that have workarounds
- Calculation errors impacting a minority of records
- Reports calculation issues
- Printer related issues (related to interfaces with the Software and not the printer itself)
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

### **Priority 3 – Low**

Low priority issues consist of errors that may be causing (i) loss of non-essential Software functionality that has a workaround or (ii) difficulties in the user interface. Examples of low priority issues include:

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Issues with workarounds for large majority of accounts
- Recommendations for enhancements on system changes
- Questions on documentation

## **Response Times**

E2G2 will correct reported Errors in accordance with the following provisions. All time references below are clock hours or calendar days, unless otherwise specified.

### **1. *Priority 1 Errors***

a. E2G2 will provide Licensee with a telephone number for emergency support to be used by Licensee at any time on a seven (7) day a week, twenty-four (24) hours a day basis to report Priority 1 Errors, if the customer chooses to pay an additional maintenance premium, otherwise, the customer will be able to place a call for support anytime during the help desk hours corresponding to Licensee's public working hours.

b. E2G2 will provide an initial response to all Priority 1 Errors within one (1) hour following the report of issue.

c. E2G2 will use commercially reasonable efforts to resolve Priority 1 Errors within twenty-four (24) hours or identify a mutually agreeable correction plan within twenty-four (24) hours following the report of Error.

### **2. *Priority 2 Errors***

a. The Licensee shall use the standard call support center telephone number or web service for emergency support during normal business hours.

b. E2G2 will provide an initial response to all Priority 2 Errors within four (4) working hours following the report of the Error.

c. E2G2 will use commercially reasonable efforts to resolve Priority 2 Errors within seven (7) working days following the report of the issue.

### **3. *Priority 3 Errors***

a. The Licensee shall use the standard call support center telephone number or web service for emergency support during normal business hours.

b. E2G2 will provide the Licensee a tracking number for all Priority 3 Errors within five (5) business days following the report of issue, and respond further as part of our normal online tracking system.

c. E2G2 will use commercially reasonable efforts to resolve Priority 3 Errors by means of a future scheduled update or release, as mutually agreed.

## Call Process

All issues or questions reported to support are tracked via a support call. Support analysts cannot provide assistance unless a support call is logged. The current process for logging calls includes the following: eSupport (via website), email, phone and fax.

- Each call must contain at a minimum: the Licensee name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of its question or issue and any other pertinent information.
- The support system or one of the support analysts will provide the Licensee with a call i.d. to track the issue and the call will be logged into a support tracking database.
- Each call will be stored in a queue and the first available support representative will be assigned to deal with the issue.
- As the support representative assigned to the call investigates the issue, the Licensee will be contacted and advised as to where the issue stands and the course of action that will be taken for resolution. If the support analyst requires additional information, he/she will contact the Licensee to obtain the information required.
- All correspondence and actions associated with a call will be tracked in the support database. At any time, if available to the Licensee, the Licensee may log onto the E2G2's website to see the status of each call.
- Once the call has been resolved, the Licensee will receive an automated notification by email that the call has been closed. This email will contain the entire event history of the call from the time the call was created and leading up to the resolution of the call. The Licensee also has the option of viewing both open and closed calls, if available to the Licensee, via the E2G2's website.
- If the issue needs to be escalated to a development resource or programmer for resolution, the issue will be logged into a development tracking database and the Licensee will be provided with a separate i.d. number to track the progress of the issue. At this time, the support call will be closed and replaced by the development i.d. number. The development i.d. number will remain open until the issue has been completely resolved. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue.
- The Licensee may contact the support department at its convenience for a status update on its development issues, or log onto the E2G2's website (if available to the Licensee) to view issues on-line.

## Escalation Process

In the event E2G2 has been unable to provide either a permanent or a mutually acceptable temporary resolution within the applicable timeframes set forth in the Response Time Section above, E2G2 will initiate the following escalation procedures. All procedures will be undertaken at E2G2's sole expense except where the issue is determined to be due to hardware malfunctions, utility failures, air conditioning malfunctions, communications malfunctions, environmental problems, user errors or any other cause outside E2G2's reasonable control. All time references below are clock hours or calendar days, unless otherwise specified.

**1. Escalation Stage 1.**

a. **Priority 1 Error:** If a Priority 1 Error is not corrected within twelve (12) hours following the report of the Error, the Support Representative attempting to correct the Error shall notify the Support Supervisor or Group Lead who will immediately become personally involved in resolving the problem, which will include a determination, in his/her reasonable discretion following consultation with the Licensee, whether it is necessary to locate a Support Representative onsite at the Licensee's location to correct the Error. E2G2 will keep the Licensee apprised of the status of its efforts to correct the Error at no less than four (4) hour intervals during standard business hours.

b. **Priority 2 Error:** If a Priority 2 Error is not corrected within seven (7) days following the report of the Error, the Support Representative attempting to correct the Error shall notify the Support Supervisor or Group Lead who will immediately become personally involved in resolving the problem, which will include a determination, in his/her reasonable discretion following consultation with the Licensee, whether it is necessary to locate a Support Representative onsite at the Licensee's location to correct the Error. E2G2 will keep the Licensee apprised of the status of its efforts to correct the Error at no less than daily intervals.

**2. Escalation Stage 2**

a. **Priority 1 Error:** If a Priority 1 Error has not been corrected after twenty four (24) hours since the initial report of Issue, E2G2 will involve its Director of Support in directing the resolution of the problem, which will include a determination, in his/her reasonable discretion following consultation with the Licensee, whether it is necessary to locate a Support Representative onsite at the Licensee's location to correct the Error. E2G2 will keep the Licensee apprised of the status of its efforts to correct the Issue at no less than four (4) hour intervals during standard business hours.

b. **Priority 2 Error:** If a Priority 2 Error has not been corrected after seven (7) days since the initial report of the Error, E2G2 will involve its Director of Support in directing the resolution of the problem, which will include a determination, in his/her reasonable discretion following consultation with the Licensee, whether it is necessary to locate a Support Representative onsite at the Licensee's location to correct the Error. E2G2 will keep the Licensee apprised of the status of its efforts to correct the Issue at no less than daily intervals.

**3. Escalation Stage 3.**

a. **Service Level 1 Error:** If the Error has not been corrected after forty eight (48) hours since the initial report of the Error, E2G2 will immediately assign its Vice President of Support or company CEO to directly oversee our efforts to remedy the Error, including, in his/her reasonable determination following consultation with the Licensee, assigning a Support Representative to work onsite at the Licensee's location, until such Error is resolved.

b. **Service Level 2 Error:** If the Error has not been corrected after ten (10) days since the initial report of the Error, E2G2 will immediately assign its Vice President of Support or company CEO to directly oversee its efforts to remedy the Error, including in his/her reasonable determination following consultation with the Licensee assigning a Support Representative to work onsite at the Licensee's location, until such Error is resolved.

c. **Service Level 1 or 2 Errors:** If, at any time, after the specified periods above, the Error has not been corrected, E2G2 will advise the Licensee of the steps it intend to take to correct the Error and the corresponding schedule of such steps. E2G2 will consider, in good faith, such measures that it has not taken to date, including without limitation, placement of company personnel onsite at the Licensee and/or retention of third party technical services to resolve the Error at E2G2's own cost.

#### **Failure to Correct Issues.**

Licensee shall be entitled to receive a ten percent (10%) reduction of the monthly maintenance fee for the affected software, up to a maximum of 100% of such fee for the current month, for each twenty four (24) hour period (excluding weekends and customer holidays) during which a Service Level 1 Error is not corrected seventy-two (72) hours following the report of the Error, provided however, such reductions shall not apply where the cause of the Error is not within E2G2's reasonable control, which includes hardware malfunctions, utility failures, air conditioning malfunctions, System Software problems, communications malfunctions, environmental problems, and issues due to errors by the Licensee or third-party personnel.

#### **Table of Service Level Requirements.**

By way of example, but not by limitation, a compilation of the deadlines stated herein is included below for convenience of reference by the parties.

Service Level Required	Level 1 Error	Level 2 Error	Level 3 Error
	(time measured from initial report of Error to E2G2)		
Initial Response Due	1 hour	4 hours	5 days
Correction identified and a mutually agreeable correction plan will be developed within	24 hours	7 days	As mutually agreed
Escalation Stage 1 (Support Supervisor/Group Lead.)	12 hours	7 days	N/A

Service Level Required	Level 1 Error	Level 2 Error	Level 3 Error
	(time measured from initial report of Error to E2G2)		
<i>Stage 1 Status Report Intervals</i>	<i>every 4 hours during standard business hours</i>	<i>daily</i>	N/A
Escalation Stage 2 (Dir. of Support)	24 hours	7 days	N/A
<i>Stage 2 Status Report Intervals</i>	<i>Every 4 hours during standard business hours</i>	<i>daily</i>	N/A
Escalation Stage 3 (VP of Support/CEO)	72 hours	10 days	N/A
Maintenance and Support Fee Reduction (10%/day to a max of 100% of the monthly fee for the affected application or module of software)	after 72 hours	N/A	N/A

### Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Day	Closed
Memorial Day	Closed
Independence Day	Closed
Labor Day	Closed
Veteran's Day	Closed
Thanksgiving	Closed
Day after Thanksgiving Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed
Day after Christmas Day	Closed
New Year's Eve	Early Closure

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Resolution No. 2011-94, A Resolution of the City Council of the City of Banning Authorizing the City Manager or his Designee to Execute For and On Behalf of the City of Banning any actions necessary for the purpose of obtaining Financial Assistance Provided by the Governor's Office of Homeland Security.

**RECOMMENDATION:**

Adopt Resolution No. 2011-94, authorizing the execution of Appendix C, Governing Body Resolution, of the FY 09-10 California Transit Security Grant Program and the and the California Transit Assistance Fund (CTSGP-CTAF) Application

**JUSTIFICATION:** Resolution No. 2011-94 is required to obtain funding made available by CAL-EMA through the FY 2009-10 California Transit Security Grant Program (CTSGP) California Transit Assistance Fund (CTAF).

**BACKGROUND:** In February, 2011 California Emergency Management Agency (CalEMA) approved funding for the City of Banning in the amount of \$18,650 for Bus Security Upgrades: Radios and Security Cameras. This funding will allow for the continued upgrade of radios and security cameras on the buses and dial-a-rides as required for the efficient, safe, operation of the Banning Pass Transit System.

The upgrading of the audio and visual recording equipment on the buses will help to improve security on board the transit buses, monitor suspicious activity and assist in reducing claims against the city for incidents that occur.

Staff received notification of approval from (CalEMA) approving funding in the amount of \$18,650 for this purchase. A Governing Body Resolution approved by the City Council of the City of Banning must be received as a part of the application to receive the funding.

**FISCAL DATA:** None

174

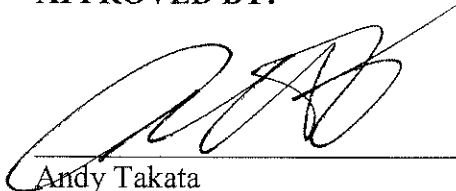
**RECOMMENDED BY:**

  
Heidi Meraz  
Community Services Director

**REVIEWED BY:**

\_\_\_\_\_  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager



**RESOLUTION NO. 2011-94**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING CALIFORNIA, AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXECUTE FOR AND ON BEHALF OF THE CITY OF BANNING ANY ACTION NECESSARY FOR THE PURPOSE OF OBTAINING FINANCIAL ASSISTANCE PROVIDED BY THE GOVERNOR'S OFFICE OF HOMELAND SECURITY**

**WHEREAS**, the City of Banning Transit Department applied for and was approved for funding through the CalEMA Prop 1B FY 09-10; and

**WHEREAS**, the monies received are to be used for the purchase and installation of security cameras and radios for the transit and dial-a-ride buses; and

**WHEREAS**, Banning Pass Transit desires to purchase additional security cameras and radios for all of their buses and dial-a-rides; and

**WHEREAS**, the City of Banning has been identified as the recipient of CalEMA Prop 1B funds in the amount of \$18,650; and

**WHEREAS**, these funds will be deposited in and made available for the purchase and upgrades of security cameras and radios for the buses and dial-a-rides in the Transit fund, 61058004349056; and

**WHEREAS**, a Governing Body Resolution approved by the City Council of the City of Banning must be received by CalEMA for the appropriated funds to be disbursed.

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

Authorizing the City Manager or the Administrative Services Director/Deputy City Manager to execute for and on behalf of the City of Banning and any action necessary for the purpose of obtaining financial assistance provided by the Governor's Office of Homeland Security.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of December, 2011.

\_\_\_\_\_  
Mayor  
City of Banning

**ATTEST:**

176

\_\_\_\_\_  
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. 2011-94 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, 2011 by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

177

## CITY COUNCIL AGENDA

**DATE:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Resolution No. 2011-95, "Awarding the Construction Contract for Project No. 2011-06, "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue"

**RECOMMENDATION:** Adopt Resolution No. 2011-95:

**I.** Awarding the Construction Contract for Project No. 2011-06, "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue" to Matich Corporation of San Bernardino, CA, for an amount of \$1,331,000.00, and allowing a 10% construction contingency.

**II.** Approving the Professional Services Agreement for Material Testing Services with Aragon Geotechnical Inc. of Riverside, California, for an amount not to exceed \$13,465.00.

**III.** Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations and transfers to Account No. 101-4900-431-93.16 to fund this project.

**JUSTIFICATION:** Matich Corporation is the lowest responsible bidder to perform the work for Project No. 2011-06 "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue."

**BACKGROUND:** The California Integrated Waste Management Board (CIWMB) receives an annual appropriation from the California Tire Recycling Management Fund (Tire Fund) to administer the Tire Recycling Act (Act), per the terms of Senate Bill 937 and related legislation. As part of the Act, the CIWMB offers the Targeted Rubberized Asphalt Concrete (TRAC) Incentive Grant Program to encourage the use of waste tire rubber in order to reduce landfill disposal and stockpiling of California Waste Tires. In late February of 2011, the Public Works Department's Engineering Division submitted a grant request to the CIWMB for a street improvement project along Wilson Street, from Stargaze Way to Mountain Avenue, utilizing Rubberized Asphalt Concrete. The CIWMB staff evaluated the proposed project and approved the grant application. The City will be reimbursed 70% of the differential between RAC and conventional asphalt unit prices. The maximum reimbursement for this grant is equal to \$250,000.00.

The base bid included the following scope of work: grinding/cold planing of existing asphalt; placing 1-1/2" to 2" of Asphaltic Rubber Hot Mix (ARHM) overlay per the City Engineer's recommendations; constructing sidewalks, curbs, gutters, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, water meters, and water valve covers to grade; striping improvements; signage installation; and cleaning on Wilson Street, from Stargaze Way to Mountain Avenue.

The project included an alternative bid for the construction of cold in place recycling of the existing pavement on Sunset Avenue, from Wilson Street to the City of Banning limits, approximately 2 miles north of Wilson Street. Staff has evaluated the proposal and find it reasonable and request that the alternative bid also be awarded.

The award of the project was solely based on the base bid amount and did not consider the alternative bid.


The project was advertised for bids on October 21, 2011, and October 28, 2011, as shown attached as Exhibit "A", and five (5) bids were received and opened on November 15, 2011, as shown attached as Exhibit "B", with the following results:

<u>NAME OF FIRM</u>	<u>BASE BID AMOUNT</u>
1. Match Corporation San Bernardino, CA	\$892,000.00
2. Silvia Construction Company, Inc Rancho Cucamonga, CA	\$906,332.50
3. All American Asphalt Corona, CA	\$930,000.00
4. EBS General Engineering Corona, CA	\$931,136.45
5. Hardy & Harper, Inc. Santa Ana, CA	\$946,000.00

The Engineer's estimate for the base bid was \$1,005,000.00 and \$1,375,000.00 for the total of the base bid plus the alternative bid. If approved, the project is anticipated to be completed by March, 2012.

**FISCAL DATA:** The entire project amount of \$1,477,565.00, which includes a 10% construction contingency and cost for material testing services, is requested to be appropriated to Account No. 101-4900-431-93.16. The funds necessary to pay for this project are as follows: Measure "A" funds in the amount of \$820,000.00, CIWMB Grant Funds in the amount of \$130,000.00, Gas Tax funds in the amount of \$250,000.00 and AB2928 funds in the amount of \$277,565.00.

**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**APPROVED BY:**

  
Andy Takata  
City Manager

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director

**RESOLUTION NO. 2011-95**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2011-06 "RUBBERIZED ASPHALT CONCRETE (RAC) OVERLAY AND STREET IMPROVEMENTS ALONG WILSON STREET, FROM STARGAZE WAY TO MOUNTAIN AVENUE"**

**WHEREAS**, Senate Bill 937 authorizes the California Environmental Protection Agency, Integrated Waste Management Board (CIWMB) to use funds from the California Tire Recycling Management Fund to administer the Tire Recycling Act (Act); and

**WHEREAS**, as part of the Act, the CIWMB offers the Targeted Rubberized Asphalt Concrete (TRAC) Incentive Grant Program to encourage the use of waste tire rubber to pave roadways with Rubberized Asphalt Concrete (RAC); and

**WHEREAS**, in late February of 2011, the Engineering Division of the Public Works Department applied for a grant from the CIWMB for FY 2010/2011; and

**WHEREAS**, the Public Works Department received approval of up to \$250,000.00 in TRAC Incentive Grant Program funds to overlay Wilson Street, from Stargaze Way to Mountain Avenue, with RAC and City Council authorized the execution of the Grant Agreement with CIWMB on June 25, 2011; and

**WHEREAS**, the scope of work under this project includes grinding/cold planing of existing asphalt; placing 1-1/2" to 2" of Asphaltic Rubber Hot Mix (ARHM) overlay per the City Engineer's recommendations; constructing sidewalks, curbs, gutters, cross gutters, spandrels and handicap ramps in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, water meters, and water valve covers to grade; striping improvements; signage installation; and cleaning on Wilson Street, from Stargaze Way to Mountain Avenue; and

**WHEREAS**, the project advertisement included an alternative bid to construct cold in place recycling of the existing pavement on Sunset Avenue, from Wilson Street to the City of Banning limits, approximately 2 miles north of Wilson Street; and

**WHEREAS**, staff has evaluated the alternative bid and finds it reasonable and request that the alternative bid also be awarded; and

**WHEREAS**, the project was advertised for bids on October 21, 2011 and October 28, 2011, and bids were received and opened on November 15, 2011, with five (5) contractors bidding the project; and

**WHEREAS**, Matich Corporation of San Bernardino, California, is the lowest responsible bidder; and

**WHEREAS**, funding for the project is available in the Measure "A", Gas Tax and AB 2928 funds and from the awarded CIWMB grant.

