

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

February 14, 2012  
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 and the Banning Utility Authority and a Meeting of the City Council of the City of Banning Sitting In Its Capacity as Successor Agency.*

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

**I. CALL TO ORDER**

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

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS**

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

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

#### IV. CONSENT ITEMS

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

**Motion: That the City Council approve Consent Item 1 through 10**

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

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

1.	Approval of Minutes – Regular Joint Meeting – 01/24/12 (Closed Session) . . . .	1
2.	Approval of Minutes – Regular Meeting – 01/24/12 . . . . .	3
3.	2 <sup>nd</sup> Reading: Ordinance No. 1444, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.20 of the Municipal Code Entitled “Claims Against City” Adding Procedural Requirements for Claims Made Against City in Compliance with California Government Code . . . . .	22
4.	2 <sup>nd</sup> Reading: Ordinance No. 1445, An Ordinance of the City Council of the City of Banning, California, Establishing Section 3.21 ‘Financial Procedures’ to the Banning Municipal Code . . . . .	27
5.	2 <sup>nd</sup> Reading: Ordinance No. 1447, An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 11-97502 Amending the Sign Regulations for Freeway-Oriented Signs . .	30
6.	Approval of Accounts Payable and Payroll Warrants for the Month of December 2011 . . . . .	37
7.	Report of Investments for November 2011 . . . . .	40
8.	Report of Investments for December 2011 . . . . .	50
9.	Resolution No. 2012-09, Entering Into Agreements with The Emergency Response Network of the Inland Empire (ERNIE) and with The California Water/Wastewater Agency Response Network to Provide Mutual Aid in the Event of a Catastrophic Disaster . . . . .	60
10.	2010-11 Annual Report of Development Impact Fees . . . . .	87

- 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 UTILITY AUTHORITY.**

#### V. CONSENT ITEM

1.	Resolution No. 2012-02 UA, Awarding a Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, California for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS) . . . . .	91
2.	Resolution No. 2012-03 UA, Amending the Professional Services Agreement with AECOM, (Formerly Known as Metcalf & Eddy, Inc.) for the Design of the Transmission Pipeline to Deliver State Water Project Water to Banning . . . . .	120

Adjourn Joint Meeting of the Banning City Council and the Banning Utility Authority and call to order a meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity as Successor Agency.

**VI. CONSENT ITEMS**

1. Approval of Minutes – Regular Jt. Meeting – 01/24/12 (Closed Session) . . . . . 127
2. Approval of Minutes – Regular CRA Meeting – 01/24/12 . . . . . 129
3. Resolution No. 2012-03 SA, Authorizing Investment of Monies in the Local Agency Investment Fund . . . . . 131
4. Resolution No. 2012-11, Authorizing Investment of Monies in the Local Agency Investment Fund . . . . . 134

Adjourn Meeting of the Banning City Council and the Banning City Council Sitting in Its Capacity of a Successor Agency and reconvene regular City Council Meeting.

**VII. PUBLIC HEARINGS**

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

1. Tow Fee Study  
Staff Report . . . . . 136  
Recommendation: **That the City Council adopt Resolution No. 2012-02, Amending the Towing Franchise Fee and Vehicle Storage Fee in Conformance with Chapter 3.36 “Fee and Service Charge Revenue/Cost Comparison” System and accept the recommendations of the attached “Review of Towing Franchise Fee and Other Associated Fees” final report completed by Willdan Financial Services.**
2. Resolution No. 2012-10, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste.  
Staff Report . . . . . 156  
Recommendation: **That the City Council adopt Resolution No. 2012-10, Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste, as set forth in the City of Banning’s Franchise Agreement with Waste Management of the Inland Empire.**

**VIII. REPORTS OF OFFICERS**

1. New Developments in the Law: AB 23 and New FPPC (Fair Political Practices Commission) Rules In Re to Appointments to Paid Positions.  
Staff Report. . . . . 171

Recommendation: **File and receive City Attorneys' report on new developments in law relating to the conduct of local agency meeting: AB 23 (relating to disclosure of compensation for corollary bodies) and new FPPC rules in re conflicts-of-interest procedures for appointments to paid positions.**

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

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

**X. ITEMS FOR FUTURE AGENDAS**

New Items –

1. Consideration of a resolution in support of the transfer of Ontario International Airport (ONT) back to local control. *(Robinson)*
2. Discussion and passing of a resolution in regards to Healthy Eating-Active Living (HEAL) Cities Campaign *(Franklin)*

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Policies & Procedures (fingerprinting) for Applicant re. Projects and Applicants for Commissions & Committees *(Commissions & Committees)*
3. Water Resources Report *(Workshop) (April)*

Successor Agency

1. Parking Delineation (Martin to 4<sup>th</sup>; Livingston to Williams, Nicolet
2. Proposal from Owners of Oddfellows Building - 42 W. Ramsey Street.

**XII. 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

01/24/2012  
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Robinson on January 10, 2012 at 4:03 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/Agency Counsel  
Zai Abu Bakar, Community Development Director  
Duane Burk, Public Works Director  
Bill Manis, Economic Development/Redevelopment Director  
Marie A. Calderon, City Clerk/Secretary

PUBLIC COMMENTS

There were none.

CLOSED SESSION

City Attorney said the closed session items are one matter of potential litigation pursuant to the provisions of Government Code Section 54956.9; matters involving real property negotiations pursuant to the provisions of Government Code Section 54956.8 concerning parcels behind the City Yard APN's – 541-260-030, 541-260-031, 541-260-040, 541-260-043, 541-260-045 and APN: 541-260-045; and APN: 538-230-011 located at 226 S. 22<sup>nd</sup> Street; a potential litigation matter (claim) involving sewer damage with the property located 1358 N. Murray Street; and one matter of pending litigation pursuant to the provisions of Government Code Section 5496.9(a) to give a status on Banning Airport Associates, et al. v. City of Banning, et al.: (Riverside Superior Court Case No. RIC 497338).

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

Meeting went into closed session at 4:02 p.m. and returned to regular session at 4:42 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:43 p.m.

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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

01/24/12  
REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the Banning City Council Sitting in Its Capacity of a Successor Agency and the Community Redevelopment Agency was called to order by Mayor Robinson on January 10, 2012 at 5:02 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

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  
Duane Burk, Public Works Director  
Leonard Purvis, Police Chief  
Jeff Stowells, Battalion 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

The invocation was given Councilmember Botts. Councilmember Machisic invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney said that the Council and Agency met in closed session to discuss one matter of potential litigation and a status report was given and no action was taken. For the City we discussed real property negotiations regarding the parcels at the City Yard and a status report was given and no action was taken. They also discussed property at 226 S. 22<sup>nd</sup> Street and a status report was given on those negotiations and no action was taken. The Council discussed a claim concerning property at 1358 Murray Street regarding sewer damage and direction was given for further negotiations on that claim. In regards to Banning Airport Associates a status report was given on settlement of that matter and based upon that discussion they would like to add to the agenda this evening a settlement agreement with Banning Airport Associates. Staff would like to add it as Agenda Item VIII. 2. There have been on-going settlement discussions

and just late last week they worked out a settlement agreement and wanted to present it to the Council for public action this evening.

**Motion Hanna/Botts to add the item regarding Banning Airport Associates to the agenda under VIII. 2. Motion carried, all in favor.**

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – On Items Not on the Agenda

Charlene Sakurai, 4985 Bermuda Dunes addressed the Council announcing that February is Heart Month nationally and the American Heart Association is again doing its “Going Red for Women” Campaign to educate the public about women’s heart disease and risk for stroke. This will be the 5<sup>th</sup> Year that the Banning Cultural Alliance will be holding this event and it will be the “5<sup>th</sup> Annual Go Red for Women Luncheon” on Saturday, February 11<sup>th</sup> at 11:30 a.m. with doors opening at 11 a.m. It will be held at the Banning Women’s Club and the cost is \$15.00 and will include lunch, speakers, 50/50, door prizes, etc. You can make reservations by calling the Banning Cultural Alliance at 922-4911.

Marva Biggers addressed the Council stated that she is the aunt of a deceased person, Tasha Jean Biggers. She along with two other individuals that were citizens of the city of Banning were murdered on September 6, 2011 which was four months ago. If she is not mistaken, the articles that appeared in the Record Gazette and the Press Enterprise pointed out to all of you that these were the first homicides in the city of Banning for 2011. She is coming on ask on behalf of her family, her niece’s family who was a mother, a daughter, a sister and a friend along with Mr. Hunt who was also someone’s son, someone’s father, someone’s spouse, someone’s friend, someone’s uncle, and cousin and Miss Moore who was someone’s daughter, someone’s mother, someone’s spouse, etc. She is asking that the City of Banning post a reward for those persons who took these three people’s lives. No one has the right to take someone’s life. She said that her niece was 33 years old and has left behind two sons. The hardest part is coming up when those individuals who took their lives are faced with justice. We all know inside this room and outside these doors that money does a lot of things and that is why she is asking that the City of Banning please don’t sit on this anymore and make a decision so that these streets can be safe for our children and our children’s children to be able to enjoy that life we have and that is why she is here. She said that she has spoken several times with Sgt. Diaz and Det. Merritt and they have been very cooperative and very honest, very forthcoming and she can’t tell you how in these circumstances how different it has been to come to the police department and have them have open doors. She is asking the Council for their help in posting a reward just like it was done in Moreno Valley with Normal Lopez because facts come out and information comes out and people start talking. We need to get the people talking. She asked the Council to consider this and she thanked them for their time.

City Manager said he will discuss this with the police chief.

City Manager said he would like to review some public comment that happened at the last meeting. We redid our internet website and by doing that it created some “cookie” issues for

people when they were trying to pay their bill. We were able to resolve that and online it actually tells you how to go about getting rid of your cookies in order to pay your bill. That was one lady's issue. There was another lady that had an issue who had a spiking bill. What our customer service reps do they usually monitor bills and if they see a spike, they flag it and contact the person, which they did in this case, and they also at that point in time have a re-read. When we have a re-read we don't send anymore bills until we have it re-read. To his understanding there was a re-read and the person wanted to make payments and we said yes but in regards to the payments there was a misunderstanding. Our staff actually works with people when their bill goes up and you do have an option if your bill spikes up to either check your water or wait for the re-read but if the issue is on your end, then you are going to have a lot of water that you are going to have to pay for. We are not responsible for anything passed the meter. That is something the person has to take care of on their own.

Mayor Robinson asked that someone get back to Ms. Biggers as quickly as possible with what we can do on this.

City Manager addressed Ms. Biggers stating that for her information the Council can't take any action on anything at the meeting. It has to be posted 72 hours ahead of time before they could actually consider it.

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Proclamation – Chamber Citizen of the Year Stan Smith

Mayor Robinson said that at the Chamber Installation event the other night Stan Smith received some proclamations from Assemblyman Cook and Senator Emmerson and the school district and one was missing from the City of Banning and that was an oversight on our part and we wanted to taken this opportunity to make this presentation and realize how important he is to this community and the children's programs that we have in the city of Banning. Mayor Robinson read the proclamation for the benefit of the audience and he along with the City Council members presented the proclamation to Stan Smith.

Mr. Smith said that he has been in Banning for 40 years and he has really enjoyed all the things that he has done in coaching and working for the City. He loves working at the Community Center and Heidi Meraz is a great person to work for and we have a great staff and he thinks this city is on the verge of growing and he is looking forward to still being around and helping out as much as you can.

2. Police and Fire Updates by Chief Purvis and Chief Stowells

Fire Update –

Battalion Chief Stowells addressed the Council stating he was happy to be here and have an opportunity to tell them what they did in 2011. In 2011 the two engines that are assigned to the City of Banning responded to 4,840 calls for service. That was a 9% increase from 2010 and

most of that increase revolves around the EMS side of it and not necessarily fire. They also provided at both of the fire stations tours to school children and Boys and Girl Scouts and most of that revolves around knowing the 911 system and how to use it appropriately and those programs have done pretty well and they have received some grants to run those programs as well. It provides young children an opportunity to learn and be a part of the solution for helping if somebody goes down in their own family. One of the other things that they do every year and was very successful this year with the help of all of the community was the "Spark of Love" Toy Drive that they do through the Fire Department. They provided three to four gifts for 1,030 children and that was only possible because of the donations from people in the community whether it was the actual toy and/or money donations. That was great thing for them and they enjoy doing it every year. They also do public safety and education tips each month and you can access those online through the City's website and the link to the Fire Department. Currently, he would like to emphasize the use of a chimney sweep in a fire place that you burn wood in because we have had a couple of fires within the last couple of months that have been started because that had not been done. We have also had some fires start from unattended space heaters. As a safety tip we would like to remind everyone while it is cold and while we want you to be warm and comfortable just don't leave those unattended.

There were some questions and discussion about the process of getting these toys together for those in need and working together with other groups so there is no duplication and they can provide it to everyone that needs it.

#### Police Update –

Chief Purvis addressed the Council stating that he would be giving a quick update giving 2011 highlights to let them know where they are as a police department and what has been happening. He said he was going to start with some negative news and then hopefully after that it gets a little bit better. He said that unfortunately crime is up and they had some luck for six years and year after year they saw declines in almost every crime category from 2005 to 2010 but unfortunately in 2011 they saw several crime increases in different categories. The most notable were in burglary and vehicle theft and larcenies and those were in the higher twenty percentile point. Burglaries were up 28%, vehicle theft at 28% and larcenies and theft up also up about 27%. They did see a reduction in robberies by a negative 6% but in every other crime category they saw increases. There are a few explanations with the first being the economy and we all know that we are going through tuff economic times. We do have another factor which is AB 109 and that is with releases that are starting to occur and that did occur in October 2011 and we haven't felt the impact of that yet because that process has not come to fruition as far as the jail releasing a large amount of inmates yet but we are expecting that to occur here within the next year and hope it doesn't impact our crime rates that much. Also we had a loss in positions going from 41 police officers just a few years ago to our current 31 officers so that obviously has an impact. We also loss some non-sworn positions going from about 20 down to 12 non-sworn positions and that does have an impact. He said that he is proud of the men and women of the Banning Police Department that are out there everyday doing the best they can to keep crime at bay and our non-sworn personnel are working just as hard dealing with members of the public. A good bit of news is that the Banning Police Department is committed to seeking grants and last year they were very successful in being awarded about \$831,000 dollars worth of grants that they are very appreciative of and most of the grant funding came from

Morongo Band of Mission Indians of about \$565,000. They will continue to seek grants as much as they can. They re-activated the Citizen Volunteer Patrol Program to try to get as many volunteers involved in our community and police department to help offset some of the losses they experienced at the police department. They also hired their first Tribal Liaison Police Officer and this is the first tribal liaison police officer he knows of in at least Riverside County that is working closely with the Tribe to try to bridge those gaps between the police department in a sovereign nation and that relationship is building slowly but surely and hope good things come of that relationship in the near future. They are trying to be as open as possible with the community and the public and every month they post a monthly report online and also post their policies and procedures and statistics. They are also trying to build a facebook page. They are also very proud of their community room and briefing room at the new police station and have used it quite a few times over the year to host community meetings and officer training for different agencies. They are working closely with Public Works Dept. to make Banning a "Graffiti Free" town and they are committed to keeping that going and to make sure we don't have a graffiti presence in this town. They also station the mobile command post throughout the city to reach out to citizens and businesses. They are also committed in working with the community and intervention and prevention is huge and he is committed to these programs and they are starting their sixth year of B.P.A.L.'s Saturday Morning Sports and Activities Program at Nicolet Middle School. They encourage the community to have their kids come out and spend time with police officers in a positive environment. Lastly, they had their 5<sup>th</sup> Annual "Shop with a Hero" event just last month where they partner up with Beaumont Police Department and they hosted 22 kids and treated them to breakfast and let them go through Wal-Mart and spend \$100 bucks.

### 3. Introduction of New Employees by the City Manager

City Manager as you know we started this recently and first of all these new employees are replacement employees. They are actually taking someone's place and we are not hiring any brand new positions. He introduced the new employees giving some background on each of them: Renee Addcox, Payroll Coordinator; Jessica Hicks, Receptionist; and Joni Miller, Human Resources Technician.

### CONSENT ITEMS

Mayor Robinson said on page 3 of the agenda under Section V. Consent Item No. 1, Resolution No. 2012-07, will be added to this portion of the agenda for approval and will be added as No. 12.

#### 1. Approval of Minutes – Regular Joint Meeting – 12/13/11 (Closed Session)

Recommendation: That the minutes of the Regular Joint Meeting of December 13, 2011 be approved.

#### 2. Approval of Minutes – Regular Meeting – 12/13/11

Recommendation: That the minutes of the Regular Meeting of December 13, 2011 be approved.



3. Approval of Minutes – Regular Joint Meeting – 01/10/11 (Closed Session)

Recommendation: That the minutes of the Regular Joint Meeting of January 10, 2012 be approved.

4. Approval of Minutes – Regular Meeting – 01/10/12

Recommendation: That the minutes of the Regular Meeting of January 10, 2012 be approved.

5. Approval of Accounts Payable and Payroll Warrants for the Month of September 2011.

Recommendation: That the City Council review and ratify the following report per the California Government Code.

6. Approval of Accounts Payable and Payroll Warrants for the Month of October 2011.

Recommendation: That the City Council review and ratify the following report per the California Government Code.

7. Approval of Accounts Payable and Payroll Warrants for the Month of November 2011.

Recommendation: That the City Council review and ratify the following report per the California Government Code.

8. 2<sup>nd</sup> Reading: Ordinance No. 1440, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.24 of the Banning Municipal Code to Permit the City Manager to Sign Conveyances and Other Instruments.

Recommendation: That Ordinance no. 1440 pass its second reading and be adopted.

9. 2<sup>nd</sup> Reading: Ordinance No. 1443, An Ordinance of the City Council of the City of Banning, California, Re-establishing and Declaring Prima Facie Speed Limits Within Specified Speed Zones Throughout the City of Banning.

Recommendation: That Ordinance no. 1443 pass its second reading and be adopted.

10. Approve Amendment to Contract with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

Recommendation: That the City Council amend the current limit on compensation for services (\$50,000) with Norman A. Traub for Investigation Services for the City of Banning Police Department to \$75,000.

11. Resolution No. 2012-06, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal year 2012-2013.

Recommendation: That the City Council adopt Resolution No. 2012-06.

12. Resolution No. 2012-07, Appropriating Funds for the Downtown Corridor Underground Utilities Conversion Project.

Recommendation: That the City Council adopt Resolution No. 2012-07.

**Motion Machisic/Franklin that Consent Items 1 through 12 be approved.** Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

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## ORDINANCES-INTRODUCTION

1. Ordinance Nos. 1444 & 1445, Ordinances of the City Council of the City of Banning to Revoke and Amend Section 3.20 "Claims Against the City" and Establish Section 3.21 "Financial Procedures" of the Banning Municipal Code.  
(Staff Report – June Overholt, Director of Administrative Services/Deputy City Mgr.)

Director Overholt stated that these particular ordinances are a joint project with the City Attorney's office and proceeded to give the staff report as contained in the agenda packet going over some of the new laws in handling claims and the administration of warrants paid by the City in its normal business operations.

There was some Council and staff discussion in regards to the process of warrants and that this was for procedure and does not changing the rights of any of the residents.

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

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1444. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.20 of the Municipal Code Entitled "Claims Against City" Adding Procedural Requirements for Claims Made Against City in Compliance with California Government Code.

**Motion Franklin/Machisic to waive further reading of Ordinance No. 1444. Motion carried, all in favor.**

**Motion Hanna/Franklin that Ordinance No. 1444 pass its first reading. Motion carried, all in favor.**

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1445. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Establishing Section 3.21 'Financial Procedures' to the Banning Municipal Code.

**Motion Machisic/Franklin to waive further reading of Ordinance No. 1445. Motion carried, all in favor.**

**Motion Franklin/Machisic that Ordinance No. 1445 pass its first reading. Motion carried, all in favor.**

## PUBLIC HEARINGS

1. Zone Text Amendment (ZTA) No. 11-97502, Amending Sign Regulations for Freeway-Oriented Signs.  
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Zai addressed the Council giving the staff report as contained in the agenda packet going over the purpose of this proposed ordinance and she started her power-point presentation (see Exhibit "A").

There was Council and staff discussion in regards to understanding direct line of sight, having design standards in reviewing proposals, design approaches, the maximum number of signs and the franchise companies that have standard signs.

Mayor Robinson opened the public hearing on this item. Seeing none, he closed the public hearing.

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1447. City Clerk read: An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 11-97502 amending the Sign Regulations for Freeway-Oriented Signs."

**Motion Botts/Hanna to waive further reading of Ordinance No. 1447. Motion carried, all in favor.**

**Motion Hanna/Machisic that Ordinance No. 1447 pass its first reading. Motion carried, all in favor.**

2. Resolution No. 2012-02, Amending the Towing Franchise Fee and Vehicle Storage Fee in Conformance with chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" System.

City Manager said that the Council approved towing contracts and what we have done was to actually have a study done for the towing contract but it was not available with the staff report in time for the Council meeting so staff is asking that the Council open the public hearing and then continue it to the next Council Meeting.

Mayor Robinson opened the public hearing for comments from the public. There were none.

**Motion Botts/Franklin to continue the public hearing to February 14, 2012. Motion carried, all in favor.**

#### REPORTS OF OFFICERS

Mayor Robinson said that we are adding one item to this section which is a Settlement Agreement with Banning Airport Associates and the Council has already voted to add this to the agenda.

1. Adoption of a City Council Resolution Relating to Assembly Bill 936  
(Staff Report – Bill Manis, Economic Development/Redevelopment Director)

Director Manis gave the staff report on this item as contained in the agenda packet. This bill requires that any time a city, county, or RDA (redevelopment agency) forgives a debt of the other, it must adopt a resolution making specific findings. In addition, cities, counties, and RDA's are required to adopt a resolution by Feb. 1, 2012, stating whether or not they forgave any loans,

advances between Jan. 1, 2010 to December 31, 2011 and the resolution must be sent to the State Controller.

Mayor Pro Tem Franklin said just to clarify this has nothing to do with private citizens or private businesses. This is only the City and RDA loaning money to each other. Director Manis said that was correct or a public entity.

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

**Motion Hanna/Machisic that the City Council adopt Resolution No. 2012-08, Declaring that the City Council of the City of Banning, California, under Health and Safety Code Section 33354.8 that, during the period of January 1, 2010 to December 31, 2011, the City has not forgiven the repayment, wholly or partially, of any loan, advance, or indebtedness owned to the City by the Redevelopment Agency. Motion carried, all in favor.**

2. Settlement Agreement with Banning Airport Associates  
(Staff Report – David J. Aleshire, City Attorney)

City Attorney said that this is the added agenda item. Over ten years ago the City approved a project with All American Racing to build a drag strip on airport property. That project was intended to produce a project that would be a venue for different auto events, drag racing, and activities that would help bring economic development to the city. Over a period of time the project faced a number of problems. The original party "All American Racing" was replaced with a subsequent entity called "Banning Airport Associates" and that occurred back in 2005. Due to various reasons which ultimately involved litigation between the parties the City in March 2008 revoked the Conditional Use Permit that had been approved for the project and thereafter litigation followed. That litigation has been on-going and both the parties have spent significant sums in undertaking this lawsuit. The developer Banning Airport Associates claims significant monetary damages which they were seeking to recover and the Council conducted a whole reconsideration of the matter and it should not have taken this long but the judge handling this matter was basically changed and we were kind of starting over again in front of a new judge. Along the way we had a dialogue with Banning Airport Associates concerning any potential settlement of the claim and the agreement has been negotiated. The settlement agreement provides for a payment in the amount of \$197,000.00. This payment is basically spaced out over a period of time so it will fall into two different fiscal years which makes it a little bit easier for us to deal with the payment. The developer had originally installed some roadway improvements and we think the value of those roadway improvements were somewhere in the range of \$160,000.00 to \$175,000.00 dollars and fundamentally we conclude that we did get a roadway out of the project and it is appropriate to reimburse the Banning Airport Associates for the roadway that was constructed and if you take that as being the value of that roadway it seemed like the additional \$20,000 to \$30,000 dollars that we are paying to settle this was basically based upon our estimate of what we would spend in legal fees on a go-forward basis. City Attorney said that their office has been willing to recommend this settlement because if you consider the roadway improvement which is really to our benefit and would not be Banning Airport Associates' long-term benefit it is really for the general benefit of the City and if you take the potential that we would spend in going forward in the litigation the \$197,000.00 that they are recommending is a reasonable settlement especially as we have

negotiated provisions which allow us to pay over the two-fiscal year period. So in terms of getting this on the agenda we had some last-minute developments to pull this together which meant although it didn't make the agenda as you said earlier made the recommendation that you add this to the agenda as an added item and the Council made that finding so we have the settlement agreement on the agenda tonight for approval.

Mayor Robinson asked what caused this to come forward to us this evening; what was the trigger that caused that. Was there a deadline on the first payment?

City Attorney said one of the accommodations we had in this agreement was the fact that it would be paid in two different fiscal years and so the first payment is due on or before January 31, 2012. So this is your last meeting before the end of the month in order to get the agreement approved and make that payment.

Mayor Pro Tem Franklin said that by making this payment we are not admitting to any liability?

City Attorney said no. Basically there are provisions in here where both parties are dismissing claims against each other but neither party is conceding that they did anything wrong.

Councilmember Botts said he thinks a provision of this obviously in deliberation we looked at the fact that we now have a significantly improved road of value of about \$175,000 that the taxpayers will not be paying for. On the other hand he believes that going forward future development along this road will be assessed a portion of that, if he is correct. The bottom line is that we will recoup that by future development.

City Attorney said in terms of the negotiations and our discussion about this we did talk about the potential for getting reimbursement for this amount in terms of properties that would benefit from the enhanced access. That is not specifically a term of the agreement. The City would need to impose that reimbursement program in terms of the future properties and that is something that we can work on with Duane Burk to put something in place. But that would be a mechanism to recoup the expense.

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

**Motion Machisic/Franklin to approve the settlement agreement with Banning Airport Associates. Motion carried, all in favor.**

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND THE COMMUNITY REDEVELOPMENT AGENCY.

#### REPORTS OF OFFICERS

1. Initial Enforceable Obligations Payment Schedule (EOPS) Resolution and the Preliminary Draft Recognized Obligation Payment Schedule (PDROPS) Resolution
2. Adoption of a City Council, acting as the Successor Agency, Resolution Relating to the

City Managers Authority under ABX126  
(Staff Report – Bill Manis, Economic Development/Redevelopment Manager)

Director Manis gave the staff report on both of these items as contained in the agenda packet. He said that this is yet another item in response to ABX126 which was approved by the California Supreme Court at the end of last year which is the redevelopment Opt-Out bill.

Mayor Robinson said that he overlooked opening the joint meeting and will do so at this time. Mayor Robinson adjourned the regular City Council Meeting and called to order a joint meeting of the Banning City Council Sitting In Its Capacity of a Successor Agency and the Community Redevelopment Agency.

**Motion Machisic/Franklin that the Successor Agency adopt Resolution No. 2012- 01 SA of the City Council of the City of Banning acting in its capacity as Successor Agency to the Community Redevelopment Agency of the City of Banning, California receiving and adopting its Enforceable Obligation Payment Schedule (EOPS) and receiving and adopting a Preliminary Draft Recognized Obligation Payment Schedule (PDROPS) pursuant to Health and Safety Code Section 34177 and transmitting the draft PDROPS to the necessary agencies. Motion carried, all in favor.**

**Motion Hanna/Robinson that the Agency Board adopt CRA Resolution 2012-02 of the Community Redevelopment Agency of the City of Banning, California amending and updating its Enforceable Obligation Payment Schedule (EOPS) and adopting a Preliminary Draft Recognized Obligation Payment Schedule (PDROPS) pursuant to Health and Safety Code Section 34177 and transmitting the draft PDROPS to the Successor Agency. Motion carried, all in favor.**

**Motion Hanna/Botts that the City Council, acting as the Successor Agency: Adopt City Council Resolution No. 2012-02 SA declaring that the City Council of the City of Banning, California, acting as the Successor Agency to the Community Redevelopment Agency of the City of Banning, California, authorizing the City Manager to undertake all administrative actions necessary to comply with ABX126. Motion carried, all in favor.**

Mayor Robinson adjourned the joint meeting of the Banning City Council Sitting in Its Capacity of a Successor Agency and the Community Redevelopment Agency and reconvened the regular City Council Meeting.

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

City Council

Mayor Pro Tem Franklin –

- Attended a hospital presentation last week at Sun Lakes and it was interesting to see the pictures of where we are going regarding the improvements at the hospital. They would like to recommend that we eventually look towards a presentation here for our Council, as well as, the

public to see. They did say that the construction is on schedule and the first part is supposed to be completed by April 2013.

