

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

April 10, 2012  
5:00 p.m.

Banning Civic Center  
Council Chambers

*The following information comprises the agenda for a regular meeting of the City Council and the City Council of the City of Banning Sitting In Its Capacity as Successor Agency, and the Banning Financing Authority, Banning Housing Authority and the Banning Utility Authority.*

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

**I. CALL TO ORDER**

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

**II. REPORT ON CLOSED SESSION**

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

**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 the category may be received and filed or referred to staff for future research or a future agenda.

**PRESENTATIONS:**

1. Proclamation – April as National Donate Life Month . . . . . **1**
2. Introduction of New Employee by the City Manager (ORAL)

*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 a member of the City Council wishes to remove an item for separate consideration.)*

**Motion: That the City Council approve Consent Item 1 through 9**

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

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

1.	Approval of Minutes – Special Meeting – 03/13/12 (Closed Session) . . . . .	2
2.	Approval of Minutes – Special Meeting – 03/27/12 (Closed Session) . . . . .	3
3.	Approval of Minutes – Regular Meeting – 03/27/12. . . . .	4
4.	Second Amendment to the Professional Services Agreement with Saddleback Realty Analysis, Inc. DBA, Integra Realty Resources. . . . .	80
5.	Resolution No. 2012-13, Authorizing the Expenditure of Late Ambulance Penalty Fees for the Purchase of Emergency Medical and Rescue Equipment. . . . .	84
6.	Resolution No. 2012-19, Approving the Agreement for Consultant Services Between the City of Banning and SAIC Energy, Environmental & Infrastructure, LLC (formerly RW Beck) in the Amount of \$210,670.00. . . . .	87
7.	Ordinance No. 1450- 2 <sup>nd</sup> Read.: An Ordinance of the City Council of the City of Banning, California, Amending the Deutsch Specific Plan and Superseding it with the Butterfield Specific Plan and Adopting Conditions of Approval and Making Findings in Support Thereof. . . . .	129
8.	Ordinance No. 1451 – 2 <sup>nd</sup> Read: An Ordinance of the City Council of the City of Banning, California, Adopting the Development Agreement Superseding the Deutsch Specific Plan Development Agreement and Making Finding in Support Thereof . . . . .	171
9.	Approval of Exclusive Negotiations Agreement by and Between the City of Banning and the Banning Science & Technology Center, Inc. . .	258

- Open for Public Comments
- Make Motion

#### V. REPORTS OF OFFICERS

1.	FY 2011/12 Mid Year Budget Review Staff Report. . . . .	284
<b>Recommendation: That the City Council (1) approve City Resolution No. 2012-31, the Banning Utility Authorize Resolution No. 2012-05 UA and the Successor Agency Resolution No. 2012-06 SA, authorizing the Administrative Services Director to make necessary budget adjustments to implement the mid-year analysis, amend the position control and update the Budgetary and Fiscal Policies; and (2) approve City Resolution No. 2012-21, Amending the Classification and Compensation Plan for the City of Banning.</b>		

2. Resolution No. 2012-30, Approving the Downtown Decorative Lighting Plan.  
Staff Report. . . . . 332  
Recommendation: **That the City Council adopt Resolution No. 2012-30, Approving the Downtown Decorative Lighting Plan, as designated by City Council.**

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

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

**VII. ITEMS FOR FUTURE AGENDAS**

New Items –

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 24, 2012)*

Successor Agency

1. Proposal from Owners of Oddfellows Building - 42 W. Ramsey Street.

**VIII. ADJOURNMENT**

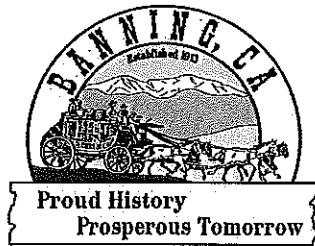
*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.*

**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].





## PROCLAMATION

*WHEREAS, organ, tissue, marrow and blood donation are life-giving acts recognized worldwide as expressions of compassion to those in need; and*

*WHEREAS, more than 100,000 individuals nationwide and almost 20,000 in California are currently on the national organ transplant waiting list, and every 90 minutes one person dies while waiting due to the shortage of donated organs; and*

*WHEREAS, the need for donated organs is especially urgent in Hispanic and African American communities; and*

*WHEREAS, more than 600,000 units of blood per year are needed to meet the need in California and at any given time, 6,000 patients are in need of volunteer marrow donors; and*