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

SECTION 1. City Council adopts Resolution No. 2011-95 awarding the construction contract for Project No. 2011-06, "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue" to Matich Corporation of San Bernardino, California, for an amount of \$1,464,100.00, which includes an approximate 10% construction, and all other bids are hereby rejected.

SECTION 2. City Council approves the Professional Services Agreement for Material Testing with Aragon Geotechnical Inc. of Riverside, California, for an amount "not to exceed" \$13,465.00.

SECTION 3. The Administrative Services Director is authorized to make the necessary budget appropriations from the Measure "A" Funds in the amount of \$820,000.00, CIWMB Grant funds in the amount of \$130,000.00, Gas Tax in the amount of \$250,000.00 and AB 2928 in the amount of \$277,565.00 to Account No. 101-4900-431-93.16 and any budget adjustments, appropriations and transfers related to this project.

SECTION 4. The City Manager is authorized to execute the contract agreements for Project No. 2011-06 "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue." This authorization will be rescinded if the contract agreement is not executed by both parties within forty-five (45) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-95 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, 2011, by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

# EXHIBIT "A"

## NOTICE INVITING TO BID

### THE PRESS-ENTERPRISE

3450 Fourteenth Street  
Riverside, CA 92501-3878  
951-684-1200  
951-368-9018 FAX

PROOF OF PUBLICATION  
(2010, 2015.5 C.C.P.)

Publication(s): Press-Enterprise

PROOF OF PUBLICATION OF

Ad Desc.: /

I am a citizen of the United States. I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am an authorized representative of THE PRESS-ENTERPRISE, a newspaper in general circulation, printed and published daily in the County of Riverside, and which newspaper has been adjudicated a newspaper of general circulation by the Superior Court of the County of Riverside, State of California, under date of April 25, 1952, Case Number 54446, under date of March 29, 1957, Case Number 65673, and under date of August 25, 1995, Case Number 267864; that the notice, of which the annexed is a printed copy, has been published in said newspaper in accordance with the instructions of the person(s) requesting publication, and not in any supplement thereof on the following dates, to wit:

10/21, 10/28/2011

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Date: October 28, 2011  
At: Riverside, California



BANNING, CITY OF  
99 E RAMSEY ST  
BANNING, CA 92220

Ad Number: 0000648075-01

P.O. Number:

#### Ad Copy:

NOTICE INVITING TO BID  
PROJECT NO. 2011-06 - RUBBERIZED  
ASPHALT CONCRETE (RAC)  
OVERLAY AND STREET IMPROVEMENTS  
ALONG WILSON STREET,  
FROM STARGATE WAY TO MOUNTAIN AVENUE\*

OWNER: City of Banning

**PROJECT DESCRIPTION:** The scope of work under this project includes grinding/cold planing of existing asphalt; placing 1-1/2" to 2" of Asphaltic Rubber Hot Mix (ARHM) overlay per City Engineer's recommendations in accordance with the City of Banning and CALTRANS Standard Specifications; adjusting manholes, and water valve covers to grade; striping improvements; signage installation; and cleaning; etc., on various streets. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector.

**PLANS & SPECS:** Full-size drawings and specifications will be made available on October 24, 2011, and may be obtained at the Public Works Department, Engineering Division, City of Banning, 99 E. Ramsey Street, Banning, California 92220, by a non-refundable deposit of Forty Dollars (\$40.00) per set. An additional non-refundable charge of Ten Dollars (\$10.00) to cover the cost of wrapping, handling, and postage will be made for each set of Contract Documents mailed.

**NON-MANDATORY PRE-BID CONFERENCE:** November 3, 2011 at 10 a.m. at City Hall, 99 E. Ramsey St., Banning, CA, 92220.

**REQUIREMENTS:** Prevailing Wage, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award.

This project is funded in part by a California Integrated Waste Management Board (CIWMB) grant. Thus, the Contractor is responsible for meeting the CIWMB requirement of utilizing and verifying that 100% of the tire rubber used in the Crumb Rubber Modifier is from California tires, by submitting Manufacturer's Form 74G - RAC.

**SEALED BIDS DUE:** November 15, 2011 and Opened Publicly at 10 a.m. local time, at the above City Hall address. Attn: City Clerk.

CITY OF BANNING, CALIFORNIA  
Dated: 10/17/2011

Publication Date: 10/21/2011  
10/28/2011

S/ Marie A. Calderon  
City Clerk

10/21, 28

CITY OF BANNING  
NOV 22 2011  
PUBLIC WORK DEPT.

181B



## EXHIBIT "B"

### SUMMARY OF BIDS RECEIVED CITY OF BANNING

PROJECT NO.: 2011-06

DESCRIPTION: Rubberized Asphalt Concrete (RAC) Overlay and Street  
Improvements Along Wilson Street from Stargate Way  
to Mountain Avenue.

BID OPENING DATE: Nov. 15, 2011 TIME: 10:00 a.m.

NAME OF BIDDER:	Bid Bond	Addendum	TOTAL BID AMOUNT:
Matich Corporation Highland, CA	X	X	\$892,000.00 1
All American Asphalt Corona, CA	X	X	\$930,000.00 3
Hardy & Harper, Inc. Santa Ana, CA	X	X	\$946,000.00 5
Silvia Construction, Inc. Rancho Cucamonga, CA	X	X	\$906,332.50 2
EBS General Engineering Corona, CA	X	X	\$931,136.45 4

VERIFIED BY: Maria A. Caldeira, City Clerk  
[Signature]

## CITY COUNCIL AGENDA

**Date:** December 13, 2011

**TO:** City Council

**FROM:** Kahono Oei, City Engineer

**SUBJECT:** Resolution No. 2011-96, "Approving the Projects for Fiscal Year 2012-2013 Community Development Block Grant (CDBG) Program"

**RECOMMENDATION:** Resolution No. 2011-96, "Approving the Projects for Fiscal Year 2012-2013 Community Development Block Grant (CDBG) Program," and authorize staff to submit said applications to the Riverside County Economic Development Agency.

**JUSTIFICATION:** The approval of this resolution is essential in order to utilize federal grant funds available through the Community Development Block Grant (CDBG) Fiscal Year 2012-2013 program.

**BACKGROUND:** The City of Banning, through the Riverside County Economic Development Agency, has been submitting various projects annually for funding under the CDBG program.

Requests for applications were mailed by the Public Works Department on September 15, 2011 to City Departments and non-profit organizations that serve the community within the City of Banning. Additionally a press release was published in the Press Enterprise on September 21, 2011 notifying the public of application availability as shown in Exhibit "A".

As part of the CDBG guidelines, the proposed projects/activities must meet the following criteria:

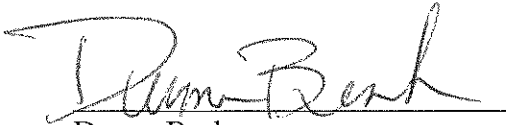
1. The project or activity must primarily benefit the low and moderate-income community.
2. The project or activity must aid in the prevention or elimination of slums and blight areas.
3. The project or activity must be designed to meet the Community's development needs and have a particular urgency.

On October 11, 2011 at its regular meeting, the City Council appointed a committee to review the applications. On November 7, 2011 the committee met with the Public Works staff as well as the applicants and provided recommendations as shown as Exhibit "B". All project applications are available at the City Clerk's office for public review.

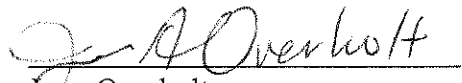
The notice inviting public community participation was published in a local newspaper on December 1, 2011 as attached herewith as Exhibit "C". As set forth in the guidelines for utilization of the Community Development Block Grant funding, the City Council may allocate up to 15% of the total allocation to service oriented non-profit agencies.

**FISCAL DATA:** The estimated funding under the CDBG Fiscal Year 2012-2013 program is approximately \$141,000.00. Upon approval of the City Council, the projects will be submitted to the Riverside County Economic Development Agency and it is anticipated that final funding approval will be conveyed to the City by July of 2012.

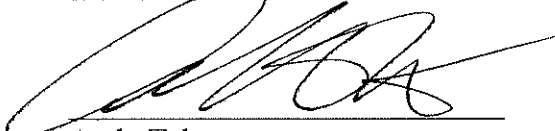
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Assistant City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2011-96**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROJECTS FOR THE FISCAL YEAR 2012-2013 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM**

**WHEREAS**, the City of Banning has been submitting applications for projects/activities under the Community Development Block Grant (CDBG) program to the Riverside County Economic Development Agency annually; and

**WHEREAS**, on September 15, 2011, the City of Banning mailed out requests for applications to the eligible organizations that serve the Community within the City of Banning and a press release was published in the Press Enterprise on September 21, 2011 as shown in Exhibit "A"; and

**WHEREAS**, on October 11, 2011 at its regular meeting, the City Council appointed a committee to review the applications and on November 7, 2011 the committee met with the Public Works staff as well as the applicants and provided recommendations as shown as Exhibit "B" and;

**WHEREAS**, the projects/activities submitted herein meet the CDBG program guidelines and/or requirements; and

**WHEREAS**, it is essential that the projects/activities be approved by the City Council through resolution in order for the City and its citizens to utilize the federally funded CDBG grant funds.

**NOW, THEREFORE, BE IT RESOLVED** as follows:

SECTION 1. Resolution No. 2011-96, approving the project/activities submitted for funding under the Community Development Block Grant programs for Fiscal Year 2012-2013 as listed in Exhibit "B" is hereby adopted.

SECTION 2. Staff is authorized to submit Fiscal Year 2012-2013 Community Development Block Grant program applications to Riverside Economic Development Agency for approval by their Board.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of December, 2011.

\_\_\_\_\_  
Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-96, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

## EXHIBIT "A"

### SEPTEMBER 21, 2011 PRESS RELEASE NOTIFYING THE PUBLIC OF APPLICATION AVAILABILITY

#### **BANNING: Applications being accepted for Community Block Grants**

By PE News on September 21, 2011 4:46 PM

~

The city of Banning is accepting applications for the fiscal year 2012-13 Community Development Block Grant Program.

Organizations that provide public services may be eligible for a grant. These services include but are not limited to child care, health care, job training, services for the homeless and senior citizens, recreation programs and public safety, according to a news release.

Applications and guidelines are available at [www.rivcoeda.org](http://www.rivcoeda.org) in the community services section. The deadline to apply for a grant is 3 p.m. on Oct. 20.

For more information call the city's engineering division at 951-922-3130.

— **ERIN WALDNER**  
[ewaldner@PE.com](mailto:ewaldner@PE.com)

**EXHIBIT “B”**

**REQUESTED PROJECT AND SERVICE PROGRAMS**

**Requested Project for FY 2012-13  
Community Development Block Grant (CDBG) Program**

**CITY PROJECTS**

<b>NO.</b>	<b>PROJECT NAME</b>	<b>DESCRIPTION</b>	<b>FY 2012-13 REQUESTED</b>	<b>AD-HOC RECOMMENDATION</b>
<b>1.</b>	<b>Repplier Park Bowl Rehabilitation</b>	<b>Construction Services</b>	<b>\$300,000.00</b>	<b>\$120,000.00</b>
	<b>Total</b>		<b>\$300,000.00</b>	<b>\$120,000.00</b>



**Requested Projects for FY 2012-2013  
Community Development Block Grant (CDBG) Program**

**SERVICE RELATED PROJECTS**

<b>NO.</b>	<b>AGENCY</b>	<b>DESCRIPTION</b>	<b>FY 2012-13 REQUESTED</b>	<b>AD-HOC RECOMMENDATION</b>
1.	Alternatives to Domestic Violence	Comprehensive Domestic Violence Services	\$10,000.00	\$0
2.	Boys and Girls Club	Teen – Town (Youth Development Services)	\$30,000.00	\$10,500.00
3.	Carol's Kitchen	Food Services	\$25,000.00	\$0
4.	San Geronio Child Care Consortium – App 1	Update Facilities	\$10,000.00	\$0
5.	San Geronio Child Care Consortium – App 2	Special Needs	\$10,000.00	\$10,500.00
6.	Urban Community Action Projects	Medical Outreach Services Program	\$10,000.00	\$0
	Total		\$95,000.00	\$21,000.00

**EXHIBIT "C"**  
**PUBLIC NOTICE INVITING**  
**COMMUNITY PARTICIPATION PUBLISHED IN THE RECORD**  
**GAZETTE ON DECEMBER 1, 2011**

Public Notice

On Tuesday, December 13, 2011, the City of Banning will be considering the approval of Community Development Block Grant Program applications for Fiscal Year 2012-2013 at its regular City Council Meeting. Beginning at 5:00 p.m., the public is invited to participate throughout the duration of the public comments portion of the meeting.

Publish The Record  
Gazette  
No. 60435  
12.02, 2011

## CITY COUNCIL AGENDA

**DATE:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Resolution No. 2011-97, "Authorizing an Appropriation from the Airport Enterprise Fund for the Purchase of Aviation Fuel"

**RECOMMENDATION:** Adopt Resolution No. 2011-97, "Authorizing an Appropriation from the Airport Enterprise Fund for the Purchase of Aviation Fuel".

**JUSTIFICATION:** The purchase of aviation fuel is necessary in order to maintain standard operations at the airport.

**BACKGROUND:** The City of Banning owns and operates the Banning Municipal Airport. As part of the operations, the City provides fueling services to pilots between the hours of 8:00 a.m. and 5:00 p.m. daily. In an effort to attract pilots to Banning, fuel is competitively priced. As a result, current fuel charges are marked up approximately 15% to cover the purchase of fuel and operating costs.

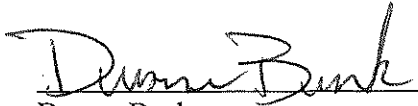
In comparison to surrounding areas, fuel prices as of November 2011 are as follows:

<u>LOCATION</u>	<u>PRICE PER GALLON</u>
City of Banning	\$5.43 (Pump Service, some assistance by staff)
Hemet	\$5.52 (Self-Service)
Hemet	\$6.02 (Full-Service)
Redlands	\$5.49 (Self-Service)
Palm Springs	\$7.32 (Full-Service)
San Bernardino	\$6.02 (Self-Service)
San Bernardino	\$6.51 (Full-Service)
Big Bear	\$5.19 (Self-Service)

**FISCAL DATA:** Currently the fuel prices per gallon are marked up approximately 15%. It is expected that the expenditures for this purchase will be offset by the revenues. Staff is recommending an increase in estimated revenues Account No. 600-5100-351.35-76 (Aviation Fuel Sales) and an appropriation in the Airport Enterprise Fund to Account No. 600-5100-435.36-12 (Aviation Fuel) in the amount of \$90,000 which is necessary to cover the purchase of aviation fuel. The estimated Airport Enterprise Fund balance is 225,713.00.

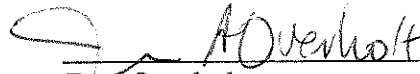
**SIGNATURES NEXT PAGE**

**RECOMMENDED BY:**

A handwritten signature in dark ink, appearing to read "Duane Burk", written over a horizontal line.

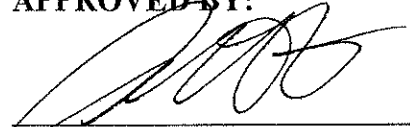
Duane Burk  
Director of Public Works

**REVIEWED BY:**

A handwritten signature in dark ink, appearing to read "June Overholt", written over a horizontal line.

June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

A handwritten signature in dark ink, appearing to read "Andy Takata", written over a horizontal line.

Andy Takata  
City Manager

**RESOLUTION NO. 2011-97**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, AUTHORIZING AN APPROPRIATION FROM THE AIRPORT  
ENTERPRISE FUND FOR THE PURCHASE OF AVIATION FUEL**

**WHEREAS**, the City of Banning owns and operates the Banning Municipal Airport;  
and

**WHEREAS**, the City provides fueling services to pilots between the hours of 8:00 a.m.  
and 5:00 p.m. daily; and

**WHEREAS**, to attract pilots to Banning, fuel is competitively priced at a mark-up of  
approximately 15% to cover the purchase of fuel and operating costs; and

**WHEREAS**, the purchase of aviation fuel is necessary in order to maintain standard  
operations at the airport; and

**WHEREAS**, an appropriation from the Airport Enterprise Fund to Account No. 600-  
5100-351.35-76 (Aviation Fuel) in the amount of \$90,000.00 is necessary to cover the purchase  
of aviation fuel.