- Attended the San Geronio Pass Water Agency meeting and one item of discussion had to do with the design contract for the extension of the State Waterline Project to come to the Banning basin and their board agreed to pay 50% of the cost up to \$50,000. It is anticipated that the cost to finish the design is about \$80,000. So they said if Banning steps up and pays 50%, then they will pay up to \$50,000 for the design of the pipeline coming into Banning.
- Attended the Community Action Partnership Energy Task Force Meeting and they had a discussion of where we were with the Low Income Home Energy Assistance Program (HEAP). Congress approved \$3.5 billion and this is down \$1.1 billion from last year. It is a 23.8% reduction for the State of California. We have asked as Riverside County to get additional monies and through the American Recovery and Reinvestment Act we are asking for additional money with the understanding that we will be able to spend that. As to how this impacts our residents is that this is money used for weatherization of homes, as well as, utility assistance for our low income residents.
- She and Councilmember Hanna attended the Anti-Human Trafficking and Sexual Exploitation Community Forum last week. It was very interesting to find out what kind of penetration is here in Riverside County and they talked about how this is a \$32 billion dollar industry and mainly because it is recyclable. They use people over and over again for both labor and sexual exploitation. They have uncovered over 80 operations here in Riverside County and one of the points they made is that prostitution starts at age 12 and what they are asking us to do as a community is to be aware of what all of the signs are in our neighborhoods. They showed a video where it was an upper income neighborhood and the lawn was manicured but they had slaves inside that house. You don't always know from the outside but there are tips that you can look at and she does have some information for the rest of the Council. Hopefully we can have them come out and give a short presentation to our city at one point because they said the biggest piece of it is to really be able to identify what is going on in your neighborhood because a lot of people are not aware this is happening.
- Friday she attend the League of California Cities meeting for Community Services and they were given an update on the State budget and redevelopment and there are a lot of things going on with the judgment on AB 26. They said that there is a growing list of problems and one example was that the City of Los Angeles and Los Angeles County have decided not to be successor agencies so that means all the things that we are doing here in Banning will now go to the State for Los Angles. They also said that the budget relies on cuts, as well as, some tax increases and the tax increase will be on the ballot and it is a half-cent per dollar spent for four years. They do want additional cuts but there is a concern that some of these cuts may affect matching funds that we get from the federal government do they are just saying that they really don't know where it is all going to shake out but there will be more coming because it seems to be changing everyday.
- On the federal level we heard that the SAFETEA-LU money was reauthorized through March 31, 2012 but they are working on trying to get it to be a multi-year agreement instead of just one year. Also, because the Super Committee couldn't come to a consensus on spending money, automatic budget cuts will begin in January 2013 and will continue through 2021 and they will total \$1.2 trillion dollars or \$109 billion dollars per years. Social Security, veteran's benefits and Medicaid are exempt from the cuts, and Medicate is limited to 2% of the provider only funding and it doesn't impact the beneficiary.

- In their Committee they talked about two main things: 1) California Library Services Act and this is where they do literacy for residents through the libraries and this was cut from the State budget and she was able to find out for the city of Banning that this does not have a big impact on us and it is about \$3,000 dollars and about 1% of our library's budget; and 2) HEAL (Healthy Eating – Active Living) Cities Campaign is something that we have talked about before but we were asked to have our cities each come back and for those who are not members do a resolution and there are 91 cities in the state that are involved and we are not one of the 91. The priorities are healthy food access, physical activity and employee wellness for City staff.

Councilmember Machisic –

- Last Saturday he went over to Beaumont and they had a Veterans event where they had all kinds of booths talking about rights and privileges that certain veterans had. They must have had at least 40 different booths where they talked about everything from hospital services, their rights under the GI bills, etc. and when he walked in he was overcome by the number of people in attendance and they must have had over 150 people. He said it was a great event.
- He said that WRCOG (Western Riverside County of Governments) has formed different kinds of subcommittees to find out if they can assist in various things in different communities and this past Wednesday, Jan. 18<sup>th</sup> at the Murrieta Library there was a joint committee of the Economic Development Committee, Education, and the Health subcommittee and they invited businessmen and wanted to hear what business people had to say and he and the City Manager attended an event. Some of the things they talked about was that obviously the dollar is down and they used some illustrations because a lot of those men in there and they were all men were talking about how they conduct trade. The trade is good in America because the dollar is down but there are some bad affects to it. They also indicated that if cities want to support certain industries they ought to concentrate on one or two because you can't use a shotgun approach. They also believed in mentoring. That you could get together and help people who work like in the green industry, health industry and so on and as they went through these various things he was trying to think what could WRCOG do because they have been involved in a lot of things and mentoring is one and that would cross community lines and we now have 17 cities in WRCOG and each city cannot support mentoring for each industry but it is a way WRCOG could do it. They also indicated that we need to look forward to housing changes in the future because of a number of factors: 1) the cost of homes; 2) the number of low paying jobs; and 3) price of gasoline where people commute. They think that housing in the future whenever that is, is going to be high-density – apartment houses, condos, houses owned by the City where they are rented out, more people are renting. It was very interesting because business people see things a little differently than we do in a city and he thought it was an excellent experience.

Mayor Robinson –

- Yesterday he and Fred Mason, Electric Utility Director attended a SCPA (Southern California Public Power Authority) meeting and acronyms don't go over real well with Assemblyman Paul Cook and we went in there with a handful of acronyms and he told us to send it back as real language so we are going to do that. We were trying to address with the legislators the issue of taking our public utility and the local control of it away from us and putting it in the hands of the State. Rod Wright, Senator from South Los Angeles and some



definite colorful language to talk about how silly this is to try to fleece us again on a system that has been over 80 years in operation and hand it over to the State and let them run it. We will follow-up with some more information to Assemblyman Paul Cook who took the time to meet with us. They met with Teresa who is a legislative aide to Senator Emmerson who is our representative in our area and gave her the same information on our concern about our public utilities being run by the State.

**Councilmember Botts –**

- He said that Councilmember Franklin talked about SAFETEA-LU and the Mayor just talked about acronyms and SAFETEA-LU is a transportation federal reauthorization transportation bill which is terrible important to us. Normally we authorize every six years and with all the partisanship it has sort of gone south over the past years but it is a multi-trillion dollar bill for building highways, freeways, bridges so we have a real significant benefit coming back to the City of Banning and the City of Riverside and he represents the Council at the Riverside County Transportation Commission. In regards to that there was a hearing by Southern California Association of Governments (SCAG) Monday in Riverside and they have a RTP (Regional Transportation Plan) Plan for the next 35 years of how do we deal with transportation and multiple issues. One of the interesting things is that they want to build a \$550 billion dollar truck freeway just for trucks from Los Angeles coming out with four lanes and would be a toll road. He said that he believes that he did share that we are going to extend the 91 freeway twelve miles from the Orange County line through Corona and Riverside and it is a \$1.5 billion dollar project but it is going to be a toll road. His position to them was that if we are asking individual citizens to pay the toll, we ought to ask the truckers to pay, if we are going to build a whole freeway. No one answered where we are going to find the \$550 billion dollars to build it but it is a challenging idea.
- As your representative to the Banning Chamber of Commerce he attended their last board meeting and it was a very good meeting and he was pleased to see that they have scheduled a workshop to analyze and look at where do we go from here as a chamber, how do we expand, how do we get healthy financially, how can we better work with the City of Banning and so forth and that session will be coming up and they asked that he participate in that workshop.

City Committee Reports – There were none.

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

Report by City Manager

- Family Dollar just closed escrow on Monday and they received their demolition permit and they will start demolition of the old Dick's Tire building tomorrow.
- The Foreclosure Workshop by the Fair Housing Council of Riverside County will be held on March 22, 2012 from 4 to 7 p.m. in the Council Chambers. This workshop is to provide information on how to prevent home foreclosures and how to work with the lenders to prevent that.
- In regards to 385 W. Ramsey Street which is the burnt out older house asbestos removal will be between January 31<sup>st</sup> and Feb. 2<sup>nd</sup> and demolition should be completed by the end of February.

- Duane Burk and his staff met with Serrano Del Vista to talk about the recycle center and at the end everyone realized that it wasn't going to go on the corner and so it actually turned out fairly well with them.

Mayor Robinson said that if anybody gets an opportunity down on the east end of Ramsey Street the Inland Behavioral Center building has been stuccoed and the roof is on and so we will start seeing interior work going on and it is a very nice looking building and a nice addition to the east end of Banning.

#### ITEMS FOR FUTURE AGENDAS

New Items – None

#### Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Policies & Procedures (fingerprinting) for Applicant re. Projects and Applicants for Commissions & Committees (*Commissions & Committees*)
3. Water Resources Report (*Workshop*) (*April*)

#### Successor Agency

1. Parking Delineation (Martin to 4<sup>th</sup>; Livingston to Williams, Nicolet
2. Proposal from Owners of Oddfellows Building - 42 W. Ramsey Street.

#### ADJOURNMENT

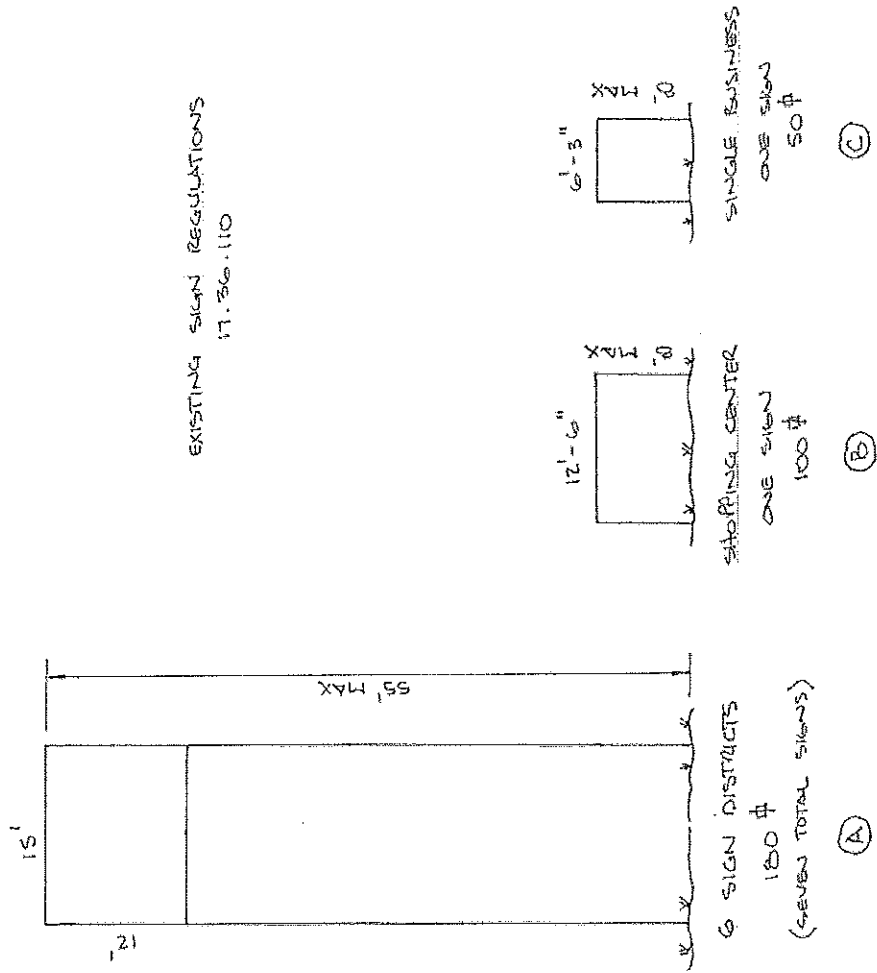
By common consent the regular City Council meeting adjourned at 6:38 p.m.

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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.**

# Freestanding Signs Allowed Under the Current Zoning Code



# Freeway-Oriented Sign History/Background

- Pre-2006 Zoning Ordinance allowed freeway-oriented signs.
- Current Zoning Ordinance (adopted by Council in January 2006) allowed freeway-oriented signs permitted in addition to monument or wall signs.
- Ordinance 1377 (adopted in September 2007) restricted freeway-oriented signs to only 7 total signs within 6 sign districts.
- Urgency Ordinance 1402 (adopted February 2009) temporarily permitting freeway-oriented signs again, without restricting to the 6 sign districts.
- Urgency Ordinance 1402 expired in December 2010 and the 6 sign districts are in place.
- Study Session between City Council and Planning Commission on April 25, 2011.
- Planning Commission reviewed and recommended approval to the City Council on January 4, 2012.

# Proposed Ordinance Summary

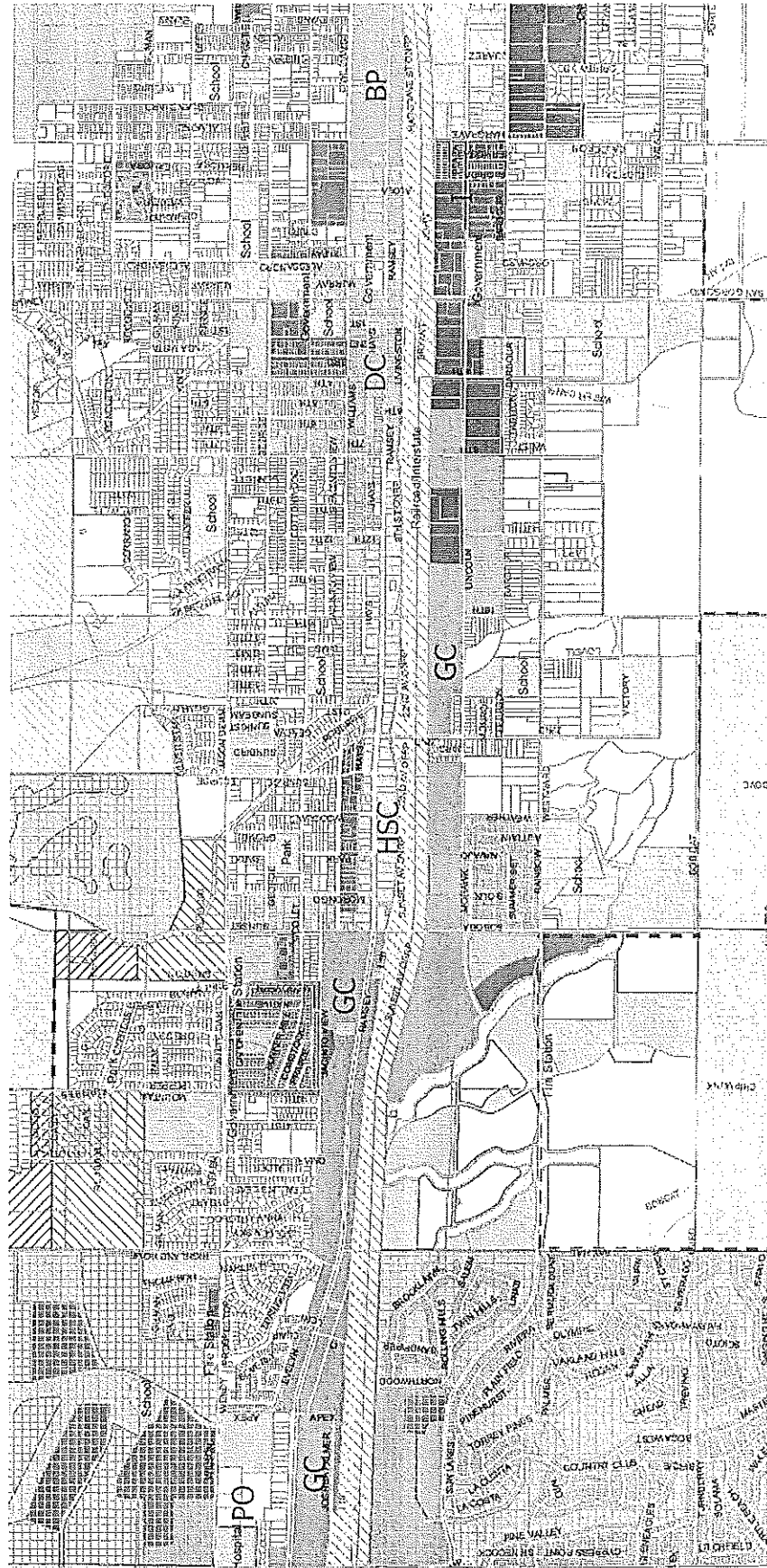
- Remove the 6 sign districts.
- Allow freeway-oriented signs along the freeway corridor:
  - Wall sign as freeway-oriented sign
  - Freestanding freeway-oriented sign
  - Shopping center sign
- Shopping center sign to include City logo or City of Banning identification
- Require review and approval of a Conditional Use Permit by Planning Commission
- Freeway-oriented signs to meet the following findings:

1. The elevation of the freeway in relation to the elevation of the abutting properties justifies the height requested, and is the minimum necessary.
2. The number and spacing of freeway signs will not cause unnecessary confusion, clutter or other unsightliness in the general location.
3. The use identified, as well as its type, size and intensity, justifies the size, design and location of the sign requested.
4. The needs of the travelling public for identification and directional information justifies the sign requested.

# Zoning Map

Scale = 1:22,883

0 0.25 0.5 Miles



*2nd Read.*

**ORDINANCE NO. 1444**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING CHAPTER 3.20 OF THE MUNICIPAL CODE ENTITLED "CLAIMS AGAINST CITY" ADDING PROCEDURAL REQUIREMENTS FOR CLAIMS MADE AGAINST CITY IN COMPLIANCE WITH THE CALIFORNIA GOVERNMENT CODE.**

**WHEREAS**, Chapter 3.20 of the Banning Municipal Code may be supplemented with standard provisions to replace and expand the City's current procedures for individuals making a claim or demand against the City; and

**WHEREAS**, Section 3.20.010 of the Municipal Code is proposed to be amended in Chapter 3.20 to present the authority to which this chapter is hereby enacted; and

**WHEREAS**, Section 3.20.020 of the Municipal Code is proposed to be amended in Chapter 3.20 to require claims procedures to be governed by Section 900 et seq. of the California Government Code; and

**WHEREAS**, Section 3.20.030 of the Municipal Code is proposed to be amended in Chapter 3.20 to specify form requirements for claims, preventing claims to be filed on behalf of a class of persons unless verified by each member of that class; and

**WHEREAS**, Section 3.20.040 of the Municipal Code is proposed to be amended in Chapter 3.20 to allow the director over Risk Management to delegate claims to a third-party administrator, while maintaining supervision of the claims; and

**WHEREAS**, Section 3.20.050 of the Municipal Code is proposed to be amended to Chapter 3.20 to require persons bringing a challenge against the City to present such claims to the City prior to bringing its action; and

**WHEREAS**, Article XIII, Section 32, of the California Constitution sets forth what is commonly known as a "pay first, litigate later" requirement; and

**WHEREAS**, while such requirement has heretofore been assumed to be applicable to actions against cities, in a recent court opinion involving the City of Anaheim, the Court of Appeal held that such Constitutional protection does not apply to a city which does not have a "pay first, litigate later" code provision; and

**WHEREAS**, Section 3.20.060 of the Municipal Code is proposed to be amended to Chapter 3.20 to require persons challenging the payment of taxes, fees, fines, and other payments to the City to make such payments prior to commencing any actions to recover such payments; and

**WHEREAS**, Section 3.20.070 of the Municipal Code is proposed to be added to Chapter 3.20 to require persons bringing suit against the City or employee of the City to conform to Sections 940-951 of the California Government Code; and

*22*

**NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF BANNING CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1: Chapter 3.20 of the Banning Municipal Code is hereby amended to read in its entirety as follows:

**"Section 3.20.010            Authority.**

This Chapter is enacted pursuant to Section 935 of the California Government Code.

**Section 3.20.020            Claims Required.**

All claims against the City for money or damages not otherwise governed by the Government Claims Act, California Government Code Sections 900 et seq., or another state law (hereinafter in this ordinance, "claims") shall be presented within the time, and in the manner, prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that Part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this Chapter.

**Section 3.20.030            Form of Claim.**

All claims shall be made in writing and verified by the claimant or by the guardian, conservator, executor or administrator of claimant. In addition, all claims shall contain the information required by California Government Code Sections 910 through 915.4. The foregoing reference to Government Code Sections 910 through 915.4 shall not be construed to authorize a class claim, and no claim may be filed on behalf of a class of persons unless verified by every member of that class.

**Section 3.20.040            Delivery of Claims to the Director over Risk Management.**

All documents setting forth claims or demands against the City which may come into the hands of the City Clerk or any other officer of the City shall be forthwith delivered to the director. The director shall audit each demand and investigate each claim for damages and shall cause the same to be promptly presented to the Third Party Administrator or City Attorney in compliance with the guidelines provided by the risk sharing joint powers authority the City is a member thereof. Notwithstanding the foregoing, the third-party administrator providing the general administration of claims shall be under the continued supervision of the director. Settlement authority is determined by resolution adopted by the City Council.

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**Section 3.20.050****Claim Prerequisite to Suit.**

In accordance with California Government Code Sections 935(b) and 945.6, all claims shall be presented as provided in this section and acted upon by the City prior to the filing of any action on such claims and no such action may be maintained by a person who has not complied with the requirements contained in the sections of Chapter 3.20.

**Section 3.20.060****Actions for Payment of Taxes, Fees or Fines; Payment Required Prior to Commencement of Legal Action.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the City or an officer thereof to prevent or enjoin the collection of taxes, fees or fines sought to be collected pursuant to any provision or resolution ordinance of the City for the payment of all taxes, fees or fines. Payment of all taxes, fees or fines, interest and penalties shall be required as a condition precedent to seeking judicial review of the validity or application of any such tax, fees or fines.

**Section 3.20.070****Suit.**

Any action brought against the City upon any claim or demand shall conform to the requirements of Sections 940-949 of the California Government Code. Any action brought against any employee of the City shall conform with the requirements of Section 950-951 of the California Government Code.

SECTION 2. This Section is intended to revoke and replace Chapter 3.20 of the Banning Municipal Code. Except as expressly modified pursuant to this Ordinance, all other provisions of Chapter 3 shall remain unmodified and in full force and effect. All ordinances in conflict with the provisions hereof are superseded to the extent of such conflict. Upon the effective date of this Ordinance, all prior ordinances establishing procedural requirements for claims made against the City shall be repealed and rescinded, and shall be superseded by the provisions herein.

SECTION 3. If any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance, it being expressly declared that this Ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

SECTION 4. This Section is to be interpreted liberally and applied consistent with the interpretation and application of Article XIII, Section 32 of the California Constitution and Revenue and Tax Code Section 6931.

SECTION 5. The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the city. Thereupon this Ordinance shall take effect (30) days after adoption and be in effect according to the law.

SECTION 6. This Ordinance shall take effect and be in force thirty (30) days after the adoption by the City Council for the City of Banning.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

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Don Robinson, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk  
City of Banning

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

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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 Ordinance No. 1444 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 24<sup>th</sup> day of January, 2012 and was duly adopted at a regular meeting of said City Council on the 14th day of February 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

2nd Read.

ORDINANCE NO. 1445

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA ESTABLISHING SECTION 3.21 "FINANCIAL  
PROCEDURES" TO THE BANNING MUNICIPAL CODE.

THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:

Section 1. Code Amendment. Sections 3.21 of the Banning Municipal Code is hereby established as follows:

"Section 3.21 Financial Procedures

3.21.010 Warrants

All disbursements except petty cash are made on warrants. A combined demand-warrant is employed and signed by use of check signature plates (or most current technology) to imprint signatures of any two of the following: The Administrative Services Director, Finance Director, City Manager, and the Mayor or Council-Member.

The warrants shall be drawn on the city of Banning bank account.

Warrants shall be of four types:

1. General;
2. Payroll;
3. Return of deposit;
4. Such other warrants as may be necessary for expenditures from certain restricted and special accounts.

All warrants issued must be properly documented. No warrants shall be made payable to "bearer" or "cash."

All warrants appear on the warrant registers in numerical sequence. Voided or canceled warrants are so indicated on the registers and are properly defaced. There may be separate warrant registers to cover the different types of warrants.

Warrants may be issued by the Finance Department on a weekly basis for demands which are accompanied by supporting documents. Such disbursements shall only be for items which have followed the procurement procedures prescribed by this code and for which funds have been appropriated by the city council. Monthly warrant registers for these disbursed items shall be submitted to the city council for ratification at the next regularly scheduled council meeting after the issuance thereof.

### 3.21.020 Accounting Methods

The basis of accounting is in conformity with generally accepted principles of municipal accounting.

### 3.21.030 Audit

An audit of the accounts and records is made annually by a certified public accountant.

### 3.21.040 Receipts, Deposit and Safekeeping of Moneys

All collections of cash are the responsibility of the administrative services director, who outlines the procedures pertaining to the physical aspects of the receipt, deposit and safekeeping of all moneys. Receipts are issued for all collections in a form as prescribed by the director and suitable to the nature of the collection. Cash is deposited daily. Cash on the premises shall be safeguarded through the use of locked cash drawers, safes, or other protective devices. Persons having access to cash shall be kept to a minimum and adequately bonded.”

**Section 2.** If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

**Section 3.** The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the city. Thereupon this Ordinance shall take effect (30) days after adoption and be in effect according to the law.

**Section 4.** This Ordinance shall take effect and be in force thirty (30) days after the adoption by the City Council for the City of Banning.

**PASSED, APPROVED AND ADOPTED**, this 14<sup>th</sup> day of February, 2012.

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Don Robinson, Mayor  
City of Banning

ATTEST:

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Marie A. Calderon  
City Clerk

APPROVED AS TO FORM  
AND LEGAL CONTENT:

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

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1445 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 24<sup>th</sup> day of January, 2012 and was duly adopted at a regular meeting of said City Council on the 14<sup>th</sup> day of February 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

*2nd Read.*

**ORDINANCE NO. 1447**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA APPROVING ZONING TEXT  
AMENDMENT NO. 11-97502 AMENDING THE SIGN  
REGULATIONS FOR FREEWAY-ORIENTED SIGNS**

**WHEREAS**, the City of Banning ("City") has long recognized the use and value of freeway-oriented signage for business development along Interstate 10; and

**WHEREAS**, prior to September 25, 2007 the City sign ordinances allowed the use and placement of freestanding freeway-oriented signs subject to location, height, size and sign area requirements; and

**WHEREAS**, historically the use of signage has been utilized by merchants and citizens as a significant form of business development; and

**WHEREAS**, on September 25, 2007, the City adopted Ordinance No. 1377, creating six (6) sign districts and precluding the approval of any freeway-oriented signs subsequent to September 25, 2007 and preventing the placement of any new signage that is not within a sign district; and

**WHEREAS**, the City did not implement the use of "sign districts"; and

**WHEREAS**, on February 10, 2009, the City Council adopted Interim Urgency Ordinance No. 1402, which allowed freestanding freeway-oriented signs for such services as food, lodging, and automotive businesses; and

**WHEREAS**, that interim urgency ordinance and subsequent extensions expired on December 24, 2010, meaning that the requirement for six sign districts along the I-10 corridor was reinstated and is currently in place; and

**WHEREAS**, the City has not begun to implement the use of "sign districts" and has no other options available to merchants for freeway-oriented sign placement; and

**WHEREAS**, the City recognizes that the implementation of "sign districts", which require the removal of existing non-conforming freeway signs and construction of new "sign districts", presents significant financing challenges and could only be accomplished in the current economic environment at considerable cost to the City; and

**WHEREAS**, in light of the economic circumstances within the State of California in general, and the City of Banning specifically, the City Council believes that the current standards set for the use of signage may not appropriately take the economy, welfare and concerns of businesses and citizens into consideration; and

**WHEREAS**, the City does not wish to implement the “sign district” concept, and finds that it is in the best interest of the City and its citizens to allow new freeway-oriented signs subject to location, height, size and sign area requirements and subject to the approval of a conditional use permit; and

**WHEREAS**, the City Council desires to respond to the concerns of its citizens regarding the economic impact of freeway-oriented signage on local businesses and believes that it is in the best interest of its citizens to put forth a sign ordinance that addresses the immediate concerns of businesses desiring to advertise; and

**WHEREAS**, by regulating the location, height, size and sign area of freeway-oriented signs and requiring the approval of a conditional use permit for freeway-oriented signs, the City Council desires to minimize overhead visual clutter in the City and ensure traffic safety; and

**WHEREAS**, the City of Banning is proposing amending the Sign Regulations of the Zoning Ordinance for freeway-oriented signs in accordance with the proposed development standards and guidelines; and

**WHEREAS**, the City Council has authority per Chapter 17.116 of the Municipal Code to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

**WHEREAS**, the Planning Commission recommended adoption of Ordinance No. 1447 amending the Sign Regulations of the Zoning Ordinance by approving Resolution No. 2012-01 as stated in writing; and

**WHEREAS**, on the 13<sup>th</sup> day of January, 2012, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Press Enterprise newspaper of the holding of a public hearing at which the amendment to the Zoning Ordinance would be considered; and

**WHEREAS**, on the 24<sup>th</sup> day of January, 2012, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed amendment, and at which time the City Council considered Zone Text Amendment No. 11-97502; and

**WHEREAS**, at this public hearing on the 24<sup>th</sup> day of January, 2012, the City Council considered and heard public comments on the proposed Zone Text Amendment; and

**WHEREAS**, at this public hearing, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 24<sup>th</sup> day of January, 2012;

**NOW THEREFORE, BE IT HEREBY ORDAINED** by the City Council of the City of Banning as follows:



## **SECTION 1. ENVIRONMENTAL FINDINGS.**

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated January 24, 2012, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

### **1. California Environmental Quality Act (CEQA):**

CEQA: The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

### **2. Multiple Species Habitat Conservation Plan (MSHCP).**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

## **SECTION 2. REQUIRED FINDINGS.**

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

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

### **Findings of Fact:**

The Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use Goal states "*A balanced, well planned community including*

*businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents”.*

Furthermore, allowing freeway-oriented signs through the Conditional Use Permit process encourages development of businesses along the freeway. Economic Development Policy 6 states *“Encourage and facilitate highway-serving commercial development at appropriate Interstate-10 interchanges within the City limits”.*

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

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendment will modify and update development standards pertaining to freeway-oriented signs within the limits established by the Zoning Ordinance and Planning Commission through the Conditional Use Permit approval process.