*WHEREAS, a single individual's donation of the heart, lungs, liver, kidneys, pancreas and small intestine can save up to eight lives; donation of tissue can save and heal the lives of up to 50 others; and a single blood donation can help three people in need; and*

*WHEREAS, millions of lives each year are saved and healed by donors of organs, tissues, marrow and blood and the spirit of giving and decision to donate are not restricted by age or medical condition; and*

*WHEREAS, nearly nine million Californians have signed up with the state-authorized Donate Life California Registry to ensure their wishes to be organ and tissue donors are honored; and*

*WHEREAS, California residents can sign up with the Donate Life California Registry when applying for or renewing their driver's licenses or ID cards at the California Department of Motor Vehicles.*

**NOW, THEREFORE, BE IT RESOLVED,** that I, Don Robinson, Mayor of the City of Banning along with the City Council that in recognition of National Donate Life Month, hereby proclaim the month of April 2012 as "DMV/Donate Life California Month" in the city of Banning, and in doing so we encourage all Californians to check "YES!" when applying for or renewing their driver's license or I.D. card, or by signing up at [www.donateLIFecalifornia.org](http://www.donateLIFecalifornia.org) or [www.donateVIDAcalifornia.org](http://www.donateVIDAcalifornia.org)

*IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 10<sup>th</sup> day of April, 2012.*

**ATTEST:**

Marie A. Calderon, City Clerk

Don Robinson, Mayor

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

03/13/2012  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on March 13, 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  
Duane Burk, Public Works Director  
Bill Manis, Economic Development/Redevelopment Director  
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney announced that there is one item involving potential litigation pursuant to Government Code Section 54956.9; and pursuant to the provisions of Government Code Section 54956.8 there are two items of real property negotiations concerning: 1) 4545 W. Ramsey - APN: 537-100-032, and 2) 347 E. Ramsey Street - APN: 541-184-001.

Mayor Robinson opened the item for public comments. There were none. Meeting went into closed session at 4:04 p.m. and reconvened at 4:43 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:44 p.m.

---

Marie A. Calderon, City Clerk

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

2

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

03/27/2012  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Robinson on March 27, 2012 at 4:15 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  
Duane Burk, Public Works Director  
Marie A. Calderon, City Clerk/Secretary

CLOSED SESSION

City Attorney stated that the City Council will meet pursuant to Government Code Section 54957.6 in regards to labor negotiations with International Brotherhood of Electrical Workers (IBEW) – Utility Unit, International Brotherhood of Electrical Workers (IBEW) – General Unit, Banning Police Officers Association (BPOA), and City of Banning Association of Managers (CBAM); and pursuant to Government Code Section 54956.8 regarding: Pardee Homes – property on the north east corner of Highland Springs Avenue and Wilson Street.

Mayor Robinson opened the item for public comments. There were none. Meeting went into closed session at 4:17 p.m. and reconvened at 5:05 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:06 p.m.

---

Marie A. Calderon, City Clerk

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

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

03/27/12  
REGULAR MEETING

A regular meeting of the Banning City Council and the City Council of the City of Banning Sitting In Its Capacity as Successor Agency, and the Banning Financing Authority, Banning Housing Authority and the Banning Utility Authority was called to order by Mayor Robinson on March 27, 2012 at 5:15 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 Machisie  
Mayor Robinson

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager  
June Overholt, Administrative Services Director  
David J. Aleshire, City Attorney  
Zai Abu Bakar, Community Development Director  
Duane Burk, Public Works Director  
Heidi Meraz, Community Services Director  
Bill Manis, Economic Development/Redevelopment Director  
Fred Mason, Electric Utility Director  
Marie A. Calderon, City Clerk

The invocation was given by Pastor Elder Preston, Praise Tabernacle Church. Council Member Hanna invited the audience to join her in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that the Council met in closed session to discuss a matter of labor negotiations with our bargaining units and direction was given for further negotiations with the negotiators and the bargaining units. Also discussed was a matter of real property negotiations and potential litigation involving the property on Highland Springs and a status report was given and no reportable action was given.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

John Benefield, 10610 Gilman Street (Bench) addressed the Council regarding the job on Sunset. He said a beautiful, beautiful job was done and it is much safer and smoother. Thank

you and special thanks to Duane Burk. You should really see this road at night because those reflectors are like nothing he has ever seen before; it is like being at an airport. It is a fabulous job and it couldn't be nicer.