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

SECTION 1: An increase in estimated revenues Account No. 600-5100-351.35-76 (Aviation  
Fuel Sales) and an appropriation in the amount of \$90,000.00 to Account No. 600-5100-  
435.36-12 (Aviation Fuel) is hereby authorized.

SECTION 2: The Administrative Services Director is authorized to make necessary budget  
adjustments related to these funds.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of December, 2011.

\_\_\_\_\_  
, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

193

**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. 2011-97 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

194

## CITY COUNCIL

**DATE:** December 13, 2011  
**TO:** City Council  
**FROM:** Zai Abu Bakar, Community Development Director  
**SUBJECT:** Resolution No. 2011-98, "Rejecting All Proposals for Developing 59 Acres of Industrial Zoned Land APN 532-130-011 and 532-130-018"

**RECOMMENDATION:** Adopt Resolution No. 2011-98, "Rejecting All Proposals for Developing 59 Acres of Industrial Zoned Land APN 532-130-011 and 532-130-018."

**JUSTIFICATION:** It is the opinion of staff that rejecting all proposals submitted would be in the City's best interest due to the speculative nature of the proposal received.

**BACKGROUND:** At the closed session meeting of the City Council held on April 26, 2011, staff was directed to prepare a Request for Qualifications to develop the 59 acres of vacant land adjacent to the airport. A Request for Qualifications (RFQ) was advertised on the City's website with a due date of September 21, 2011. One response to the request was received by the City prior to the due date from the individual(s) as listed below:

KU & Associates  
650 Camino De Gloria  
Walnut, CA 91789

Upon review of the one proposal, it was determined that the proposed project was speculative in nature with no anchor tenant or specific business planned for the project. The project was described as a "build-to-suit" project. Since the City intends on developing the subject property for a specific use it is necessary to reject the proposal and seek other avenues to develop the site.

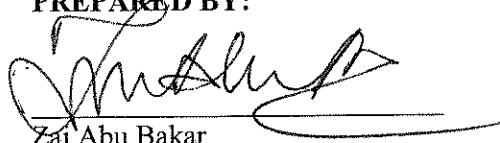
**FISCAL DATA:** There is no fiscal impact to the General Fund associated with this action.

**RECOMMENDED BY:**



Andrew J. Takata  
City Manager

**PREPARED BY:**



Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**



June Overholt  
Deputy City Manager/  
Administrative Services Director

Attachment:

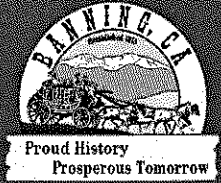
1. RFQ for 59 Acres of Industrial Zoned Land

195

**ATTACHMENT “1”**

**(RFQ)**





# *City of Banning*

## Request for Qualifications

Response Due By  
September 21, 2011

*A DEVELOPMENT OPPORTUNITY*

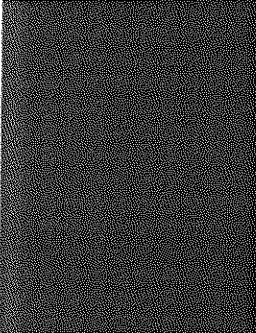
*for*

*59 ACRES*

*of*

*INDUSTRIAL ZONED LAND*

197



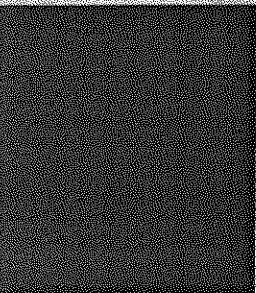
## THE OPPORTUNITY

The City of Banning invites Statements of Qualifications from qualified firms or individuals to develop an approximately 59 acre site of vacant land located adjacent to the municipal airport. The land is owned by the City and is zoned Industrial (I). The City is seeking proposals to develop the site into a commercial/industrial project. The land is located in west Riverside County adjacent to Interstate 10 approximately 90 miles east of the Port of Long Beach.



## ABOUT THE CITY

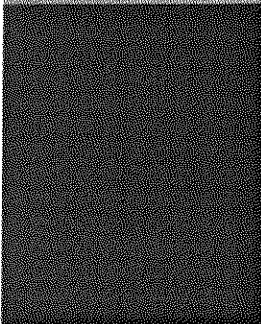
The City of Banning, CA (population 30,000) is strategically located in the San Geronio Pass area of Southern California astride Interstate 10 between Los Angeles and Palm Springs. The community enjoys clean air, ample water supplies, and the inspiring vistas of the two tallest peaks in Southern California, Mt. San Geronio and Mt. San Jacinto. In addition to the beauty of the mountains residents enjoy picturesque meadows, fruit groves, and a charming downtown. Recreational activities are plentiful with the mountain resorts of Idyllwild, Lake Arrowhead, and Big Bear only a short drive away. The premier golf destinations of Palm Springs, Rancho Mirage, and Indian Wells are equally close. Development opportunities exist for commercial, industrial and residential projects. These opportunities are enhanced by City owned water and electric utilities, a municipal airport, and easy access to four commercial airports.



## THE GOVERNMENT

Incorporated in 1913, the City of Banning is a general law city operating under the Council-Manager form of government. Five City Council members are elected at-large to serve staggered four year terms. The City Manager and City Attorney are appointed by the City Council.

Banning is a full service city with approximately 152 full time employees. Departments include Administration, City Clerk, Administrative Services, Community Development, Public Works, Community Services, Public Utilities and Police. Fire protection services are provided via a contract with Riverside County. The City's overall budget is approximately \$84 million with a general fund budget of approximately \$13 million.



**City Hall**  
**99 E. Ramsey Street**  
**Banning, CA 92220**  
**[www.ci.banning.ca.us](http://www.ci.banning.ca.us)**

## PROJECT REQUIREMENTS

The proposals shall meet the requirements of the City's development code. The development code may be reviewed online at [www.ci.banning.ca.us](http://www.ci.banning.ca.us) or by visiting City Hall and requesting the necessary information. The goal of the project is to provide economic and employment opportunities for the community, while maintaining high standards of development and environmental protection.

## PREFERRED QUALIFICATIONS

The City is interested in working with a developer who is experienced in the construction of large commercial/industrial developments. This experience may be demonstrated by listing examples of successful developments in the recent past involving properties of similar area. It is the intention of the City to solicit Statements of Qualifications at this time. Following review of the qualifications submitted, one or more firms may be selected to provide a more detailed development proposal that may include concept design drawings, financial projections, and the financial terms for the purchase or lease of the land. While this RFQ describes some of the submittal requirements, in a subsequent Request for Proposals phase separate, instructions will be provided to the firms selected to submit detailed proposals.

A tour of the site and pre-submittal meeting is scheduled for September 7, 2011 at 9:00 a.m. The meeting will begin at City Hall, 99 E. Ramsey Street, the Large Conference room. Then all will drive to the site. Please be prepared to walk some of the perimeter area of the property.

For further information, please contact Brian Guillot, Assistant Planner at (951) 922-3181 or email [bguillot@ci.banning.ca.us](mailto:bguillot@ci.banning.ca.us).

Questions on this RFQ should be submitted in writing to this office no later than September 14, 2011. All responses from the City will be shared with all respondents via posting on the project web page at <http://www.ci.banning.ca.us>.

## PROJECT CONDITIONS

The site is located immediately south of the municipal airport with vehicle access provided along Westward Avenue. The area is partially improved. The site consists of two parcels, one of 20 acres and the other consisting of 39 acres, more or less as follows:

Identification	APN	Acres	General Plan	Zoning
Parcel 1	532-130-011	39.10	Industrial	Industrial
Parcel 2	532-130-018	20.00	Industrial	Industrial

**DEVELOPMENT STANDARDS**

Industrial - This zoning district includes industrial parks and freestanding industrial users. Examples of permitted uses include light and medium intensity manufacturing operations, warehousing and distribution, mini-storage, and associated offices. Commercial recreation facilities, or auto storage and repair are also allowed. Retail uses ancillary to the industrial use are also appropriate.

<b>Development Standards for the Industrial Designation</b>	
Min. Lot Area	10,000 sq. ft.
Min. Lot Dimensions	Min. Lot Width: 70 feet Min. Lot Depth: 100 feet
Min. Front Yard Set-back	10 feet
Min. Rear Yard Set-back	0 feet
Min. Side Yard Set-back	Adjacent to street: 10 feet Interior lot: 0 feet
Maximum Building Coverage	60%
Maximum Height (stories/feet)	2/50
Maximum Fence/Wall Height	8 feet

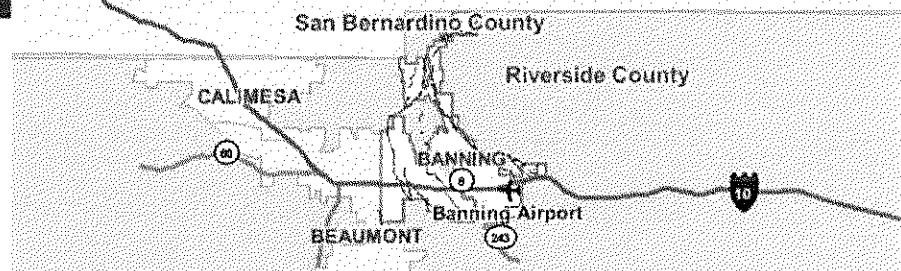
**MATERIALS AVAILABLE ONLINE**

Go to [www.ci.banning.ca.us](http://www.ci.banning.ca.us) and find the Community Development page. Most of the development information may be found by navigating to the Municipal Code link and reviewing Title 17 (Zoning Ordinance).

- City of Banning General Plan 2006
- Airport Master Plan
- Riverside County Airport Land Use Commission (ALUC)



## Project Location and Aerial Photograph



Exit Interstate 10 at Hargrave Street and go south to Westward Avenue, turn left.

## SCOPE OF WORK AND DEVELOPER RESPONSIBILITIES

Once selected, the developer will be responsible for implementing the concepts of the General Plan and development standards of the City. A general description of the developer's responsibilities includes, but is not limited to, the list below. As mentioned, following this RFQ process, one to three developers may be selected to participate in a limited RFP phase which will require the submission of more detailed information relating to the following topics as well.

***Project Design and Management.*** Development entity will be responsible for development of a specific, detailed timeline identifying all design and development components through project completion; development of site plan(s) concept board drawings for developer improvements including materials, color board, building elevations, preliminary landscape plans, a traffic and circulation plan, and rendered perspective(s) as appropriate; and management of the architectural and construction contracts.

***Project Financing.*** The developer will be expected to secure financing for the project's hard-cost and soft-cost categories including, but not limited to, possible land acquisition, deconstruction of existing improvements, soils testing, design, site planning, entitlements, permits, site clearance, grading, and construction of both off-site and on-site improvements, etc. During the RFP phase, selected developers will be required to submit a comprehensive project analysis and pro-forma, assuming a property acquisition cost based on lot square footage and market rate pricing (or developer may order a property appraisal). Project analysis and pro-forma must provide all assumptions and be submitted as an excel file with active formulas and include hard copies.

***Project Entitlements.*** The developer will be responsible for securing entitlements for the development of the Site. These entitlements include, but are not limited to project-level environmental review, site plan review, completion of building plan check process, acquisition of all required permits, and payment of all applicable fees.

***Public Participation.*** The developer will be required to conduct community outreach as a part of the process to ensure the best possible development is achieved. The community generally plays an active role in local decision-making, thus outreach is expected to potentially include public and/or community meetings, coordination with the Chamber of Commerce, and distribution of information. Exact scope of outreach will be mutually agreed to by the City and the developer.

***Site Clearance.*** The developer will be responsible for the deconstruction of any existing improvements on the Site as applicable.

**Relocation.** Should additional properties surrounding the site be included in the ultimate project, the development entity may be required to participate in the relocation of displaced residents or businesses.

**Prevailing Wage Requirement.** The developer will be responsible for complying with the prevailing wage requirements as appropriate.

**Policy and Legal Compliance.** The developer will be required to comply with the City's municipal code, federal and state regulations, and all City development regulations, permits, and fees.

**Deposit Requirements.** The selected developer will submit a \$25,000 nonrefundable good faith deposit upon execution of an Exclusive Negotiation Agreement.

**Agreement ("ENA") with the City.** The deposit will be used to pay the costs of the City (e.g., legal counsel, etc.), to the extent necessary, during the negotiation of an Agreement to develop the Site.

**Disposition of the Site.** The City and Agency are open to proposals for the ultimate financial and ownership structure of the project that best meets the objectives of all stakeholders. While a limited explanation of the developer's suggested deal structure is required by this RFQ, a more detailed proposal will be expected during the limited RFP phase.

## **SUBMITTAL**

Respondents may submit all materials electronically via email or may submit 3 bound copies and 1 unbound reproducible copy by mail or courier. Submittals should not exceed 30 pages, inclusive of any graphic renderings or marketing materials. All hard copy submittals should be directed to:

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

Electronic submittals may be directed to Brian Guillot, Assistant Planner via [bguillot@ci.banning.ca.us](mailto:bguillot@ci.banning.ca.us). Please contact the Brian Guillot directly to confirm electronic submittals by telephoning (951) 922-3181.

Response Due By  
September 21, 2011

**The statement of qualifications and all other submittal requirements are due to this office by 5:00 p.m. September 21, 2011.**

## SUBMITTAL REQUIREMENTS

**Narrative Description of the Project.** All proposals should include a written description of the proposed development concept, which illustrates the firm's understanding of City of Banning and the local commercial industrial environment. Descriptions may include the scale of development, an estimate of the number and type of units, the amount of area devoted to light and medium intensity manufacturing operations, warehousing and distribution, mini-storage, and associated offices and retail (commercial recreation facilities, or auto storage and repair are also allowed) and information describing the proposed character and quality of the development. Applicants should also discuss how green building and design elements may be incorporated in the proposed project.

**Developer Identification.** Identify the development entity's name, street address, mailing address, telephone number, facsimile number, and e-mail address. Specify the legal form of the organization (e.g., corporation, partnership, joint venture, other), and identify persons with the authority to represent and make legally binding commitments for the development entity. Identify other members of the development team including architects, engineers, contractors, financial or equity partners, lenders, and any known participating developer entities. Provide relevant experience for each team member, a description of their previous projects, and their role in the cited projects.

**Developer Experience and Qualifications.** Provide a list and description of at least three previously completed projects similar to that proposed and their respective locations. Provide the names and telephone numbers of project references (private and/or public sector) for each project described. Please also provide a brief description of prior experience with community outreach, particularly relating to commercial/industrial projects.

**Proposal for Disposition of Site.** Provide a short description of the preferred method(s), if any, for structuring the financial and ownership arrangement of the Site between the development entity and City. Please include a description of any relevant experience negotiating previous public/private partnerships. As the ultimate disposition of the site will be subject to negotiations, the developer should demonstrate a willingness to work with the City to reach the most equitable arrangement.

**Financial Capacity of Developer.** Submittals to this RFQ must demonstrate that the development firm has the financial capacity and willingness to carry out the proposed project and initiate development within 12 months of completing a development and disposition agreement. The City recognizes the sensitive nature of the financial information requested in this RFQ. Therefore, such information may be submitted under separate cover and labeled "Confidential." This information will be used solely for purposes of evaluation and will be kept confidential to the fullest extent allowed by law. Confidential records may be returned to those not selected if so requested.



## SELECTION PROCESS

**Statement of Qualifications.** All statements submitted in response to this RFQ will be reviewed and evaluated based on the information contained in the respective responses, an investigation of the developer's past projects and performance, and other pertinent factors. The City will prepare an analysis of all statements, and depending upon the number and quality of responses, one to three firms may be asked to submit a more detailed proposal. In addition, the City and selection committee may also request to interview a limited number of finalists. The City reserves the right to request additional information as deemed necessary and appropriate. The City further reserves the right to eliminate the secondary RFP phase at its discretion.

A recommendation will be made to the City Council for the selection of one developer with whom the City will enter into an ENA. If negotiations are successful, approval to enter into an Agreement to develop the site will be sought from the City Council. The nature of this Agreement will depend upon the entity that is selected as well as the type of City assistance (if any) that is negotiated.

The selection process is expected to take up to approximately five months as outlined below. Please note the schedule may be altered at the City's discretion.

Activity	Anticipated Completion Date
RFQ Submitted to City	September 21, 2011
RFQ's Reviewed	October 12, 2011
RFP's Required	November 2, 2011
Interviews	November 16, 2011
ENA Approved	January 10, 2012

**Selection Criteria.** Factors to be considered in the selection process include:

- The completeness of the submittal.
- Relevant experience of the development entity in producing similar, high-quality developments.
- Demonstrated success with public/private partnerships and community participation.
- The degree to which the development entity appears willing to negotiate the financial level or structure of City/Agency participation.
- The degree to which the development entity demonstrates its access to equity and financing to underwrite construction.
- The degree to which the development entity illustrates its understanding of City of Banning and the commercial/industrial development potential and the importance of a high quality project at the Site.
- The degree to which the development entity demonstrates that it is willing and able to initiate site and development programming activities upon signing an exclusive negotiation agreement, and that it can commit to initiating construction within 12 months after executing a development and disposition agreement.