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

Findings of Fact:

The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

**SECTION 3.** Ordinance No. 1377 is hereby repealed in its entirety.

**SECTION 4.** *Section 17.36.110(B)(2)* of the Banning Municipal Code is amended to read, in its entirety, as follows:

- “2. Wall signs. Each business shall be permitted wall signs per occupancy footage. The area devoted to such signs shall not exceed one square foot of sign area per one foot of building frontage; and shall not exceed fifty (50) square feet of sign area. The fifty (50) square feet of sign area maximum for wall signs shall not apply to a freeway-oriented wall sign proposed to be located and designed in such a manner as to be viewed primarily in a direct line of sight from a main traveled roadway of a freeway or a freeway on-ramp/ off-ramp and advertising onsite retail or service-oriented businesses. Freeway-oriented wall signs shall be subject to all

requirements of section 17.36.110(B)(6), including requiring the approval of a conditional use permit.”

**SECTION 5.** *Section 17.36.110(B)(6)* of the Banning Municipal Code is amended to read, in its entirety, as follows:

“6. Freeway-Oriented Freestanding Sign. Freeway-oriented freestanding signs shall be allowed subject to the following requirements:

- a. Said sign shall be located and designed in such a manner as to be viewed primarily in a direct line of sight from a main traveled roadway of a freeway or a freeway on-ramp/ off-ramp. The phrase “viewed primarily in a direct line of sight from” shall mean that the message may be seen with reasonable clarity for a greater distance by a person traveling on the main traveled roadway of a freeway or on-ramp/off-ramp than by a person traveling on the street adjacent to the sign.
- b. Said signs shall be limited to on-site retail or services businesses. Shopping centers may have one freeway-oriented sign and shall include city identification or city logo as approved by planning commission. Said city identification or logo shall be excluded from the display face area calculation. When the display area of the sign is used for commercial speech, the copy must qualify as onsite as to the business or shopping center.
- c. Said sign shall not block another freeway-oriented freestanding sign. The applicant shall be responsible for providing the planning commission with evidence to assure satisfactory compliance with this requirement.
- d. Said sign shall be located in a planter area not less than fifty square feet with one dimension being at least six feet, unless from the evidence presented to the planning commission it can be determined that the area is not visible from public street or right-of-way, or the absence of the planter shall not be detrimental to the appearance of the area.
- e. Said sign shall not exceed an overall height of fifty-five feet.
- f. Said sign shall not exceed one hundred seventy-five square feet per display face.
- g. Said sign shall require approval of a conditional use permit. In addition to satisfying requirements set forth above in this section *17.36.110(B)(6)* of the Banning Municipal Code, the following findings must be made prior to approval of a conditional use permit for a freeway-oriented free standing sign, without consideration of message content of the proposed signs:
  - i. The elevation of the freeway in relation to the elevation of the abutting properties justifies the height requested, and is the minimum necessary.
  - ii. The number and spacing of freeway signs will not cause unnecessary confusion, clutter or other unsightliness in the general location.

- iii. The use identified, as well as its type, size and intensity, justifies the size, design and location of the sign requested.
- iv. The needs of the travelling public for identification and directional information justifies the sign requested.”

**SECTION 6.** *Section 17.36.110(B)(8)* of the Banning Municipal Code is amended to read, in its entirety, as follows:

“8. Any existing freestanding sign shall be considered legal and conforming, but shall not be altered or replaced except by approval of a conditional use permit.”

**SECTION 7. SEVERABILITY.**

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 8. PUBLICATION; EFFECTIVE DATE.**

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

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Don Robinson, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk

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

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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 Ordinance No. 1447 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 24<sup>th</sup> day of January, 2012, and was duly adopted at a regular meeting of said City Council on the 14<sup>th</sup> day of February, 2012, by the following vote, to wit:

AYES:

NOES:

ABSEN:

ABSTAIN:

---

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

## CITY COUNCIL AGENDA

**Date:** February 22, 2012  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director  
**SUBJECT:** Approval of Accounts Payable and Payroll Warrants for Month of December 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 December 2011.

The reports are:

Expenditure approval lists

December 1, 2011	1,053,907.33
December 8, 2011	215,506.40
December 15, 2011	637,633.86
December 29, 2011	354,808.41
February 2, 2012	2,259,253.51 (December Month End)

Payroll check registers

December 2, 2011	4,956.69
December 16, 2011	5,400.34
December 30, 2012	5,133.25

Payroll direct deposits\*

December 2, 2011	327,907.01
December 16, 2011	307,685.64
December 30, 2011	300,262.99

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 December month end expenditure approval list of February 2, 2012.

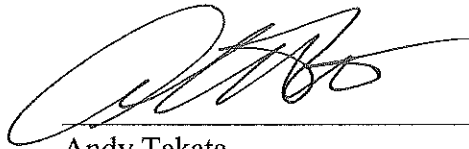
Report Prepared by: Jenna Harrell, Accounts Payable

**RECOMMENDED BY:**



June Overholt  
Administrative Services Director

**APPROVED BY:**



Andy Takata  
City Manager

## Fund/Department Legend:

### General Fund – 001

#### Departments

0001 – General  
1000 – City Council  
1200 – City Manager  
1300 – Human Resources  
1400 – City Clerk  
1500 – Elections  
1800 – City Attorney  
1900 – Fiscal Services  
1910 – Purchasing & A/P  
2060 – TV Government Access  
2200 – Police  
2210 – Dispatch  
2279 - TASIN - SB621  
2300 – Animal Control

2400 – Fire  
2700 – Building Safety  
2740 - Code Enforcement  
2800 – Planning  
3000 – Engineering  
3200 – Building Maintenance  
3600 – Parks  
4000 – Recreation  
4010 – Aquatics  
4050 – Senior Center  
4060 – Sr. Center Advisory Board  
4500 – Central Services  
4800 – Debt Service  
5400 – Community Enhancement

#### All Other Funds

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

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



## CITY COUNCIL AGENDA

**Date:** February 14, 2012  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Report of Investments for November 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 November 2011. As of November 30, 2011, the City's operating funds totaled \$63,220,856. Included in operating funds is \$1,567,596 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of November 30, 2011 approximately 47% of the City's unrestricted cash balances were invested in investments other than LAIF.

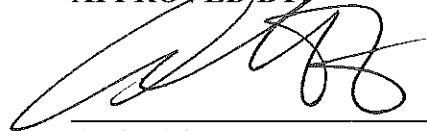
Presented are three months of Investment Reports. November is a first issue, while September and October are included to provide multiple months of statements for comparison.

**FISCAL DATA:** The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) increased to 0.401 % in November. The average rate for all investments in November was 0.320%.

**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 CashAmount

2,305

Bank Accounts

Interest

Rate

Amount

Wells Fargo Bank

0.000%

42,179

Wells Fargo Bank-Investment Account

0.100%

2,868,834

Bank of America-Airport

0.300%

15,891

Bank of America-Parking Citations

0.300%

3,875

Bank of America-CNG Station

0.300%

5,879*Money Market and Bank Account Sub-Total*

2,936,658

Government Pools

Local Agency Investment Fund: Account #1

0.401%

31,513,738

Account #2 Operating Amount

404,740

Account #2 CRA Bond Cash Bal

1,567,596

Local Agency Investment Fund: Account #2

0.401%

1,972,335*Government Pool Sub-Total*33,486,074**Operating Cash Balance****36,425,037**Restricted Operating Funds at Riverside Public Utilities

Highmark U.S. Government Money Market Fund

0.000%

**1,206,019**Other Investments

Investments-US Bank/Piper Jaffray - See Page 2

0.240%

**25,589,800*****Operating Funds Total*****63,220,856****Fiscal Agent**Amount

US Bank

44,480,980***Fiscal Agent Total*****44,480,980**

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# City of Banning Investment Report

November 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
<u>Bank Accounts</u>								
42,179	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	42,179	n/a	42,179
2,868,834	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,868,834	n/a	2,868,834
15,891	Bank of America-Airport	n/a	0.30%	daily	varies	15,891	n/a	15,891
3,875	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,875	n/a	3,875
5,879	Bank of America-Parking Citations	n/a	0.30%	daily	varies	5,879	n/a	5,879
Sub-total								2,936,658
<u>Government Pools</u>								
31,513,738	L.A.I.F. account #1	n/a	0.401%	daily	varies	31,513,738	n/a	31,513,738
1,972,335	L.A.I.F. account #2	n/a	0.401%	daily	varies	1,972,335	n/a	1,972,335
								33,486,074
<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		1,000,140
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,310
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,000,860
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,000,780
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,000,550
18,584,160	Money Market	n/a	0.000%	daily	varies	18,584,160	0	18,584,160
US Bank/Piper Jaffray Average Rate=								25,589,800

Average Rate All= 0.320%

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.

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# City of Banning Investment Report

November 30, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Nov-11	11/30/2011 Market Value
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>							
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.500%	daily	188,943	7.99	188,049
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003</b>							
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	75.00%	7/28/2011	971,763	3,682.50	988,392
		US Bank Mmkt 4-Ct	0.500%	daily		0.86	21,836
		US Bank Mmkt 4-Ct	0.300%	daily			29
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.500%	daily		506.67	11,931,858
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	1,880,751	79.64	1,875,493
Special Fund		US Bank Mmkt 4-Ct	0.400%	daily			47
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.000%	daily		4.04	4
Principal Account		US Bank Mmkt 4-Ct	0.000%	daily		2.87	6
		US Bank Mmkt 4-Ct	0.500%	daily		156.62	3,688,256
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.040%	daily		23.71	24
Principal Account		US Bank Mmkt 4-Ct	0.500%	daily		15.19	30
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	2,310,710	98.16	2,310,931
Project Fund		US Bank Mmkt 4-Ct	0.500%	daily		178.25	4,197,628
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily			873,547
Acquisition & Construction		Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500	41,032.69	3,026,111
		US Bank Mmkt 4-Ct	0.500%	daily		653.04	15,378,723
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>						<b>Total</b>	<b>46,442.23 44,480,980</b>

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**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

# 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
								33,486,074
<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=								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.

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# City of Banning Investment Report

October 31, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-11	10/31/2011 Market Value
<b>US BANK</b>							
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
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
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
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
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
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
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
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
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
Acquisition & Construction		US Bank Mmkt 4-Ct	0.500%	daily		1.17	53,570
		US Bank Mmkt 4-Ct	0.500%	daily		631.95	15,378,070
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>							<b>45,333,855</b>

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## 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

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# 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								
								3,267,899
<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
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		1,000,100
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.

*Handwritten signature/initials*

# City of Banning Investment Report

September 30, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve	Bond Maturity Date	Minimum Reserve Requirement	Interest Sep-11	9/30/2011 Market Value
<b>US BANK</b>								
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	
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>								
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	
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
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	
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>								
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	
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>								
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	
Acquisition & Construction		US Bank Mmkt 4-Ct	0.500%	daily			53,569	
		US Bank Mmkt 4-Ct	0.500%	daily		652.99	15,377,438	
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>							<b>Total</b>	<b>43,982,139</b>

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## CITY COUNCIL AGENDA

**Date:** February 14, 2012  
**TO:** City Council  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Report of Investments for December 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 December 2011. As of December 31, 2011, the City's operating funds totaled \$62,582,938. Included in operating funds is \$1,569,748 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Treasurer's Report. As of December 31, 2011 approximately 48% of the City's unrestricted cash balances were invested in investments other than LAIF.


Presented are three months of Investment Reports. December is a first issue, while October and November 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 0.382 % in December. The average rate for all investments in December was 0.469%.

**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% 4,620

Wells Fargo Bank-Investment Account

0.100% 2,947,287

Bank of America-Airport

0.300% 4,666

Bank of America-Parking Citations

0.300% 3,244

Bank of America-CNG Station

0.300% 3,726

*Money Market and Bank Account Sub-Total*

2,963,544

**Government Pools**

Account #1 Operating Amount 31,216,326

Account #1 CRA Bond Cash Bal. 297,412

Local Agency Investment Fund: Account #1 0.382% 31,513,738

Account #2 CRA Bond Cash Bal. 1,272,335

Local Agency Investment Fund: Account #2 0.382% 1,272,335

*Government Pool Sub-Total*

32,786,074

**Operating Cash Balance****35,751,923****Restricted Operating Funds at Riverside Public Utilities**

Highmark U.S. Government Money Market Fund

0.000%

1,244,500

**Other Investments**

Investments-US Bank/Piper Jaffray - See Page 2

0.623%

25,586,516

***Operating Funds Total*****62,582,938****Fiscal Agent**

Amount

US Bank

43,554,793

***Fiscal Agent Total*****43,554,793**

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# City of Banning Investment Report

December 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>								
4,620	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	4,620	n/a	4,620
2,947,287	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,947,287	n/a	2,947,287
4,666	Bank of America-Airport	n/a	0.30%	daily	varies	4,666	n/a	4,666
3,244	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,244	n/a	3,244
3,726	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,726	n/a	3,726
Sub-total								
								2,963,544
<u>Government Pools</u>								
31,513,738	L.A.I.F. account #1	n/a	0.382%	daily	varies	31,513,738	n/a	31,513,738
1,272,335	L.A.I.F. account #2	n/a	0.382%	daily	varies	1,272,335	n/a	1,272,335
Sub-total								
								32,786,074
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,002,900
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,000,120
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,000,260
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,000,110
5,000,000	FHLMC MTN	n/a	0.500%	9/6/2013	12/2/2011	5,000,000		4,994,050
5,000,000	FHLMC MTN	n/a	0.450%	9/6/2013	12/2/2011	5,000,000		4,999,150
3,000,000	Federal Farm Bank Credit Bks	n/a	0.620%	5/1/2014	12/2/2011	3,000,000		3,000,840
5,500,000	Federal Farm Bank Credit Bks	n/a	0.690%	6/12/2014	12/28/2011	5,500,000		5,498,625
1,090,461	Money Market	n/a	0.000%	daily	varies	1,090,461	0	1,090,461
US Bank/Piper Jaffray Average Rate=								
			0.623%					25,586,516

Average Rate All= 0.469%

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 305 days and does not include Bond Reserve Fund Investments.

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# City of Banning Investment Report

December 31, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Dec-11	12/31/2011 Market Value
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>							
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.500%	daily	188,943	7.73	188,057
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003</b>							
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	75.00%	7/28/2011	971,763	0.00	987,622
		US Bank Mmkt 4-Ct	0.500%	daily		0.84	21,837
		US Bank Mmkt 4-Ct	0.300%	daily			29
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.500%	daily		490.35	11,932,348
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	1,880,751	77.07	1,875,570
Special Fund		US Bank Mmkt 4-Ct	0.400%	daily			47
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			9
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.000%	daily			4
Principal Account		US Bank Mmkt 4-Ct	0.000%	daily			6
		US Bank Mmkt 4-Ct	0.500%	daily		151.57	3,688,408
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.040%	daily			24
Principal Account		US Bank Mmkt 4-Ct	0.500%	daily		-	30
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	2,310,710	94.97	2,311,026
Project Fund		US Bank Mmkt 4-Ct	0.500%	daily		172.51	4,197,800
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
		US Bank Mmkt 4-Ct	0.500%	daily		19.15	19
		US Bank Mmkt 4-Ct	0.500%	daily		55.14	2,972,594
Acquisition & Construction		US Bank Mmkt 4-Ct	0.500%	daily		632.00	15,379,355
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>						<b>Total</b>	<b>43,554,793</b>

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

Amount

2,305

**Bank Accounts**

Interest

Rate

Amount

Wells Fargo Bank

0.000%

42,179

Wells Fargo Bank-Investment Account

0.100%

2,868,834

Bank of America-Airport

0.300%

15,891

Bank of America-Parking Citations

0.300%

3,875

Bank of America-CNG Station

0.300%

5,879

*Money Market and Bank Account Sub-Total*

2,936,658

**Government Pools**

Local Agency Investment Fund: Account #1

0.401%

31,513,738

Account #2 Operating Amount

404,740

Account #2 CRA Bond Cash Bal

1,567,596

Local Agency Investment Fund: Account #2

0.401%

1,972,335

*Government Pool Sub-Total*

33,486,074

**Operating Cash Balance****36,425,037****Restricted Operating Funds at Riverside Public Utilities**

Highmark U.S. Government Money Market Fund

0.000%

1,206,019

**Other Investments**

Investments-US Bank/Piper Jaffray - See Page 2

0.240%

25,589,800

**Operating Funds Total****63,220,856****Fiscal Agent**

Amount

US Bank

44,480,980

***Fiscal Agent Total*****44,480,980**

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# City of Banning Investment Report

November 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
<u>Bank Accounts</u>								
42,179	Wells Fargo Bank-Operating	n/a	0.00%	daily	varies	42,179	n/a	42,179
2,868,834	Wells Fargo Bank-Investment Acct	n/a	0.10%	daily	varies	2,868,834	n/a	2,868,834
15,891	Bank of America-Airport	n/a	0.30%	daily	varies	15,891	n/a	15,891
3,875	Bank of America-Parking Citations	n/a	0.30%	daily	varies	3,875	n/a	3,875
5,879	Bank of America-Parking Citations	n/a	0.30%	daily	varies	5,879	n/a	5,879
Sub-total								2,936,658
<u>Government Pools</u>								
31,513,738	L.A.I.F. account #1	n/a	0.401%	daily	varies	31,513,738	n/a	31,513,738
1,972,335	L.A.I.F. account #2	n/a	0.401%	daily	varies	1,972,335	n/a	1,972,335
								33,486,074
<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		1,000,140
1,000,000	Federal Home Loan Banks	n/a	1.000%	6/27/2014	6/16/2011	1,000,000		1,003,310
2,000,000	Federal Home Loan Banks	n/a	1.125%	6/30/2014	6/16/2011	2,000,000		2,000,860
2,000,000	FHLMC MTN	n/a	0.650%	7/18/2013	7/18/2011	2,000,000		2,000,780
1,000,000	FHLMC MTN	n/a	1.000%	4/11/2014	7/11/2011	1,000,000		1,000,550
18,584,160	Money Market	n/a	0.000%	daily	varies	18,584,160	0	18,584,160
US Bank/Piper Jaffray Average Rate=								25,589,800

Average Rate All= 0.320%

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.

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# City of Banning Investment Report

November 30, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Maturity Date	Minimum Reserve Requirement	Interest Nov-11	11/30/2011 Market Value
<b>COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A</b>							
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 4-Ct	0.500%	daily	188,943	7.99	188,049
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003</b>							
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	75.00%	7/28/2011	971,763	3,682.50	988,392
		US Bank Mmkt 4-Ct	0.500%	daily		0.86	21,836
		US Bank Mmkt 4-Ct	0.300%	daily			29
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			8
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
Redevelop Fund	2037	US Bank Mmkt 4-Ct	0.500%	daily		506.67	11,931,858
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	1,880,751	79.64	1,875,493
Special Fund		US Bank Mmkt 4-Ct	0.400%	daily			47
Surplus Fund		US Bank Mmkt 4-Ct	0.000%	daily			9
<b>BUA - WASTE WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.000%	daily		4.04	4
Principal Account		US Bank Mmkt 4-Ct	0.000%	daily		2.87	6
		US Bank Mmkt 4-Ct	0.500%	daily		156.62	3,688,256
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
Interest Account		US Bank Mmkt 4-Ct	0.040%	daily		23.71	24
Principal Account		US Bank Mmkt 4-Ct	0.500%	daily		15.19	30
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily	2,310,710	98.16	2,310,931
Project Fund		US Bank Mmkt 4-Ct	0.500%	daily		178.25	4,197,628
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
Reserve Fund		US Bank Mmkt 4-Ct	0.500%	daily			873,547
Acquisition & Construction		Reliance Trust Company # 9AMGGBEZ7	3.650%	11/17/2011	2,961,500	41,032.69	3,026,111
		US Bank Mmkt 4-Ct	0.500%	daily		653.04	15,378,723
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>							
<b>Total</b>						<b>46,442.23</b>	<b>44,480,980</b>

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**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**

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# 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
33,486,074								
<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.

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## City of Banning Investment Report

October 31, 2011

## Individual Investments with Fiscal Agent

Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	Interest Oct-11	10/31/2011 Market Value
<b>US BANK</b>							
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	US 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
<b>COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007</b>							
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
<b>BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
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
<b>BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES</b>							
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
<b>BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES</b>							
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
Acquisition & Construction		US Bank Mmkt 4-Ct	0.500%	daily		1.17	53,570
		US Bank Mmkt 4-Ct	0.500%	daily		631.95	15,378,070
<b>*Paid Semi-Annually-Deposited into Money Mkt Account</b>							
<b>Total</b>						<b>1,646.26</b>	<b>45,333,855</b>

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## CITY COUNCIL

**DATE:** February 14, 2012

**TO:** Banning City Council

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

**SUBJECT:** Adopt Resolution No. 2012-09, approving the agreements with Emergency Response Network of the Inland Empire (ERNIE) and the California Water/Wastewater Agency Response Network (CALWARN) to provide mutual aid in event of a catastrophic disaster.

**RECOMMENDATION:** The City Council of the City of Banning Adopts Resolution No. 2012-09, entering into agreements with the Emergency Response Network of the Inland Empire (ERNIE) which facilitates public agency preparedness for response to and recovery from local and regional disasters to ensure the delivery of critical public services through mutual aid, communications and compliance with State and Federal emergency standards; and with the California Water/Wastewater Agency Response Network (CALWARN), to provide mutual aid in the event of catastrophic disaster.

**JUSTIFICATION:** To ensure mutual aid and assistance to help the City of Banning in responding to incidents that may require resources beyond the capability of the local utility. ERNIE and CALWARN would provide the materials, equipment and skilled man power as needed. An authorized official and alternate(s) will be responsible for requesting assistance, offering assistance, refusing assistance and withdrawing assistance.

**BACKGROUND:** California's emergency response system is built on the Standardized Emergency Management System (SEMS) and the National Incident Management System (NIMS). The Operational area concept as defined under SEMS and the Incident Command System (ICS) as defined under NIMS, join together to form the concept of operations under which ERNIE and CALWARN operate in California. The goal of these mutual aid response networks is to support and promote statewide emergency preparedness, disaster response and mutual assistance agreements, agencies can share emergency resources to respond and recover more quickly from a disaster.

Participation is voluntary. Participating agencies are under no obligation to provide or deplete their own resources. ERNIE and CALWARN require a local emergency proclamation and the requesting jurisdiction to pay for any assistance.

Becoming party to the ERNIE and CALWARN agreements will establish a clear avenue to receive and/or provide reimbursable voluntary assistance during a declared emergency. A proclamation of a local emergency by an authorized official of the agency impacted by the disaster is necessary to trigger the agreement. If the Governor or the President declares a disaster, agencies that have received assistance through this agreement can request

reimbursement from the state and federal government. In turn, agencies providing aid will be reimbursed by the requesting jurisdiction.

The City of Banning shall designate the Public Works Director as the Mutual Aide Coordinator on all matters relative to Public Works Mutual Aid for the City of Banning. The Coordinator and/or any person designated as an Alternate Coordinator during a disaster would be authorized to request public works resources and bind the agency for the cost of these resources. The Coordinator acts on behalf of the agency on all matters relative to mutual aid, including but not limited to requests, responses and reimbursements.

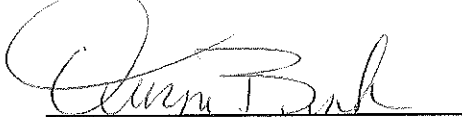
Under ERNIE and CALWARN each requesting and assisting party is required to keep accounting records of the personnel, equipment and materials provided as required by the guidelines with in the Federal Emergency Management Agency (FEMA) administered Stafford Act and the California Disaster Assistance Act (CDAA). The requesting party is also responsible for the safekeeping of the resources provided by the assisting party, which includes housing, food and equipment/vehicle fuel and services.

**FISCAL DATA:** Funds in the amount of \$400.00 annually for these agreements are available in the Fiscal Year 2012 Water Division Operation Budget, Account No. 660-6300-471.33-11 and the Wastewater Division Operations Budget, Account No. 680-8000-454.23-37. If providing the resources, the agency requesting the assistance pays all costs pursuant to ERNIE and CALWARN Agreements. Federal reimbursements may be available if a local emergency has been proclaimed by the City and/or County and the state and federal governments have declared a local state of emergency.

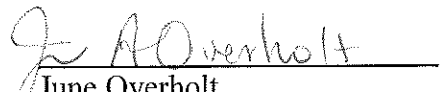
**ATTACHMENTS:**

Attachment A: ERNIE Agreement  
Attachment B: CALWARN Agreement  
Attachment C: Resolution No. 2012-09 approving the ERNIE & CALWARN Agreement

**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2012-09**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA ENTERING INTO AGREEMENTS WITH THE EMERGENCY RESPONSE NETWORK OF THE INLAND EMPIRE (ERNIE) AND WITH THE CALIFORNIA WATER/WASTEWATER AGENCY RESPONSE NETWORK TO PROVIDE MUTUAL AID IN EVENT OF A CATASTROPHIC DISASTER**

**WHEREAS**, the California Department of Public Health (DPH) has expressed an interest in the establishment of a plan to facilitate and encourage water agency mutual assistance agreements between water agencies, cities, and county jurisdictions; and

**WHEREAS**, the Emergency Response Network of the Inland Empire (ERNIE) was originally created to provide a forum for the development of mutual assistance agreements between agencies in the Inland Empire of California; and

**WHEREAS**, Becoming party to the ERNIE and CALWARN agreements will establish a clear avenue to receive and/or provide reimbursable voluntary assistance during a declared emergency; and

**WHEREAS**, the EMERGENCY RESPONSE NETWORK (ERNIE) 2006 OMNIBUS MUTUAL ASSISTANCE AGREEMENT attached hereto and incorporated herein sets forth the mutual covenants and agreements for agencies to provide mutual assistance to one another in times of emergency; and

**WHEREAS**, State California Office of Emergency Services (OES) regulates the SEMS/NIMS program, and this agreement is consistent with Standardized Emergency Management System (SEMS) National Incident Management System (NIMS) and that it is necessary to have a mutual assistance agreement in place to support requests to the Federal Emergency Management Agency (FEMA) for costs of using assistance during an emergency; and

**WHEREAS**, the agencies hereto have determined that it would be in their best interests to enter into an agreement that implements that plan and sets forth procedures and the responsibilities of the agencies whenever emergency personnel, equipment and facility assistance are provided from one agency to the other; and

**WHEREAS**, no agency should be in a position of unreasonably using its own resources, facilities, or services providing such mutual assistance; and

**WHEREAS**, it is the intent of ERNIE to revise this agreement as necessary and to annually publish a list of all agencies participating in this agreement, as posted on the East Valley Water District's Web-site; [www.eastvalley.org](http://www.eastvalley.org); and

**WHEREAS**, such an agreement is in accord with the California Emergency Services Act set forth in Title 2, Division 1, Chapter 7 (Section 8550 et seq.) of the Government Code and specifically with Articles 14 and 17 (Section 8630 et seq.) of the Act.

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

SECTION 1. The City Council of the City of Banning Adopts Resolution No. 2012-09, entering into agreements with the Emergency Response Network of the Inland Empire (ERNIE) which facilitates public agency preparedness for response to and recovery from local and regional disasters to ensure the delivery of critical public services through mutual aid, communications and compliance with State and Federal emergency standards; and with the California Water/Wastewater Agency Response Network (CALWARN), to provide mutual aid in the event of catastrophic disaster.

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

\_\_\_\_\_  
Don Robinson, Mayor  
City of Banning

**ATTEST:**

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

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

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



**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, hereby certify that Resolution No. 2012-04, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of February, 2012, by the following vote to, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

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1 Health, or associations, who are members of the Regional or State Steering Committees  
2 and do not officially sign the WARN agreement.

- 3
- 4 E. **Confidential Information** - Any document shared with any signatory to this Agreement that  
5 is marked confidential, including but not limited to any map, report, notes, papers, opinion,  
6 or e-mail which relates to the system vulnerabilities of a Member or Associate Member.
- 7
- 8 F. **Non-Responding Member** - A Member that does not provide assistance during a Period of  
9 Assistance under the Mutual Aid and Assistance Program.
- 10
- 11 G. **Requesting Member** - A Member who requests assistance under the Mutual Aid and  
12 Assistance Program.
- 13
- 14 H. **Responding Member** - A Member that responds to a request for assistance under the  
15 Mutual Aid and Assistance Program.
- 16
- 17 I. **Period of Assistance** - A specified period of time when a Responding Member assists a  
18 Requesting Member. The period commences when personnel, equipment, or supplies  
19 depart from Responding Member's facility and ends when the resources return to their  
20 facility (portal to portal). All protections identified in the Agreement apply during this period.  
21 The specified Period of Assistance may occur during response to or recovery from an  
22 Emergency.
- 23
- 24 J. **National Incident Management System (NIMS)** - A national, standardized approach to  
25 incident management and response that sets uniform processes and procedures for  
26 emergency response operations.
- 27
- 28 K. **Standardized Emergency Management System (SEMS)** - A standardized approach to  
29 field command and jurisdictional management and response set forth by State of California  
30 Code of Regulations for multi-agency or multi-jurisdictional response to an emergency.
- 31
- 32

33 **ARTICLE III.**  
34 **ADMINISTRATION**

35

36 The administration of the Water/Wastewater Agency Response Network (WARN) will be  
37 through WARN Regional Steering Committees (RSC) and the WARN State Steering Committee  
38 (SSC).

39

40 The WARN RSCs will be established by representatives from the Members in that region. A  
41 chair and co-chair will be elected and act as administrators for that region. The chair will  
42 represent the region on the WARN SSC. Each WARN RSC will sponsor an annual meeting for  
43 Members, maintain a data base of all water and wastewater utilities who have signed this  
44 Agreement, and meet as a committee to address concerns and procedures for requesting  
45 mutual assistance in that region. The regions will be comprised of one or more of the six Office  
46 of Emergency Services (OES) mutual aid regions.