Vincent Sternjacob addressed the Council asked some questions. He said that about a month ago the City police chief reported about 2011 and the status of the police department and one of the things he said, unless he misunderstood, he indicated that major crime was up 9% across the board and he thought he said that the City had authorized the police department with 41 officers but they only have 31 and he was wondering what the City was planning to do because if crime is up and the number of officers that are authorized is down 25%, what is the plan? Also, what is the status of the shopping center on Sunset and Ramsey? There were plans that were in the paper probably a year ago that it was going to be redone so he was curious because it looks pretty bad. Also, why does the City utility department not allow solar rebates if you wanted to get solar panels on your home. On a positive note he agrees with the gentleman that addressed the work done on the street because on Wilson Street where he travels is terrific.

Mayor Robinson asked him to give his contact information to the City Clerk and said that each department head will contact him with responses to his questions.

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Introduction of New Employee by the City Manager

City Manager said one of the things he enjoys doing is introducing our new employees. He said that Stacy Baval comes to us with 14 years of experience in customer service and she is our Financial Analyst but she is actually the utility troubleshooter or manager for the City. She has had 14 years of customer service experience with the City of Yorba Linda and the City of Corona. She is just finishing her Bachelor's Degree, is a Notary Public and FEMA certified. She currently lives in Yucca Valley and has two teenage boys ages 16 and 18 and they enjoy hiking in Joshua Tree National Park, as well as, camping. We are really happy to have her with us and she is taking the place of a vacant position that the City has had for awhile.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 03/13/12.

Recommendation: That the minutes of the Regular Meeting of March 13, 2012 be approved.

2. Resolution No. 2012-26, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years from Date of Completion Per California Government Code Section 34090 and California Penal Code Section 832.5, and Resolution No. 2003-26 of the City of Banning.

Recommendation: That the City Council adopt Resolution No. 2012-26, Authorizing the Banning Police Department to Destroy Internal Affairs Records in Excess of Five Years from

Date of Completion Per California Government Section 34090 and California Penal Code Section 832.5.

3. Resolution No. 2012-28, Awarding the Construction Contract for Project No. 2012-02, Street and Electrical Improvement on Ramsey Street Between San Geronio Avenue and Martin Street and Rejecting All Other Bids.

Recommendation: That the City Council (I) adopt Resolution No. 2012-28, Awarding the Construction Contract for Project No. 2012-02, Street and Electrical Improvements on Ramsey Street between San Geronio Avenue and Martin Street to Cooley Construction, Inc. of Hesperia, CA for an amount of \$488,308.50 and allowing a 10% contingency of \$48,830.85; (II) Approving the Professional Services Agreement for Surveying and Construction Staking Services with Albert A. Webb Associates of Riverside, CA for an amount of "not to exceed" \$4,920.00 and a Professional Services Agreement for Materials Testing Services with Landmark Consultants, Inc. of Palm Desert, CA for an amount of "not to exceed" \$4,000; (III) Authorizing the Administrative Services Director to appropriate \$412,690.55 from the 2003 Tax Allocation Bond Fund to Account No. 856-9500-490.93-72 and \$80,814.80 from the 2007 Electric Revenue Bond Proceeds to Account No. 673-7000-473-96.29 and to make the necessary budget adjustments, appropriations and transfers to fund this project; and (IV) Authorizing the Administrative Services Director to approve change orders within the 10% contingency of \$48,830.85.

4. Resolution No. 2012-29, Updating the Status of Banning Electric Department Energy Storage Activities and Opening a Proceeding to Determine Appropriate Energy Storage Targets.

Recommendation: That the City Council adopt Resolution No. 2012-29, accepting the update on the status of the Banning Electric Department energy storage activities, and opening a proceeding to determine appropriate energy storage targets.

5. Report of Investments – January 2012

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

6. Resolution No. 2012-05 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, ratifying the Mayor's appointments of City Council Member Bob Botts, City Council Member John Machisic as the alternate for Council Member Botts, and Brian Guillot the City's Assistant Planner to the Banning Oversight Board.

Recommendation: That the City Council adopt Resolution No. 2012-05 SA.

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

Mayor said at this time they will be moving up Sections 6 and 7 prior to the opening of the Public Hearing item.