**Notice to Developer/Respondents.** This solicitation does not commit the City to award a contract, to pay any cost incurred with preparation of the proposal, or to procure or contract for services or supplies. The City reserves the right to accept or reject any or all submittals received in response to this request, to negotiate with any qualified source, or cancel in whole or in part this process in its sole and absolute discretion. Subsequent to negotiations, prospective development entities may be required to submit revisions to their proposals. All persons or entities responding to the RFQ should note that any contract pursuant to this solicitation is dependent upon the recommendation of the City staff and the approval of the City Council after all legally required steps are taken. The City reserves the right to postpone selection for its own convenience, to withdraw this Request for Qualifications at any time, and to reject any and all submittals without indicating any reason for such rejection. As a function of the Request for Qualifications process, the City reserves the right to remedy any technical errors in this Request for Qualifications and modify the published scope of services. The Agency reserves the right to request that specific personnel with specific expertise be added to the team, if the City determines that specific expertise is lacking in the project team. Submittals and other information will not be returned with the exception of financial data if requested by the submitting entity. The City reserves the right to abandon the Request for Qualifications process and/or change its procurement process for the contract at any time if it is determined that abandonment and/or change would be in the City's best interest.

The City will not be liable to any contractor for any costs or damage arising out of its response to the Request for Qualifications.

**RESOLUTION NO. 2011-98**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ("CITY")  
REJECTING ALL PROPOSALS FOR DEVELOPING 59 ACRES OF INDUSTRIAL  
ZONED LAND APN 532-130-011 AND 532-130-018**

**WHEREAS**, the City of Banning desires to develop the 59 acres of Industrial Zoned vacant land adjacent to the airport; and

**WHEREAS**, a Request for Qualifications (RFQ) was solicited to develop the property with a due date of September 21, 2011; and

**WHEREAS**, prior to the due date one proposal was received in response to the RFQ; and

**WHEREAS**, due to the speculative nature of the proposed project the City Council of the City of Banning desires to reject all proposals and seek other avenues to develop the property;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Banning hereby rejects all proposals for Developing 59 Acres of Industrial Zoned Land APN 532-130-011 and 532-130-018 as stated in the RFQ due on September 21, 2011.

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of December, 2011.

\_\_\_\_\_  
Mayor  
City of Banning

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

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

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning

207

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution No. 2011-98 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December 2011, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

208

## CITY COUNCIL AGENDA

**Date:** December 13, 2011  
**To:** Honorable Mayor and City Council  
**From:** Fred Mason, Electric Utility Director  
**Subject:** Resolution No. 2011-99, Approving the City of Banning's RPS Enforcement Program and Renewable Energy Resources Procurement Plan

**RECOMMENDATION:** Adopt Resolution No. 2011-99, approving the City of Banning's Renewables Portfolio Standard (RPS) Enforcement Program and Renewable Energy Resources Procurement Plan, attached herewith as Exhibit "A".

**JUSTIFICATION:** California State Senate Bill X1 2 (SBX1 2) requires that all load serving electric utilities develop a RPS Enforcement Program and Procurement Plan.

**BACKGROUND:** On April 12, 2011 the Governor signed SBX1 2, which increased the renewable energy requirements for California's electric utilities to 33 percent by 2020. In addition, it required that the governing body of each electric utility approve a RPS Enforcement Program and Renewable Energy Resources Procurement Plan by December 31, 2011.

The attached Enforcement Program and Procurement Plan was developed by the California Municipal Utilities Association (CMUA) to meet the requirements of SBX1 2, and is being utilized by many of CMUA's member utilities. The City of Banning is a member of CMUA.

Staff recommends approval of the RPS Enforcement Program and Renewable Energy Resources Procurement Plan, attached herewith as Exhibit "A".

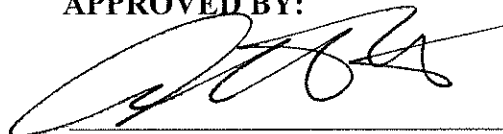
**FISCAL DATA:** There are no immediate fiscal impacts. The Council approved Ordinance #1435 on January 25, 2011, authorizing the execution of an agreement for the purchase of renewable energy from the La Paz Solar Tower Project, which is projected to begin producing energy in 2015. Therefore, the City's projected renewable energy expense would not increase until that time.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andy Takata  
City Manager

**RESOLUTION NO. 2011-99**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
APPROVING THE CITY OF BANNING'S RPS ENFORCEMENT PROGRAM AND  
RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN**

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

**WHEREAS**, California State Senate Bill X1 2 requires that all load serving electric utilities develop a Renewables Portfolio Standard (RPS) Enforcement Program and Renewable Energy Resources Procurement Plan; and

**WHEREAS**, the Banning Electric Utility is subject to these requirements; and

**WHEREAS**, the City developed said Enforcement Program and Procurement Plan, attached herewith as Exhibit "A";

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

SECTION 1. Adopt Resolution No. 2011-99, approving the RPS Enforcement Program and Renewable Energy Resources Procurement Plan.

SECTION 2. Authorize the City Manager, or his/her designee, to administer and ensure compliance with said RPS Enforcement Program and Renewable Energy Resources Plan.

**PASSED, ADOPTED AND APPROVED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

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

## **Exhibit “A”**

# **RPS Enforcement Program and Renewable Energy Resources Procurement Plan - City of Banning**

---

## **Enforcement Program**

### **Section 1: Program for Enforcement of Compliance with SBX1 2 Procurement Obligation**

The City Council of the City of Banning directs the Banning Electric Utility department to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, and to adopt and implement all other measures as necessary to comply with California Senate Bill X1 2 (SBX1 2)

### **Section 2: Procedure for Adoption**

The direction to procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits and to adopt and implement all other measures as necessary to comply with SBX1 2 is adopted by the City Council of the City of Banning in accordance with the procedures specified in PUC § 399.30(f) by January 1, 2012 in accordance with PUC § 399.30(e)

## **Renewable Energy Resources Procurement Plan**

### **Section 1: Definitions**

The definitions set forth in Public Resources Code (PRC) § 25741 and Public Utilities Code (PUC) § 399.12 are incorporated herein.

The following definitions shall also apply to the City of Banning Electric Utility's RPS Enforcement Procurement Plan: The renewable energy resources procurement plan adopted by the City of Banning pursuant to PUC § 399.30(a) Energy Commission: The State Energy Resources Conservation and Development Commission.

CPUC: The California Public Utilities Commission.

### **Section 2: Procurement**

In order to fulfill unmet long-term generation resource needs, the City of Banning's Electric Utility shall procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatt hours sold to the City of Banning Electric Utility's retail end-use customers for each compliance period specified in Section 2 to achieve the targets specified in Section 3.

### **Section 3: Compliance Periods**

The compliance periods as required by PUC § 399.30(b) are:



# RPS Enforcement Program and Renewable Energy Resources Procurement Plan - City of Banning

---

Compliance Period One: January 1, 2011 through December 31, 2013

Compliance Period Two: January 1, 2014 through December 31, 2016

Compliance Period Three: January 1, 2017 through December 31, 2020

Annually each calendar year starting with 2021.

## **Section 4: Procurement Targets**

The City of Banning Electric Utility shall procure a minimum quantity of electricity products from eligible renewable energy resources, including renewable energy credits, as a specified percentage of total kilowatt hours sold to the City of Banning Electric Utility's retail end-use customers to achieve the following targets, pursuant to PUC § 399.30(c)(1)-(2):

### Compliance Period One:

- An average of not less than 20 percent of retail sales during the compliance period.

### Compliance Period Two:

Progressive purchases of eligible renewable energy, as a percent of retail sales, during the compliance period to reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 25 percent of retail sales by December 31, 2016.

### Compliance Period Three:

Progressive purchases of eligible renewable energy, as a percent of retail sales, during the compliance period to reflect reasonable progress in each of the intervening years sufficient to ensure that the procurement of electricity products from eligible renewable energy resources achieves 33 percent of retail sales by December 31, 2020.

### All Years Subsequent to 2020:

- An average of not less than 33 percent of retail sales in each calendar year subsequent to 2020

## **Section 5: Procurement Content Categories**

The Electric Utility Director shall assign all RPS-eligible resources procured by the City of Banning Electric Utility to their appropriate procurement content category in accordance with the provisions of PUC § 399.30(c)(3), consistent with PUC § 399.16.

# RPS Enforcement Program and Renewable Energy Resources Procurement Plan - City of Banning

---

## **Section 6: Grandfathering of Procurement Content Category Requirements**

Consistent with PUC § 399.16(d), the Electric Utility Director of the City of Banning Electric Utility may count all resources that meet the conditions of PUC § 399.16(d) in full towards meeting the procurement requirements set forth in the City of Banning.

## **Section 7: Delay of Timely Compliance**

The City Council may adopt measures permitting the Banning Electric Utility department to delay timely compliance with the City of Banning's RPS Enforcement Program pursuant to PUC § 399.30(c)(2), consistent with the requirements of PUC § 399.15(b)(5).

## **Section 8: Banking Rules**

The City Council may adopt measures permitting the Banning Electric Utility department to accumulate, beginning January 1, 2011, excess procurement in one compliance period to be applied to any subsequent compliance period provided that the quantity of excess procurement is determined in the same manner as allowed for retail sellers pursuant to PUC § 399.13(a)(4)(B).

## **Section 9: Cost Limitations**

The City Council may establish a limitation on the procurement expenditures for all RPS-eligible resources used to comply with the Banning Electric Utility department's Procurement Plan. In establishing such limit, the City Council shall rely on factors specified in PUC § 399.15(c)(1)-(3) and ensure compliance with PUC § 399.15(d).

## **Section 10: Public Notice**

The Banning Electric Utility department staff shall post a public notice whenever the Banning City Council will deliberate in public on the Renewable Energy Resources Procurement Plan.

## **Section 11: Unmet long-term needs**

Consistent with § 399.30(a), the Banning Electric Utility department shall determine its unmet long-term generation resource needs.

## **Section 12: Reporting**

The Banning Electric Utility department shall provide data annually to the Energy Commission and to report annually to the Banning Electric Utility department's customers and the Energy Commission in accordance with PUC § 399.30(g).

**CITY COUNCIL AGENDA  
CONSENT CALENDAR**

**DATE:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** SBPEA/CBAM - Memorandum of Understanding 2010-2011

**RECOMMENDATION:** Adopt Resolution No. 2011-100 approving the successor Memorandum of Understanding between the City of Banning and the San Bernardino Public Employees Association representing the Mid-Management & Professional Unit for the period July 1, 2010 through June 30, 2011.

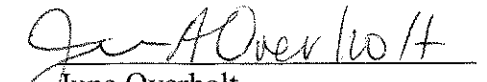
**JUSTIFICATION:** Section 3505.1 of the Meyers-Milius-Brown Act ("MMBA") (Gov't Code Sections 3500-3511) provides that: "If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written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

**BACKGROUND:** The City's labor relations negotiation team and the San Bernardino Public Employees Association representing the Mid-Management & Professional Unit (also known as CBAM) labor representatives began meet and confer negotiations in March of 2010 regarding a successor memorandum of understanding ("MOU"). The existing Memorandum of Understanding between the City and the Association would expire by its own terms on June 30, 2010. The City's negotiating team and the Association continued negotiations after the expiration of the existing MOU, with a final agreement being reached as reflected in the attached San Bernardino Public Employees Association representing the Mid-Management & Professional Unit MOU 2010-2011.

Staff is recommending that Council approve the attached MOU in order to formalize what was agreed to and implemented during 2010-2011. Challenges related to the technical name of the bargaining unit and signature authority prevented the MOU from being signed in a timely manner. However, all parties have mutually agreed to move the MOU forward for Council adoption. Negotiations are continuing for the current year and future years to address ongoing economic and budget challenges.

**FISCAL DATA:** The MOU resulted savings from layoffs in 2010 and reductions to employee benefits that were reflected in the 2010-2011 fiscal year budget.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy J. Takata  
City Manager

**RESOLUTION NO. 2011-100**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
APPROVING A SUCCESSOR MEMORANDUM OF UNDERSTANDING BETWEEN  
THE SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION REPRESENTING  
THE MID MANAGEMENT AND PROFESSIONAL UNIT AND THE CITY OF  
BANNING**

**WHEREAS**, the City of Banning ("City") has formally recognized the as the exclusive employee organization for the bargaining unit; and

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

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

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

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

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

SECTION 1: That the City Council approves the Memorandum of Understanding Between the City and the San Bernardino Public Employees Association representing the Mid Management and Professional Unit for the period July 1, 2010 through June 30, 2011, a copy of which is attached hereto and by this reference made a part hereof.

**PASSED, APPROVED AND ADOPTED** this 13th day of December, 2011.

\_\_\_\_\_, Mayor  
City of Banning, California

**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. 2011-100 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of December, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CITY OF BANNING  
AND  
THE SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION  
REPRESENTING THE MID MANAGEMENT AND PROFESSIONAL UNIT**

**JULY 1, 2010 – JUNE 30, 2011**

## **ARTICLE 1 - PREAMBLE**

1.1 - This Memorandum of Understanding ("MOU" or "Agreement") is entered into between The City of Banning, a Municipal Corporation ("the City" or "City") and the San Bernardino Public Employees Association ("Association"), a California nonprofit Mutual Benefit Corporation and the recognized employee organization for the mid-management and professional unit of representation (the "Unit"), relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 - 3510 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act.

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

1.3 - Except as otherwise provided herein, this Agreement between the City and the Association relative to wages, hours, and other terms and conditions of employment, shall be effective as of July 1, 2010 and shall remain in full force and effect until June 30, 2011 and thereafter shall remain in full force and effect and continue year-by-year unless one (1) of the parties notifies the other no later than March 1, 2011 of its request to modify, amend or terminate this MOU or no later than March 1<sup>st</sup> of any year after 2011. Upon receipt of such written notice, the parties agree that negotiations shall begin no later than March 15<sup>th</sup> unless otherwise mutually agreed by the parties or until a new agreement has been executed by the parties or the City Council acts in accordance with the terms of the City's Employer-Employee Resolution.

1.4 - This Agreement covers employees in the following Unit classifications:

Assistant Civil Engineer	Parks/Streets Maintenance Manager
Assistant Planner	Planning Engineer
Assistant Director Water/Wastewater	Power Resource and Revenue Administrator
Associate Civil Engineer	Principal Civil Engineer
Associate Electrical Engineer	Public Works Superintendent
Associate Planner	Purchasing Manager
City Engineer	Recreation Manager
Customer Services Manager	Redevelopment Manager
Development Service Manager CBO	Risk Management Analyst
Electric Operations Manager	Senior Planner
Fleet Maintenance Manager	Senior Civil Engineer
Information Technology Manager	Water/Wastewater Superintendent



The classification of Electric Systems Engineer is an approved classification in the City's Classification Plan. At such time as the City determines to conduct a recruitment to fill the position, the City agrees to only meet and confer with the Association prior to recruitment regarding the appropriateness of adding the classification to the Unit.

## **ARTICLE 2 - CONTINUATION OF RULES & POLICIES**

2.1 - Subject to the terms of this Agreement, all City Ordinances, Policies, Resolutions, Rules and Regulations, including the Personnel Rules and Regulations of the City of Banning, the Employer-Employee Relations Resolution; and the Administrative Policies of the City of Banning, or successor rules, shall remain in effect during the course of this Agreement.

2.2 - Association and City agree to meet and confer during the term of this Memorandum over the adoption or revision of City Ordinances, Policies, Rules, Regulations, Administrative and/or Personnel Policies regarding mandatory subjects of negotiation pursuant to the Meyers-Milias-Brown Act.

2.3 - The Association recognizes the right of the City to adopt new or revised departmental rules and regulations which are not in conflict with this MOU and which are not regarding mandatory subjects of negotiation. In adopting such new or revised departmental rules and regulations, the City shall receive and consider input, if any, submitted by unit employees. The process of making such input shall not delay the timely implementation of such rule. Such input shall generally be solicited as follows:

- (a) The City shall provide a draft of the proposed change to the Association's designated business representative or his/her designee. At the time of providing the draft, a time shall be set to meet and confer on the proposed change. Such date shall be no less than twenty-five (25) and no more than thirty-five (35) calendar days following date of presentation of the draft.
- (b) Within twenty (20) days following date of presentation, the Association shall provide copies of its comments to the Human Resource Director in writing. Failure to provide written comments within the twenty (20) day time period shall be deemed to be acceptance of the proposal as presented and termination of the requirement for further meet and confer.
- (c) If agreement is not reached on the proposal at the first meeting, a second meeting shall be held within fifteen (15) days thereafter. If an agreement is not reached at the second meeting as to a matter which is not a mandatory subject of meet and confer, the City may proceed with the adoption of the policy without further meetings.
- (d) The time limits set forth herein may be modified by the written agreement of the parties.

## **ARTICLE 3 - EMPLOYEE RIGHTS**

3.1 - The provisions of this MOU shall apply to all persons covered by this MOU without discrimination on account of race, sexual orientation, color, age, ancestry, sex

SBPEA MOU 2010-11 2

221

(including pregnancy, childbirth and related medical conditions), national origin, religion, creed, marital status, physical or mental disability, medical condition, citizenship status or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or activities on behalf of the Association.

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

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

3.4 - Employees shall also have:

- (a) The right to form, join, and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.
- (b) The right to refuse, join, or participate in the activities of employee organizations.
- (c) The right to be free from interference, intimidation, restraint, coercion, discrimination, or reprisal by other employees, employee organizations, management or supervisors, as a result of their exercise of rights indicated in (a) and (b) above.

#### **ARTICLE 4 - MANAGEMENT RIGHTS**

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

222

4.2 - When the decision to make the change is non-negotiable, but the effects of the decision are negotiable, the duty to provide notice and an opportunity to bargain arises at the time the decision is made and prior to taking action to implement the decision.