47

48 The WARN SSC will include the chairs of the regional steering committees, and a  
49 representative from the California Department of Public Health (CDPH), California Utilities  
50 Emergency Association (CUEA), Department of Water Resources (DWR), the American Water  
51 Works Association (AWWA) Emergency Planning Committee, California Rural Water

1 Association (CRWA) and California Sanitation Risk Management Authority (CSRMA). The SSC  
2 will identify a Chair for the purpose of leading the SSC and act as a point of contact for the  
3 WARN SSC. At a minimum, the WARN SSC will meet annually and issue a list of participating  
4 utilities. The database will be maintained on the WARN website, managed by a volunteer  
5 Member, as appointed by the SSC.  
6  
7

8 **ARTICLE IV.**  
9 **PROCEDURES**  
10

- 11 A. In coordination with the Regional Steering Committees, emergency management and public  
12 health system of the state, the State Steering Committee shall develop operational and  
13 planning procedures for the Mutual Aid and Assistance Program. These procedures shall  
14 be consistent with the Standardized Emergency Management System (SEMS) and the  
15 National Incident Management System (NIMS), reviewed at least annually and updated as  
16 needed by the State Steering Committee.  
17  
18 B. Requests for emergency assistance under this Agreement shall be directed to the  
19 appropriate Authorized Official(s) from the list of Members.  
20  
21 C. Consistent with SEMS, when more than one County is impacted by a disaster, requests for  
22 mutual assistance under this Agreement may be channeled through the CUEA Utility  
23 Operation Center to ensure maximum effectiveness in allocating resources to the highest  
24 priority needs.  
25

26  
27 **ARTICLE V.**  
28 **REQUESTS FOR ASSISTANCE**  
29

30 In general, assistance will be in the form of resources, such as equipment, supplies, and  
31 personnel. Assistance shall be given only when Responding Member determines that its own  
32 needs can be met while rendering assistance. The execution of this Agreement shall not create  
33 any duty to respond on the part of any party hereto. A potential Responding Member shall not  
34 be held liable for failing to provide assistance. A potential Responding Member has the  
35 absolute discretion to decline to provide any requested assistance.  
36

- 37 A. **Member Responsibility** - Members shall identify an Authorized Official and alternates;  
38 provide contact information including 24-hour access; and maintain resource information  
39 made available by the utility for mutual aid and assistance response, as allowed by utility  
40 policy. Such information shall be updated annually or as changes occur (whichever is  
41 sooner), provided to the State Steering Committee, and uploaded into the statewide  
42 database.  
43  
44 B. **Member Request** - In the event of an Emergency, a Member's Authorized Official may  
45 request mutual aid and assistance from a participating Member. Requests for assistance  
46 can be made orally or in writing. When made orally, the request for personnel, equipment,  
47 and supplies shall also be prepared in writing and submitted to the participating Member as  
48 soon as practicable. Requests for assistance shall be directed to the Authorized Official of  
49 the participating Member. Specific protocols for requesting aid shall be provided in the  
50 procedures developed under Article IV.  
51

67

1 C. **Response to a Request for Assistance** – Members are not obligated to respond to a  
2 request. After a Member receives a request for assistance, the Authorized Official evaluates  
3 whether or not to respond, whether resources are available to respond, or if other  
4 circumstances would hinder response. Following the evaluation, the Authorized  
5 Representative shall inform, as soon as possible, the Requesting Member whether it will  
6 respond. If the Member is willing and able to provide assistance, the Member shall inform  
7 the Requesting Member about the type of available resources and the approximate arrival  
8 time of such assistance.  
9

10 D. **Discretion of Responding Member's Authorized Official** – Execution of this Agreement  
11 does not create any duty to respond to a request for assistance. When a Member receives  
12 a request for assistance, the Authorized Official shall have sole and absolute discretion as to  
13 whether or not to respond, or the availability of resources to be used in such response. An  
14 Authorized Member's decisions on the availability of resources shall be final.  
15  
16

17 **ARTICLE VI.**  
18 **RESPONSE COORDINATION**  
19

20 When providing assistance under this Agreement, the Requesting Member and Responding  
21 Member shall be organized and shall function under the Standard Emergency Management  
22 System and National Incident Management System protocols and procedures.  
23

24 A. **Personnel** – Responding Member retains right to identify the employees who are willing  
25 to participate and the resources that are available.  
26

27 B. **Control** – While employees so provided may be under the supervision of the  
28 Responding Member, the Responding Member's employees come under the direction  
29 and control of the Requesting Member, consistent with the NIMS Incident Command  
30 System to address the needs identified by the Requesting Member. The Requesting  
31 Member's Authorized Official shall coordinate response activities with the designated  
32 supervisor(s) of the Responding Member(s). Whenever practical, Responding  
33 Member personnel must be self sufficient for up to 72 hours. The Responding Member's  
34 designated supervisor(s) must keep accurate records of work performed by personnel  
35 during the specified Period of Assistance.  
36

37 C. **Food and Shelter** – When possible, the Requesting Member shall supply reasonable food  
38 and shelter for Responding Member personnel. If the Requesting Member is unable to  
39 provide food and shelter for Responding Member personnel, the Responding Member's  
40 designated supervisor is authorized to secure the resources necessary to meet the needs of  
41 its personnel. Except as provided below, the cost for such resources must not exceed the  
42 State per diem rates for that area. To the extent Food and Shelter costs exceed the State  
43 per diem rates for the area, the Responding Member must demonstrate that the additional  
44 costs were reasonable and necessary under the circumstances. Unless otherwise agreed  
45 to in writing, the Requesting Member remains responsible for reimbursing the Responding  
46 Member for all reasonable and necessary costs associated with providing food and shelter,  
47 if such resources are not provided.  
48

49 D. **Communication** – The Requesting Member shall provide Responding Member personnel  
50 with radio equipment as available, or radio frequency information to program existing radio,  
51 in order to facilitate communications with local responders and utility personnel.

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- 1  
2 E. **Status** - Unless otherwise provided by law, the Responding Member's officers and  
3 employees retain the same privileges, immunities, rights, duties and benefits as provided in  
4 their respective jurisdictions.  
5  
6 F. **Licenses and Permits** - To the extent permitted by law, Responding Member personnel  
7 who hold licenses, certificates, or permits evidencing professional, mechanical, or other  
8 skills shall be allowed to carry out activities and tasks relevant and related to their respective  
9 credentials during the specified Period of Assistance.  
10  
11 G. **Right to Withdraw Resources** - The Responding Member's Authorized Official retains the  
12 right to withdraw some or all of its resources at any time for any reason in the Responding  
13 Member's sole and absolute discretion. Notice of intention to withdraw must be  
14 communicated to the Requesting Member's Authorized Official as soon as soon as is  
15 practicable under the circumstances.  
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18 **ARTICLE VII.**  
19 **COST REIMBURSEMENT**  
20

21 Unless otherwise mutually agreed in whole or in part by both parties, the Requesting Member  
22 shall reimburse the Responding Member for each of the following categories of costs incurred  
23 while providing aid and assistance during the specified Period of Assistance.  
24

- 25 A. **Personnel** - Responding Member will make such employees as are willing to  
26 participate available to Requesting Member at Requesting Member's expense equal to  
27 Responding Member's full cost, i.e., equal to the employee's applicable salary or hourly  
28 wage plus fringe benefits and overhead, and consistent with Responding Member's  
29 collective bargaining agreements or other conditions of employment. All costs incurred  
30 for work performed during the specified Period of Assistance will be included. The  
31 Requesting Member shall be responsible for all direct and indirect labor costs.  
32  
33 B. **Equipment** - Use of equipment, such as construction equipment, vehicles, tools, pumps  
34 and generators, shall be at Responding Member's current equipment rate and subject to the  
35 following conditions: The Requesting Member shall reimburse the Responding Member for  
36 the use of equipment during the specified Period of Assistance, including, but not limited to,  
37 reasonable rental rates, all fuel, lubrication, maintenance, transportation, and  
38 loading/unloading of loaned equipment. All equipment shall be returned to the Responding  
39 Member as soon as is practicable and reasonable under the circumstances.  
40 (a) At the option of Responding Member, equipment may be provided with an  
41 operator.  
42 (b) Equipment shall be returned to Responding Member within 24 hours after receipt  
43 of an oral or written request for return.  
44 (c) Requesting Member shall, at its own expense, supply all fuel, lubrication and  
45 maintenance for furnished equipment.  
46 (d) Responding Member's cost related to the transportation, handling and  
47 loading/unloading of equipment shall be chargeable to Requesting Member.  
48 (e) In the event equipment is damaged while being dispatched to Requesting Member,  
49 or while in the custody and use of Requesting Member, Requesting Member shall  
50 reimburse Responding Member for the reasonable cost of repairing said damaged  
51 equipment. If the equipment cannot be repaired, then Requesting Member shall

1 reimburse Responding Member for the cost of replacing such equipment with  
2 equipment that is of at least equal capability as determined by the Responding  
3 Member. If Responding Member must lease a piece of equipment while Requesting  
4 Member equipment is being repaired or replaced, Requesting Member shall  
5 reimburse Responding Member for such lease costs.  
6

7 C. **Materials and Supplies** – Requesting Member shall reimburse Responding Member in  
8 kind or at actual replacement cost, plus handling charges, for use of expendable or non-  
9 returnable supplies. Other supplies and reusable items that are returned to Responding  
10 Member in a clean, damage-free condition shall not be charged to the Requesting  
11 Member and no rental fee will be charged; otherwise, they shall be treated as  
12 expendable supplies. Supplies that are returned to the Responding Member with  
13 damage must be treated as expendable supplies for purposes of cost reimbursement.  
14

15 D. **Payment Period** – The Responding Member shall provide an itemized bill to the Requesting  
16 Member for all expenses incurred by the Responding Member while providing assistance  
17 under this Agreement. The Requesting Member shall send the itemized bill not later than  
18 (90) ninety days following the end of the Period of Assistance. The Responding Member  
19 may request additional periods of time within which to submit the itemized bill, and  
20 Requesting Member shall not unreasonably withhold consent to such request. The  
21 Requesting Member agrees to reimburse the Responding Member within 60 days from  
22 receipt of an invoice for assistance provided under this Agreement. The Requesting  
23 Member may request additional periods of time within which to pay the itemized bill, and  
24 Responding Member shall not unreasonably withhold consent to such request, provided,  
25 however, that all payment shall occur not later than one-year after the date a final itemized  
26 bill is submitted to the Requesting Member.  
27

28 E. **Records** - Each Responding Member and its duly authorized representatives shall have  
29 access to a Requesting Member's books, documents, notes, reports, papers and records  
30 which are directly pertinent to this Agreement for the purposes of reviewing the accuracy of  
31 a cost bill or making a financial, maintenance or regulatory audit. Each Requesting Member  
32 and its duly authorized representatives shall have access to a Responding Member's books,  
33 documents, notes, reports, papers and records which are directly pertinent to this  
34 Agreement for the purposes of reviewing the accuracy of a cost bill or making a financial,  
35 maintenance or regulatory audit. Such records shall be maintained for at least three (3)  
36 years or longer where required by law and as needed for federal reimbursement practices.  
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### 39 **ARTICLE VIII.** 40 **ARBITRATION** 41

42 If any controversy or claim arises out of, or relates to, the Agreement, including, but not limited  
43 to an alleged breach of the Agreement, the disputing Members shall first attempt to resolve the  
44 dispute by negotiation, followed by mediation and finally shall be settled by arbitration in  
45 accordance with the Rules of the American Arbitration Association. Judgment on the award  
46 rendered by the arbitrator(s) may be entered in any court having jurisdiction.  
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**ARTICLE IX.**  
**REQUESTING MEMBER'S DUTY TO INDEMNIFY**

Pursuant to Government Code Section 895.4, and subject to Article X, Requesting Member shall assume the defense of, fully indemnify and hold harmless Responding Member, its Directors, Council Members, Supervisors, officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the Requesting Member's work hereunder, including, but not limited to, negligent or wrongful use of equipment, supplies or personnel provided to Requesting Member or faulty workmanship or other negligent acts, errors or omissions by Responding Member, or by personnel provided to Requesting Member from the time assistance is requested and rendered until the assistance is returned to Responding Member's control, portal to portal.

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**ARTICLE X.**  
**SIGNATORY INDEMNIFICATION**

In the event of a liability, claim, demand, action or proceeding, of whatever kind or nature arising out of the rendering of assistance through this Agreement, the parties involved in rendering or receiving assistance agree to indemnify and hold harmless all Members whose only involvement is the execution and approval of this Agreement, in the transaction or occurrence which is the subject of such claim, action, demand or other proceeding. Such indemnification shall include indemnity for all claims, demands, liability, damages and costs, including reasonable attorneys' fees and other costs of defense, for injury, property damage and workers compensation.

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**ARTICLE XI.**  
**WORKER'S COMPENSATION CLAIMS**

The Responding Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees. The Requesting Member is responsible for providing worker's compensation benefits and administering worker's compensation for its employees.

**ARTICLE XII.**  
**NOTICE**

Each party hereto shall give to the others prompt and timely written notice of any claim made or any suit instituted coming to its knowledge, which in any way, directly or indirectly, contingently or otherwise, affects or might affect them, and each Member shall have the right to participate in the defense of the same, as it considers necessary to protect its own interests.



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**ARTICLE XIII.**  
**INSURANCE**

Members shall maintain an insurance policy or maintain a self insurance program that covers activities that it may undertake by virtue of membership in the Mutual Aid and Assistance Program.

**ARTICLE XIV.**  
**CONFIDENTIAL INFORMATION**

To the extent allowed by law, any Member or Associate Member shall maintain in the strictest confidence and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information provided to it by another Member pursuant to this Agreement. If any Member, Associate Member, or third party requests or demands, by subpoena or otherwise, that a Member or Associate Member disclose any Confidential Information provided to it under this Agreement, the Member or Associate Member shall immediately notify the owner of the Confidential Information and shall take all reasonable steps necessary to prevent the disclosure of any Confidential Information by asserting all applicable rights and privileges with respect to such information and shall cooperate fully in any judicial or administrative proceeding relating thereto.

**ARTICLE XV.**  
**EFFECTIVE DATE**

This Agreement shall take effect for a new party immediately upon its execution by said party.

**ARTICLE XVI.**  
**WITHDRAWAL**

Any party may terminate its participation in this Agreement by written notice to the Chair of the appropriate RSC and to the SSC Chair. Withdrawal takes effect 60 days after the appropriate officials receive notice. Withdrawal from this Agreement shall in no way affect a Requesting Member's duty to reimburse a Responding Member for cost incurred during a Period of Assistance, which duty shall survive such withdrawal.

**ARTICLE XVII.**  
**MODIFICATION**

No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement require a simple majority vote of Members within each region and unanimous agreement among the regions. The State Steering Committee will notify all parties of modifications to this Agreement in writing and those modifications shall be effective upon 60 days written notice to the parties.

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3 **ARTICLE XVIII.**  
4 **SEVERABILITY**

5 If any term or provision of this Agreement is declared by a court of competent jurisdiction to be  
6 illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be  
7 affected, and the rights and obligations of the parties shall be construed and enforced as if the  
8 Agreement did not contain the particular term or provision held to be invalid.  
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11 **ARTICLE XIX.**  
12 **PRIOR AGREEMENTS**  
13

14 To the extent that prior agreements among signatories to this Agreement for mutual assistance  
15 are inconsistent with this Agreement, such agreements are hereby superseded. This  
16 Agreement supersedes the 1996 Omnibus Mutual Aid Agreement, the WARN 1997 Omnibus  
17 Mutual Aid Agreement, and the WARN 2001 Omnibus Mutual Aid and Assistance Agreement.  
18  
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20 **ARTICLE XX.**  
21 **PROHIBITION ON THIRD PARTIES AND ASSIGNMENT OF RIGHTS/DUTIES**  
22

23 This Agreement is for the sole benefit of the Members and no other person or entity has rights  
24 under this Agreement as a third party beneficiary. Assignment of benefits or delegation of  
25 duties created by this Agreement to third parties that are not Members is prohibited and without  
26 effect.  
27

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29 **ARTICLE XXI.**  
30 **TORT CLAIMS**  
31

32 This Agreement in no way abrogates or waives any immunity or defense available under  
33 California law.  
34

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36 **ARTICLE XXII.**  
37 **INTRASTATE AND INTERSTATE MUTUAL AID AND ASSISTANCE PROGRAMS**  
38

39 To the extent practicable, Members retain the right to participate in mutual aid and assistance  
40 activities conducted under the State of California Intrastate WARN Mutual Aid and Assistance  
41 Program and the Interstate Emergency Management Assistance Compact (EMAC) and similar  
42 programs.  
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**CalWater/Wastewater Agency Response Network (WARN)  
2007 Omnibus Mutual Assistance Agreement  
Emergency Contact List**

<b>WARN Region:</b>	<input checked="" type="checkbox"/> Region 1, Southern	<b>Type of Utility Member</b>
	<input type="checkbox"/> Region 2, Coastal	
	<input type="checkbox"/> Region 3, Northern	<input checked="" type="checkbox"/> Water
	<input type="checkbox"/> Region 4, Inland	<input checked="" type="checkbox"/> Wastewater
	<input type="checkbox"/> Region 5, Valley	<b>Other Membership</b>
	<input type="checkbox"/> Region 6, Southern	

Date of Joining: \_\_\_\_\_ Date of Update: \_\_\_\_\_

**Agency Name:** City of Banning

**Address:** P.O. Box 998

**City:** Banning **Zip Code:** 92220

**County:** Riverside **Website:** WWW.ci.banning.ca.us

**24-Hr. Telephone No.:** (951) 922-3281

***Authorized Representative Emergency Contact Info:***

**Name:** Perry Gerdes **Telephone:** ( 951 ) 849-3273

**Cell Phone:** ( 951 ) 232-9236

**E-Mail:** pgerdes@ci.banning.ca.us

***Alternate Representative Emergency Contact:***

**Name:** Arturo Vela **Telephone:** ( 951 ) 922-3134

74

Cell Phone: ( 951 ) 232-7288

E-Mail: avela@ci.banning.ca.us

***Emergency Operations Center:***

Location: Fire Admin

Telephone: ( 951 ) 922-3210

Cell Phone: (     )

E-Mail: jeff.stowells@fire.ca.gov

***Radio  
Frequency:***

***Call Signs:***

\_\_\_\_\_

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***No. of Services:*** 10,500

***The information provided on this page will be included in the WARN  
web site ([www.calwarn.org](http://www.calwarn.org)). ([Back to signature page](#))***

© CalWARN, 2008

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**California Water/Wastewater Agency Response Network (CalWARN)  
2007 Omnibus Mutual Assistance Agreement**

WHEREAS, the California Office of Emergency Services (OES), the Department of Water Resources (DWR), the Department of Public Health (DPH) and the California Utilities Emergency Association (CUEA) have expressed a mutual interest in the establishment of a plan to facilitate and encourage water agency mutual assistance agreements between water agencies; and

WHEREAS, the California Water Agency Response Network (CalWARN) was originally created to provide a forum for the development of mutual assistance agreements between water agencies in the OES Coastal Region of California; and later expanded to all water and wastewater agencies in the State of California, and

WHEREAS, the CALIFORNIA WATER/WASTEWATER AGENCY RESPONSE NETWORK (CalWARN) 2007 OMNIBUS MUTUAL ASSISTANCE AGREEMENT is a continuation of the WARN 1996 OMNIBUS MUTUAL AID and 2001 OMNIBUS MUTUAL AID AGREEMENT and sets forth the mutual covenants and agreements for water and wastewater agencies to provide mutual assistance to one another in times of emergency; and

WHEREAS, State OES regulates the SEMS program, and this agreement is consistent with SEMS, and that it is necessary to have a mutual assistance agreement in place to support requests to FEMA for costs of using assistance during an emergency, and

WHEREAS, the water or wastewater agency hereto has determined that it would be in its best interests to enter into an agreement that implements that plan and sets forth procedures and the responsibilities of the agency whenever emergency personnel, equipment and facility assistance are provided from one agency to the other; and

WHEREAS, no water or wastewater agency should be in a position of unreasonably using its own resources, facilities, or services providing such mutual assistance; and

WHEREAS, it is the intent of WARN to revise this agreement as necessary and to annually publish a list of all water and wastewater agencies participating in this agreement, as posted on [www.calwarn.org](http://www.calwarn.org); and

WHEREAS, such an agreement is in accord with the California Emergency Services Act set forth in Title 2, Division 1, Chapter 7 (Section 8550 et seq.) of the Government Code and specifically with Articles 14 and 17 (Section 8630 et seq.) of the Act.

NOW, THEREFORE, in consideration of the conditions and covenants contained therein, the

CITY OF BANNING

(Utility)

agrees to become a party to the CalWARN 2007 Omnibus Mutual Assistance Agreement.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Please return a signed copy of this page, plus the information requested on Emergency*

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Contacts List to:

Raymond Riordan  
CalWARN, State Steering Committee  
2662 Marsh Drive  
San Ramon, California 94583.

## **Emergency Response Network of the Inland Empire (ERNIE) 2006 Omnibus Mutual Assistance Agreement**

**WHEREAS**, the California Department of Public Health (DPH) has expressed an interest in the establishment of a plan to facilitate and encourage water agency mutual assistance agreements between water agencies, cities, and county jurisdictions; and

**WHEREAS**, the Emergency Response Network of the Inland Empire (ERNIE) was originally created to provide a forum for the development of mutual assistance agreements between agencies in the Inland Empire of California; and

**WHEREAS**, the EMERGENCY RESPONSE NETWORK (ERNIE) 2006 OMNIBUS MUTUAL ASSISTANCE AGREEMENT attached hereto and incorporated herein sets forth the mutual covenants and agreements for agencies to provide mutual assistance to one another in times of emergency; and

**WHEREAS**, State California Office of Emergency Services (OES) regulates the SEMS/NIMS program, and this agreement is consistent with Standardized Emergency Management System (SEMS) National Incident Management System (NIMS) and that it is necessary to have a mutual assistance agreement in place to support requests to the Federal Emergency Management Agency (FEMA) for costs of using assistance during an emergency; and

**WHEREAS**, the agencies hereto have determined that it would be in their best interests to enter into an agreement that implements that plan and sets forth procedures and the responsibilities of the agencies whenever emergency personnel, equipment and facility assistance are provided from one agency to the other; and

**WHEREAS**, no agency should be in a position of unreasonably using its own resources, facilities, or services providing such mutual assistance; and

**WHEREAS**, it is the intent of ERNIE to revise this agreement as necessary and to annually publish a list of all agencies participating in this agreement, as posted on the East Valley Water District's Web-site; [www.eastvalley.org](http://www.eastvalley.org)

**WHEREAS**, such an agreement is in accord with the California Emergency Services Act set forth in Title 2, Division 1, Chapter 7 (Section 8550 et seq.) of the Government Code and specifically with Articles 14 and 17 (Section 8630 et seq.) of the Act.

Now, THEREFORE, in consideration of the conditions and covenants contained therein, the City of Banning

(Agency Name)

agrees to become a party to the ERNIE, 2006 Omnibus Mutual Assistance Agreement.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

*Please return a signed copy of this page, plus the Articles of Agreement to:*

Gary Sturdivan

East Valley Water District

P.O. Box 3427

San Bernardino, CA 92413

(909) 888-8986 extension 4087



**ERNIE Member List**  
**As of January 19, 2010**

**Governmental Organizations:**

California Department of Public Health  
City of Big Bear, Department of Water and Power  
City of Corona, Department of Water and Power  
City of Redlands Municipal Utilities Department  
City of San Bernardino Water Department  
City of San Bernardino Municipal Water Department  
City of Riverside Public Works  
East Valley Water District  
Eastern Municipal Water  
Elsinore Valley Municipal Water District  
Jurupa Community Services District  
Riverside Highland Water Company  
San Bernardino County Sheriff's Department  
San Bernardino Valley Municipal Water District  
San Manuel Band of Mission Indians  
Western Municipal Water District  
Yucaipa Valley Water District

**Non-Governmental Organizations (NGOs):**

Risk Management Professionals  
SRM Associates, Inc.

**Articles of Agreement  
Emergency Response Network of the Inland Empire  
(ERNIE) 2006 Omnibus Mutual Assistance Agreement**

THIS AGREEMENT is made and entered into by those agencies who have adopted and signed this agreement to provide mutual assistance in times of emergency in accordance with the California Emergency Services Act and the California Disaster and Civil Defense Master Mutual Aid Agreement; and to provide reimbursement for equipment, supplies and personnel made available on an emergency basis.

All of said agencies being herein referred to collectively as "the parties."

In consideration of the mutual covenants and agreements hereinafter set forth, the parties agree to provide mutual assistance to one another in times of emergency as follows:

**Article I - APPLICABILITY.** This agreement is available to all agencies, public and private, in the Inland Empire, State of California.

**Article II - ADMINISTRATION.** The administration of the Emergency Response Network of the Inland Empire (ERNIE) will be through The East Valley Water District and The City of San Bernardino Municipal Water Department.

The ERNIE will be established by representatives from the signatory agencies in the region. A chair and co-chair will be elected and act as administrators. ERNIE will sponsor a monthly meeting for signatory agencies, maintain a database of all agencies who have signed this agreement, and meet as a committee to address concerns and procedures for requesting mutual assistance within the region.

**Article III - DEFINITION OF EMERGENCY.** "Emergency" means a condition of disaster or calamity arising within the area of operation of the parties, caused by fire, flood, storm, earthquake, civil disturbance, or other condition which is or is likely to be beyond the control of the services, personnel, equipment, and facilities of a party hereto and requires mutual assistance.

**Article IV - REQUESTS FOR ASSISTANCE.** Requests for emergency assistance under this Agreement shall be directed to the appropriate designated official(s) from the list of participating agencies.

When more than one agency is impacted by a disaster, requests for mutual assistance under this Agreement may be channeled through the CUEA Utility Operation Center to ensure maximum effectiveness in allocating resources to

the highest priority needs.

The party rendering assistance under this Agreement is referred to as LENDER; the party receiving assistance is referred to as BORROWER.

**Article V - GENERAL NATURE OF ASSISTANCE.** Assistance will generally be in the form of resources, such as equipment, supplies, and personnel. Assistance shall be given only when LENDER determines that its own needs can be met while rendering assistance. The execution of this Agreement shall not create any duty to respond on the part of any party hereto. A potential LENDER shall not be held liable for failing to provide assistance. A potential LENDER has the absolute discretion to decline to provide any requested assistance. Resources are to be made available on a loan basis with reimbursement terms varying with the type of resource.

**Article VI - LOANS OF EQUIPMENT.** Use of equipment, such as construction equipment, vehicles, tools, pumps and generators, shall be at LENDER's current equipment rate and subject to the following conditions:

- (a) At the option of LENDER, loaned equipment may be loaned with an operator.
- (b) Loaned equipment shall be returned to LENDER within 24 hours after receipt of an oral or written request.
- (c) BORROWER shall, at its own expense, supply all fuel, lubrication and maintenance for loaned equipment.
- (d) LENDER's cost related to the transportation, handling and loading/unloading of equipment shall be chargeable to BORROWER.
- (e) In the event loaned equipment is damaged while being dispatched to BORROWER, or while in the custody and use of BORROWER, BORROWER shall reimburse LENDER for the reasonable cost of repairing said damaged equipment. If the equipment cannot be repaired, then BORROWER shall reimburse LENDER for the cost of replacing such equipment with equipment that is of at least equal capability. If LENDER must lease a piece of equipment while LENDER's equipment is being repaired or replaced, BORROWER shall reimburse LENDER for such lease costs.

**Article VII - EXCHANGE OF SUPPLIES.** BORROWER shall reimburse LENDER in kind or at actual replacement cost, plus handling charges, for use of expendable or non-returnable supplies. Other supplies and reusable items that are returned to LENDER in a clean, damage-free condition shall not be charged to the BORROWER and no rental fee will be charged; otherwise, they shall be treated as expendable supplies.

**Article VIII - PERSONNEL.** LENDER will make such employees as are willing to participate available to BORROWER at BORROWER's expense equal to

LENDER's full cost, i.e., equal to the employee's applicable salary or hourly wage plus fringe benefits and overhead, and consistent with LENDER's personnel union contracts or other conditions of employment. Employees so loaned will be under the supervision and control of the BORROWER. BORROWER shall be responsible for all direct and indirect costs associated with workers compensation claims. Costs to feed and house loaned personnel, if necessary, shall be chargeable to and paid by BORROWER. LENDER will not be responsible for cessation or slowdown of work if LENDER's employees decline or are reluctant to perform any assigned tasks.

**Article IX - REIMBURSEMENT.** The BORROWER agrees to reimburse the LENDER within 60 days from receipt of an invoice for assistance provided under this Agreement.

**Article X - LIABILITY AND HOLD HARMLESS.** Pursuant to Government Code Section 895.4, and subject to the conditions set forth in Article XI, BORROWER shall assume the defense of, fully indemnify and hold harmless LENDER, its Directors, Council Members or Supervisors, its officers and employees, from all claims, loss, damage, injury and liability of every kind, nature and description, directly or indirectly arising from the BORROWER's work hereunder, including, but not limited to, negligent or wrongful use of equipment, supplies or personnel on loan to BORROWER, or faulty workmanship or other negligent acts, errors or omissions by BORROWER or by personnel on loan to BORROWER from the time assistance is requested and rendered until the assistance is returned to LENDER's control, portal to portal.

Each party hereto shall give to the others prompt and timely written notice of any claim made or any suit instituted coming to its knowledge, which in any way, directly or indirectly, contingently or otherwise, affects or might affect them, and each shall have the right to participate in the defense of the same to the extent of its own interest.