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

City Council

Council Member Hanna -

- She went to a conference last week held by the Green Council of the Inland Empire and it was on healthy cities. It was particularly about Rancho Cucamonga and their healthy city program. They got started about five years ago and they had a doctor who was Mayor on the Council and he gave really good direction for them and they made one decision right up front that they would not use any General Fund monies for this program. That was interesting and if we were to do anything in the future about healthy cities maybe that will be a decision we will need to make at least for now given our current financial situation. It was very comprehensive and they are looking at everything and involving the community and it is really a terrific program and she would encourage you to look at Rancho Cucamonga's Healthy Cities Program.

Mayor Pro Tem Franklin –

- Thank you to everyone that participated in helping to make our Little League so successful. Most of us had a chance to go to the opening and there were a lot of compliments from people afterwards about how happy they were about everything that has happened at the park.
- Reminder that Friday is the deadline for anybody that wants to apply for the opening for Division 1 for the San Geronio Pass Water Agency.

Council Member Botts –

- On behalf of the Chamber of Commerce he would like to announce a new committee called "Business to Business Connection". There is a real need to network amongst retailers in Beaumont and Banning and the Pass Area and also those that sell services as well as products. They meet the 2<sup>nd</sup> and 4<sup>th</sup> Wednesday of each month but tomorrow is their second meeting. At their first meeting they had about 35 people attend from throughout the Pass and this is purely for networking to promote your business to sell your products and services. The meeting will be held tomorrow morning, March 28<sup>th</sup> at 7:30 – 9:00 a.m. at The Lakes.

Council Member Machisic –

- He said that the Council met with a representative of Senator Barbara Boxer and we indicated to him the projects that we are involved in and obviously looking for help from the federal government and he was most helpful. Also, the week prior the Council met with a representative of Senator Feinstein. So we are trying to explore possibilities in these hard economic times to see what we can do for the city.

Mayor Robinson –

- This week we met with the owners of Truck Works. He said that he along with Bill Manis, Economic Development Director and Mayor Pro Tem Debbie Franklin went out and gave him a plaque in appreciation for bringing his business to Banning. He is going to have to expand that business and we are trying to help him with that. This is a new program that we

started here at the City to go meet face to face with the business owners and let them know that we appreciate that they are here in Banning and this is the location that they have chosen to be.

- The Tribute Van was revealed at the Fire Memories Museum last Friday and then it came to the City Hall and this van is dedicated to the memory of war dogs and rescue dogs and the handlers that took care of them. A lot of the Vietnam vets remember that the dogs were left over there and there are a lot of dogs doing work now. One of the dogs featured on this truck was actually at the event on Friday and that dog was looking for astronauts when the space shuttle crashed. The next showing is March 31<sup>st</sup> at the March Air Museum and at Noon Assemblyman Paul Cook is going to talk about welcoming home Vietnam Veterans. On April 4<sup>th</sup> it will be at the Riverside County Convention Center with the Riverside County Sheriff's Appreciation Ceremony. On April 19<sup>th</sup> hopefully it will be at the LEAC (Law Enforcement Appreciation Committee) Dinner and one of the dogs featured on the side is Riverside County dog, Inga and his handler. On April 21<sup>st</sup> it will be at the Fire Memories Museum for their First Annual Pancake Breakfast. This Tribute Van was done right here in Banning by Ding Masters and the artist, Mickey Harris was flown in from Tennessee.

City Committee Reports – There were none.

Report by City Attorney – None at this time.

Report by City Manager – None at this time.

#### ITEMS FOR FUTURE AGENDAS

New Items – There were 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. Proposal from Owners of Oddfellows Building - 42 W. Ramsey Street.

#### PUBLIC HEARINGS

1. Pardee Homes, Water Supply Assessment, Final Environmental Impact Report, General Plan Amendment No. 11-2501, Zone Change No.11-3501, Butterfield Specific Plan, and Development Agreement.  
(Staff Report Zai Abu-Bakar - Community Development Director, Duane Burk - Public Works Director, and David Aleshire – City Attorney)

Council Member Hanna stated that state law prohibits her from participating in this issue regarding the Pardee Development because she lives around about 305 feet from the



development. She has not been able to speak to staff or the Council Members but she will be able to speak at this public hearing. At this time, Council Member Hanna left the dais.

Mayor Robinson adjourned the regular City Council Meeting to a joint meeting of the Banning Utility Authority and the Banning City Council. At this time he went over the process for this public hearing this evening and the five-minute time limit for public comments.

Director Zai mentioned that this is a big project and required a team effort and it has been a team effort from all the departments throughout the City and for this evening's presentation we will have three people that will give the presentation and that would include herself focusing on land use and zoning, Duane Burk on infrastructure, and City Attorney on the development agreement.