## **ARTICLE 5 - DUES DEDUCTION**

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

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

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

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

5.5 - The aggregate amount of such deductions by the City shall be transmitted monthly to the Association. The City shall provide the Association with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 5.2, 5.3 and 5.4.

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

## **ARTICLE 6 - ASSOCIATION REPRESENTATIVES**

6.1 - Three (3) employees selected by the Association may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first providing adequate notice to their supervisor and the City Manager. Additional employees who are not on duty may participate at no additional cost to the City. Such meetings shall be scheduled in a manner consistent with the City's operating requirements and work schedules. Nothing herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

## **ARTICLE 7 - BULLETIN BOARDS**

7.1 - The City will furnish adequate bulletin board space where currently available. Only areas designated by the Human Resource Department may be used for posting notices. Bulletin boards may be used for the following notices:

- (a) Scheduled Association Meetings, Agenda and Minutes.
- (b) Information on Association Elections and the Results.
- (c) Information Regarding Association Special, Credit Association, Recreational, and Related Bulletins.
- (d) Reports of Official Business of Association Including Reports of Committees or the Board of Directors.
- (e) MOU, Pay Scales, Job Announcements, Promotion Lists, Etc.
- (f) Such other items as may be approved by the Human Resource Director upon request of the Association.

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

## **ARTICLE 8 - MEMORANDUM OF UNDERSTANDING COPIES**

8.1 - After it has been executed by the parties, the City shall provide the Association with twenty-three (23) executed copies of this MOU. Association shall be responsible for providing copies of this MOU to represented employees at Association's expense. City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the represented unit after the effective date of the MOU. City may charge for any additional copies.

## **ARTICLE 9 - MEETINGS**

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

9.2 - The Association may be granted permission to use City facilities for the purpose of meeting with employees to conduct its internal affairs provided space for such meetings can be made available without interfering with City needs. Permission to use facilities must be obtained by the Association from the City Manager. The Association shall be held fully responsible for any damages to and security of any facility that is used by the Association.

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

9.4 - The City shall notify the Association's designated business representative of its intention to subcontract work performed by employees covered by this Agreement no later than the date bids are requested for said contract work. Association may comment on the proposed subcontracting and may request a meeting under Article 9 to discuss it or if applicable may ask for a meet and confer on the effects.

#### **ARTICLE 10 - HOURS OF WORK**

10.1 - Each unit member shall work a forty (40) hour workweek under a 4/10 work week plan. This will be accomplished by the City closing for business every Friday. All other work days (Monday through Thursday) will be ten (10) hour workdays. Working hours will be 7:00 am to 6:00 pm or as set by the Department head.

#### **ARTICLE 11 - REGULATION OF FLSA ISSUES**

11.1 - Association and the City shall endeavor and resolve to meet and confer on a case by case basis as may arise during the term of this Agreement on issues related to employee's current and past status under the FLSA.

#### **ARTICLE 12 - SALARIES, PERFORMANCE EVALUATIONS, RETIREMENT BENEFITS, AND EDUCATION INCENTIVE**

12.1 -

(a) In November 2010, the City will initiate a salary survey of the agreed upon cities and counties for all appropriate Unit classifications to determine whether the salary schedules for all unit classifications should be increased. No later than October 1, 2010, the City and Association will meet to determine appropriate agencies to be surveyed and benchmarking standards. No salary ranges for any classification will be lowered as a result of the survey. The City is required to complete this study by March 1, 2011 and initiate meet and confer with the Association regarding applicable salary range changes in conjunction with the MOU negotiations, in accordance with Article 1.3. The City agrees that the methodology for the salary survey will be used for all represented classifications.

(b) The City will obtain the salary ranges from each of the agreed upon entities for the classifications that are comparable with each Unit classification. If an entity does not have a comparable classification for a specific classification, the City shall enter a N/A next to that city/county. The City will provide the Association a detailed description of the methodology used to calculate new salary ranges for a proposed change to any Unit classification and provide unedited source data for all surveyed cities and counties no later than April 14, 2011.

- (c) Effective July 1, 2010 represented classifications are assigned to salary ranges, as set forth below in accordance with the City's adopted Salary Table. Employees will be able to progress through the salary range as set forth in section 12.2.

Unit Classification	New Salary Range
Assistant Director Water/Wastewater	81
City Engineer	81
Electric Operations & Maintenance Manager	81
Development Services Manager (Building Official)	80
Power Resource & Revenue Administrator	81
Redevelopment Manager	81
Senior Civil Engineer	78
Water/Wastewater Superintendent	77
Public Works Superintendent	77
Senior Planner	75
Information Technology Manager	73
Purchasing Manager	73
Planning Engineer	72
Associate Civil Engineer	72
Associate Electrical Engineer	72
Fleet Maintenance Manager	71
Customer Services Manager	67
Streets/Parks Maintenance Manager	66
Assistant Civil Engineer	64
Associate Planner	64
Risk Management Analyst	60
Assistant Planner	59
Recreation Manager	58
Principal Civil Engineer	N/A

The City and the Association agree to meet and confer regarding the job description and salary range for the classification of Principal Civil Engineer at such time as the City desires to fund a position in that classification. The City reserves the right to fill the position with the current incumbent in the classification of Career Part-Time Associate Civil Engineer, or with any other qualified applicant, whichever best meets its needs at that time.

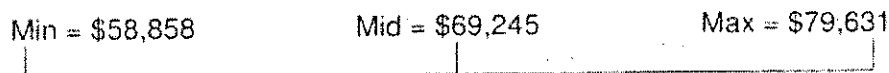
## 12.2 - PAY FOR PERFORMANCE

- (a) Salary increases are to be based upon performance, rather than market increases. All Unit employees shall have their performance evaluated annually on the City's Achievement Evaluation Forms in accordance with their salary anniversary date. Employees may only receive increases in accordance with Sections (b) through (f) below.
- (b) Effective July 1, 2006, whenever Unit classifications are allocated to higher salary ranges, based upon the City's biennial salary survey or otherwise, subsequent salary increases for incumbents in the represented classifications shall be calculated according to the following methodology.

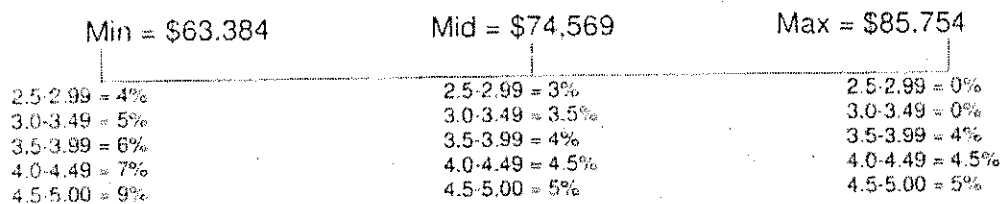
The prior range maximum amount shall be deducted from the new range maximum amount and that portion of the new salary range represented by such difference shall only be available to the incumbent employee upon achievement of a performance rating of 3.5 or above.

In other words, the prior range maximum amount, i.e. the highlighted area in the example graph below, shall serve as a performance based control point on the amount of the new salary range which is available to the incumbent.

Current Salary Range = 70



Recommended Salary Range = 73



An exception to this method shall occur whenever the midpoint of the new range is above the maximum of the old range in that there shall be no constraint on the incumbent's ability to achieve any portion of the available salary range, i.e., any performance rating which equates with a salary increase in accordance with Section (c), (d) and (e), below.

- (c) Pursuant to the Levels of Achievement on their annual performance evaluation, employees who have not reached within two (2) percent of the mid point of their salary range would receive the following salary percentage increase corresponding with their Achievement Evaluation Form rating. Once an employee reaches within two (2) percent of the mid point of their

227

salary range, then these employees would receive increases up to the maximum of their range as set forth in paragraph d, below:

2.50 - 2.99 = 4% salary increase  
3.00 - 3.49 = 5% salary increase  
3.50 - 3.99 = 6% salary increase  
4.00 - 4.49 = 7% salary increase  
4.50 - 5.00 = 9% salary increase

- (d) Pursuant to the Levels of Achievement on their Achievement Evaluation Form, employees who have reached within two (2) percent or above the mid point, but less than the control point defined in paragraph (b) shall receive the following salary percentage increase corresponding with their annual achievement Evaluation Form rating, up to the maximum of their range.:

Achievement Rating of 2.50 – 2.99 = 3% salary increase  
Achievement Rating of 3.00 – 3.49 = 3.5% salary increase  
Achievement Rating of 3.50 – 3.99 = 4% salary increase  
Achievement Rating of 4.00 – 4.49 = 4.5% salary increase  
Achievement Rating of 4.50 – 5.00 = 5% salary increase

If any percentage increase set forth above, causes an employee's base salary to exceed the maximum of their salary range as shown, only the percentage increase up to the maximum of their salary range will be applied to their base salary and the remaining percentage increase will be paid as a one time bonus.

- (e) Employees who have attained the maximum of their respective salary ranges may continue to receive performance pay in the form of a one-time annual bonus, which is PERS reportable income. These bonuses do not become part of the employee's base salary.

Achievement Rating of 3.50 – 4.49 = 2% one-time annual bonus  
Achievement Rating of 4.50 – 5.00 = 3% one-time annual bonus

- (f) Effective July 1, 2008, an Achievement Evaluation Review Committee was established to review all annual ratings of 4.00, or above, and to review employee complaints of inappropriate ratings, which are 2.00 or below. The Human Resource Director, non evaluating Department Head (or City Manager) and a representative serves as the Achievement Evaluation Review Committee. Employees who have reached the maximum of their salary range are not entitled to request a review.

- i. The purpose of the review of all overall ratings of 4.00 or above is to ensure that the varying departmental cultures are reconciled, that consistency and fairness occurs throughout the organization, and to make sure that organizational values are promoted through the evaluation process. Before an employee is authorized to receive a pay increase as a result of an overall rating of 4.00 or above, the



Achievement Evaluation Review Committee must review and approve the rating in the Achievement Evaluation Form. The review and response of the Achievement Evaluation Review Committee must be done within fifteen (15) business days of receipt of the Achievement Evaluation Form from the evaluating department to the Department of Human Resources. The Achievement Evaluation Review Committee's decision on the overall rating will be the final decision.

- ii. Employees have fifteen (15) business days after receiving their Achievement Evaluation Form with an overall rating of 2.49 or below to request a review with the Achievement Evaluation Review Committee. An employee shall not be given an overall performance rating of less than 2.50 or below, unless they have received some form of written communication during the previous twelve (12) month evaluation period outlining the supervisor's expectations for performance improvement. The employee's signature is not required to trigger the fifteen (15) business day period and if the employee refuses to sign the document, the Department Head will note and date the employee's refusal to sign. The employee must submit a written request to the Human Resources Director which details their position and must state the specific reasons for disagreement on all sections on the Achievement Evaluation Form that the employee believes are inaccurate and attach all documents that it contends the Achievement Evaluation Review Committee should consider. An employee's failure to timely submit such a written request to the Human Resources Director waives the employee's right to a review. Within fifteen (15) business days of receipt of the employee's written request, the Achievement Evaluation Review Committee will meet with the employee and provide the employee the opportunity to discuss any and all items set forth in the employee's written request for the review. The review request may be processed longer than fifteen (15) business days provided there is mutual agreement between the employee and the Achievement Evaluation Review Committee and that the Association representative who serves on Achievement Evaluation Review Committee can coordinate a date that is acceptable to all members and the employee. The Achievement Evaluation Review Committee only has the authority to increase any rating identified by the employee in the review request or affirm the rating in the evaluation, but it has no authority to decrease any rating. The Achievement Evaluation Review Committee will, among other things, review the evaluation, the employee's position on the evaluation, and whether the employee received formal written and/or oral counseling from the evaluator during the previous twelve (12) month evaluation period. The Achievement Evaluation Review Committee shall notify the employee in writing of its decision within fifteen (15) business days of its meeting with the employee and its decision shall be final.

- iii. If during the course of administering Pay for Performance, there is mutual agreement by Association and the City that meet and confer is necessary, Association and the City shall commence the meet and confer process, pursuant to the identified Pay for Performance deficiencies.

### 12.3 - PERS

- (a) Effective July 5, 2004, the City shall pay eight percent (8%) of the miscellaneous employees' regular and special compensation as defined by PERS as of the date of this Agreement as employee's contribution to PERS. The amount paid under this section shall be treated as employee contributions pursuant to Section 141(h)(2) of the Internal Revenue Code or successor Section.
- (b) The City agrees to pay the employer's portion of the One (1) Year Final Compensation and Full Formula PERS plus Social Security Retirement Plan for represented miscellaneous employees.
- (c) The City shall continue to provide the One (1) Year Final Compensation and Full Formula PERS plus Social Security retirement plan for members of the bargaining unit designated as miscellaneous employees by PERS.
- (d) The 2% Management Incentive Pay under Article 22.1 shall be considered as salary for the purpose of PERS contribution.

12.4 - F.I.C.A. - Unit members shall pay the employee's portion of FICA and the City shall be responsible for payment of the employer's portion.

12.5 - DISABILITY - Each employee shall pay the cost of membership in the State Disability Insurance or other long term disability insurance selected by the City.

12.6 - DIRECT DEPOSIT - All employees shall be paid by direct deposit of their payroll check into an account of their choice, except those employees who either do not hold an account with a financial institution that offers direct deposit or who do not hold an account of any type. It shall be the responsibility of the employee to establish and maintain such account. When separation from the City is caused by death, payment of all outstanding compensation, including Salary and all remaining Sick Leave, Vacation, Comp Time or Holiday Time accruals shall be paid into the employee's direct deposit account the same as regular payroll.

12.7 - RESIDENCY CREDIT. - All employees who reside within City limits shall receive \$150 per month as a discount against the cost of electric and water service during the period of such residence.

12.8 - EDUCATION INCENTIVE. - Effective July 1, 2008, represented employees whose job specification does not require a bachelor's degree as a minimum requirement shall receive additional compensation of \$200.00 per month for a Bachelor's Degree; employees who possess a Bachelor's Degree and a job related

certificate shall receive \$225.00 per month; employees who possess a Bachelor's Degree and a certification through a professional designation of official competency after taking a test or meeting established criteria by a universally recognized authority or association will receive \$250.00 per month; employees who possess a Master's Degree will receive \$275.00 per month; those employees who possess a Master's Degree and a certification through a professional designation of official competency after taking a test or meeting criteria established by a universally recognized authority of association shall receive \$300.00 per month.

### **ARTICLE 13 - COMPENSATORY TIME, OVERTIME AND ON-CALL PAY**

#### **13.1 - EXEMPT UNIT EMPLOYEES:**

- (a) Except as outlined in Article 13.7, the following listed represented Unit classifications shall not receive overtime pay:

- Assistant Director Water/Wastewater
- Associate Civil Engineer
- Associate Electrical Engineer
- City Engineer
- Customer Services Manager
- Development Services Manager (Building Official)
- Electric Operations & Maintenance Manager
- Fleet Maintenance Manager
- Information Technology Manager
- Parks/Streets Maintenance Manager
- Planning Engineer
- Public Works Superintendent
- Power Resource & Revenue Administrator
- Principal Civil Engineer
- Public Works Superintendent
- Purchasing Manager
- Recreation Manager
- Redevelopment Manager
- Risk Management Analyst
- Senior Civil Engineer
- Senior Planner
- Water/Wastewater Superintendent

#### **13.2 - NON-EXEMPT UNIT EMPLOYEES:**

- (a) The following represented Unit employees are entitled to receive overtime pay:

- Assistant Planner
- Associate Planner
- Assistant Civil Engineer

231

13.3 - Compensated time off for Non-Exempt employees listed in Article 13.2:

- (a) Non-Exempt employees shall be paid for all overtime at the rate of time and one-half (1-1/2) for each hour worked, or they shall accrue compensatory time off hours at the rate of one and one-half hour (1-1/2) for each hour worked up to a maximum of two-hundred forty (240) hours.
- (b) Employees may exercise the option to cash out a maximum of sixty (60) hours of compensatory time off per fiscal year.

13.4 - For purposes of overtime calculation, "hours worked" for non-exempt unit members shall include time spent in required court appearances as set forth in Article 15. All other hours paid for but not worked, including, but not limited to vacation, holiday, sick leave, on call time and compensatory time off shall not be counted as hours worked for overtime calculation.

13.5 - All work performed by represented employees listed in Article 13.2 in excess of forty (40) hours per week shall be paid at the rate of one and one half times (1-1/2) the employee's regular hourly base rate of pay, except for employees who choose to be compensated in additional compensatory time as outlined in Article 13.2. All overtime worked shall be authorized by a supervisor in advance of working overtime hours, if possible. Otherwise, the claim for overtime shall be subject to review by the Human Resource Director.

13.6 - Only the employees listed in Article 13.2, the non-FLSA exempt members of the Association, shall be entitled to additional compensation for on call status. Employees required to remain in an on call status shall, at employee's option, receive an additional eight (8) hours of compensatory time or pay at his/her regular rate for each week for such duty plus and additional one (1) hour for any week in which a holiday occurs. Employees shall be entitled to receive the pro rata equivalent for any partial week.

- (a) When required to respond, such employee shall receive, at employee's option, a minimum of two (2) hours of compensatory time or pay at his/her regular rate for any time worked during the first one (1) hour and compensatory time or pay at time and one-half (1-1/2) for each hour worked thereafter.
- (b) For purposes of this Article, an employee shall be deemed to be in on call status only when all of the following conditions are met:

- (1) The appropriate Director has placed the employee in on call status by a notice in writing;
- (2) The employee is required to respond to the City Yard or other designated location within a specified time not to exceed thirty (30) minutes; and,
- (3) While on call the employee is prohibited from engaging in any activity which may interfere with the employee's ability to respond

232

to an emergency call and immediately commence the required job performance.