**Article XI - SIGNATORY INDEMNIFICATION.** In the event of a liability, claim, demand, action or proceeding, or whatever kind or nature arising out of the rendering of assistance through this agreement, the parties involved in rendering or receiving assistance agree to indemnify and hold harmless each signatory to this mutual assistance agreement, whose only involvement is the execution and approval of this Agreement, in the transaction or occurrence which is the subject of such claim, action, demand or other proceeding. Such indemnification shall include indemnity for all claims, demands, liability, damages and costs, including reasonable attorneys' fees and other costs of defense, for injury, property damage and workers compensation.

**Article XII - WORKER'S COMPENSATION AND EMPLOYEE CLAIMS.** LENDER's employees, officers or agents, made available to BORROWER shall, except as otherwise provided under Labor Code sections 3600.2 through 3600.6 be the

special employees of BORROWER and the general employees of LENDER (as defined in Insurance Code 11663) while engaged in carrying out duties, functions, or activities pursuant to this Agreement. BORROWER will reimburse

LENDER for all costs, benefits, and expenses associated with workers compensation and other claims. LENDER is responsible for providing workers compensation benefits and administering workers compensation claims subject to the reimbursement terms of this agreement. BORROWER will reimburse LENDER for workers compensation costs, benefits and expenses on a quarterly basis or on other terms mutually agreed upon by LENDER and BORROWER.

**Article XIII - MODIFICATIONS.** No provision of this Agreement may be modified, altered or rescinded by individual parties to the Agreement. Modifications to this Agreement require a simple majority vote of signatory agencies to the Agreement. The ERNIE will notify all parties of modifications to this Agreement in writing and those modifications shall be effective upon 60 days written notice to the parties.

**Article XIV - TERMINATION.** This Agreement is not transferable or assignable, in whole or in part, and any party may terminate their participation in this Agreement at any time upon 60 days' written notice delivered or mailed to the East Valley Water District.

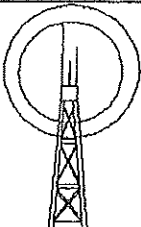
**Article XV - EFFECT.** Agreement shall take effect for a new party immediately upon its execution by said party.

**Article XVI - PRIOR AGREEMENTS.** Deleted 06/28/06

**Article XVII - ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**Article XVIII - TORT CLAIMS.** This Agreement in no way acts to abrogate or waive any immunity or defense available under California Law.

(end)



**E**mergency  
**R**esponse  
**N**etwork  
of the  
**I**ndland  
**E**mpire

## EMERGENCY CONTACTS

### AGENCY DATA

Agency Name: CITY OF BANNING

Mailing Address: P.O. BOX 998, BANNING, CA 92220

Main Phone Number: 951 922-3281 24-hr Phone Number: 951 922-3170

Radio Frequency - Water: N/A Radio Frequency - Wastewater: N/A

Date of last update: \_\_\_\_\_

### EMERGENCY CONTACTS

Emergency Manager/Coordinator Name: PERRY GERDES

Main Phone Number: 951 922-3281 24-hr Phone Number: 951 922-3170

Pager Number: \_\_\_\_\_ E-Mail: pgerdes@ci.banning.ca.us

Radio Call Sign: \_\_\_\_\_ Emergency Operations Center Phone Number: \_\_\_\_\_

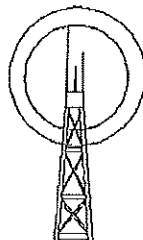
Secondary Contact Person Name: ARTURO VELA

Secondary Main Phone Number: 951 922-3130 24-hr Phone Number: 951 922-3170

Secondary E-Mail: avela@ci.banning.ca.us Secondary Radio Call Sign: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_



Emergency  
Response  
Network  
of the  
Inland  
Empire

## EMERGENCY CONTACTS

### Water Contacts

Senior Person Name: Perry Gerdes Title: Water/Wastewater Superintendent

Main Phone Number: (951) 849-3273 24-hr Phone Number: (951) 232-9236

Radio Call Sign: N/A Pager Number: N/A

Operations Center Phone Number: \_\_\_\_\_

Secondary Person Name: Arturo Vela Title: Senior Civil Engineer

Main Phone Number: (951) 922-3134 24-hr Phone Number: (951) 232-7288

Radio Call Sign: N/A Pager Number: N/A

Notes: \_\_\_\_\_

(same as above)

### Wastewater Contacts

Senior Person Name: \_\_\_\_\_ Title: \_\_\_\_\_

Main Phone Number: \_\_\_\_\_ 24-hr Phone Number: \_\_\_\_\_

Radio Call Sign: \_\_\_\_\_ Pager Number: \_\_\_\_\_

Operations Center Phone Number: \_\_\_\_\_

Secondary Person Name: \_\_\_\_\_ Title: \_\_\_\_\_

Main Phone Number: \_\_\_\_\_ 24-hr Phone Number: \_\_\_\_\_

Radio Call Sign: \_\_\_\_\_ Pager Number: \_\_\_\_\_

Notes: \_\_\_\_\_

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## CITY COUNCIL AGENDA

**Date:** February 14, 2012  
**TO:** Mayor and City Council  
**FROM:** June Overholt, Administrative Services Director  
**SUBJECT:** 2010-11 Annual Report of Development Impact Fees

**RECOMMENDATION:** “That the City Council review and approve the 2010-11 Annual Report of Development Impact Fees as required by the Mitigation Fee Act.”

**JUSTIFICATION:** The Mitigation Fee Act requires an annual report on the receipt, use and retention of development impact fees.

**BACKGROUND/ANALYSIS:** Pursuant to the Mitigation Fee Act (the Act) the City is required to report on the status of its development impact fee (DIF) balances on an annual basis. The report must contain a summary of receipts, disbursements and retention of these funds. In addition, one of the requirements under that Act is that the City expend the DIF collected within five (5) years. If the City fails to do so the City must make certain findings or refund the monies. With respect to a 5 year accumulation of funds, the required findings are as follows:

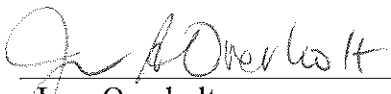
- Identify the purpose for which funds will be spent
- Indicate that the fee was appropriately charged
- Identify all monies on hand that will go toward certain incomplete improvements
- Identify the expected dates that the City anticipates having all required funding and making the appropriate identified improvements

The City currently has 5 categories of fees that have a 5 year accumulation of funds. In each case, the attached report contains the required findings.

**FISCAL DATA:** None. The attached report contains all required findings.

RECOMMENDED BY:

APPROVED BY:

  
\_\_\_\_\_  
June Overholt  
Administrative Services Director/  
Deputy City Manager

  
\_\_\_\_\_  
Andy Takata  
City Manager



## 2010-11 ANNUAL REPORT OF DEVELOPMENT IMPACT FEES

Pursuant to Government Code Section 66006, the following report on the receipt, use and retention of development impact fees for fiscal year 2010-11 is hereby presented to the City Council for review and approval.

**Police Facilities Development Fund** - To account for development impact fees levied for the purpose of acquisition and expansion of police facilities.

Beginning Balance at 07/01/10	\$	19,090
Receipts		5808
Disbursements		<u>-0-</u>
Ending Balance at 06/30/11	\$	24,898

Receipts include \$5,685 of fees and \$123 of interest income.

The balance is committed to reimburse expenses to build police facilities and to purchase police vehicles.

Funds unexpended or uncommitted for five years or more: None

**Fire Facilities Development Fund** - To account for development impact fees levied for the purpose of acquisition and expansion of fire facilities.

Beginning Balance at 07/01/10	\$	916,249
Receipts		6,209
Disbursements		<u>-0-</u>
Ending Balance at 06/30/11	\$	922,458

Receipts include \$821 of fees and \$5,388 of interest income.

Funds unexpended or uncommitted for five years or more: \$736,989

These funds are designed for improvements or the construction to Fire stations and the purchase of related apparatus. The improvements to the Wilson Street Station are pending development plans for the west end of the City and availability of the station. The building would need to be remodeled in certain areas to restore it to a functional fire station. Although the costs associated with any remodel are expected to be significant, there is currently no certain timeframe or current cost estimate for the above. The above fees were appropriately charged and collected for the identified improvement.

**Traffic Control Facilities Fund** - To account for development impact fees levied for the purpose of constructing and installing new traffic signals.

Beginning Balance at 07/01/10	\$	383,610
Receipts		16,441
Disbursements		<u>-0-</u>

Ending Balance at 06/30/11                      \$        400,051

Receipts include \$14,160 of fees and \$2,281 of interest income.

Funds unexpended or uncommitted for five years or more: \$263,542

These funds are designated for traffic signals. Due to the economic downturn, the strategic timing of signal projects is being reconsidered. Once development related activity increase, the above funds will be spent on eligible improvements. The above fees were appropriately charged and collected for the identified improvement.

**General Government Facilities Fund** - To account for development impact fees levied for the purpose of constructing and making improvements to City facilities that are not part of the City's enterprise fund operations.

Beginning Balance at 07/01/10	\$	462,687
Receipts		7,153
Disbursements		<u>-0-</u>
Ending Balance at 06/30/11	\$	469,840

Receipts include \$4,425 of fees and \$2,728 of interest income.

Funds unexpended or uncommitted for five years or more: \$378,371

The funds are designated for improvements to City facilities. The City is considering upgrades that will improve public access to the City Hall restrooms and customer service. A definitive timeline has not been established. The above fees were appropriately charged and collected for the identified improvement.

**Park Development Fund** - To account for development impact fees levied for the purpose of funding the acquisition and development of park facilities.

Beginning Balance at 07/01/10	\$	179,470
Receipts		988
Disbursements		<u>(26,590)</u>
Ending Balance at 06/30/11	\$	153,868

Receipts include \$0 of fees and \$988 of interest income.

Disbursements consisted of costs for professional services related to the parks master plan and landscape improvements at Repplier Park.

Funds unexpended or uncommitted for five years or more: \$40,941

These funds are designated for acquisition of park land and expansion improvements to community recreation facilities. The current projects include updating the City's parks master plan as well as improvements to Repplier Park. The above fees were appropriately charged and collected for the identified services and improvements.

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**Water Capital Facilities Fees Fund** - To account for development impact fees levied for the purpose of funding the initial cost of new water facilities to meet the water demand of new users.

Beginning Balance at 07/01/10	\$	4,683,164
Audit Restatement to Fund Balance		1,300,000
Receipts		80,838
Disbursements		<u>(145,279)</u>
Ending Balance at 06/30/11	\$	5,918,723

Receipts include \$53,643 of fees and \$27,194 of interest income.

The FY10 financial statements included an audit restatement of 1,300,000. The fund has been reimbursed by the CRA (through a loan) for CRA eligible projects.

Disbursements consisted of payments related to the relocation of the S.C.E. transmission facility as well as engineering related to replacement of water lines.

Funds unexpended or uncommitted for five years or more: None

**Wastewater Capital Facilities Fees Fund** - To account for development impact fees levied for the purpose of the initial cost of sewerage capacity to meet the service demand of new users.

Beginning Balance at 07/01/10	\$	10,991,950
Removed Tertiary Surcharge Funds		(2,681,036)
Receipts		1,103,613
Disbursements		<u>(169,963)</u>
Ending Balance at 06/30/11	\$	9,224,564

Receipts include \$1,045,811 of fees and \$57,802 of interest income.

Funds unexpended or uncommitted for five years or more: \$6,483,054

Previous reports included Tertiary Surcharge funds which are not an impact fee. Therefore, it should not be included in this report.

The City is studying an upgrade to the wastewater treatment plant or a reclamation plant. The City will utilize available bonds proceeds and will pursue low interest loans and grants through the State programs to assist in the funding. The above fees were appropriately charged and collected for the identified improvement.

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## CITY COUNCIL / BANNING UTILITY AUTHORITY AGENDA

**DATE:** February 14, 2012

**TO:** Banning Utility Authority

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

**SUBJECT:** Resolution No. 2012-02 UA, "Awarding a Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, California for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS)"

**RECOMMENDATION:** Adopt Resolution No. 2012-02 UA, "Awarding the Professional Services Agreement to Nobel Systems, Inc. of San Bernardino, California for the Maintenance, Training and Support of the Water and Wastewater Geographic Infrastructure System (GIS) in an amount "Not to Exceed" \$50,000.00 as shown in Exhibit "A" attached hereto."

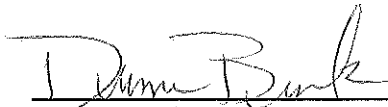
**JUSTIFICATION:** Maintaining the Water and Wastewater Geographic Infrastructure System, also known as GeoViewer, will enable the City to continue to provide web-based mapping information to better serve the public providing efficient record accessibility on hydrant locations, water mains, sewer mains, Storm Drainage, water pressures and as-builts.

**BACKGROUND:** In May of 2006, the Water and Wastewater Divisions began to transfer records into an on-line hard copy mapping system. The mapping system is based on a GIS system improving the record keeping of water and wastewater infrastructure. The program assists with day to day operations, enabling personnel to perform efficient research of the City's existing utilities and infrastructure. The City's water and wastewater data needs to continue to be updated with the completion of the downtown water main replacement project and several water maintenance projects throughout the City. The approval of this contract will bring the divisions up to date on adding tentative tracts/as-builts, subdivision plans and profile drawings, reservoirs, and pump stations. It will also include adding the City's storm drainage system to the GIS system to meet the requirements of the Regional Board for tracking possible sewer spills and storm events that may or may not enter the drainage system leading to water ways.

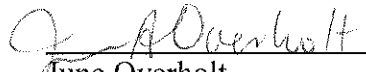
Nobel Systems, Inc. is a reputable specialized company providing the above mentioned services to many other utilities utilizing new technology to enhance mapping. Additionally, Nobel Systems, Inc. provided the City with initial set-up of the system and is a sole source provider for the GeoViewer System. Staff respectfully requests the approval of the proposed agreement in the amount of \$50,000.00 as shown in Exhibit "A" attached hereto.

**FISCAL DATA:** Funds in the amount of \$50,000.00 for this agreement are available in the Fiscal Year 2012 Water Division Operation Budget, 75% out of Account No. 660-6300-471.33-11 and the Wastewater Division Operations Budget, 25% out of Account No. 680-8000-454.23-37.

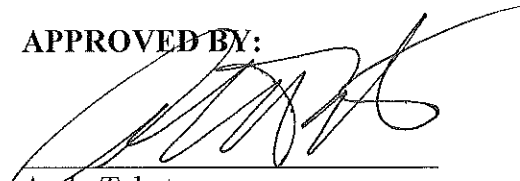
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2012-02 UA**

**A RESOLUTION BY THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDED A PROFESSIONAL SERVICES AGREEMENT TO NOBEL SYSTEMS, INC. OF SAN BERNARDINO, CALIFORNIA FOR THE MAINTENANCE, TRAINING AND SUPPORT OF THE WATER AND WASTEWATER GEOGRAPHIC INFRASTRUCTURE SYSTEM (GIS)**

**WHEREAS**, the City is the Urban Water Supplier for the water service area of the City of Banning; and

**WHEREAS**, in May of 2006 the City's Water Division began to transfer records into an on-line hard copy mapping system; and

**WHEREAS**, the mapping system is based on a GIS system of the water and wastewater utilities and infrastructures such as hydrant locations, water mains, sewer mains, pressures and as-builts; and

**WHEREAS**, maintaining the Water and Wastewater, also known as GeoViewer, will enable personnel to more efficiently access information, enabling personnel to more effectively perform day to day operations; and

**WHEREAS**, Nobel Systems, Inc., a sole source provider, performed the initial set-up of the system and is a reputable specialized company that is well known in the industry; and

**WHEREAS**, funding is established in the Water and Wastewater Operations Account Nos. 660-6300-471.33-11 and 680-8000-454.23-37.

**NOW, THEREFORE, BE IT RESOLVED**, by the Utility Authority of the City Banning as follows:

SECTION 1. The Professional Services Agreement for the GeoViewer Maintenance, Training and Support for the Water and Wastewater GIS Systems is awarded to Nobel Systems, Inc. of San Bernardino, California, in an amount "Not to Exceed" \$50,000.00 as shown in Exhibit "A" attached hereto.

SECTION 2. The City Manager is authorized to execute the Professional Services Agreement with Nobel Systems, Inc. of San Bernardino, California, and this authorization will be rescinded if the parties do not execute the contract agreement within Sixty (60) days of the date of this resolution.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of February 2012.

\_\_\_\_\_  
Don Robinson, Chairman  
Banning Utility Authority

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**ATTEST:**

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Marie A. Calderon, Secretary  
Banning Utility Authority

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

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David Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-02 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 14<sup>th</sup> day of February, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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**EXHIBIT “A”**

**NOBEL SYSTEMS, INC. PROPOSED AGREEMENT**



# **CONTRACT SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**NOBEL SYSTEMS**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
NOBEL SYSTEMS**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 15<sup>TH</sup> day of February, 2012 by and between the City of Banning, a municipal corporation ("City") and NOBEL SYSTEMS, ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." (The term Contractor includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

#### 1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the

performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

#### 1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

#### 1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

#### 1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed \$50,000.00 (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

### 2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

**ARTICLE 3. PERFORMANCE SCHEDULE**

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

### 3.5 Term.

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

## ARTICLE 4. COORDINATION OF WORK

### 4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

BALAJI KADABA  
(Name)

OPERATIONS MANAGER  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

### 4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept



informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used,

either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or

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failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of

Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

### **6.2 Reports.**

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim

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for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

#### 7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other

appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

#### 7.2 Disputes; Default.

In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

#### 7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party

of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of N/A (\$ N/A ) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate



such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during

employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

#### 8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

### ARTICLE 9. MISCELLANEOUS PROVISIONS

#### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

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

**CITY:**

CITY OF BANNING, a municipal corporation

\_\_\_\_\_  
City Manager

ATTEST:

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

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CONTRACTOR:**

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

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

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Two signatures are required if a corporation.

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

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**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. Contractor will perform the following Services:**
- A. Updating Water and Sewer GIS data with field notes and Asbuilt scans.
  - B. Show Sewer cleaning and valve and fire hydrant locations along with pertinent information available in spreadsheet as external table and Printing of revised Sewer and Water Atlas Books.
  - C. Data Conversion for Storm Drain System.
  - D. Application Development & Enhancements to Geo-Viewer.
- II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**
- A. Revised/Update Geodatabase for both Water and Sewer facilities
  - B. Create and Print Atlas Books for Sewer and Water facilities
  - C. New Geo Database & 5 Atlas Books for Storm Drain System.
  - D. New Tools in Geo-Viewer.
- III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City appraised of the status of performance by delivering the following status reports:**
- A. Project Status Report on weekly basis.
  - B. PAR (Problems and Resolution) forms for City's review and feedback.
  - C. Procedure and Standards document used for data conversion/update process.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**
- V. Contractor will utilize the following personnel to accomplish the Services:**
- A. Balaji Kadaba
  - B. Ahmed Khattab
  - C. Nagaraja Chokkalingam

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

- A. Section 5.4 Performance Bond
- B. Section 7.7 Liquidated Damages
- C. Article 3, Section 3.5 Agreement may be renewable for an additional four (4) single years upon an annual review of the provided services, unless earlier terminated as provided in Section 7.8 "Termination of Agreement".
- D. Notarization Waived

**EXHIBIT "C"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>
<b>A.</b>	<b>Task A</b>	<b><u>\$10,000.00</u></b>	<b><u>4-8 Weeks</u></b>
<b>B.</b>	<b>Task B</b>	<b><u>\$3000.00</u></b>	<b><u>1 Week</u></b>
<b>C</b>	<b>Task C</b>	<b><u>\$22,000.00</u></b>	<b><u>3-6 Weeks</u></b>
<b>D..</b>	<b>Task D</b>	<b><u>\$15,000.00</u></b>	<b><u>6-12 Weeks</u></b>

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services. (NOT APPLICABLE)**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**

**VI. The City will compensate Contractor for the Services performed at the completion of each task upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the Services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed \$50,000.00, as provided in Section 2.1 of this Agreement.**

**VI. The Contractor's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

- I. Contractor shall perform all services timely in accordance with the following schedule:**

		<b><u>Days to Perform</u></b>	<b><u>Deadline Date</u></b>
<b>A.</b>	<b>Task A</b>	<b><u>20 – 40 Days</u></b>	<b><u>6/30/12</u></b>
<b>B.</b>	<b>Task B</b>	<b><u>5 Days</u></b>	<b><u>3/31/12</u></b>
<b>C.</b>	<b>Task C</b>	<b><u>15 – 30 Days</u></b>	<b><u>2/28/12</u></b>
<b>D.</b>	<b>Task D</b>	<b><u>15-45 Days</u></b>	<b><u>5/30/12</u></b>

- II. Contractor shall deliver the following tangible work products to the City by the following dates.**

- A. Revised/Update Geodatabase for both Water and Sewer facilities – 6/30/12**
- B. Create and Print Atlas Books for Sewer and Water facilities – 1/15/12**
- C. Update GeoViewer for new data and CCTV Inspection Report – 2/28/12**
- D. New Geoviewer Tools for Man Hole Inspection Report Exercise – 5/30/12**



## CITY COUNCIL/BANNING UTILITY AUTHORITY AGENDA

**DATE:** February 14, 2012

**TO:** City Council & Banning Utility Authority

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

**SUBJECT:** Resolution No. 2012-03 UA, "Amending the Professional Services Agreement with AECOM, (Formerly Known as Metcalf & Eddy, Inc.) for the Design of the Transmission Pipeline to Deliver State Water Project Water to Banning"

**RECOMMENDATION:** The Utility Authority adopt Resolution No. 2012-03 UA:

- I. Amending the Professional Services Agreement with AECOM of Camarillo, California for the Design of the Transmission Pipeline to Deliver State Water Project water to Banning in an amount of \$82,460.00 for a total contract amount "Not to Exceed" \$486,721.00.
- II. Authorizing the Administrative Services Director to make necessary adjustments and appropriations in an amount of \$82,460.00 from the Water Operations Fund to Account No. 661-6300-471.96-28 (State Water Line). Note: San Gorgonio Pass Water Agency will reimburse the City for fifty-percent of the cost "Not to Exceed" \$50,000.00.

**JUSTIFICATION:** It is necessary to implement changes to the transmission pipeline design in order to complete the plans for the future State Water Project (SWP) mainline and to recharge SWP water in the Beaumont Basin.

**BACKGROUND:** On October 23, 2007 the City Council awarded a Professional Services Agreement to "Design the Transmission Pipeline to Deliver SWP Water to Banning" to Metcalf & Eddy, Inc. in the amount of \$249,046.00.

On June 10, 2008 the City Council approved the First Amendment to the Agreement in the amount of \$95,215.00 at the request and expense of the San Gorgonio Pass Water Agency (SGPWA) to upsize the size of the pipeline from 24" to 54".

On March 24, 2009, City Council approved the Second Amendment in the amount \$60,000.00 authorizing Metcalf & Eddy to engineer the downsizing of the transmission pipeline from 54" to 36" in diameter as determined necessary by SGPWA staff. SGPWA agreed to reimburse the City for the additional costs associated with the downsizing.

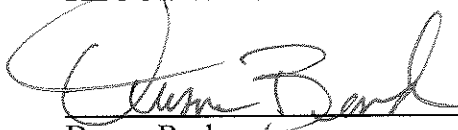
On March 30, 2010, AECOM, formerly known as Metcalf & Eddy, Inc., met with SGPWA staff and was informed that they recently secured a permanent connection to the SWP pipeline and that they would be able to assist the City in securing a permit for the permanent connection. This new SGPWA permanent connection to the SWP pipeline has been recently constructed via the set of plans produced for the SGPWA dated January 2009 called the Noble Creek EBX Connection. SGPWA created their connection on a parcel owned by SGPWA on Noble Street.

On May 16, 2011, the SGPWA approved the Capacity Fee Nexus Study for The San Geronio Pass Water Agency dated May 13, 2011 prepared by David Taussig and Associates. The study defines facilities and land that SGPWA has determined essential in order to meet their future demands as shown in Table 5 of the report attached hereto as Exhibit "A". Also included in this report are respective estimated costs that will be financed, or partially financed, by the revenue from the facility capacity fee recommended in the study. The inclusion of the SWP transmission pipeline, as referred to in the report as the Banning Pipeline Extension, confirms SGPWA's commitment to the project. For review, the selected route of the proposed transmission pipeline is highlighted in yellow as shown in the attached Exhibit "B".


Consequently, City staff requested a proposal from AECOM for the completion of the SWP mainline design including a 24" waterline for Banning and a 36" waterline for SGPWA, essentially two designs. In response, AECOM submitted a proposal in the amount of \$82,460.00. Staff respectfully requests the approval of the Third Amendment in an amount "Not to Exceed" \$82,460.00. As in the past, the contract will be facilitated by the City. SGPWA will reimburse fifty-percent of the cost "Not to Exceed" \$50,000.00 as approved by their board on January 17, 2012.

**FISCAL DATA:** The original contract for this project was awarded in the amount of \$249,046.00. With the approval of this resolution, the amendments amount to \$237,675.00 for a total contract amount of \$486,721.00. In April of 2010 SGPWA reimbursed the City in the amount of \$135,000.00. An appropriation in the amount of \$82,460.00 is necessary from the Water Operations Fund to Account No. 661-6300-471.96-28 (State Water Line) for the completion of the SWP waterline design. The Third Amendment in the amount of \$82,460.00 will be funded by both the City and SGPWA at a cost of fifty-percent each; therefore, SGPWA will reimburse the City an additional \$41,230.00. The Water Operation Fund balance is approximately \$1,551,154.00.

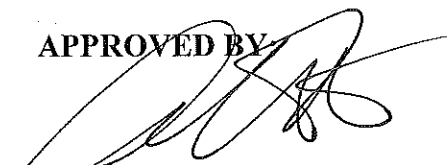
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2012-03 UA**

**RESOLUTION NO. 2012-03 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE PROFESSIONAL SERVICES AGREEMENT WITH AECOM, (FORMERLY KNOWN AS METCALF & EDDY, INC.) FOR THE DESIGN OF THE TRANSMISSION PIPELINE TO DELIVER STATE WATER PROJECT WATER TO BANNING**

**WHEREAS**, on October 23, 2007 the City Council awarded a Professional Services Agreement to "Design the Transmission Pipeline to Deliver State Water Project (SWP) Water to Banning" to Metcalf & Eddy, Inc. in the amount of \$249,046.00; and

**WHEREAS**, on June 10, 2008 the City Council approved the First Amendment to the Agreement in the amount of \$95,215.00 at the request and expense of the San Geronio Pass Water Agency (SGPWA) to upsize the size of the pipeline from 24" to 54"; and

**WHEREAS**, on March 24, 2009, City Council approved the Second Amendment in the amount of \$60,000.00 authorizing Metcalf & Eddy to engineer the downsizing of the transmission pipeline from 54" to 36" in diameter as determined necessary and SGPWA agreed to reimburse the City for the additional costs associated with the downsizing; and

**WHEREAS**, on March 30, 2010, AECOM, formerly known as Metcalf & Eddy, Inc., met with SGPWA staff and was informed that they recently secured a permanent connection to the SWP pipeline and that they would be able to assist the City in securing a permit for a permanent connection; and

**WHEREAS**, the new SGPWA permanent connection to the SWP pipeline has been recently constructed via the set of plans produced for the SGPWA dated January 2009 called the Noble Creek EBX Connection which is located on a parcel owned by SGPWA on Noble Street; and

**WHEREAS**, City staff requested a proposal from AECOM for the completion of the SWP mainline design including a 24" waterline for Banning and a 36" waterline for SGPWA, essentially two designs, and AECOM submitted a proposal in the amount of \$82,460.00; and

**WHEREAS**, staff recommends the approval of the Third Amendment in an amount "Not to Exceed" \$82,460.00, fifty-percent of which will be funded by SGPWA as approved by their board on January 17, 2012.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The Amendment to the Professional Services Agreement with AECOM for the completion of the SWP mainline design is approved in the amount of \$82,460.00 for a total contract amount "Not to Exceed" \$486,721.00.

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SECTION 2. The Administrative Services Director is authorized to appropriate funds from the Water Operations Fund to Account No. 661-6300-471.96-28 (State Water Line), in the amount of \$82,460.00 and is authorized to make necessary budget adjustments related to these funds.

SECTION 3. The City Manager is authorized to execute the Amendment to Professional Services Agreement with AECOM for the Design of the Transmission Pipeline to Deliver State Water Project water to Banning. This authorization will be rescinded if the parties do not execute the contract agreement within Ninety (90) days of this resolution.

**PASSED, APPROVED AND ADOPTED** this 14th day February, 2012.

\_\_\_\_\_  
Don Robinson, Chairman  
Banning Utility Authority

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, Secretary

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

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

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-03 UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting thereof held on the 14th day of February, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, Secretary  
Banning Utility Authority

## EXHIBIT "A"

**TABLE 5  
NEEDS LIST AND ESTIMATE OF COSTS**

Facility Name	Cost Estimate	% Allocated to New Development	Cost to New Development
Banning Pipeline Extension	\$2,410,800	51.37%	\$1,238,375
Cabazon Pipeline Extension	\$18,228,000	51.37%	\$9,363,321
Beaumont Basin Recharge Facility	\$3,753,500	100.00%	\$3,753,500
Cabazon Basin Recharge Facility	\$14,347,000	51.37%	\$7,369,737
16 cfs capacity from SBVMWD	\$30,000,000	100.00%	\$30,000,000
Sub Totals	\$68,739,300		\$51,724,932
Land	Cost Estimate	Allocated to New Development	Cost to New Development
Beaumont Basin Recharge Facility	\$3,200,000	100.00%	3,200,000
Cabazon Basin Recharge Facility	\$1,020,000	51.37%	523,951
Sub Totals	\$4,220,000		\$3,723,951
Total Facility and Land Cost	\$72,959,300		\$55,448,884
Administrative fee @ 0.50%			\$277,244
<b>Grand Total</b>			<b>\$55,726,128</b>

## EXHIBIT "B"

### PROPOSED TRANSMISSION PIPELINE ROUTE



MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

01/24/2012  
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Robinson on January 10, 2012 at 4:03 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/Agency Counsel  
Zai Abu Bakar, Community Development Director  
Duane Burk, Public Works Director  
Bill Manis, Economic Development/Redevelopment Director  
Marie A. Calderon, City Clerk/Secretary

PUBLIC COMMENTS

There were none.