#### 13.7 - CTO CASH OUT:

- (a) In the event an employee terminates his or her employment the City shall "cash out" the employee's accrued compensatory time. The employee shall be compensated for all such compensatory time at his/her then current, straight time rate of pay.

13.8 - CONTRACT OVERTIME FOR NON-EXEMPT EMPLOYEES. In assessing costs against such other agency for work performed by these employees, the City shall assess compensation for such employee at the rate of one and one-half (1-1/2) times the regular rate of compensation. Represented employees shall receive in compensation the greater of that received from the third party agency for the employee's services or such compensation as he/she shall be otherwise entitled to under law and this MOU.

13.9 - PERSONAL LEAVE The employees listed in Article 13.1 ("Exempt Employees") shall receive ninety-eight (98) hours of personal leave per year which shall be credited July 1 of each year, to compensate for time spent in excess of normal working hours in completing their responsibilities.

- (a) Personal Leave may be accrued without limit and used under the same rules as vacation leave. In the event an employee terminates his or her employment with the City, the employee shall be compensated for all accrued personal leave at his or her then current rate of pay.

- (b) Employees may exercise the option to cash out a maximum of sixty (60) personal leave hours per fiscal year.

#### ARTICLE 14 - ACTING PAY AND PROMOTION PAY

14.1 - A represented employee temporarily assigned by management to fill a vacancy in a higher classification, when the vacancy is created by a departure, or when the incumbent is absent in excess of twenty (20) work days, shall be compensated from the first day working such assignment, and consecutive days worked thereafter, at the lowest pay range of the incumbent which is at least five percent (5%) above the acting employee's normal rate of compensation while working in the higher classification. The conditions of this subsection are a prerequisite to the receipt of any higher acting pay. At such time as an employee is no longer performing work out of his permanent classification, he/she shall be compensated at his/her regular rate of pay for his/her permanent classification.

14.2 - Represented employees promoted to work in a higher classification shall be paid five percent (5%) more than the employee received in the lower classification.

14.3 - Temporary assignments to perform work out of an employee's permanent classification shall be limited in duration to six (6) months in any one (1) year. A time

extension to the temporary assignment beyond the initial six months may be made with the concurrence of Association in writing.

#### **ARTICLE 15 - PAY FOR JURY DUTY & COURT APPEARANCES**

15.1 - Any employee who shall be summoned for attendance to any court for jury duty during his/her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him/her shall be paid into the City treasury. Any employee, who shall be called as a witness arising out of and in the course of his/her City employment, shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him/her shall be paid into the City treasury. An employee absent as a witness in a private matter shall not be entitled to be paid during such absence, but he/she may, however, use vacation leave, holiday leave, personal leave or compensatory leave for such absence.

#### **ARTICLE 16 - SAFETY, EQUIPMENT, AND TRAINING**

16.1 - The City will provide covered employees safety equipment in accordance with California State Law. Effective the first full pay period in January 2009 and annually thereafter, the City shall provide a yearly boot/safety shoe allowance of \$200 to each employee who is required, by nature of his/her work to wear a specific type/style of shoe or boot. An approved shoe/boot is one which meets the minimum standards as determined by the Department Head. Departmental standards shall not be less than those which may be required by CAL/OSHA. Employees shall wear approved shoes/boots during working hours where required by work conditions.

16.2 - The City shall reimburse represented employees the reasonable replacement value of personal property destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the appropriate supervisor the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to \$200 per pair per year. Replacement for watches is limited to \$100 per year. Replacement of items will be secondary to any applicable insurance.

16.3 - A Joint Safety and Training Committee shall be continued.

(a) Joint Safety and Training Committee. The Committee shall consist of an equal number of members appointed by the City and the Association. The Committee shall be advisory only. The Committee shall meet on a regular basis, but not less than once (1) per quarter. The Association and City may agree to meet more frequently on a regular or special basis. The Committee may review work practices, training, procedures and rules and may recommend changes in the interest of health and safety. The Committee may review all serious accidents, injuries or fatalities, and include recommendations resulting from its review in the Committee's minutes.

(b) Reporting. Minutes of all Committee meetings shall be posted on Association bulletin boards, with copies to the Human Resource Director and to the President of the Association, within five (5) working days after the Committee

meeting. Specific questions submitted either to the Committees or by the Committees to Management will be responded to within a reasonable time and the answers posted on Association bulletin boards.

- (c) Proceedings of the Committee shall be completely independent of any disciplinary action and the Committee's findings shall not be entered into the record of any such disciplinary proceedings.

#### **ARTICLE 17 - MILEAGE, MEALS AND OTHER REIMBURSEMENTS**

17.1 - Effective July 1, 2008, the following listed classifications, shall be provided with a \$250 per month vehicle allowance under this section. The City will also provide employees with mileage reimbursements as provided in the Administrative Policy E-1 dated September 1, 2001, except that AP E-1 item C.4 is amended as follows: mileage for trips exceeding forty (40) miles round trip shall be reimbursable at the current IRS rate for total trip mileage that exceeds forty (40) miles, an employee may only request reimbursement for expenses equal to or greater than \$20.00 and an employee must keep record of the mileage or aggregate from multiple trips to establish the \$20.00 minimum.

- Associate Civil Engineer
- Associate Electrical Engineer
- Associate Planner
- Assistant Civil Engineer
- Assistant Planner
- Customer Services Manager
- Information Technology Manager
- Planning Engineer
- Power Resource & Revenue Administrator
- Principal Civil Engineer
- Purchasing Manager
- Recreation Manager
- Redevelopment Manager
- Risk Management Analyst
- Senior Planner
- Senior Civil Engineer

17.2 - The following listed classifications shall be provided with a City Vehicle for performing City business and travel to and from work:

- Assistant Director Water/Wastewater
- City Engineer
- Development Services Manager (CBO)
- Fleet Maintenance Manager
- Public Works Superintendent
- Streets/Parks Maintenance Manager
- Electric Operations & Maintenance Manager
- Public Utilities Superintendent

In the event the City vehicle is unavailable, the employee shall receive a vehicle allowance or mileage, consistent with City policy.

17.3 - All employees receiving such vehicle allowance shall name the City as an additional named insured on any policy of insurance providing coverage for the vehicle used by the employee for the purposes set forth herein. Proof of current insurance shall be maintained on file with the City.

17.4 - Employees not receiving compensation pursuant to Section 17.1, 17.2 or 17.3 above shall be reimbursed for use of their own vehicle for authorized City business at the rate set by the Internal Revenue Service.

17.5 - Employees shall be reimbursed for meals as per the administrative policies of the City.

17.6 - The City shall bear the full cost of any fidelity or other bonds required of the represented employee under any law or ordinance.

17.7 - Members who are certified under the State of California Department of Motor Vehicles Employer Testing Program to train and test for Class "A" driver's license (truck portion) will receive a \$50.00 stipend each time such training is done. Payment will be authorized by the Human Resources Department only upon receipt of proper documentation that the City remains in compliance with the Employer Testing Program.

#### **ARTICLE 18 - TUITION, BOOK REIMBURSEMENT AND PROFESSIONAL TRAINING AND TRAVEL**

18.1 - QUALIFICATIONS - Tuition reimbursement is limited to \$3,500 per year and cost of books actually paid will be reimbursed to all permanent employees for professional and technical courses approved by the Human Resource Director and taken in an accredited educational institution provided that:

- (a) The subject matter of the course relates directly to and contributes toward the employee's position with the City.
- (b) The employee has received at least a competent proficiency rating on the last evaluation report.
- (c) The employee has furnished evidence that the course has been completed with at least a 'C' grade.
- (d) Textbooks paid for by the City shall be returned to the City upon request and shall become the property of the City.
- (e) However, for employees who are enrolled in an approved Master Degree Program as of September 14, 2004, the City will provide payment of tuition in an amount equivalent to the cost of obtaining the education at a California State University or University of California. All other provisions will apply to such employees, except the \$3,500 cap on tuition reimbursement. Unit members who are subject to this provision will only continue to receive this



benefit provided they do not have an absence in their enrollment beyond one eighty (180) days.

#### 18.2 - REIMBURSEMENT

- (a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).
- (b) Reimbursement for textbooks will be approved only if the textbooks were not made available at no cost to the employee by the City
- (c) Reimbursements will be made only after proof of completion of course with 'C' average or better and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

18.3 - TRAINING - Employer hereby agrees to pay, as outlined in Article 17, the travel and subsistence expenses of represented employees for professional and official travel, meetings, and occasions required to continue the professional development of Employee and to adequately pursue necessary official and other functions of Employer, including but not limited to annual state conference of the California League of Cities, and such other national, regional, state and local governmental groups provided it is budgeted in the annual operations budget. Time spent in City required and approved training or conferences, including travel time shall be included as time worked in accordance with FLSA standards. The City shall not pay for the costs incurred to meet minimum job requirements.

18.4 - TOOLS - The City hereby agrees to finance at no interest the purchase of any job-related tools or equipment that serve the professional development of any represented employee over the term of this Memorandum of Understanding. Such tools and equipment shall be approved in advance by the Human Resource Director. Repayment to the City by the represented employee shall be made by payroll deductions until the amount loaned is completely repaid. The maximum period for repayment shall be two (2 years).

#### ARTICLE 19 - SICK LEAVE

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

19.2 - Sick leave shall be granted only where consistent with the City's sick leave policy (currently AP-1), except as otherwise provided in the Family Medical Leave Act and Pregnancy Leave policies of the City (currently AP-02).

19.3 - All sick leave shall hereafter accrue in a "Bank". Any employee may cash in the "Bank", to a maximum of ninety-six (96) hours, at straight time at the current rate of pay, but will not be allowed to cash out the "Bank" below forty (40) hours. This request must be made no later than Nov. 1st of each year and the payment shall be made in the last check issued in November of each year.

- (a) Upon separation, service retirement, disability retirement, or termination, an employee shall be eligible to receive a cash payment for accrued sick leave in the "Bank" in an amount equivalent to straight time, to a maximum of ninety-six (96) hours.
- (b) After ten (10) years of continuous City service, all hours accrued in the "Bank" less the total hours cashed out in 19.3 A, shall be eligible for conversion to cash in an amount equivalent to thirty percent (30%) of such unused sick Leave. Such reimbursement to be computed based upon the employees' final compensation rate. (See AP-01). Beginning with the eleventh (11) year of City service, unit members may convert the value of the total amount of their sick leave bank minus forty (40) hours to either Deferred Compensation or the Retiree Health Savings. Thereafter, the unit member may contribute one hundred percent (100%) of the value of unused sick leave minus forty (40) hours for such purposes.

19.4 - All Employees covered by this Agreement who have passed their probation are granted bereavement leave. In the event of the death of a member of their family, including mother, father, brother, sister, child, grandchild, or grandparent of the employee or any one of the same relatives of the employee's spouse, the employee shall be allowed twenty-four (24) hours of bereavement leave for each death of a family member. In the event of the death of a spouse or multiple family deaths occurring within a twenty-four (24) hour period, the employee shall be allowed forty (40) hours of bereavement leave.

19.5 - In addition to the foregoing bereavement leave, the employee may also utilize up to sixteen (16) hours from accrued sick leave, if there is a death of a family member and up to forty (40) hours from accrued sick leave in the event of the death of a spouse or multiple family deaths. If the employee has insufficient accumulated sick leave to exercise this option, the employee may utilize accrued vacation, or compensated time off for the additional bereavement leave.

## **ARTICLE 20 - VACATION AND HOLIDAY LEAVE**

20.1 - For members of the Association effective July 5, 2004, vacation leave shall accrue in accordance with the following schedules:

- (a) One (1) through four (4) years service:  
Ten (10) eight (8) hour days per year = three and eight hundredth (3.08) hours per pay period
- (b) Beginning the fifth (5<sup>th</sup>) year through the ninth (9<sup>th</sup>) year:  
fifteen (15) eight (8) hour days per year = four and sixty-two hundredth (4.62) hours per pay period
- (c) Beginning the tenth (10<sup>th</sup>) year & thereafter:  
twenty (20) eight (8) hour days per year = six and fifteen hundredth (6.15) hours per pay period

Vacation leave may be accrued to a maximum of three-hundred twenty (320) hours. If an employee has accumulated the maximum allowed under this Article, said employee will receive no further vacation leave accruals until said employee uses a portion of his/her vacation leave and his/her vacation leave accruals have been reduced below the maximum. There shall be no retroactive receipt of any vacation leave lost as a result of this Article.

20.2 - Vacation leave may be taken with approval of the employee's supervisor, and as otherwise consistent with the policies of the City. Vacation leave may be taken at any time following the completion of the six (6) month probationary period. Vacation leave taken shall not be in excess of that actually accrued at the time such vacation leave is taken. Vacation leave must be approved a minimum of fourteen (14) days in advance of the first (1<sup>st</sup>) day of such vacation. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the employee's supervisor.

20.3 - Any employee, who has been in continuous full-time service of the City for a period of six (6) months or more, who is about to terminate his or her employment, and has earned vacation leave to his/her credit, shall be paid for such vacation leave on the effective date of such termination at the current rate of pay.

20.4 - Employees with greater than two hundred fifty (250) hours of accrued vacation time may request a one-time cash out of fifty percent (50%) of the total available hours to be paid at their current pay rate. Unused vacation accrual in excess of eighty (80) hours may be paid off at the option of the employee up to a maximum of eighty (80) hours per fiscal year.

20.5 - Holiday time off shall accrue for members of the bargaining unit at the rate of three and sixty-nine hundredth (3.69) hours per pay period.

20.6 - Holiday leave other than City recognized holidays (City Hall closed) must be approved a minimum of fourteen (14) days in advance of the first day of such leave. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the employee's supervisor.

20.7 - Any employee, who is about to terminate his/her employment, and has earned Holiday leave to his/her credit, shall be paid for such holiday leave on the effective date of such termination at the employee's then current rate of pay.

20.8 - If, during the term of this MOU, the City Council recognizes an additional Holiday for City employees the accrual rate shall be adjusted accordingly.

#### **ARTICLE 21 - CAFETERIA PLAN**

21.1 - For the period July 1, 2010 through June 30, 2011, the City shall contribute \$947.00 per month to each represented employee for the cafeteria benefits plan detailed in this section.

- (a) Said contribution shall first be used to provide for health insurance for the employee. Employee shall be covered by health insurance with a City approved health plan unless the employee provides proof to the City that

239

employee is covered by another acceptable health plan as determined by the City's Human Resource Director.

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

1. Health insurance for employee's spouse and/or dependents.
2. Dental Plan for employee, spouse and/or dependents.
3. Eye care plan for employee, spouse and/or dependents
4. Term life insurance on employee's life.
5. Deferred compensation programs.

(c) Employee may elect to receive ninety-two and five-tenth percent (92.5%) of the balance in cash as PERS non-includable taxable income.

(d) The City will pay for life insurance in the amount of \$150,000 and the employee will pay the taxes on the portion of the premium attributable to coverage above \$50,000.

21.2 - During the term of this Agreement, the City shall maintain an Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pre-tax salary or wages for the reimbursement of medical care expenses or dependent care expenses or both, as well as health and welfare insurance premiums, with the exception of disability insurance premiums.

21.3 - Effective July 1, 2005, the City will reimburse employee and employee's dependents a maximum of \$250 for eyewear every two (2) years.

#### **ARTICLE 22 - MANAGEMENT INCENTIVE PAY**

22.1 - The City agrees to pay an amount equal to two percent (2%) of employee's annual salary as management incentive due to the unique nature of the job. The Management Incentive Pay will be reported as special compensation every pay period and will be for duties performed during normal business hours.

#### **ARTICLE 23 - LAYOFFS AND RE-EMPLOYMENT**

23.1 - PURPOSE. The purpose of this Article is to provide a fair and equitable basis for the reduction of full-time classified personnel due to insufficient work or funds.

23.2 - REASONS FOR LAYOFF. The City retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at an acceptable level of service. Lack of funds means that the City cannot sustain operations at the current level of employment within the funding available.

23.3 - NOTICE OF LAYOFF Any layoff initiated under the provisions of this document can take place at any time during the year. The City shall notify the affected employees in writing at least sixty (60) calendar days prior to the employee's last day of work. The City reserves the right to pay the employee for such sixty (60) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate bargaining unit representative. Any notice of layoff shall specify the reason for the layoff and effective date. The form and timing of such notice shall be subject to the established Grievance Procedure provided however, that the City's decision to layoff is not subject to the grievance procedure. The date of layoff shall not be delayed by the pendency of a grievance.

23.4 - ORDER OF LAYOFF. Any layoff shall be effective within classes determined by the City. The order of layoff shall be based on the City Manager's evaluation of critical position function and seniority measured as the length of uninterrupted service within the class as measured to the date of the layoff notice.

23.5 - EQUAL SENIORITY. If two (2) or more employees subject to layoff have equal class seniority, then the determination as to who has seniority shall be based upon total length of uninterrupted service with the City

23.6 - RE-EMPLOYMENT RIGHTS.

Any Association member who has been given a written notice of layoff may compete for any open position for which he or she is qualified. The City will make reasonable efforts to notify the affected employee of any position that is open or any future position that is opening for the Association member's consideration. The Human Resource Manager shall receive and date the resume/application and set up testing for the member who is qualified for that position. The Association member shall compete with any other laid off employee who also qualifies for that position. An Association employee that has been laid off and is qualified shall compete for the position that has opened or that is opening prior to it being open to present employees or to the public.

(a) Employees who have been laid off or reduced in classification under the provisions of this Article shall be placed upon reemployment lists for a period of two (2) years, or until they are re-employed with the City, whichever occurs first. For purposes of this section, "reemployment" means any full-time employment with the City. Employees on a reemployment list shall have hiring preference for vacancies in their original classifications in order of their respective seniorities within those classifications, with the most senior employees having first preference. Employees on such reemployment lists shall also have preference over new hires in applying for vacancies in bargaining unit classifications other than those from which they were laid off, and according to the City's usual and customary hiring practices.

(b) This article shall be implemented consistent with the provisions of Administrative Policy AP-10.

## **ARTICLE 24 - GRIEVANCE PROCEDURE**

24.1 - As to all employees listed in Section 1.4, no discipline may be imposed except as consistent with FLSA rules for the applicable class of exempt employee.

24.2 - Any permanent employee in the bargaining unit who has a grievance based upon his/her demotion, dismissal, reduction in pay, improper treatment, violation of the personnel ordinance or salary resolution, shall be entitled to have the matter reviewed through the following grievance procedure outlined in this article. This right shall not extend to complaints concerning Achievement Evaluation Forms.

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

24.4 - Step One. If the grievance is not adjusted to the satisfaction of the employee under the procedures set forth in Sections 24.3 above, the employee or his/her representative may submit the grievance, in writing, to the City Manager, within fourteen (14) calendar days after the completion of the last step under Section 24.3 above. The City Manager shall meet with the employee, and his/her representative if applicable, within fourteen (14) calendar days of receipt of such written grievance, and shall deliver his decision in writing, to the employee, along with the reasons for such decision, within fourteen (14) calendar days after the meeting.

24.5 - Step Two. If the grievance is not adjusted to the satisfaction of the employee under the procedures set forth in Sections 24.3 and 24.4 above, the employee or his/her steward or business representative, as appropriate, may submit the grievance, in writing, to the Human Resource Director, within fourteen (14) calendar days after the last step under Section 24.4, above. The Human Resource Director shall meet with the employee, and his/her steward or business representative, as appropriate, within fourteen (14) calendar days of receipt of such written grievance, and within the next fourteen (14) calendar days after such meeting shall deliver his/her decision in writing, to the employee, along with the reasons for such decision.

24.6 - Step Three. If the grievance is not adjusted to the satisfaction of the employee under the procedure set forth in Section 24.5 above, the employee or his/her representative may submit written notice to the City Manager within fourteen (14) calendar days after the completion of the last step under Section 24.5 above of his/her intent to submit the matter to advisory arbitration. The procedures set forth below shall be followed.

(a) Within seven (7) calendar days of receipt of the written notice, the parties shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.

(b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Association shall attempt to reach an agreement on an arbitrator.

Failing to agree on an arbitrator, the Association and the City shall take turns striking the names or arbitrators from the FMCS list until one (1) name remains. The Association shall strike the first name.

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

(d) The cost of the arbitrator shall be split equally by the City and the Association.

(e) All arbitration proceedings shall be recorded. The arbitrator shall be required to provide both parties with a decision and with written findings of fact in support of the decision. The arbitrator's decision shall be consistent with and supported by the substantive law.

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

24.8 - The above time limits may be changed by mutual agreement.

#### **ARTICLE 25 - MISCELLANEOUS**

Effective July 1, 2008 Association agrees that the probationary period for newly hired represented employees will be one year. The probationary period for promotions will remain at six (6) months.

The City agrees that as soon as practicable, job specifications will be reviewed to determine any necessary changes in minimum education requirements.

#### **ARTICLE 26 - SAVINGS CLAUSE**

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

#### **ARTICLE 27 - COMPLETE AGREEMENT**

Anything contained herein to the contrary notwithstanding, during the meeting and conferring resulting in this Memorandum of Understanding, the City and the Association each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter as to which the Meyers-Millas-Brown Act imposes an obligation to meet and confer. Except as specifically set forth elsewhere in this

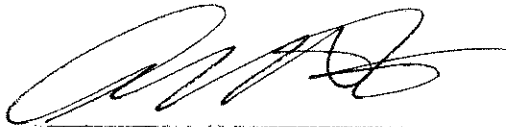
Memorandum of Understanding, the City expressly waives its right to require the Association meet and confer, and the Association expressly waives its right to require the City to meet and confer, over all matters as to which the Meyers-Millas-Brown Act imposes an obligation to meet and confer, whether or not: (a) such matters are specifically referred to in this Memorandum of Understanding; (b) such matters were discussed between the City and the Association during the negotiations which resulted in this Memorandum of Understanding; (c) such matters were within the contemplation of or knowledge of the City or the Association at the time this Memorandum of Understanding was negotiated and executed. This Memorandum of Understanding contains the entire understanding, undertaking, and agreement of the City and the Association, after exercise of the right and opportunity referred to in the first sentence of this Article, and finally determines all matters of meeting and conferring for its term. Changes in this Memorandum of Understanding, whether by addition, waiver, deletion, amendment, or modification, must be reduced to writing and executed by both the City and the Association.

This Memorandum of Understanding has been jointly prepared after meet and confer sessions between the authorized representatives of the City and the Association and represents a joint recommendation to the City Council for determination and adoption pursuant to Government Code Section 3505.1. The parties hereto acknowledge that they have the authority to make this joint recommendation and that this Memorandum of Understanding shall not be in full force and effect until adoption by the City Council of the City.



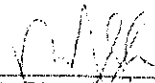
SUBJECT TO THE FOREGOING. THIS MEMORANDUM OF UNDERSTANDING IS EXECUTED BY THE AUTHORIZED REPRESENTATIVES OF THE CITY AND THE ASSOCIATION. IN WITNESS WHEREOF THE PARTIES HAVE CAUSED THEIR SIGNATURES TO BE AFFIXED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2010

FOR THE CITY OF BANNING



Andrew J. Takata, City Manager

FOR THE SAN BERNARDINO  
PUBLIC EMPLOYEES  
ASSOCIATION



By: Bob Blough  
SBPEA General Manager



Colin J. Tanner, Lead Negotiator



By: Chuck Thurman  
Mid-Management and  
Professional Unit

## TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE 1 - PREAMBLE.....	1
ARTICLE 2 - CONTINUATION OF RULES & POLICIES .....	2
ARTICLE 3 - EMPLOYEE RIGHTS.....	2
ARTICLE 4 - MANAGEMENT RIGHTS.....	3
ARTICLE 5 - DUES DEDUCTION.....	4
ARTICLE 6 - ASSOCIATION REPRESENTATIVES .....	4
ARTICLE 7 - BULLETIN BOARDS.....	5
ARTICLE 8 - MEMORANDUM OF UNDERSTANDING COPIES.....	5
ARTICLE 9 - MEETINGS .....	5
ARTICLE 10 - HOURS OF WORK.....	6
ARTICLE 11 - REGULATION OF FLSA ISSUES.....	6
ARTICLE 12 - SALARIES, PERFORMANCE EVALUATIONS, RETIREMENT BENEFITS, AND EDUCATION INCENTIVE.....	6
ARTICLE 13 - COMPENSATORY TIME, OVERTIME AND ON-CALL PAY .....	12
ARTICLE 14 - ACTING PAY AND PROMOTION PAY.....	14
ARTICLE 15 - PAY FOR JURY DUTY & COURT APPEARANCES.....	15
ARTICLE 16 - SAFETY, EQUIPMENT, AND TRAINING .....	15
ARTICLE 17 - MILEAGE, MEALS AND OTHER REIMBURSEMENTS .....	16

ARTICLE 18 - TUITION, BOOK REIMBURSEMENT AND PROFESSIONAL TRAINING AND TRAVEL.....	17
ARTICLE 19 - SICK LEAVE .....	18
ARTICLE 20 - VACATION AND HOLIDAY LEAVE .....	19
ARTICLE 21 - CAFETERIA PLAN.....	20
ARTICLE 22 - MANAGEMENT INCENTIVE PAY .....	21
ARTICLE 23 - LAYOFFS AND RE-EMPLOYMENT .....	21
ARTICLE 24 - GRIEVANCE PROCEDURE .....	23
ARTICLE 25 - MISCELLANEOUS.....	24
ARTICLE 26 - SAVINGS CLAUSE .....	24
ARTICLE 27 - COMPLETE AGREEMENT.....	24

## **CITY COUNCIL AGENDA**

**DATE:** December 13, 2011

**TO:** Mayor and City Council

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

**SUBJECT:** Classification Plan Amendment

**RECOMMENDATION:**

Adopt Resolution No. 2011-101 amending the job description for Utility Financial Analyst under the classification and compensation plan for the City of Banning, amending the position control and authorizing the Administrative Services Director to amend the budget and make any necessary budget adjustments, appropriations and transfers related to the Utility Billing Services Fund (F761).

**DISCUSSION:** The City Council approved the City of Banning Classification and Compensation Plan on January 25, 2005. Periodically the plan is amended to reflect changes in the organizational structure. Maintenance of the plan is a dynamic process in order to reflect organizational and strategic needs within the City. City Personnel Rules require that the City Council approve all changes to the City's Classification Plan.

Currently, the Finance Department has a vacant position that is being filled by a temporary worker. During the FY10 budget cycle, the Customer Service Manager position was eliminated and replaced with a Utility Billing Representative position. This action was most likely taken due to the labor intensive tasks in the Utility Billing area and to show budget savings. The position has remained vacant but the department has utilized part time or temporary workers to manage the existing manual payment processing function and work load demands.

In an effort to address the labor intensive tasks and improve the customer service capabilities of the Utility Billing area, Council recently approved the purchase of remittance processing equipment that should significantly automate payment processing. With the new system soon to be implemented, attention can be given to other challenges impacting customer service.

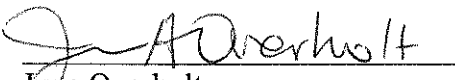
In order to address the challenges and opportunities facing the City Utilities and the Billing area, staff has determined that a Utility Financial Analyst is needed to meet the demands for analysis of revenue data and the rate study; to assist in collaborative audits of data between City departments and external providers (i.e. Waste Management); to assist staff in streamlining existing workflow and thus to improve customer service to utility customers. This position would have responsibility to oversee the staff in the utility billing area and to provide high level analysis for the City.

In order to create the Analyst position, staff is recommending that the Utility Billing Representative position be removed from the authorized positions in the budget and that the Utility Financial Analyst position be added to the authorized positions in the budget. The analyst


position currently exists in the Classification and Compensation Plan. However, it has been amended to include wording that addresses Utility Billing functions in addition to Electric functions.

**FISCAL DATA:** This action will result in an annualized increase to the Utility Billing Services Fund (F761) of approximately \$69,200. Funding for the increase comes from the various utilities in the City (Electric, Water, Wastewater and Waste Management funds). Based on conversations with the managers overseeing each of these areas, this position is needed and will likely pay for itself by streamlining processes or identifying revenues lost through gaps of information among the departments.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

## RESOLUTION NO 2011-101

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING ITS 2011-12 FISCAL BUDGET AND AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY OF BANNING

**WHEREAS**, the budget for fiscal year 2011-2012 of the City of Banning has been adopted by this Council in its original form, and said budget will need to be amended at times to fulfill the goals of the City; and

**WHEREAS**, the City departments may not exceed their appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and inter-fund transfers, without the consent of the City Manager; and

**WHEREAS**, the City may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Council; and

**WHEREAS**, the City Departments may not hire in excess of the approved number of positions in job classification as indicated by the budget detail without the consent of the City Council; and

**WHEREAS**, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise.

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

SECTION 1: Authorize removing one Utility Billing Representative position from the authorized position control.

SECTION 2: Authorize adding one Utility Financial Analyst position to the authorized position control.

SECTION 3: Authorize the Administrative Services Director to amend the budget and make any necessary budget adjustments, and appropriations from the Utility Billing Services Fund (F761), including allocations to the utility funds.

SECTION 4: That the City Council approves the amendment to the job description for the Utility Financial Analyst (Job Code 5028) attached as Exhibit "A".

////

**PASSED, APPROVED AND ADOPTED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-101 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, 2011, by the following vote, to wit:

AYES:

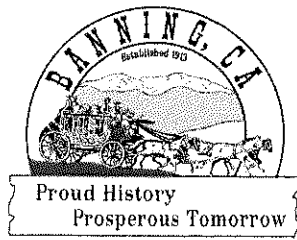
NOES:

ABSTAIN:

ABSENT:

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

251



## CITY OF BANNING, CALIFORNIA

### Utility Financial Analyst

**Job Code: 5028**

**FLSA**      ☒ **Exempt**      ☐ **Non-Exempt**

---

**JOB DEFINITION:** Under general direction of the Director, performs administrative, technical and analytical analysis for the Department in general accounting, budgeting, contracting, utility billing, and energy accounting, including transaction analysis, cost of service studies and retail rate analysis. Supervises activities of assigned personnel. May supervise or oversee staff under the division or programs.

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

**REPRESENTATIVE DUTIES:** Develops and maintains databases and spreadsheets to analyze, monitor and validate the City (Electric, Water, Wastewater, Waste Management) Utility's expenses, revenues, retail consumption, distribution and losses. Identifies and recommends opportunities for cost savings. Monitors and analyzes the utility's fiscal condition, and assists in the preparation and oversight of the departmental budget. Creates reports to inform upper management and track data. Prepares and submits periodic reports and documentation as required.

May act as the City's liaison to outside agencies such as the California Independent System Operator (CAISO). Validates and approves invoices that may include power purchases.

Reviews and evaluates pertinent regulatory issues for potential impact on the City. Prepares and submits a variety of reports as required by various Federal and State agencies and other entities with public utility oversight authority.

Supervises the development and implementation of qualified programs and services. Directs, monitors and evaluates the activities of assigned personnel to ensure effective administration of the City's Public Benefit Programs. Monitors and manages collection of revenues.

Reviews and maintains a working knowledge of various public utility contracts and agreements. Reviews and evaluates documents, correspondence and reports from a variety of agencies and determines the potential impact on the City. Manages special projects, interfaces with vendors, contractors and City personnel and ensures satisfactory completion of projects. May represent the City at a variety of meetings pertaining to Utility operations.

Performs other duties as assigned or required.

(continued on reverse side)



# CITY OF BANNING, CALIFORNIA

## Utility Financial Analyst

Job Code: 5028

---

### KNOWLEDGE and SKILLS:

- Knowledge of accounting and finance methods and procedures.
- Principles and practices of budget administration.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of file and records management principles.
- Knowledge of research methods and procedures.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications, including Microsoft Excel and Word.

**MINIMUM QUALIFICATIONS:** Any combination of education and experience that has provided the knowledge, skills and abilities necessary for a Utility Financial Analyst. A typical way of obtaining the required qualifications is to possess a Bachelor's degree in Accounting, Business Administration, Finance or a related field **AND** three (3) years of experience in public utility accounting, transactions analysis, or governmental accounting.

**ADDITIONAL REQUIREMENTS:** May be required to work outside the traditional work schedule.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Resolution No. 2011-102, accepting the 2012 Supplemental Law Enforcement Services Fund Allocation and authorizing the Banning Police Department to use the funds towards the purchase of law enforcement related equipment and training.

**RECOMMENDATION:** "The City Council adopt Resolution No. 2011-102 accepting the 2012 Supplemental Law Enforcement Services Fund (SLESF) allocation and authorize the Banning Police Department to apply the funds towards the purchase of law enforcement related equipment and training."

**JUSTIFICATION:** Funds from the Supplemental Law Enforcement Services Fund must be used to supplement frontline municipal police services.

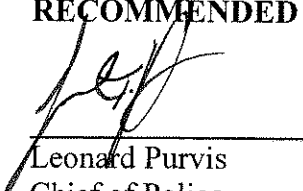
**BACKGROUND:** The Banning Police Department anticipates using funds from SLESF to purchase equipment and provide advanced officer training, which will enhance the department's ability to provide a high level of professional service to the citizens of Banning. Anticipated purchases may include but are not limited to, vehicles, technology equipment and software, evidence collection materials, communication related parts, tactical equipment, and advanced officer training.

Legislation requires the City Council to officially accept the Supplemental Law Enforcement Services Funds and approve the police department's anticipated use of the funds.

**STRATEGIC PLAN INTEGRATION:** Council approval of this resolution will meet the city's goal to protect the citizens of this community with updated technology, equipment, and well trained police officers.

**FISCAL DATA:** The Supplemental Law Enforcement Services Fund (SLESF) allocation for 2012 is \$100,000. There is no city match required for this grant. The appropriation is requested in the resolution.