CLOSED SESSION

City Attorney said the closed session items are one matter of potential litigation pursuant to the provisions of Government Code Section 54956.9; matters involving real property negotiations pursuant to the provisions of Government Code Section 54956.8 concerning parcels behind the City Yard APN's – 541-260-030, 541-260-031, 541-260-040, 541-260-043, 541-260-045 and APN: 541-260-045; and APN: 538-230-011 located at 226 S. 22<sup>nd</sup> Street; a potential litigation matter (claim) involving sewer damage with the property located 1358 N. Murray Street; and one matter of pending litigation pursuant to the provisions of Government Code Section 5496.9(a) to give a status on Banning Airport Associates, et al. v. City of Banning, et al.: (Riverside Superior Court Case No. RIC 497338).

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

Meeting went into closed session at 4:02 p.m. and returned to regular session at 4:42 p.m.



ADJOURNMENT

By common consent the meeting adjourned at 4:43 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  
COMMUNITY REDEVELOPMENT AGENCY  
BANNING, CALIFORNIA

01/24/12  
REGULAR MEETING

A regular meeting of the Community Redevelopment Agency was called to order by Chairman Machisic on January 24, 2012 at 6:44 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Boardmember Botts  
Boardmember Franklin  
Boardmember Hanna  
Boardmember Robinson  
Chairman Machisic

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  
Duane Burk, Public Works Director  
Leonard Purvis, Police Chief  
Bill Manis, Economic Development/Redevelopment Director  
Marie A. Calderon, City Clerk

PUBLIC COMMENTS

There were none.

CONSENT ITEMS

1. Approval of Minutes – Joint Meeting – 12/13/11 (Closed Session)

Recommendation: That the minutes of the joint meeting of December 13, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 12/13/11

Recommendation: That the minutes of the regular meeting of December 13, 2011 be approved.

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

REPORTS OF OFFICERS

1. Adoption of a CRA Resolution Relating to Assembly Bill 936  
(Staff Report – Bill Manis, Economic Development/Redevelopment Director)

Director Manis gave the staff report as contained in the agenda packet. He said that this resolution mirrors the one City Council resolution that was approved earlier tonight. Staff is recommending adoption of this agency resolution basically saying that the Agency has not waived any of our loans that they have gave to the City or to the public.

**Motion Robinson/Franklin that the Agency Board adopt CRA Resolution No. 2012- 01 of the Community Redevelopment Agency of the City of Banning declaring under Health and Safety Code Section 33354.8 that, during the period of January 1, 2010, to December 31, 2011, the Agency has not forgiven the repayment, wholly or partially, of any loan, advance, or indebtedness owed to the Agency by a Public Body.** Chairman Machisic opened the item for public comments. There were none. **Motion carried, all in favor.**

#### EXECUTIVE DIRECTOR'S REPORT

Executive Director stated that this is the last meeting of the Community Redevelopment Agency unless something happens legislatively and the City Council will now be functioning as the Successor Agency. It is kind of a sad moment actually because if you think about all the good things that Redevelopment Agency has done over the years from façade programs with things happening in the downtown even though some people disagreed with some of the things that you did you made an effort. The groundbreaking for the courthouse will be held next month and he thinks that this is going to spur quite a number of businesses around that area as well as the Village at Paseo San Gorgonio.

Chairman Machisic said he thinks that some of the projects that the CRA has done will be in this community 5 to 20 years from today, the effects of it.

#### ADJOURNMENT

By common consent the meeting adjourned at 6:48 p.m.

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Marie A. Calderon, Secretary

**THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE AGENCY BOARD. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY**

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## CITY COUNCIL AGENDA

**Date:** February 14<sup>th</sup>, 2011  
**TO:** Mayor and City Council Members  
**FROM:** June Overholt, Administrative Services Director/Deputy City Manager  
**SUBJECT:** Recommendation to Adopt a Resolution Authorizing Investment of Monies in Local Agency Investment Fund

**RECOMMENDATION:**

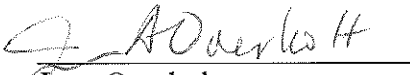
1. Adopt Resolution No. 2012-03 SA "A Resolution of the City of Banning, Acting as Successor Agency to The Community Redevelopment Agency, Authorizing Investment of Monies in the Local Agency Investment Fund."
2. Adopt Resolution No. 2012-11 "A Resolution of the City of Banning Authorizing Investment of Monies in the Local Agency Investment Fund."

**BACKGROUND:** The Local Agency Investment Fund (LAIF) requires a specific resolution authorizing individuals to make investments in the Fund. The City of Banning has two investment accounts with LAIF. One is in the name of the City of Banning and the other is in the name of the Community Redevelopment Agency (CRA). The last time the resolution pertaining to LAIF was updated for both the City and CRA in 2010.

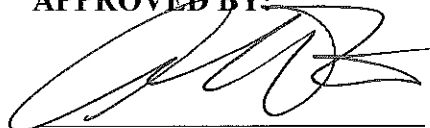
Due to the elimination of the CRA, the State Treasurer's Office requires an authorization on behalf of the Successor Agency establishing the identity of the successor entity as well as any officers who are authorized to conduct transactions in the LAIF account on behalf of the successor entity (Successor Agency). Without appropriate documentation (resolution, bank and authorization form) in place, transactions in the LAIF account for the Successor Agency cannot be processed. The CRA LAIF account balance is currently zero in anticipation of this transition.

**FISCAL DATA:** No fiscal impact will result from the adoption of this resolution.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2012-03 SA**

**A RESOLUTION OF THE CITY OF BANNING, ACTING AS SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY, AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND.**

**AGENCY ADDRESS: 99 E. RAMSEY ST., BANNING CA 92220**

**AGENCY PHONE: 951-922-3102**

**WHEREAS**, Pursuant to Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

**WHEREAS**, the Successor Agency to the Community Redevelopment Agency of the City of Banning does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein as in the best interests of the Agency;

**NOW, THEREFORE, BE IT RESOLVED** by the Successor Agency of the City of Banning, California, as follows: the Successor Agency does hereby authorize the deposit and withdrawal of Agency monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government code for the purpose of investment as stated therein, and verification by the State Treasurer's Office of all banking information provided in that regard;

**BE IT FURTHER RESOLVED**, that the following City officers or their successors in office shall be authorized to order the deposit of withdrawal of monies in the Local Agency Investment Fund:

<b>Name</b>	<b>Title</b>	<b>Signature</b>
June Overholt	Administrative Services Director	_____
Andy Takata	City Manager	_____

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

\_\_\_\_\_  
Don Robinson, Mayor  
City of Banning

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

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

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-03 SA, was duly adopted by the Successor Agency Board of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of February, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**RESOLUTION NO. 2012-11**

**A RESOLUTION OF THE CITY OF BANNING AUTHORIZING INVESTMENT OF MONIES IN THE LOCAL AGENCY INVESTMENT FUND.**

**AGENCY ADDRESS: 99 E. RAMSEY ST., BANNING CA 92220**

**AGENCY PHONE: 951-922-3102**

**WHEREAS**, Pursuant to Chapter 730 of the statutes of 1976 Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and

**WHEREAS**, the City Council of the City of Banning does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein as in the best interests of the Agency;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, California, as follows: the City Council does hereby authorize the deposit and withdrawal of Agency monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government code for the purpose of investment as stated therein, and verification by the State Treasurer's Office of all banking information provided in that regard;

**BE IT FURTHER RESOLVED**, that the following City officers or their successors in office shall be authorized to order the deposit of withdrawal of monies in the Local Agency Investment Fund:

<b>Name</b>	<b>Title</b>	<b>Signature</b>
June Overholt	Administrative Services Director	_____
Andy Takata	City Manager	_____

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

\_\_\_\_\_  
Don Robinson, Mayor  
City of Banning

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

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

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-11, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of February, 2012 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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



**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**Date:** February 14, 2012  
**TO:** City Council  
**FROM:** Mike West, Lieutenant  
**SUBJECT:** Tow Fee Study

**RECOMMENDATION:** "The City Council adopt Resolution No. 2012-02, Amending the Towing Franchise Fee and Vehicle Storage Fee in Conformance with Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" System and accept the recommendations of the attached "Review of Towing Franchise Fee and Other Associated Fees" final report completed by Willdan Financial Services.

**JUSTIFICATION & BACKGROUND:** Beginning in 2000, the Banning Police Department recognized the need to recover costs associated with the towing, storage, and impounding of vehicles. The City Council adopted Resolution 2000-30, which authorized the formation of Franchise Tow Service Agreements with two tow companies as "contractors" to provide this service. This was expanded during the term of the first agreement to three tow companies. In 2004, the Franchise Tow Service Contracts were updated through the adoption of Resolution 2004-39 and the number of authorized tow companies was increased to three.

The City is only allowed to charge franchise fees necessary to recover actual and reasonable costs associated with the towing, storage, and impounding of vehicles per California Vehicle Code 12110(b). The full Vehicle Code Section is attached and permits the charging of franchise fees;

"Subdivision (a) does not preclude a public entity otherwise authorized by law from requiring a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity. However, the fee in those cases may not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program."

Previous recoverable towing costs were estimated at \$87,264.87 per year. The existing tow service contract and extensions require each tow company to pay \$25,000 annually in bi-annual payments. These cost estimates were originally set in 2004, and had not been re-evaluated in the intervening years and do not reflect current recoverable annual costs.

Willdan Financial Services was contracted by the City of Banning to conduct a comprehensive review of the towing franchise fees, vehicle release fees, and other associated costs. Their report analyzes recoverable costs associated with the towing, storage, and impounding of vehicles, and is also attached.

The first part of the Willdan analysis focused on recoverable costs associated with the towing franchise fee. The towing franchise fee is assessed on contracted towing companies for the purpose of recovering the City's estimated annual costs relating to the towing of vehicles within

the City. The annual costs are evenly distributed to the companies, which is consistent with the rotational basis for which the tows are assigned to the towers pursuant to the City's Vehicle Towing Policy. The current annual franchise fee charged to each of the towing firms is \$25,000, a total of \$75,000 cost recovery by the City.

Based on the analysis of the annual cost for the towing operations for Fiscal Year 2012, the City's current annual towing franchise fees of \$75,000, \$25,000 to each of the three tow firms, is less than the estimated \$122,440 of annual service costs. It is recommended that the annual towing franchise fee be increased to \$40,813 per company for each of the three companies currently under contract with the City. This will allow the City to recover 100% of the estimated annual cost of the FY 2012 towing operations. If less than three operators provide tow services, the franchise fee will be divided between the remaining operators.

The statute is not specific as to how the franchise fee should be collected, but the City has found that collecting it annually in a lump sum presents the least administrative burden. If the City had to continually administer and monitor collections, there would be additional costs associated with the Finance and Police departments which were not included in the Willdan report.


The Willdan report analyzes all City police costs incurred in the tow process (police management, officers, dispatchers, records), the time of personnel involved per tow and costs of the personnel; 2012 City budget and financial information; tow counts from 2008 to 2010 as annualized; legal, and other costs. This is the most extensive study ever performed of the City's towing costs.

The second analysis focused on the vehicle release fee. The vehicle release fee is assessed on vehicle owners for the purpose of recovering the City's estimated administrative costs associated with the release of a vehicle from impound. The current vehicle release fee charged by the City is \$77 per vehicle for an estimated annual cost recovery of \$68,376 based on estimated annual releases of 888 per year. Based on the analysis of the annual cost for vehicle releases for Fiscal Year 2012, the estimated cost per impound release occurrence is determined to be \$77.96 per release, only slightly more than the \$77 currently being charged by the City. It is recommended that the City increase its vehicle release fee to \$78 to recover 100% of the estimated costs of providing the vehicle release service.


It is intended that the operators sign two year agreements to provide towing services. The City will not use tow operators who do not sign agreements. The City is committed to a two year RFP process to obtain new operators in the future.

**FISCAL DATA:** By instituting the new recommendations listed in the Willdan Financial Services report, the City stands to gain \$35,175.13 (per year) in recoverable costs associated with towing vehicles.

**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andrew Takata  
City Manager

VEHICLE CODE  
Division 5. Occupational Licensing and Business Regulations  
Chapter 9. Towing

*Cal Veh Code § 12110 (2012)*

**§ 12110. Acceptance of gift or compensation from towing service; Referral fees from repair shop**

(a) Except as provided in subdivision (b), no towing service shall provide and no person or public entity shall accept any direct or indirect commission, gift, or any compensation whatever from a towing service in consideration of arranging or requesting the services of a tow truck. As used in this section, "arranging" does not include the activities of employees or principals of a provider of towing services in responding to a request for towing services.

(b) Subdivision (a) does not preclude a public entity otherwise authorized by law from requiring a fee in connection with the award of a franchise for towing vehicles on behalf of that public entity. However, the fee in those cases may not exceed the amount necessary to reimburse the public entity for its actual and reasonable costs incurred in connection with the towing program.

(c) Any towing service or any employee of a towing service that accepts or agrees to accept any money or anything of value from a repair shop and any repair shop or any employee of a repair shop that pays or agrees to pay any money or anything of value as a commission, referral fee, inducement, or in any manner a consideration, for the delivery or the arranging of a delivery of a vehicle, not owned by the repair shop or towing service, for the purpose of storage or repair, is guilty of a misdemeanor, punishable as set forth in subdivision (d). Nothing in this subdivision prevents a towing service from towing a vehicle to a repair shop owned by the same company that owns the towing service.

(d) Any person convicted of a violation of subdivision (a) or (c) shall be punished as follows:

(1) Upon first conviction, by a fine of not more than five thousand dollars (\$5,000) or imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. If the violation of subdivision (a) or (c) is committed by a tow truck driver, the person's privilege to operate a motor vehicle shall be suspended by the department under Section 13351.85. The clerk of the court shall send a certified abstract of the conviction to the department. If the violation of either subdivision (a) or (c) is committed by a tow truck driver, the court may order the impoundment of the tow truck involved for not more than 15 days.

(2) Upon a conviction of a violation of subdivision (a) or (c) that occurred within seven years of one or more separate convictions of violations of subdivision (a) or (c), by a fine of not more than ten thousand dollars (\$10,000) or imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the violation of subdivision (a) or (c) is committed by a tow truck driver, the person's privilege to operate a motor vehicle shall be suspended by the department under Section 13351.85. The clerk of the court shall send a certified abstract of the conviction to the department. If the violation of either subdivision (a) or (c) is committed by a tow truck owner, the court may order the impoundment of the tow truck involved for not less than 15 days but not more than 30 days.

## NOTICE OF PUBLIC HEARING


PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, January 24, 2012 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding: Resolution No. 2012-02, Amending the Towing Franchise Fee and Vehicle Storage Release Fee in Conformance with Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" System.

Information regarding the foregoing can be obtained by contacting the Police Department at (951) 849-1140.

ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, P. O. Box 998, Banning, California 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE CITY CLERK of the City of Banning, California.

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

DATED: January 3, 2012

PUBLISH: January 13, 2012

**RESOLUTION NO. 2012-02**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AMENDING THE TOWING FRANCHISE FEE AND VEHICLE STORAGE RELEASE FEE IN CONFORMANCE WITH CHAPTER 3.36 "FEE AND SERVICE CHARGE REVENUE/COST COMPARISON" SYSTEM**

**WHEREAS**, Chapter 3.36 of the Municipal Code of the City of Banning entitled "Fee and Service Charge Revenue/Cost Comparison System" ("Fee Ordinance") authorizes the City to levy fees for certain enumerated regulations, products and services (collectively "Service Fees"); and,

**WHEREAS**, the Fee Ordinance authorizes the City Council to periodically review and revise, by resolution, the amount charged for Service Fees to ensure that the City is recovering the costs reasonably borne in providing the regulations, projects and services; and,

**WHEREAS**, the City Council has previously revised the amount charged for Service Fees by Resolution No. 2007-117; and,

**WHEREAS**, Resolution No. 2000-30 authorized the formation of Franchise Tow Service Agreements with cost recovery and 2004-39 authorized three companies to have agreements with the City,

**WHEREAS**, the Police Department contracted with Willdan Financial Services to conduct a comprehensive review of the towing franchise fees, vehicle release fees and other associated costs, ensure proper cost recovery as required under the Fee Ordinance and in compliance with California Vehicle Code 12110(b) that limits fees to cost recovery of actual and reasonable costs associated with towing, storage, and impounding of vehicles,

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

SECTION 1. The City Council hereby finds, based upon the Fee Study "Review of Towing Franchise Fee and other Associated Fees", that the fee amounts for the Towing Franchise Fee and Vehicle Release Fee specified in Exhibit "A": (i) do not exceed the reasonable cost to the City of providing the regulatory product or service during fiscal year 2011-2012; and (ii) fully recover the "costs reasonably borne," as defined in Chapter 3.36 of the Banning Municipal Code and in accordance with California Vehicle Code 12110(b).

SECTION 2. Pursuant to Chapter 3.36 of the Banning Municipal Code the fee amounts for the services specified in Exhibit "A" are hereby adopted and implemented.

- Towing Franchise Fee                      \$ 122,400                      annually to be allocated evenly among the companies that enter into a Franchise Tow Service Agreement with the City
- Vehicle Release Fee                      \$ 78 per tow

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SECTION 3. Effective Date: These Service Fees do not qualify as fees upon a development project within the meaning of California Government Code Section 66017. Therefore, with regard to this Resolution, the adjustment in Service Fees shall take effect immediately upon adoption of this Resolution.

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of February, 2012.

\_\_\_\_\_  
Don Robinson, Mayor  
City of Banning

**ATTEST:**

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

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

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-02 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 14<sup>th</sup> day of February, 2012, by the following vote, to wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

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

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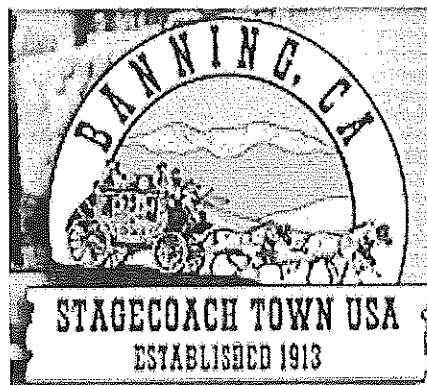
EXHIBIT "A"



## CITY OF BANNING

# REVIEW OF TOWING FRANCHISE FEE AND OTHER ASSOCIATED FEES

FINAL REPORT  
SEPTEMBER 7, 2011



**Temecula Office:**

27368 Via Industria  
Suite 110  
Temecula, CA 92590  
Tel: (951) 587-3500  
Tel: (800) 755-6864  
Fax: (951) 587-3510

**Corporate Office:**

Anaheim, CA

**Office Locations:**

Oakland, CA  
Sacramento, CA  
Orlando, FL  
Phoenix, AZ

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# Executive Summary

The City of Banning (City) police department pursuant to the City's Vehicle Towing Policy (Policy 510) is authorized to tow vehicles to the City's designated impound facility resulting from vehicle parking violations, license and registration violations and traffic instances where the vehicle cannot be removed by the driver, such as during an arrest. Section 510.3 of Policy 510 allows the City to "periodically select firms to act as the official towing service of the City and award contracts to those firms". Each contracted firm is selected on a rotating basis and pays the City, pursuant to Section 121100 (b) of the California Vehicle Code 12110(b), an annual towing franchise fee (hereinafter referred to as the "Towing Fee"). The contracted firms in turn direct charge the vehicle owner a fee for the towing of the vehicle to the impound facility. In addition to the Towing Fee, the City also collects a Vehicle Release Fee (VRF) from the vehicle owner upon release of the vehicle from the impound facility.

CA Vehicle Code Section 12110 (b) requires that the franchise fee may not exceed the amount necessary to reimburse the public agency for its actual and reasonable costs incurred in connection with the towing program. The purpose of this review is to determine the estimated FY 2012 cost to the City of providing towing and impound activity, to substantiate that the existing Towing Fee and VRF does not exceed the cost, and to provide a basis for the future establishment of these fees.

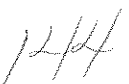
This review focuses on time and motion analysis of City staff for both the towing and impounds activity and determines the estimated cost of service based on estimated time allocations and fully burdened hour rate calculations. Fully burdened hours rates included staff salaries and benefits and allocations for police/dispatch department overhead, depreciation and City central service overhead. Also included was the estimated periodic cost of legal fees relating to the towing contract

Because staff time and personnel involved with each towing and impound occurrence may vary, estimates of the average time per occurrence and maximum fully burdened hourly rates by position were used to determine a cost per tow/impound release. A three year average of FY 2008-2010 tow data was used to estimate the total annual cost of towing and impound activity. The following is a summary of the estimated annual cost and related existing fees of the towing and impound activity for FY 2012.

Activity Type	Estimated Annual Cost	Existing Annual Fees
Towing Activity (1)	\$122,440	\$75,000
Impound Activity (2)	\$69,201	\$68,350

(1) See Table 1

(2) See Table 4



# Towing Franchise Fee

## Purpose of the Fee

The towing franchise fee is assessed on contracted towing companies (companies) for the purpose of recovering the City's estimated annual costs (annual costs) relating to the towing of vehicles within the City, pursuant to Vehicle Code Section 12110(b). The annual costs are evenly distributed to the companies, which is consistent with the rotational basis for which the tows are assigned to the towers pursuant to the City's Vehicle Towing Policy 510. The current annual franchise fee charged to each of the towing firms is \$25,000, a total of \$75,000 cost recovery by the City.

## Cost Analysis

The City's annual costs relating to the towing of vehicles are a function of the amount of time both Police & Dispatch spend on each tow occurrence, the fully burdened hourly rates of the staff involved, and the estimated annual number of tows. For the purpose of determining the annual costs, the following data was obtained from the City.

1. Time allocations for Police/Dispatch positions involved in towing activity.
2. Salaries and benefits for Police/Dispatch positions involved in towing activity.
3. Police/Dispatch departmental budgets for FY 2012.
4. Police/Dispatch annual fixed asset depreciation.
5. City wide FY 2012 budget data.
6. Annual tow counts for 2008 through 2010.
7. Legal costs relating to tow contract negotiations.

Tables 1, 2 and 3 below show the calculation of the Towing Operations Estimated Annual Cost, Fully Burdened Hourly Rates and Police/Dispatch Overhead rates, respectively.

<b>Table 1</b> <b>City of Banning</b> <b>Police/Dispatch Towing Related Operations</b> <b>Estimated Cost of Service</b> <b>Fiscal Year 2012</b>				
<b>Towing Activity</b>		<b>Time per Tow</b>	<b>Fully Burdened</b>	<b>Extended</b>
<b>Staff Position</b>	<b>Activity</b>	<b>(minutes) (1)</b>	<b>Hours</b>	<b>Hourly Rate (2)</b>
Chief	Overall management of policies&procedures, tow contracts, staff	1	0.02	\$ 226.39
Lieutenant	Review policies&procedures, tow contracts, staff, resolve issues	5	0.08	\$ 165.29
Sergeant	Field supervision; review and approve all tow reports & forms	10	0.17	\$ 137.87
Officer	Initiate tow; contact driver; conduct enforcement; etc.	35	0.58	\$ 107.80
Dispatch	Radio communication, tow dispatch, tow log maintenance, etc.	15	0.25	\$ 72.71
Records/Assistant	Process tow forms, notify owner, coordinate tows, collect fees	15	0.25	\$ 54.13
Total Direct and Indirect Cost per tow occurrence				\$ 135.12
Estimated Tows for FY 2012 (based on prior three year average) (3)				888
Estimated time and material cost for towing operations for FY 2012				\$119,939.79
Estimated annual legal costs relating to contract negotiations (4)				\$ 2,500.00
Total Estimated Cost for Towing Operations for FY 2012				\$122,439.79
Total Estimated Cost per Tow				\$ 138

(1) Source: Exhibit A- Staff Time Allocations

(2) Source: Table 2

(3) Source: Exhibit B- Tow Stats

(4) Source: City of Banning. Estimated \$10,000 per year every four years for contract negotiations.

**Table 2**  
**City of Banning**  
**Police/Dispatch Department**  
**Fully Burdened Hourly Rate Calculation**  
**Fiscal Year 2012**

Position	Total Salaries & Benefits (1)	Overhead Allocation (2)	Total Fully Burdened Cost	Fully Burdened Hourly Rate (3)
		31.9%		
Chief	\$ 281,593	\$ 89,694	\$ 371,287	\$ 226.39
Lieutenant	\$ 205,595	\$ 65,487	\$ 271,081	\$ 165.29
Sergeants	\$ 171,490	\$ 54,624	\$ 226,113	\$ 137.87
Officer	\$ 134,083	\$ 42,709	\$ 176,792	\$ 107.80
Dispatch	\$ 90,433	\$ 28,805	\$ 119,238	\$ 72.71
Records/Police Assistant	\$ 67,324	\$ 21,444	\$ 88,768	\$ 54.13

(1) Source: City of Banning

(2) Table 3 - Overhead Rate Calculation

(3) Based on average of 1,640 service hours per year per position

**Table 3**  
**City of Banning**  
**Police/Dispatch Department**  
**Overhead Allocation Rate Calculation**  
**Fiscal Year 2012**

FY 2012 Departmental Budget (1)	\$ 6,584,353
Less: Salaries & Benefits (2)	(5,565,780)
Non-Payroll Department Expenses	\$ 1,018,573
Add: Fixed Asset Depreciation (3)	596,662
Total Departmental Overhead	\$ 1,615,235
Central Service OH allocation (4)	157,599
Total Overhead	\$ 1,772,834
Total Overhead as % of Salaries & Benefits	31.9%

(1) Source: City of Banning; FY 2012 Budget Departments 2200 and 2210

(2) Source: FY 2012 budget detail

(3) Source: Exhibit C - Police Fixed Asset Depreciation

(4) Source: Exhibit D - Central Service Cost Allocation Plan

## Conclusion

Based on the analysis of the annual cost for the towing operations for Fiscal Year 2012, the City's current annual towing franchise fees of \$75,000, \$25,000 to each of the three tow firms, is less than the estimated \$122,440 of annual service costs.

## Recommendation

It is recommended that the annual towing franchise fee be increased to \$40,813 per company for each of the three companies currently under contract with the City. This will allow the City to recover 100% of the estimated annual cost of the FY 2012 towing operations. If more or fewer companies are contracted for FY 2012, the estimated annual cost of \$122,440 should be divided evenly between the companies under contract. As an alternative to an annual fee per company, the City may elect to charge a per tow fee of \$138 per tow, which should recover the estimated annual costs based on the estimated number of tows for FY 2012. A per tow fee is similar to the method of collection for many southern California agencies including the City of Riverside (see Exhibit E).

# Vehicle Release Fee

## Purpose of the Fee

The Vehicle Release Fee is assessed on vehicle owners for the purpose of recovering the City's estimated administrative costs associated with the release of a vehicle from impound. The current Vehicle Release Fee charged by the City is \$77 per vehicle for an estimated annual cost recovery of \$68,376 based estimated annual releases of 888 per year.

## Cost Analysis

The cost analysis for the VRF is similar to the Towing Fee. Estimates of staff time allocations to each function and maximum fully burdened hourly rates are the basis for the cost determination.

Tables 4 below show the calculation of the Impound Release Activity Annual Estimated Cost. Table 2 above contains the Fully Burdened Hourly Rates rate calculations.

<b>Table 4</b> <b>City of Banning</b> <b>Police/Dispatch Impound Related Operations</b> <b>Estimated Cost of Service</b> <b>Fiscal Year 2012</b>				
<u>Impound Release Activity</u>		<u>Time per Tow</u>	<u>Fully Burdened Hourly Rate (2)</u>	<u>Extended Cost</u>
<u>Staff Position</u>	<u>Activity:</u>	<u>(minutes) (1)</u>	<u>Hours</u>	
Chief		0	-	\$ 226.39
Lieutenant		0	-	\$ 165.29
Sergeant	Conduct impound hearings; release vehicle; resolve complaints	30	0.50	\$ 137.87
Officer		0	-	\$ 107.80
Dispatch		0	-	\$ 72.71
Records/Assistant	Process and coordinate release of vehicle	10	0.17	\$ 54.13
Total Cost per impound release occurrence				\$ 77.96
Estimated Impounds for FY 2012 (based on prior three year average) (3)				888
Estimated Cost for Impound Operations for FY 2012				\$ 69,201
(1) Source: Exhibit A - Staff Time Allocations				
(2) Source: Table 2				
(3) Source: Exhibit B - Tow Stats				

## Conclusion

The estimated cost per impound release occurrence is determined to be \$77.96 per release, only slightly more than the \$77 currently being charged by the City.

## Recommendation

It is recommended that the City increase its VRF to \$78 to recover 100% of the estimated costs of providing the VRF service.

# Exhibits

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EXHIBIT A – STAFF TIME ALLOCATIONS

EXHIBIT B – TOWING STATS

EXHIBIT C – POLICE/DISPATCH DEPRECIATION

EXHIBIT D – CENTRAL SERVICE COST ALLOCATION PLAN

EXHIBIT E – FEE COMPARISON WITH NEIGHBORING AGENCIES

## Exhibit A – Staff Time Allocations

**From:** Mike West [mwest@ci.banning.ca.us]  
**Sent:** Monday, June 20, 2011 5:36 PM  
**To:** Bob Quaid  
**Subject:** RE: Banning Tow Study Data

Hey Bob,

Regarding the five year tow data, did you need more than the total numbers for each year?  
The form I sent had the totals going back five years and the monthly breakdown for the past two years.