**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

\_\_\_\_\_  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andrew Takata  
City Manager

**RESOLUTION NO. 2011-102**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING ACCEPTING THE 2012 SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND ALLOCATION AND AUTHORIZING THE BANNING POLICE DEPARTMENT TO USE THE FUNDS TOWARDS THE PURCHASE OF LAW ENFORCEMENT RELATED EQUIPMENT AND TRAINING.**

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

**WHEREAS**, grants provided by State and Federal monies assist in supplementing these services; and

**WHEREAS**, the City Council is required to accept and appropriate the allocation of anticipated funds from this grant; and

**WHEREAS**, the grant funds will provide the Banning Police Department with updated technology, equipment, and training;

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning hereby accepts the 2012 Supplemental Law Enforcement Services Fund (SLESF) allocation, appropriates funds in the amount of \$100,000, and authorizes the Finance Department to make necessary budget adjustments related to these funds.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

ATTEST

\_\_\_\_\_  
Aleshire & Wynder, LLP  
City Attorney

\_\_\_\_\_  
Marie A. Calderon, City Clerk  
City of Banning

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-102 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of December 2011, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

## CITY COUNCIL AGENDA

**Date:** December 13<sup>th</sup>, 2011

**TO:** Mayor and City Council Members

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

**SUBJECT:** Resolution No. 2011-103 Approving The Cancellation And Termination Of The 1984 Lease Agreement Between The City Of Banning And The Banning/San Gorgonio Pass Area Chamber Of Commerce.

**RECOMMENDATION:** The City Council adopt Resolution No. 2011-103 approving the cancellation and termination of the 1984 lease agreement between the City of Banning ("City") and the Banning/San Gorgonio Pass Area Chamber of Commerce ("Chamber").

**BACKGROUND:** On November 26<sup>th</sup>, 1984, the City Council approved a Ground Lease ("Lease") between the City and the Chamber concerning the real property at 123 E. Ramsey St., Banning, CA where the Chamber resided until August 2006. The Lease was executed by the parties on December 1<sup>st</sup>, 1984. The term of the Lease was forty-nine (49) years (expiring on December 31<sup>st</sup>, 2033). The Lease allowed either party to initiate negotiations to extend the term for up to five (5) additional periods of ten (10) years each. The 1984 Lease provided the Chamber with real property interest at the 123 E. Ramsey St. location.

In 2005, the Community Redevelopment Agency ("Agency") and Chamber explored options to facilitate the relocation of the Chamber to alternative premises at 60 East Ramsey Street, Banning.

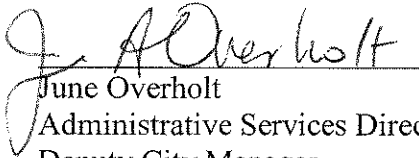
On January 18, 2006 a new lease agreement was entered into by the Chamber and the Agency pending the Agency's renovation of 60 East Ramsey Street for use by the Chamber.

The May 30<sup>th</sup>, 2006 Settlement Agreement between the Agency and the Chamber states that any right, title and interest in the 123 E Ramsey St. property would transfer to the City. However, it appears this did not occur as expected.

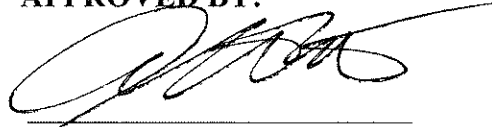
In May 2011, during the refinancing of the 1997 COP's, it was discovered that the Chamber is still listed on the title of the 123 E Ramsey St. property. The attached Cancellation and Termination Agreement was prepared by the City Attorney to formally remove the Chamber from the records at the County Recorder's office at the County of Riverside.

**FISCAL DATA:** No significant fiscal impact occurs to the City as a result of approving the cancellation and termination of the 1984 Lease with the Chamber.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2011-103**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE CANCELLATION AND TERMINATION OF THE 1984 LEASE AGREEMENT BETWEEN THE CITY OF BANNING AND THE BANNING/SAN GORGONIO PASS AREA CHAMBER OF COMMERCE.**

**WHEREAS**, The Community Redevelopment Agency (Agency) approved CRA Resolution No. 2006-15, approving the Settlement Agreement with the Chamber of Commerce (Chamber) on May 30<sup>th</sup>, 2006; and

**WHEREAS**, the Settlement Agreement stated that any right, title and interest in the 123 E. Ramsey St. property would transfer to the City of Banning.

**WHEREAS**, the Cancellation and Termination Agreement of the 1984 Lease Agreement as attached as Attachment "A" is necessary to submit to the County of Riverside Recorder's Office.

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

City Council hereby authorizes the Mayor of the City of Banning to execute the Cancellation and Termination Agreement attached hereby included as Attachment "A", and by this reference made a part hereto.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup>, day of December 2011.

\_\_\_\_\_  
, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2011-103, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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



TO BE RECORDED AND WHEN  
RECORDED RETURN TO:

City of Banning  
99 E. Ramsey St.  
Banning, CA 92220  
Attention: City Clerk.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11928 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

---

---

### CANCELLATION AND TERMINATION AGREEMENT

This TERMINATION AGREEMENT (this "Agreement"), dated as of December 13<sup>th</sup>, 2011, is among the CITY OF BANNING, a municipal corporation duly organized and existing under the laws of the State of California (the "City"), and the BANNING, SAN GORGONIO PASS AREA CHAMBER OF COMMERCE), a California nonprofit corporation (the "Chamber").

#### BACKGROUND:

1. On December 1, 1984, the City and the Chamber entered into a ground lease the ("1984 Lease Agreement") related to the property described on Exhibit "A" hereto and by this reference incorporated herein (the "Property"). The 1984 Lease Agreement was recorded in 1990 as Document No. 375025 in the records of the County Recorder of the County of Riverside.
2. The 1984 Lease Agreement provided rights for the lease of the Property and the ability to construct a site for a tourist center and chamber of commerce building on the Property.
3. Subsequently, the City and the Chamber agreed to alternative premises at 60 East Ramsey Street, Banning (the "Chamber Property"), for the Chamber to use for a tourist center and chamber of commerce building.
4. The City and/or Community Redevelopment Agency of the City of Banning (the "Agency") renovated the Chamber Property for use by the Chamber, and the Agency and the Chamber entered into the Lease Agreement, dated January 18, 2006 ("New Lease"), and recorded as Document No. 2006-0110845 in the records of the County Recorder of the County of Riverside. The New Lease on the Chamber Property was meant to replace the 1984 Lease Agreement with respect to the Property; however, a termination was never recorded for the 1984 Lease Agreement.

5. In 2009, the City completed the construction of the new police station on a portion of the Property.

6. The parties desire to cancel and terminate the 1984 Lease Agreement pursuant to this Agreement.

#### AGREEMENT

In consideration of the foregoing and the material covenants hereinafter contained, the City and the Chamber formally covenant, agree and bind themselves as follows:

SECTION 1. *Cancellation and Termination of 1984 Lease Agreement.* The City and the Chamber hereby cancel and terminate the 1984 Lease Agreement. From and after the date of recordation of this Agreement, the 1984 Lease Agreement shall be of no force and effect.

SECTION 2. *Future Actions.* The City and the Chamber agree to take such future actions as may be necessary or requested in connection with the cancellation and termination of the 1984 Lease Agreement including, but not limited to, execution of deeds, reconveyances or other instruments necessary to effectuate the purposes hereof.

SECTION 3. *Execution of Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

SECTION 4. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective Officers thereunto duly authorized, all as of the date first above written.

CITY OF BANNING

By: \_\_\_\_\_  
Barbara Hannah, Mayor

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

APPROVED AS TO FORM  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David J. Aleshire, City Attorney

BANNING, SAN GORGONIO PASS AREA  
CHAMBER OF COMMERCE, a California  
nonprofit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

**APPENDIX A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

**Parcel 1**

The southerly 24.5 feet of lot 4 and the northerly 6 feet of lot 3 of Map of Hathaway Addition to Banning, as shown by map on file in Book 5, Page 14 of Maps, Records of San Bernardino County, California

EXCEPTING THEREFROM the easterly 12 feet of said Lot 3 and Lot 4.

ALSO EXCEPTING THEREFROM the westerly 25 feet of the northerly 22 feet of the southerly 24.5 feet of said Lot 4.

**Parcel 2**

The southerly 5.5 feet of the northerly 11.5 feet of Lot 3 of Map of Hathaway Addition to Banning as shown by Map on file in Book 5, Page 14 of Maps, Records of San Bernardino County, California.

EXCEPTING THEREFROM the easterly 12 feet of said Lot 3.

STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

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

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

266

STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

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

I certify under penalty of perjury under the laws of the State of California that the  
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**JOINT MEETING  
CITY COUNCIL AND HOUSING AUTHORITY  
CONSENT ITEM**

**DATE:** December 13, 2011

**TO:** City Council

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

**SUBJECT:** Adoption of City Council Resolution No. 2011-105 and Housing Authority Resolution No. 2011-05 HA to Participate in the Riverside County Mortgage Credit Certificate Program

**RECOMMENDATION:**

1. That the City Council approve Resolution No. 2011-105 which will allow the City to participate in the Riverside County Mortgage Credit Certificate Program for mortgage loans available for the first time home buyers in Banning.
2. That the Banning Housing Authority approved Resolution No. 2011-05 HA which will allow the City to participate in the Riverside County Mortgage Credit Certificate Program for mortgage loans available for the first time home buyers in Banning.

**JUSTIFICATION:**

The Tax Reform Act of 1986 established the Mortgage Credit Certificates (MCC) as a means of assisting qualified individuals with the acquisition of new and existing single family housing. The County of Riverside is the lead agency in the MCC Program and the County Board of Supervisors has authorized the County Economic Development Agency (EDA) to apply to the California Debt Limit Allocation Committee (CDLAC) for an allocation of Mortgage Credit Certificates (MCC). Local agencies such as the City of Banning may participate in the program by adopting a resolution and submitting it to the County EDA. The County EDA will be submitting the application to the CDLAC early next year and has requested that the City submit its resolution for participation by January 5, 2012.

**BACKGROUND:**

A mortgage credit certificate entitles qualified home buyers to reduce the amount of federal tax liability on a home mortgage. This tax credit allows the buyer to qualify more easily for a loan by effectively increasing the stated income of the buyer.

The Riverside County MCC Program allows a 15% rate, which can be applied against the interest paid on the mortgage loan. The borrower can then claim a credit on their taxes equal to 15% on the interest paid during the year. Since the taxes paid by the borrower are being reduced, the annual take home pay is effectively increased. The borrower can still deduct the remaining part of the interest paid as a standard deduction. When underwriting a loan, a lender takes this potential increase in income into consideration and the borrower is able to qualify for a larger loan than would otherwise be possible.

*268*



### **Homebuyer Eligibility Criteria**

There are three (3) basic criteria for determining a homebuyer's eligibility for the MCC tax credits.

1. The borrower must be a first time home buyer, which is defined as a person who has not had an ownership interest in improved-upon residential real property nor filed any mortgage of real estate tax deductions during the most recent three (3) years.\*
2. The borrower's annual income must fall within the program income limits as follows:
  - a. Maximum Income Outside Target Area<sup>i</sup>
    - i. Household with 1-2 persons: \$70,400.00
    - ii. Household with 3+ persons: \$80,960.00
  - b. Maximum Income Inside target Area\*
    - i. Household with 1-2 persons: \$84,480.00
    - ii. Household with 3+ persons: \$98,560.00
3. The home being purchased must fall within the program purchase price limits as follows:
  - a. Maximum Home Purchase Price
    - i. Outside Target Area \$450,000.00
    - ii. Inside Target Area \$550,000.00\*

The home that is purchased in conjunction with an MCC must be the borrower's principal residence and may not be used as a business, rental, or vacation home. This program can be used with all types of homes including new and re-sale, detached and attached single-family homes, condominium units, a co-op unit, or a manufactured home on a permanent foundation.

### **CONCLUSION:**

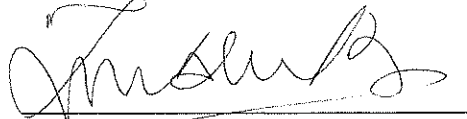
The MCC program would supplement the City's first time homebuyers program which is currently being implemented through the 20% set aside redevelopment agency funds.

#### **RECOMMENDED BY:**



Andrew J. Takata  
City Manager

#### **PREPARED BY:**



Zai Abu Bakar  
Community Development Director

#### **REVIEWED BY:**



June Overholt  
Deputy City Manager/  
Administrative Services Director

Attachments:

1. City Council Resolution No. 2011- 105
2. Banning Housing Authority Resolution No. 2011-05 HA

---

<sup>i</sup> Target areas are census tracts designated by the Federal Government to encourage investment

\* If the home is located in a target area census tract, then the first time home buyer requirement does not apply and the income and purchase price limits are higher.

# **ATTACHMENT 1**

**City Council Resolution No. 2011-105**

**RESOLUTION NO. 2011-105**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA PARTICIPATING IN THE  
COUNTY OF RIVERSIDE MORTGAGE CREDIT  
CERTIFICATE (MCC) PROGRAM**

**WHEREAS**, the Tax Reform Act of 1986 established the Mortgage Credit Certificate Program ("MCC") as a means of assisting qualified individuals with the acquisition of new and existing single-family homes; and

**WHEREAS**, pursuant to Division 31, Part 1, Chapter 3.5, Article 3.4 of the California Health and Safety Code Section 50197 et seq, local issuers are authorized to issue Mortgage Credit Certificates ("certificates") and administer the MCC Program; and

**WHEREAS**, the Board of Supervisors of the County of Riverside adopted Resolution No. 87-564 on December 22, 1987 establishing a Mortgage Credit Certificate Program; and

**WHEREAS**, the Board of Supervisors of the County of Riverside has authorized the Riverside County Economic Development Agency ("EDA") to administer the MCC Program pursuant to the applicable federal, state, and local policies and procedures, and to enter into those agreements necessary for efficient administration of the MCC Program; and

**WHEREAS**, the County of Riverside ("County") will be applying to the California Debt Allocation Committee ("CDLAC") for a mortgage credit certificate allocation in January 2012 or thereabouts; and

**WHEREAS**, the City of Banning wishes to participate in the MCC Program administered by the EDA in connection with mortgage loans it will make available for the acquisition of new and existing single-family homes in Riverside County; and

**WHEREAS**, adoption of this resolution is necessary to include the City of Banning as a participating unit of general government under Riverside County's MCC Program; and

**WHEREAS**, the City agrees to cooperate with the County of Riverside to undertake the MCC program within City jurisdiction to assist persons or households of limited income to purchase new and existing single-family homes located in the City; and

**WHEREAS**, the City by adopting this Resolution, hereby gives notice of its election to participate in the Riverside County MCC Program.

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

The City of Banning agrees:

1. To participate in the MCC Program administered by the County EDA in connection with mortgage loans it will make available for the acquisition of new and existing single-family homes in Riverside County; and
2. To assist the County of Riverside to market the MCC Program within the City's jurisdictional boundary by publishing a general public notice in the local newspaper at least twice a year.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_  
Mayor  
City of Banning

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

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

**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. 2011-105, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13<sup>th</sup> day of December 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# **ATTACHMENT 2**

**Banning Housing Authority  
Resolution No. 2011-05 HA**

**RESOLUTION NO. 2011-05 HA**

**A RESOLUTION OF THE CITY OF BANNING HOUSING  
AUTHORITY TO PARTICIPATE IN THE COUNTY OF  
RIVERSIDE MORTGAGE CREDIT CERTIFICATE (MCC)  
PROGRAM**

**WHEREAS**, the Tax Reform Act of 1986 established the Mortgage Credit Certificate Program ("MCC") as a means of assisting qualified individuals with the acquisition of new and existing single-family homes; and

**WHEREAS**, pursuant to Division 31, Part 1, Chapter 3.5, Article 3.4 of the California Health and Safety Code Section 50197 et seq, local issuers are authorized to issue Mortgage Credit Certificates ("certificates") and administer the MCC Program; and

**WHEREAS**, the Board of Supervisors of the County of Riverside adopted Resolution No. 87-564 on December 22, 1987 establishing a Mortgage Credit Certificate Program; and

**WHEREAS**, the Board of Supervisors of the County of Riverside has authorized the Riverside County Economic Development Agency ("EDA") to administer the MCC Program pursuant to the applicable federal, state, and local policies and procedures, and to enter into those agreements necessary for efficient administration of the MCC Program; and

**WHEREAS**, the County of Riverside ("County") will be applying to the California Debt Allocation Committee ("CDLAC") for a mortgage credit certificate allocation in January 2012 or thereabouts; and

**WHEREAS**, the City of Banning wishes to participate in the MCC Program administered by the EDA in connection with mortgage loans it will make available for the acquisition of new and existing single-family homes in Riverside County; and

**WHEREAS**, adoption of this resolution is necessary to include the City of Banning as a participating unit of general government under Riverside County's MCC Program; and

**WHEREAS**, the City agrees to cooperate with the County of Riverside to undertake the MCC program within City jurisdiction to assist persons or households of limited income to purchase new and existing single-family homes located in the City; and

**WHEREAS**, the City by adopting this Resolution, hereby gives notice of its election to participate in the Riverside County MCC Program.

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

The City of Banning Housing Authority agrees:

1. To participate in the MCC Program administered by the County EDA in connection with mortgage loans it will make available for the acquisition of new and existing single-family homes in Riverside County; and
2. To assist the County of Riverside to market the MCC Program within the City's jurisdictional boundary by publishing a general public notice in the local newspaper at least twice a year.

**PASSED, APPROVED, AND ADOPTED** this 13<sup>th</sup> day of December 2011.

\_\_\_\_\_  
Chairperson  
City of Banning Housing Authority

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

\_\_\_\_\_  
David J. Aleshire, Legal Counsel  
Aleshire & Wynder, LLP

**ATTEST:**

\_\_\_\_\_  
Marie Calderon, Secretary

**CERTIFICATION:**

I, MARIE A. CALDERON, Authority Secretary of the Banning Housing Authority, Banning, California, do hereby certify that the foregoing Resolution No. 2011-02 HA was duly adopted at a regular meeting of the Banning Housing Authority, Banning, California, on the 26th day of April 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Housing Authority