The average approximate amount of time spent on tows:  
(I can give a breakdown of each positions' role & responsibilities, if needed)

Officers: **35 minutes per tow**  
Dispatch: **15 minutes per tow**  
Records/Police Assistant: **15 minutes per tow and 10 minutes per impound hearing**  
Sergeants: **about 10 minutes per tow and 30 minutes per impound hearing**  
Lieutenant: **about 80 hours per year on tow issues (see minute calc below)**  
Chief : **about 15 hours per year on tow issues (see minute calc below)**

I'll work on the vehicle and computer/radio cost issues (#6)

### WFS Calc

15 Chief time spent in hours (from above)  
900` Chief time spent in minutes  
888 Average annual tows (from Exhibit B)  
1 **Approximate minutes per tow**

80 Lieutenant time spent in hours (from above)  
4,800` Lieutenant time spent in minutes  
888 Average annual tows (from Exhibit B)  
5 **Approximate minutes per tow**

## Exhibit B – Towing Stats

**To:** Lt Mike West **Date:** 29-May-11

**From:** Lead Public Safety Dispatcher Debbie Shubin

**Reference:** Tow Stats

---

The following are tow stats for the past five years with the last two years broken down by month.

		<u>WFS Calc</u>	
		<u>Annual</u>	<u>Average</u>
2010	824 tows	824	
2009	837 tows	837	
2008	1002 tows	1,002	<b>888 Three year average</b>
2007	1308 tows	1,002	
2006	1594 tows	<u>1,002</u>	<b>933 Five year average</b>



## Exhibit C – Police/Dispatch Depreciation

City of Banning  
 Police/Dispatch Department Fixed Asset Depreciation  
 FY 2012

Asset No.	Description	Cost	Annual Depreciation	Banning Fixed Asset Report Ref
02VL0230	Police Bldg	\$ 498,100.00	\$ 24,905	Pg 1 of Valuation of Fixed Assets revised 12/31/2010 report
Various	Pursuit Vehicles & Devices	\$ 106,523.61	\$ 19,767	Pg 1 of 2006 Fixed Assets revised 12/31/2010
20070058	Mobile Command Post	\$ 288,444.50	\$ 48,074	Pg 1 of 2007 Fixed Assets revised 12/31/2010
20070050	Orion Mapstar Software	\$ 32,559.51	\$ 6,512	Pg 1 of 2007 Fixed Assets revised 12/31/2010
Various	Pursuit Vehicles & Devices	\$ 774,443.98	\$ 145,274	Pg 3 of 2007 Fixed Assets revised 12/31/2010
Various	Pursuit Vehicles & Devices	\$ 113,574.17	\$ 22,715	Pg 2 of 2008 Fixed Assets revised 12/31/2010
20080023	Digital Eyewitness Media	\$ 22,702.93	\$ 4,541	Pg 2 of 2008 Fixed Assets revised 12/31/2010
20090018	Pursuit Vehicles & Devices	\$ 26,642.70	\$ 5,329	Pg 1 of 2009 Fixed Assets revised 12/31/2010
Various	Police Dept Acquisitions	\$ 462,936.29	\$ 58,947	Pg 5 of 2010 Fixed Assets revised 12/31/2010
Various	Police Dept Acquisitions	\$ 30,352.22	\$ 2,562	Pg 5 of 2010 Fixed Assets revised 12/31/2010
20100032	New Police Facility	\$ 568,595.41	\$ 7,107	Pg 6 of 2010 Fixed Assets revised 12/31/2010
20100046	New Police Facility	\$ 14,340,313.84	\$ 250,930	Pg 6 of 2010 Fixed Assets revised 12/31/2010
		<b>Total</b>	<b>\$ 596,662</b>	

Source: City of Banning Fixed Assets schedule, revised 12/31/2010

# Exhibit D – Central Service Cost Allocation Plan

## City of Banning Central Service Cost Allocation FY 2011-2012

Total Central Service Budget	\$920,792
Unallowable Amount	\$4,116
Allocable Central Service Budget	\$916,676

Distribution Basis/Bases	%	Allocable Budget
FY 2012 Budget	70%	\$ 641,673
FTEs	30%	\$ 275,003
	0%	\$ -
		\$ -
<b>Total</b>	<b>100%</b>	<b>\$ 916,676</b>

Summary	Dist. Base	Dept. %	Allocation	Dist. Base	Dept. %	Allocation	\$	\$	\$
	\$ 53,257,876	100%	\$ 641,673	153.80	100%	\$ 275,003	\$ 916,676	\$ 36,782	\$ 916,676
							\$ 916,676	\$ 36,782	\$ 916,676
<b>General</b>									
City Council - D - G	\$ 94,006	0.2%	\$ 1,133	5.0	3.3%	\$ 8,940	\$ 10,073	\$ (10,073)	\$ -
City Manager - D - G	\$ 206,819	0.4%	\$ 2,492	0.7	0.4%	\$ 1,216	\$ 3,708	\$ (3,708)	\$ -
Human Resources - D - G	\$ 149,779	0.3%	\$ 1,805	1.0	0.7%	\$ 1,824	\$ 3,628	\$ (3,628)	\$ -
City Clerk - D - G	\$ 85,753	0.2%	\$ 1,033	1.8	1.1%	\$ 3,129	\$ 4,162	\$ (4,162)	\$ -
Elections - D - G	\$ 200	0.0%	\$ 2	-	0.0%	\$ -	\$ 2	\$ (2)	\$ -
City Attorney - D - G	\$ 161,000	0.3%	\$ 1,940	-	0.0%	\$ -	\$ 1,940	\$ (1,940)	\$ -
Fiscal Services - D - G	\$ 200,896	0.4%	\$ 2,420	5.0	3.2%	\$ 8,851	\$ 11,271	\$ (11,271)	\$ -
Purchasing & A/P - D - G	\$ 18,223	0.0%	\$ 220	1.0	0.7%	\$ 1,788	\$ 2,008	\$ (2,008)	\$ -
<b>General</b>	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	\$ -	\$ -
TV Government Access - R - G	\$ 7,747	0.0%	\$ 93	-	0.0%	\$ -	\$ 93	0.0%	\$ 4
Police - R - G	\$ 5,330,625	10.0%	\$ 64,226	35.2	22.9%	\$ 62,850	\$ 127,076	14.4%	\$ 5,314
Dispatch - R - G	\$ 806,250	1.5%	\$ 9,714	8.1	5.3%	\$ 14,483	\$ 24,197	2.8%	\$ 1,012
Taslin - SB621 - R - G	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Animal Control - R - G	\$ 142,000	0.3%	\$ 1,711	-	0.0%	\$ -	\$ 1,711	0.2%	\$ 72
Fire - R - G	\$ 2,505,987	4.7%	\$ 30,193	1.0	0.7%	\$ 1,788	\$ 31,981	3.6%	\$ 1,337
Building Safety - R - G	\$ 195,777	0.4%	\$ 2,359	0.4	0.3%	\$ 751	\$ 3,110	0.4%	\$ 130
Code Enforcement - R - G	\$ 172,091	0.3%	\$ 2,073	2.0	1.3%	\$ 3,576	\$ 5,650	0.6%	\$ 236
Planning - R - G	\$ 264,103	0.5%	\$ 3,182	1.9	1.2%	\$ 3,362	\$ 6,544	0.7%	\$ 274
Engineering - R - G	\$ 192,412	0.4%	\$ 2,318	0.8	0.5%	\$ 1,377	\$ 3,695	0.4%	\$ 155
Building Maintenance - R - G	\$ 189,978	0.4%	\$ 2,289	1.3	0.8%	\$ 2,289	\$ 4,578	0.5%	\$ 191
Parks - R - G	\$ 296,897	0.6%	\$ 3,577	4.3	2.8%	\$ 7,653	\$ 11,230	1.3%	\$ 470
Recreation - R - G	\$ 181,638	0.3%	\$ 2,188	2.5	1.7%	\$ 4,703	\$ 6,891	0.8%	\$ 288
Aquatics - R - G	\$ 99,683	0.2%	\$ 1,201	2.2	1.4%	\$ 3,862	\$ 5,063	0.6%	\$ 212
Senior Center - R - G	\$ 42,333	0.1%	\$ 510	0.5	0.4%	\$ 1,126	\$ 1,637	0.2%	\$ 68
Central Services - R - G	\$ 454,575	0.9%	\$ 5,477	-	0.0%	\$ -	\$ 5,477	0.6%	\$ 229
Community Enhancement - R - G	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
<b>Other Funds</b>	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Planning - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Riverside County MOU - R - O	\$ 536,822	1.0%	\$ 6,468	-	0.0%	\$ -	\$ 6,468	0.7%	\$ 270
Gas Tax Street Fund - R - O	\$ 581,124	1.1%	\$ 7,002	-	0.0%	\$ -	\$ 7,002	0.8%	\$ 293
Measure A Street Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Article 3 Sidewalk Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
CDBG Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Landscape Maintenance - R - O	\$ 47,352	0.1%	\$ 571	-	0.0%	\$ -	\$ 571	0.1%	\$ 24
Air Quality Improvement Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Police - R - O	\$ 46,074	0.1%	\$ 555	-	0.0%	\$ -	\$ 555	0.1%	\$ 23
Supplemental Law Enforcement - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Dispatch - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Public Safety Sales Tax Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Special Donation Fund - R - O	\$ 1,500	0.0%	\$ 18	-	0.0%	\$ -	\$ 18	0.0%	\$ 1
Senior Center - R - O	\$ 4,500	0.0%	\$ 54	-	0.0%	\$ -	\$ 54	0.0%	\$ 2
Sr. Center Advisory Board - R - O	\$ 12,200	0.0%	\$ 147	-	0.0%	\$ -	\$ 147	0.0%	\$ 6
D.A.R.E. Donation Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
City Administration COP Debt Service - R - O	\$ 5,500	0.0%	\$ 66	-	0.0%	\$ -	\$ 66	0.0%	\$ 3
Sun Lakes CFD #86-1 - R - O	\$ 250	0.0%	\$ 3	-	0.0%	\$ -	\$ 3	0.0%	\$ 0
Wilson Street #91-1 Assessment Debt - R - O	\$ 9,475	0.0%	\$ 114	-	0.0%	\$ -	\$ 114	0.0%	\$ 5
Fair Oaks #2004-01 Assessment Debt - R - O	\$ 9,075	0.0%	\$ 109	-	0.0%	\$ -	\$ 109	0.0%	\$ 5
Traffic Control Facility Fund - R - O	\$ 10,000	0.0%	\$ 120	-	0.0%	\$ -	\$ 120	0.0%	\$ 5
Sunset Grade Separation Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Parks - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Recreation - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Capital Improvement Fund - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -
Airport Fund - R - O	\$ 135,353	0.3%	\$ 1,631	1.6	1.0%	\$ 2,771	\$ 4,402	0.5%	\$ 184
Transit Fund - R - O	\$ 896,395	1.7%	\$ 10,800	11.9	7.7%	\$ 21,224	\$ 32,024	3.6%	\$ 1,339
Water Fund - R - O	\$ 4,530,664	8.5%	\$ 54,587	15.1	9.8%	\$ 26,946	\$ 81,533	9.3%	\$ 3,409
Water Capital Facilities - R - O	\$ -	0.0%	\$ -	-	0.0%	\$ -	\$ -	0.0%	\$ -

# City of Banning Central Service Cost Allocation FY 2011-2012

Total Central Service Budget	\$920,792
Unallowable Amount	\$4,116
Allocable Central Service Budget	\$916,676

Distribution Basis/Bases	%	Allocable Budget
FY 2012 Budget	70%	\$ 641,673
FTEs	30%	\$ 275,003
	0%	\$ -
<b>Total</b>	<b>100%</b>	<b>\$ 916,676</b>

Allocation Basis	FY 2012 Budget	FTEs	Unallowable Amount	Allocable Budget	Distribution Percentage	Total Allocation
Irrigation Water Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA Water Capital Project Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA - Water Debt Service - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Electric Fund - R - O	\$ 22,061,767	41.4%	\$ 265,809	\$ 21,795,958	23.8%	\$ 38,264
Rate Stability Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Electric Improvement Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
'07 Elec Revenue Bond Project Fund - R - O	\$ 22,500	0.0%	\$ 271	\$ 22,229	0.0%	\$ 11
Public Benefit Fund - R - O	\$ 680,356	1.3%	\$ 8,197	\$ 672,159	0.9%	\$ 343
'07 Elec Revenue Bond Debt Service Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Wastewater Fund - R - O	\$ 1,713,663	3.2%	\$ 20,647	\$ 1,693,016	3.4%	\$ 1,261
Wastewater Capital Facility Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA Wastewater Capital Project Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
State Revolving Loan Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA Wastewater Debt Service Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Refuse Fund - R - O	\$ 2,964,538	5.6%	\$ 35,718	\$ 2,928,820	0.7%	\$ 1,234
Insurance Fund - R - O	\$ 1,956,391	3.7%	\$ 23,571	\$ 1,932,820	1.6%	\$ 2,771
Fleet Maintenance - R - O	\$ 1,121,219	2.1%	\$ 13,509	\$ 1,107,710	3.5%	\$ 6,258
Information Systems Services - R - O	\$ 360,844	0.7%	\$ 4,348	\$ 356,496	2.4%	\$ 4,291
Utility Billing Administration - R - O	\$ 1,167,851	2.2%	\$ 14,071	\$ 1,153,780	12.9%	\$ 22,977
CRA - R - O	\$ 1,533,005	2.9%	\$ 18,470	\$ 1,514,535	-	\$ -
CRA - Administration Fund - R - O	\$ 596,927	1.1%	\$ 7,192	\$ 589,735	2.9%	\$ 5,185
2007 TABS Bond Proceeds - R - O	\$ -	0.0%	\$ -	\$ -	-	\$ -
2003 TABS Bond Proceeds - R - O	\$ 7,500	0.0%	\$ 90	\$ 7,410	0.0%	\$ 4
2003 TABS Bond Proceeds Low/Mod - R - O	\$ 189,759	0.4%	\$ 2,286	\$ 187,473	0.3%	\$ 96
CRA - Project Fund - R - O	\$ 256,500	0.5%	\$ 3,090	\$ 253,410	0.4%	\$ 129

Source file: Banning Quick CAP Final Draft.xls

## Exhibit E – Fee Comparison with Neighboring Agencies

**City of Banning**  
**Police/Dispatch Towing & Impound Operations**  
**Fee Comparison with Neighboring Agencies**

	Neighboring city agencies <sup>(1)</sup>				
	<u>Banning</u>	<u>Indio</u>	<u>San Jacinto</u>	<u>Riverside</u>	<u>Palm Springs</u>
Number of tow companies under contract	3	5	11	14	4
1. Annual franchise fee to tow companies	\$25,000	\$81,836	\$0	\$0	\$25,000
2. Per tow franchise fee	\$0	\$0	\$0	\$65	\$0
3. Vehicle release fee	\$77	\$200	\$100	\$60	N/A
4. Traffic Offender Fund	None	Funded by 1 and 2	None	None	None

(1) Responses received from cities as of June 30, 2011

N/A-Not provided by agency

**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**DATE:** February 14, 2012

**TO:** City Council

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

**SUBJECT:** Resolution No. 2012-10, "Approving the Consumer Price Index (CPI ) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste"

**RECOMMENDATION:** The City Council adopt Resolution No. 2012-10, "Approving the Consumer Price Index (CPI) Increase for the Service Charges for the Collection, Transportation and Disposal of Solid Waste," as set forth in the City of Banning's Franchise Agreement with Waste Management of the Inland Empire.

**JUSTIFICATION:** Waste Management has completed a review of the cost components of the contracted rates to comply with all health, safety and service requirements. Due to increasing operation costs, and per the provisions of the Franchise Agreement, a rate adjustment is necessary.

**BACKGROUND:** The City entered into a Franchise Agreement for refuse collection, transportation, and disposal with Waste Management of the Inland Empire in 1993 for an eight year period. Subsequently, the City Council at its regular meeting on April 24, 2001, adopted Resolution No. 2001-35, extending the agreement for an additional five years as allowed per the agreement, from July 1, 2001 to June, 2006. On March 15, 2002 under Resolution No. 2002-28 the contract was re-negotiated to include automated services and to extend the agreement for an additional five year period from July 1, 2006 to June 30, 2011. Most recently, on June 28, 2011 under Resolution No. 2011-53, the agreement was modified and the term was extended for an additional ten years from July 1, 2011 to June 30, 2021.

Per Section 18 of the Franchise Agreement, the refuse collection rate can be adjusted annually based on the Consumer Price Index (CPI) for the Los Angeles-Anaheim area, the increase/decrease of the collected tonnage of waste, the increase/decrease of the Tipping Fee charged by the landfill operator, or extraordinary changes in costs related to collection.

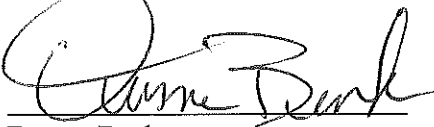
In order to adjust the rates it is necessary to comply with Article XIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act. Proposition 218 was approved by California voters in 1996 and requires that local governments 1) give notification to all affected property owners and rate payers of the proposed rates and instructions for those who wish to protest the rate increases, 2) hold a public hearing at least Forty Five (45) days after mailing of the notifications and 3) reject the proposed fee if written protests are presented by a majority of affected property owners and rate payers. The Proposition 218 notifications were mailed out on December 22, 2011 as set forth in Exhibit "A". The Notice of Public Hearing was advertised in the Record Gazette on December 23, 2011, as shown as Exhibit "B".

This year, the Tipping Fee charge will remain at \$34.37 per ton. The change in the CPI for the effective twelve month period was approximately 4%. Due to the increase, and per section 18 of the Franchise Agreement, the rate needs to be adjusted accordingly. If approved, the new rate will be effective on March 1, 2012. Additionally, by approval of this rate increase, future rate increases are authorized based on the Consumer Price Index (CPI) formula or an alternative formulaic for an additional four-year period without further hearing or protest.

**FISCAL DATA:** The current rate for the refuse collection is \$17.60 per month, per household, and if approved, the rate will increase to \$17.97. The commercial rate will be adjusted accordingly, as shown in the attached Exhibit "C".

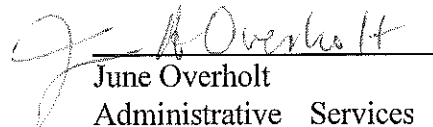
In regard to the Proposition 218 notifications, an appropriation in the amount of \$4,170.00 from the Refuse Enterprise Fund to Account No.690-9600-453.23-01(Advertising/Publishing) is necessary in order to cover the costs associated with printing and mailing the notifications.

**RECOMMENDED BY:**



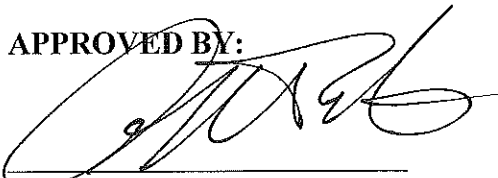
Duane Burk  
Director of Public Works

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**



Andy Takata  
City Manager

**RESOLUTION NO. 2012-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE CONSUMER PRICE INDEX (CPI) INCREASE FOR THE SERVICE CHARGES FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE**

**WHEREAS**, the City of Banning entered into a Franchise Agreement with Waste Management of the Inland Empire in July of 1993 for an eight year period; and

**WHEREAS**, on April 24, 2001, City Council adopted Resolution No. 2001-35, extending the agreement for an additional five years as allowed per the agreement, from July 1, 2001 to June, 2006; and

**WHEREAS**, on March 15, 2002 under Resolution No. 2002-28 the contract was re-negotiated to include automated services and to extend the agreement for an additional five year period from July 1, 2006 to June 30, 2011; and

**WHEREAS**, on June 28, 2011 under Resolution No. 2011-53 the City and Waste Management have mutually agreed to modify the terms and conditions of the Agreement and to extend services for an additional ten years to June 30, 2021; and

**WHEREAS**, per Section 18 of the Franchise Agreement, the refuse collection rate can be adjusted annually based on the Consumer Price Index (CPI) for the Los Angeles-Anaheim area, the increase/decrease of the collected tonnage of waste, the increase/decrease of the Tipping Fee charged by the landfill operator, or extraordinary changes in costs related to collection; and

**WHEREAS**, in order to adjust the rates it is necessary to comply with Article XIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act; and

**WHEREAS**, Proposition 218 was approved by California voters in 1996 and requires that local governments 1) give notification to all affected property owners and rate payers of the proposed rates and instructions for those who wish to protest the rate increases, 2) hold a public hearing at least Forty Five (45) days after mailing of the notifications and 3) reject the proposed fee if written protests are presented by a majority of affected property owners and rate payers; and

**WHEREAS**, the Proposition 218 notifications were mailed out to affected property owners and rate payers on December 22, 2011 as set forth in Exhibit "A" and a notice of public hearing was advertised in the Record Gazette on December 23, 2011 as shown in the attached Exhibit "B".

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

SECTION 1. FINDINGS The City Council, based on oral and written testimony submitted at the public hearing held in accordance with Proposition 218 finds as follows:

- (a.) A majority protest being 4,952, an insufficient number of protest were received to constitute a majority protest;
- (b.) The rates approved herein are necessary due to increasing operation costs and in order to comply with all health, safety and service requirements.

SECTION 2. ADOPTION Resolution No. 2012-10 is adopted approving the increases for the Service Charges for the Collection, Transportation and Disposal of Solid Waste as set forth in Exhibit "C".

SECTION 3. EFFECTIVE DATE This Resolution shall be considered as adopted upon the date that the vote is declared by the City Council and rates will become effective on March 1, 2012.

SECTION 4. IMPLEMENTATION Future rate increases are authorized based on the Consumer Price Index (CPI) formula or an alternative formulaic for an additional four-year period without further hearing or protest upon the annual approval of City Council.

SECTION 5. SUPERSEDED All previous Collection, Transportation and Disposal of Solid Waste rate structures are hereby rescinded.

SECTION 6. APPROPRIATION An appropriation is authorized in the amount of \$4,170.00 from the Refuse Enterprise Fund to Account No. 690-9600-453.23-01(Advertising/Publishing) to cover the printing and mailing costs associated with the Proposition 218 Notification.

**PASSED, APPROVED and ADOPTED** this 14<sup>th</sup> day of February, 2012.

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Don Robinson, Mayor  
City of Banning

**ATTEST:**

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



APPROVED AS TO FORM AND  
LEGAL CONTENT:

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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. 2012-10, was adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 14<sup>th</sup> day of February, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon  
City Clerk of the City of Banning

# **EXHIBIT “A”**

## **PROPOSITION 218 NOTIFICATION**



## CITY OF BANNING NOTICE OF PUBLIC HEARING



Notice of Public Hearing on Collection, Transportation, and Disposal of Solid Waste  
**February 14, 2012 at 5:00 P.M.**

City Council Chambers – 99 East Ramsey Street, Banning, CA 92220

In compliance with Article XIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act, the City of Banning is hereby notifying all affected property owners and rate payers of the proposed rate adjustment for the Collection, Transportation and Disposal of Solid Waste.

### **Public Hearing Information**

A public hearing will be held on Tuesday, February 14, 2012 at 5:00 p.m. at Banning City Hall located at 99 East Ramsey Street. At the time of the public hearing, the City Council will hear and consider all protest and objections concerning these matters and will consider and may adopt the adjusted rates and charges.

If you oppose the proposed rate adjustments, your protest must be submitted in writing, contain a description of the property, be signed by the property owner and/or rate payer and be received prior to the close of the public hearing to be considered. Only one protest per identified account will be counted. If written protests are submitted by a majority of the affected property owners and/or rate payers, the proposed rate adjustment may not be imposed. Written protests must be sent to the City Clerk, City of Banning; 99 East Ramsey Street, P.O. Box 998, Banning, CA 92220.

### **Explanation of Rate Adjustments**

The City of Banning contracts the collection, transportation and disposal of solid waste services through Waste Management of the Inland Empire. Waste Management has completed a review of the cost components of the contracted rates to comply with all health, safety and service requirements. Due to increasing operation costs, the following rate adjustments on the attached chart are proposed at this time starting on March 1, 2012.

**By approval of this rate increase, you also authorize future rate increases based on the Consumer Price Index (CPI) formula (defined below) or an alternative formulaic, automatic adjustment (also defined below) for an additional four-year period without further hearing or protest; such automatic adjustments to be in 2012, 2013, 2014, 2015 commencing on or after July 1 in each of such years. Note: CPI is an index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed based period, also known as a cost-of-living index. The CPI or other measure of automatic annual adjustments to be used will be as follows:**

- i. Service Component. The Service Component comprises sixty-five percent (65%) of the rate. The Service Component will be adjusted by the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics, for the March to February period immediately preceding the effective date of rate adjustment.
- ii. Disposal/Green Waste Processing Component. The Disposal/Green Waste Processing Component comprises thirty five percent (35%) of the rate. The Disposal/Green Waste Processing Component will be adjusted by the greater of either (1) the average of the monthly percentage increases in the CPI for the March to February period immediately preceding the effective date of the rate adjustment; or (2) the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for disposal of Solid Waste generated within Riverside County at landfills comprising the County System (Badlands Landfill, Lamb Canyon Landfill, El Sobrante Landfill) for the March to February period immediately preceding the effective date of the rate adjustment.

The City Council may in its discretion adopt such increases without further hearing and protest proceedings. The schedule of proposed rate adjustments covered by this notice will be for a period of five years starting from the effective date of the first increase.

If you wish to legally challenge any action taken by the City on the solid waste rate increases, you may be limited to raising only those issues you or someone else raised at the public hearing as described in this notice or in written correspondence delivered to the City prior to or at the public hearing.

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# NEW RATES FOR RESIDENTIAL AND COMMERCIAL EFFECTIVE : MARCH 1, 2012

## RESIDENTIAL SERVICES:

<u>Residential Cart Service:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
Basic Rate:	\$ 17.60	\$ 17.97
<u>Other Residential Fees:</u>	<u>Current Monthly Rate</u>	<u>2011-12 New Rate</u>
CRT Curbside Pickup	\$ 20.77	\$ 21.45
Extra 96-Gal Trash Cart	\$ 7.29	\$ 7.58
Extra 96-Gal Greenwaste Cart	\$ 4.46	\$ 4.64
Extra 96-Gal Recycling Cart	\$ 1.87	\$ 1.95
Bulky Pickup (over 3 free per year)	\$ 16.65	\$ 17.20

<u>Commercial Compactors:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
2 Yard, 1x a week	\$ 110.74	\$ 112.92
2 Yard, 2x a week	\$ 221.49	\$ 225.84
2 Yard, 3x a week	\$ 326.25	\$ 332.54
2 Yard, 4x a week	\$ 432.51	\$ 440.79
2 Yard, 5x a week	\$ 537.28	\$ 547.50
2 Yard, 6x a week	\$ 642.04	\$ 654.19
3 Yard, 1x a week	\$ 151.19	\$ 153.85
3 Yard, 2x a week	\$ 302.39	\$ 307.71
3 Yard, 3x a week	\$ 446.09	\$ 453.77
3 Yard, 4x a week	\$ 589.81	\$ 599.84
3 Yard, 5 a week	\$ 733.51	\$ 745.89
3 Yard, 6x a week	\$ 877.24	\$ 891.98

## COMMERCIAL SERVICES:

<u>Commercial Can Service:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
Commercial Carts	\$ 18.77	\$ 19.30

<u>Commercial Trash Service:</u>	<u>Current Monthly Rate</u>	<u>2011-12 New Rate</u>
2 Yard, 1x a week	\$ 78.98	\$ 81.41
2 Yard, 2x a week	\$ 157.97	\$ 162.82
2 Yard, 3x a week	\$ 230.97	\$ 238.01
2 Yard, 4x a week	\$ 305.46	\$ 314.75
2 Yard, 5x a week	\$ 378.47	\$ 389.95
2 Yard, 6x a week	\$ 451.47	\$ 465.13
3 Yard, 1x a week	\$ 103.55	\$ 106.59
3 Yard, 2x a week	\$ 207.10	\$ 213.18
3 Yard, 3x a week	\$ 303.16	\$ 311.97
3 Yard, 4x a week	\$ 399.24	\$ 410.78
3 Yard, 5 a week	\$ 495.29	\$ 509.57
3 Yard, 6x a week	\$ 591.38	\$ 608.39
4 Yard, 1x a week	\$ 138.55	\$ 142.62
4 Yard, 2x a week	\$ 277.10	\$ 285.24
4 Yard, 3x a week	\$ 405.20	\$ 416.99
4 Yard, 4x a week	\$ 534.79	\$ 550.28
4 Yard, 5 a week	\$ 662.90	\$ 682.04
4 Yard, 6x a week	\$ 791.01	\$ 813.79
6 Yard, 1x a week	\$ 195.14	\$ 200.73
6 Yard, 2x a week	\$ 390.27	\$ 401.46
6 Yard, 3x a week	\$ 571.98	\$ 588.21
6 Yard, 4x a week	\$ 752.19	\$ 773.40
6 Yard, 5x a week	\$ 933.90	\$ 960.16
6 Yard, 6x a week	\$ 1,114.10	\$ 1,145.34

<u>Commercial Recycle Service:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
2 Yard, 1x a week	\$ 73.06	\$ 76.02
2 Yard, 2x a week	\$ 146.13	\$ 152.04
3 Yard, 1x a week	\$ 93.53	\$ 97.31
3 Yard, 2x a week	\$ 187.05	\$ 194.62
4 Yard, 1x a week	\$ 124.23	\$ 129.26
4 Yard, 2x a week	\$ 248.46	\$ 258.51
6 Yard, 1x a week	\$ 160.76	\$ 167.27
6 Yard, 2x a week	\$ 321.52	\$ 334.53
Extra Pick Up - Recycle	\$ 43.73	\$ 45.16

<u>Other Commercial Fees:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
Extra Pick Up - Trash	\$ 54.22	\$ 56.42
Lost or Stolen Bin	\$ 276.25	\$ 287.43
Burned Bin	\$ 154.70	\$ 160.96
Bin Overage Fee	\$ 42.17	\$ 43.88
Temporary 3 Yard - one month	\$ 185.44	\$ 192.94
Temporary 3 Yard - 7 day	\$ 113.66	\$ 118.26
Locking Lids	\$ 13.26	\$ 13.80
Haul or Call Fee	\$ 25.30	\$ 26.32
Commercial Set-up Fee	\$ 15.77	\$ 16.61
Industrial Set-up Fee	\$ 15.77	\$ 16.61
Residential Set-up Fee	\$ 9.58	\$ 9.96
	\$ 113.66	\$ 118.26

## ROLL-OFF SERVICES:

<u>Temp Roll-Off Service:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
Open Top with 4 tons	\$ 342.67	\$ 356.53
Compactor	\$ 586.71	\$ 608.53
Open Top Permanent plus landfill tipping fees	\$ 188.11	\$ 195.72
Compactor permanent plus landfill tipping fees	\$ 242.84	\$ 252.66
Roll-Off Recycle/per load	\$ 188.11	\$ 195.72

<u>Other Roll-Off Fees:</u>	<u>Current Monthly Rate</u>	<u>2011-12* New Rate</u>
Delivery/Relocate/Trip Charge (new fee 2008)	\$ 68.76	\$ 71.44
Minimum Pull Fee (1 per month)	\$ 188.11	\$ 195.72
Disposal per ton	\$ 38.15	\$ 38.15

\*To be adjusted yearly for 5 years in accordance with the formula on the Notice of Public Hearing to which this schedule is attached

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# EXHIBIT "B"

## RECORD GAZETTE DECEMBER 23, 2011

Page 28 ■ www.recordgazette.net

Record Gazette

Friday, December 23, 2011

NOTICE OF  
PUBLIC HEARING  
PURSUANT TO LAW, notice is hereby given of a Public Hearing before the City Council of the City of Banning, to be heard February 14, 2012 at 5:00 p.m. at Banning City Hall located at 99 E. Ramsey Street, Banning, California, notifying all affected property owners and rate payers of the proposed rate adjustment for the Collection, Transportation and Disposal of Solid Waste to be considered for approval under resolution. The City Council may in its discretion adopt such increases without further hearing and protest proceedings. The schedule of the proposed rate adjustments covered by this notice will be for a period of five years starting from the effective date of the first increase. ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or to send written comments to the City Clerk, P.O. Box 998, Banning, CA 92220. Data relevant to these fees is available for public review at the office of the City Clerk or at the Engineering Division of the Public Works Department, at 99 E. Ramsey Street. If you wish to legally challenge any action taken by the City on the solid waste rate increases, you may be limited to raising only those issues you or someone else raised at the public hearing as described in this notice or in written correspondence delivered to the City prior to or at the public hearing. BY ORDER OF THE CITY CLERK of the City of Banning, California.  
Publish: Record Gazette  
December 23, 2011  
Marie A. Calderon,  
City Clerk  
Publish The Record  
Gazette  
No. 61658  
12/23, 2011

Resolution No. 2012-10

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# **EXHIBIT “C”**

**RATES EFFECTIVE MARCH 1, 2012**

**City of Banning  
Rate Components  
As of March 1, 2012**

**Service Components**

<b>RESIDENTIAL</b>	
Single Family Service Rates:	\$ 13.58

<b>COMMERCIAL CAN SERVICE</b>	
Refuse Service With Recycling program A:	\$ 13.65

<b>COMMERCIAL BIN SERVICE</b>									
SIZE	QTY		ONE	TWO	THREE	FOUR	FIVE	SIX	
2 Yard	One	\$	65.66	\$ 131.31	\$ 190.74	\$ 251.73	\$ 311.17	\$ 370.60	
3 Yard	One	\$	82.96	\$ 165.91	\$ 241.07	\$ 316.25	\$ 391.41	\$ 466.60	
4 Yard	One	\$	111.11	\$ 222.22	\$ 322.46	\$ 424.24	\$ 524.49	\$ 624.73	
6 Yard	One	\$	153.46	\$ 306.93	\$ 446.41	\$ 584.34	\$ 723.84	\$ 861.75	
2 Yard	Two	\$	131.31	\$ 262.62	\$ 381.48	\$ 503.45	\$ 622.34	\$ 741.20	
3 Yard	Two	\$	165.91	\$ 331.83	\$ 482.15	\$ 632.50	\$ 782.82	\$ 933.20	
4 Yard	Two	\$	222.22	\$ 444.43	\$ 644.92	\$ 848.49	\$ 1,048.97	\$ 1,249.46	
6 Yard	Two	\$	306.93	\$ 613.85	\$ 892.82	\$ 1,168.68	\$ 1,447.68	\$ 1,723.51	
2 Yard	Three	\$	196.97	\$ 393.93	\$ 572.22	\$ 755.18	\$ 933.51	\$ 1,111.80	
3 Yard	Three	\$	248.87	\$ 497.74	\$ 723.22	\$ 948.75	\$ 1,174.22	\$ 1,399.79	
4 Yard	Three	\$	333.32	\$ 666.65	\$ 967.38	\$ 1,272.73	\$ 1,573.46	\$ 1,874.19	
6 Yard	Three	\$	460.39	\$ 920.78	\$ 1,339.23	\$ 1,753.02	\$ 2,171.52	\$ 2,585.26	
2 Yard	Four	\$	262.62	\$ 525.24	\$ 762.96	\$ 1,006.91	\$ 1,244.69	\$ 1,482.40	
3 Yard	Four	\$	331.83	\$ 663.65	\$ 964.29	\$ 1,264.99	\$ 1,565.63	\$ 1,866.39	
4 Yard	Four	\$	444.43	\$ 888.86	\$ 1,289.84	\$ 1,696.97	\$ 2,097.95	\$ 2,498.92	
6 Yard	Four	\$	613.85	\$ 1,227.70	\$ 1,785.64	\$ 2,337.36	\$ 2,895.36	\$ 3,447.02	
2 Yard	Five	\$	328.28	\$ 656.55	\$ 953.70	\$ 1,258.63	\$ 1,555.86	\$ 1,853.01	
3 Yard	Five	\$	414.78	\$ 829.57	\$ 1,205.37	\$ 1,581.24	\$ 1,957.04	\$ 2,332.99	
4 Yard	Five	\$	555.54	\$ 1,111.08	\$ 1,612.29	\$ 2,121.22	\$ 2,622.43	\$ 3,123.65	
6 Yard	Five	\$	767.31	\$ 1,534.63	\$ 2,232.05	\$ 2,921.70	\$ 3,619.20	\$ 4,308.77	
2 Yard	Six	\$	393.93	\$ 787.86	\$ 1,144.44	\$ 1,510.36	\$ 1,867.03	\$ 2,223.61	
3 Yard	Six	\$	497.74	\$ 995.48	\$ 1,446.44	\$ 1,897.49	\$ 2,348.45	\$ 2,799.59	
4 Yard	Six	\$	666.65	\$ 1,333.29	\$ 1,934.75	\$ 2,545.46	\$ 3,146.92	\$ 3,748.38	
6 Yard	Six	\$	920.78	\$ 1,841.55	\$ 2,678.46	\$ 3,506.04	\$ 4,343.04	\$ 5,170.52	

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**City of Banning  
Rate Components  
As of March 1, 2012**

**Disposal Components**

<b>RESIDENTIAL TRASH</b>		Pounds per household per week								32.64
		Pounds-to-tons factor			divide by					2,000
		Monthly factor			x					4.33
		Riverside County landfill rate			x			\$		34.37
		Franchise Fee factor			divide by					0.79
		Monthly Disposal Component for one Residential Household								\$ 3.07
<b>RESIDENTIAL GREENWASTE</b>		Pounds per household per week								16.51
		Pounds-to-tons factor			divide by					2,000
		Monthly factor			x					4.33
		Riverside County landfill rate			x			\$		29.00
		Franchise Fee factor			divide by					0.79
		Monthly Disposal Component for one Residential Household								\$ 1.31
<b>COMMERCIAL CAN</b>		Pounds per customer per week								60.00
		Pounds-to-tons factor			divide by					2,000
		Monthly factor			x					4.33
		Riverside County landfill rate			x			\$		34.37
		Franchise Fee factor			divide by					0.79
		Monthly Disposal Component for one Commercial Can Customer								\$ 5.65
<b>COMMERCIAL REFUSE</b>		Pounds per yard								83.63
		Pounds-to-tons factor			divide by					2,000
		Monthly factor			x					4.33
		Riverside County landfill rate			x			\$		34.37
		Franchise Fee factor			divide by					0.79
		Monthly Disposal Component for One Cubic Yard								\$ 7.88
<b>SIZE</b>	<b>QTY</b>		<b>ONE</b>	<b>TWO</b>	<b>THREE</b>	<b>FOUR</b>	<b>FIVE</b>	<b>SIX</b>		
2 Yard	1	\$	15.75	\$ 31.51	\$ 47.26	\$ 63.02	\$ 78.77	\$ 94.53		
3 Yard	1	\$	23.63	\$ 47.26	\$ 70.90	\$ 94.53	\$ 118.16	\$ 141.79		
4 Yard	1	\$	31.51	\$ 63.02	\$ 94.53	\$ 126.04	\$ 157.55	\$ 189.06		
6 Yard	1	\$	47.26	\$ 94.53	\$ 141.79	\$ 189.06	\$ 236.32	\$ 283.59		
2 Yard	2	\$	31.51	\$ 63.02	\$ 94.53	\$ 126.04	\$ 157.55	\$ 189.06		
3 Yard	2	\$	47.26	\$ 94.53	\$ 141.79	\$ 189.06	\$ 236.32	\$ 283.59		
4 Yard	2	\$	63.02	\$ 126.04	\$ 189.06	\$ 252.08	\$ 315.10	\$ 378.12		
6 Yard	2	\$	94.53	\$ 189.06	\$ 283.59	\$ 378.12	\$ 472.65	\$ 567.18		
<b>SIZE</b>	<b>QTY</b>		<b>ONE</b>	<b>TWO</b>	<b>THREE</b>	<b>FOUR</b>	<b>FIVE</b>	<b>SIX</b>		
2 Yard	3	\$	47.26	\$ 94.53	\$ 141.79	\$ 189.06	\$ 236.32	\$ 283.59		
3 Yard	3	\$	70.90	\$ 141.79	\$ 212.69	\$ 283.59	\$ 354.49	\$ 425.38		
4 Yard	3	\$	94.53	\$ 189.06	\$ 283.59	\$ 378.12	\$ 472.65	\$ 567.18		
6 Yard	3	\$	141.79	\$ 283.59	\$ 425.38	\$ 567.18	\$ 708.97	\$ 850.77		
2 Yard	4	\$	63.02	\$ 126.04	\$ 189.06	\$ 252.08	\$ 315.10	\$ 378.12		
3 Yard	4	\$	94.53	\$ 189.06	\$ 283.59	\$ 378.12	\$ 472.65	\$ 567.18		
4 Yard	4	\$	126.04	\$ 252.08	\$ 378.12	\$ 504.16	\$ 630.20	\$ 756.24		
6 Yard	4	\$	189.06	\$ 378.12	\$ 567.18	\$ 756.24	\$ 945.30	\$ 1,134.36		
2 Yard	5	\$	78.77	\$ 157.55	\$ 236.32	\$ 315.10	\$ 393.87	\$ 472.65		
3 Yard	5	\$	118.16	\$ 236.32	\$ 354.49	\$ 472.65	\$ 590.81	\$ 708.97		
4 Yard	5	\$	157.55	\$ 315.10	\$ 472.65	\$ 630.20	\$ 787.75	\$ 945.30		
6 Yard	5	\$	236.32	\$ 472.65	\$ 708.97	\$ 945.30	\$ 1,181.62	\$ 1,417.95		
2 Yard	6	\$	94.53	\$ 189.06	\$ 283.59	\$ 378.12	\$ 472.65	\$ 567.18		
3 Yard	6	\$	141.79	\$ 283.59	\$ 425.38	\$ 567.18	\$ 708.97	\$ 850.77		
4 Yard	6	\$	189.06	\$ 378.12	\$ 567.18	\$ 756.24	\$ 945.30	\$ 1,134.36		
6 Yard	6	\$	283.59	\$ 567.18	\$ 850.77	\$ 1,134.36	\$ 1,417.95	\$ 1,701.54		



**City of Banning  
Rate Components  
As of March 1, 2012**

**Total Rates**

<b>RESIDENTIAL</b>		
Single Family Refuse Rate	\$	17.97

Additional Containers:	Trash - 96 gallon	\$	7.58
	Trash - 64 gallon	\$	6.07
	Trash - 35 gallon	\$	4.56
	Recycling	\$	1.95
	Green Waste	\$	4.64
Exchanges due to size change or customer misuse (as examples)			
In excess of one time per year		\$	22.80

<b>COMMERCIAL CAN SERVICE</b>		
Refuse Service With Recycling Program A:	\$	19.30

<b>TEMPORARY COMMERCIAL SERVICE</b>		
Temporary Bin (up to 7 Days)	\$	118.26
Temporary Bin (30 Days)	\$	192.94

<b>COMMERCIAL BIN SERVICE</b>									
SIZE	QTY		ONE	TWO	THREE	FOUR	FIVE	SIX	
2 Yard	1	\$	81.41	\$ 162.82	\$ 238.01	\$ 314.75	\$ 389.95	\$ 465.13	
3 Yard	1	\$	106.59	\$ 213.18	\$ 311.97	\$ 410.78	\$ 509.57	\$ 608.39	
4 Yard	1	\$	142.62	\$ 285.24	\$ 416.99	\$ 550.28	\$ 682.04	\$ 813.79	
6 Yard	1	\$	200.73	\$ 401.46	\$ 588.21	\$ 773.40	\$ 960.16	\$ 1,145.34	
2 Yard	2	\$	162.82	\$ 325.64	\$ 476.01	\$ 629.49	\$ 779.89	\$ 930.26	
3 Yard	2	\$	213.18	\$ 426.36	\$ 623.94	\$ 821.56	\$ 1,019.14	\$ 1,216.79	
4 Yard	2	\$	285.24	\$ 570.47	\$ 833.98	\$ 1,100.57	\$ 1,364.07	\$ 1,627.58	
6 Yard	2	\$	401.46	\$ 802.91	\$ 1,176.41	\$ 1,546.80	\$ 1,920.33	\$ 2,290.69	
2 Yard	3	\$	244.23	\$ 488.46	\$ 714.02	\$ 944.24	\$ 1,169.84	\$ 1,395.39	
3 Yard	3	\$	319.77	\$ 639.54	\$ 935.91	\$ 1,232.33	\$ 1,528.71	\$ 1,825.18	
4 Yard	3	\$	427.85	\$ 855.71	\$ 1,250.97	\$ 1,650.85	\$ 2,046.11	\$ 2,441.37	
6 Yard	3	\$	602.18	\$ 1,204.37	\$ 1,764.62	\$ 2,320.20	\$ 2,880.49	\$ 3,436.03	
2 Yard	4	\$	325.64	\$ 651.28	\$ 952.02	\$ 1,258.99	\$ 1,559.78	\$ 1,860.52	
3 Yard	4	\$	426.36	\$ 852.71	\$ 1,247.88	\$ 1,643.11	\$ 2,038.28	\$ 2,433.57	
4 Yard	4	\$	570.47	\$ 1,140.94	\$ 1,667.95	\$ 2,201.13	\$ 2,728.15	\$ 3,255.16	
6 Yard	4	\$	802.91	\$ 1,605.82	\$ 2,352.82	\$ 3,093.60	\$ 3,840.66	\$ 4,581.37	
2 Yard	5	\$	407.05	\$ 814.10	\$ 1,190.03	\$ 1,573.73	\$ 1,949.73	\$ 2,325.65	
3 Yard	5	\$	532.95	\$ 1,065.89	\$ 1,559.85	\$ 2,053.89	\$ 2,547.85	\$ 3,041.96	
4 Yard	5	\$	713.09	\$ 1,426.18	\$ 2,084.94	\$ 2,751.42	\$ 3,410.18	\$ 4,068.95	
6 Yard	5	\$	1,003.64	\$ 2,007.28	\$ 2,941.03	\$ 3,867.00	\$ 4,800.82	\$ 5,726.72	
2 Yard	6	\$	488.46	\$ 976.92	\$ 1,428.03	\$ 1,888.48	\$ 2,339.68	\$ 2,790.79	
3 Yard	6	\$	639.54	\$ 1,279.07	\$ 1,871.83	\$ 2,464.67	\$ 3,057.42	\$ 3,650.36	
4 Yard	6	\$	855.71	\$ 1,711.41	\$ 2,501.93	\$ 3,301.70	\$ 4,092.22	\$ 4,882.74	
6 Yard	6	\$	1,204.37	\$ 2,408.73	\$ 3,529.23	\$ 4,640.39	\$ 5,760.99	\$ 6,872.06	

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**City of Banning  
Rate Components  
As of March 1, 2012**

<b>COMMERCIAL RECYCLING SERVICE</b>				
		Pick-ups per week		
<u>SIZE</u>	<u>QTY</u>		<u>ONE</u>	<u>TWO</u>
2.0 Cubic Yard	One	\$	76.02	\$ 152.04
3.0 Cubic Yard	One	\$	97.31	\$ 194.62
4.0 Cubic Yard	One	\$	129.26	\$ 258.51
6.0 Cubic Yard	One	\$	167.27	\$ 334.53

<b>ROLLOFF SERVICES</b>		
40 Cubic Yard Container	\$	195.72 + landfill fees
10 Cubic Yard Container	\$	195.72 + landfill fees
Monthly Minimum Pull	\$	195.72
40 Cubic Yard Compactor	\$	252.66 +landfill
40 Cubic Yard Temporary Container	\$	356.53 includes 4 tons
Relocation/Trip/Delivery Fee	\$	71.44

<b>OTHER SERVICES</b>		
Bin exchange	\$	47.37
Lost or Stolen Bin:	\$	287.43
Burned Bin:	\$	160.96
Extra bin dump while on site	\$	56.42
Overage Fee	\$	43.88
Locking Lids: (per month times service frequency)	\$	13.80
Replacement Lock	\$	28.74
Replacement Key	\$	5.75
Residential Set Up Fee	\$	9.96
Commercial Set Up Fee	\$	16.61
Industrial Set Up Fee	\$	16.61
Additional Bulky Waste - E Waste	\$	17.33 per item
HOC fee	\$	26.32

**City of Banning  
Rate Components  
As of March 1, 2012**

COMPACTOR SERVICE RATES													
(COMPACTION RATIO = 3:1)													
SIZE	QTY		ONE		TWO		THREE		FOUR		FIVE		SIX
2 Yard	One	\$	112.92	\$	225.84	\$	332.54	\$	440.79	\$	547.50	\$	654.19
3 Yard	One	\$	153.85	\$	307.71	\$	453.77	\$	599.84	\$	745.89	\$	891.98
4 Yard	One	\$	205.64	\$	411.28	\$	606.05	\$	802.36	\$	997.14	\$	1,191.91
6 Yard	One	\$	295.26	\$	590.51	\$	871.79	\$	1,151.52	\$	1,432.81	\$	1,712.52
2 Yard	Two	\$	225.84	\$	451.68	\$	665.07	\$	881.57	\$	1,094.99	\$	1,308.38
3 Yard	Two	\$	307.71	\$	615.42	\$	907.53	\$	1,199.68	\$	1,491.79	\$	1,783.96
4 Yard	Two	\$	411.28	\$	822.55	\$	1,212.10	\$	1,604.73	\$	1,994.27	\$	2,383.82
6 Yard	Two	\$	590.51	\$	1,181.03	\$	1,743.59	\$	2,303.04	\$	2,865.63	\$	3,425.04
2 Yard	Three	\$	338.76	\$	677.52	\$	997.61	\$	1,322.36	\$	1,642.49	\$	1,962.57
3 Yard	Three	\$	461.56	\$	923.13	\$	1,361.30	\$	1,799.51	\$	2,237.68	\$	2,675.95
4 Yard	Three	\$	616.91	\$	1,233.83	\$	1,818.14	\$	2,407.09	\$	2,991.41	\$	3,575.73
6 Yard	Three	\$	885.77	\$	1,771.54	\$	2,615.38	\$	3,454.55	\$	4,298.44	\$	5,137.57
2 Yard	Four	\$	451.68	\$	903.36	\$	1,330.14	\$	1,763.14	\$	2,189.98	\$	2,616.76
3 Yard	Four	\$	615.42	\$	1,230.83	\$	1,815.06	\$	2,399.35	\$	2,983.58	\$	3,567.93
4 Yard	Four	\$	822.55	\$	1,645.10	\$	2,424.19	\$	3,209.45	\$	3,988.54	\$	4,767.64
6 Yard	Four	\$	1,181.03	\$	2,362.06	\$	3,487.18	\$	4,606.07	\$	5,731.25	\$	6,850.09
2 Yard	Five	\$	564.60	\$	1,129.20	\$	1,662.68	\$	2,203.93	\$	2,737.48	\$	3,270.95
3 Yard	Five	\$	769.27	\$	1,538.54	\$	2,268.83	\$	2,999.19	\$	3,729.47	\$	4,459.91
4 Yard	Five	\$	1,028.19	\$	2,056.38	\$	3,030.24	\$	4,011.81	\$	4,985.68	\$	5,959.54
6 Yard	Five	\$	1,476.29	\$	2,952.57	\$	4,358.97	\$	5,757.59	\$	7,164.07	\$	8,562.61
2 Yard	Six	\$	677.52	\$	1,355.04	\$	1,995.21	\$	2,644.72	\$	3,284.98	\$	3,925.14
3 Yard	Six	\$	923.13	\$	1,846.25	\$	2,722.59	\$	3,599.03	\$	4,475.37	\$	5,351.89
4 Yard	Six	\$	1,233.83	\$	2,467.65	\$	3,636.29	\$	4,814.18	\$	5,982.81	\$	7,151.45
6 Yard	Six	\$	1,771.54	\$	3,543.09	\$	5,230.77	\$	6,909.11	\$	8,596.88	\$	10,275.13

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**CITY COUNCIL MEETING  
REPORT OF OFFICERS**

**DATE:** February 14, 2012

**TO:** City Council

**FROM:** David J. Aleshire, City Attorney

**SUBJECT:** New Developments in the Law: AB 23 and New FPPC Rules In Re Appointments to Paid Positions

**RECOMMENDATION:**

File and receive City Attorneys' report on new developments in the law relating to the conduct of local agency meetings: AB 23 (relating to disclosure of compensation for corollary bodies) and new FPPC rules in re conflicts-of-interest procedures for appointments to paid positions.

**SUMMARY:**

- 1) AB 23 took effect January 1, 2012. AB 23 requires disclosure of compensation received by members of the Council that serve on other boards (such as the City's RDA). The bill does not require verbal disclosure of the compensation received by the Councilmembers for serving on the other boards provided that the amounts they receive for those boards are within the limits of state law. Because the City's RDA and Housing Authority compensate their members within these limits, no disclosure is needed for the RDA and/or Housing Authority.
- 2) In 2011, the Fair Political Practices Commission issued Advice Letter No. I-11-172, in which the FPPC took the position that FPPC Regulation 18705.5 requires that a Councilmember may not vote upon his/her nomination or appointment to stipend-paying boards and commissions. Upon nomination to a position that receives a stipend that is not received by the rest of the Council, the nominee must announce that the nomination to a paid position gives rise to a potential conflict and then must leave the dais pending the vote on his/her appointment. **A step-by-step procedure for this process is highlighted (in bold) on the last section of this report.** Appointments to positions that do not pay a stipend may be processed as usual.

**AB 23:**

Under the Ralph M. Brown Act, each legislative body of a local agency must provide the time and place for holding regular meetings. All meetings of a legislative body must be open and public unless a closed session is authorized. AB 23 (Smyth) was proposed to address an abusive practice that had been occurring in the City of Bell, whereby that City's previous city council "reconstituted" itself into other legislative bodies for the primary purpose of conducting serial meetings and being paid for attendance at each of those meetings. AB 23 works as follows:

- If a convened legislative body, whose membership constitutes a quorum of any other legislative body, also convenes a meeting of the other legislative body

simultaneously or in serial order, the clerk or member of the convened legislative body must verbally announce, prior to convening any simultaneous or serial order meeting of any other legislative body, the amount of compensation or stipend, if any, that each member will be entitled to receive as a result of convening the simultaneous or serial meeting of the other legislative body.

- The clerk or member of the convened legislative body must also verbally announce the compensation or stipend that shall be provided as a result of convening a meeting for which each member is entitled to collect compensation or a stipend, as specified.

For example, unless one of the exemptions described below applies, before each time the City Council and RDA can convene at the same time and place, the City Clerk or presiding officer of the meeting must make an announcement similar to the following for each legislative body being concurrently convened: "This is to announce, as required by Government Code section 54954.3, that members of the City Council are also members of the Board of Directors of the City's Redevelopment Agency, which is concurrently convening with the City Council this evening and each Council Member is paid an additional stipend of \$\_\_\_ for attending the Redevelopment Agency meeting."<sup>1</sup>

There are two critical *exemptions* to these disclosure rules:

- If compensation is established by statute for the corollary legislative body, unless additional compensation has been authorized by the local agency.
- Compensation or stipends do not apply to amounts reimbursed for actual and necessary expenses incurred by a member in the performance of the member's official duties.

So, no disclosure is needed if the *amount of compensation is prescribed in statute and no additional compensation above the state limits has been authorized by a local agency*. In Banning, the City Council receives stipends that are under the state limits for their participation in the RDA and Housing Authority; thus, no announcement is needed prior to opening these bodies.<sup>2</sup> If, however, another body is created whose membership constitutes a quorum of the Council, and that body either is not addressed by state's statutory compensation limits or if the City pays compensation in addition to a statutory allowance, then the AB 23 disclosure would be necessary.

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<sup>1</sup> The same would apply to a seriatim Council/Housing Authority meeting.

<sup>2</sup> Max allowable compensation per state law is \$50/meeting for Housing Authority members and \$30/meeting for Agency Board members, not to exceed 4 meetings per month. (Health & S C § 34274 and Health & S C33114.5.)

## NEW FPPC RULES ON APPOINTMENT PROCEDURES PER FINANCIAL CONFLICTS:

Each year the City Council appoints delegates and alternates to various internal and outside governmental agency boards on which the City Council has representation. This report specifically addresses City Council appointments to governmental agency boards that provide a stipend. As further discussed below, to avoid a potential conflict-of-interest under the Political Reform Act, it is recommended that individual Councilmembers abstain from voting on their own respective nominations or appointment(s) to either a delegate or alternate position that pays remuneration.

Recent correspondence from the staff of the FPPC set forth their position that the FPPC's administrative regulations, which are authorized to implement the Political Reform Act, prohibit Councilmembers from participating in decisions involving their appointment as City Council representatives (either as delegates or alternates) to government positions that provide a stipend, paid expenses or any other form of monetary remuneration. The FPPC now considers the receipt of such stipends to constitute "personal financial effects" for which potentially affected Councilmembers must abstain. The abstention rule applies under the following circumstances:

- The Council will appoint one of its own members, and
- The appointment is subject to the vote of, or ratification by, the Council, and
- The position pays a stipend, paid expenses or any other form of monetary remuneration, and
- The stipend or remuneration associated with the position is not provided to the rest of the Councilmembers.

Specific Council-appointed delegate or alternate positions that receive a stipend and meet the above criteria are:

- The Western Riverside Council of Governments, and
- The Riverside Transit Agency, and
- The Riverside County Transportation Commission, and
- The Regional Conservation Authority.

With respect to appointments to these stipend-bearing commissions, Councilmembers should take the following steps:

- i. When the Council reaches the time to make the appointment, Councilmembers may express their availability for an appointment, but are discouraged from expressly advocating their nomination or appointment to the position. Remember, where a decision may give rise to a personal financial benefit to the Councilmember, the official should refrain from *influencing* the decision. A

Councilmember should absolutely not nominate himself/herself to a paid position.

- ii. A nomination shall be made. Typically, nominations are made by the Mayor. However, if the Mayor is interested in the position, the Mayor should not nominate him/herself, but should announce his/her availability and likelihood of nomination, and then pass the gavel to the Mayor Pro Tem to make the nomination.
- iii. Before there is any discussion or ratification of the nomination, the nominee shall immediately disclose the conflict posed by the nomination, substantially as follows: "Because the position for which I have been nominated pays a stipend, the nomination affects my personal finances and I therefore abstain from this matter."
- iv. The nominee will immediately leave the room before any further discussion. The nominee shall remain absent during all discussion of his/her potential appointment and pending the vote upon his/her appointment.
- v. Upon conclusion of the vote, the nominee may return.
- vi. Delegates and alternates to a position may be voted upon at once—in which case both the delegate and alternative must abstain and leave the room. Or, they may be nominated and voted upon separately.
- vii. If a position *requires* appointment of a certain Councilmember (e.g., the League Committee delegating membership to all *mayors*), then no action or vote is needed as the mayor is deemed to fill the appointment per se.
- viii. Meeting minutes shall reflect all abstentions and the basis thereof.

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END REPORT