Director Zai said the development before the Council is the Butterfield Specific Plan which is a master-planned community. She started her power-point presentation at this time going over the specifics of the project (see Exhibit A) in regards to acres involved, land use, existing land use plan versus proposed plan, and the approvals that are needed. This project will be developed overtime for the next 35 to 40 years. She did point out that 21 acres is owned by Highland Springs Country Club Owners Association and is under the jurisdiction of the County of Riverside so any land use or planning entitlement will have to go through the County. That land area is called the Planning Area for the City of Banning. She mentioned that there are rumors out there that the project is not mitigating the impacts its created and in the staff report packet from pages 168 to 199 it includes all of the mitigation measures that they have to implement during the entire project that are addressed in the EIR (Environmental Impact Report). She continued her presentation going over General Plan Amendment No. 11-2501 and said as you can see the existing open space map shows more specific details of land use and what the developer is proposing is just to put down Butterfield Specific Plan because it would make it easier to administer the map down the road so what staff is trying to do here is to streamline the development process and the same thing would happen with Zone Change No. 11-3501. She displayed another chart showing the Butterfield Specific Plan land use areas, low density, medium density, high density, parks, golf course, commercial sites, trails, etc. In the specific plan it has very specific details as to the development standards, design guidelines, the landscaping, and so on. She also went over the amenities, the various views and street and entry concepts for the project stating that the concept is to create community.

Director Burk addressed the Council stating that he wanted to make sure that the Council knows that all of these studies that we are looking at incorporates the overall city; not just this 1500 acres. The hydraulic models for the size of the pipes for fire flow, the recycled water line, the recharge basins – all of those benefit the entire city as it relates to the infrastructure. He started his portion of the power-point presentation (see Exhibit B) showing the Domestic Water Plan and approximate location, the Recycled Water Plan which would accommodate all of the golf course or the green belt areas and/or both and if they decide to go to open space, it would be the same. He said that staff is asking the Council to adopt the Water Supply Assessment (WSA) for the project. He continued his presentation going over the Sanitary Sewer Plan that ties into our existing system, explained the satellite plant for water reclamation and said the site can go anywhere and this would be something the Council would have an opportunity to look

at later. He displayed the Offsite Sewer Plan which is our current Sewer Master Plan and explained how it flows to our existing sewer plant and said that pipelines would have to be built, not by Pardee specifically, but by development in the future as it moves west to east. He displayed a footprint of the traffic circulation and the roads that would need to be built. He said that Zai mentioned the 21 acres that are in the County and that is exactly what it is and the dash line is to say that we looked at traffic going out this way however, because it is a broken line we have looked at studies that we won't have to build it. They have tried to incorporate the General Plan Circulation for Riverside County into the overall plan and the possible impacts. He continued the presentation showing the 49 intersections in the intersection entire footprint between Beaumont and all the way out through Banning and what would have to happen to make the circulation work. Mr. Burk also explained pedestrian access, street electric vehicles/bike lanes, and access trails and trip distribution. He said the idea behind identifying all of these intersections in the circulation is that the funding mitigation measures are something they will be looking at with this development as part of the development agreement and they are looking at an impact fee to offsite some of the costs. He also displayed a layout of Highland Home Road.

Director Zai said the other thing that they are asking the Council to consider this evening is the certification of the Final Environmental Impact Report (EIR) including the Draft EIR. The Draft EIR was released in June/July of 2011 and there was a 45 day period for people to respond and comment on the EIR. In regards to the Finding of Fact that is basically the impacts that are addressed in the EIR and you have to make findings justifying why those impacts are less than significant or if they are less than significant was mitigation incorporated so staff provided a comprehensive report on that which is attached to the staff report. Also attached to the staff report are the Mitigation Monitoring and Reporting Program and this basically lists all of the mitigation that is required to be done for all of the 14 issue areas that are addressed in the EIR. She went over the Statement of Overriding Considerations and gave examples of the impacts that cannot be mitigated. She also mentioned that approval is needed of the Water Supply Assessment. She said the Final EIR and the Draft EIR are consistent with the California Environmental Quality Act (CEQA) and she highlighted other items such as the Final EIR, Project Alternatives, Fiscal Considerations, Late Comments Received, staff recommendations and Technical Corrections to the Staff Report (See Exhibit C). At this time she turned the meeting over to the City Attorney to go over the Development Agreement.

City Attorney said that as Director Zai has indicated for you the critical long-term regulatory documents concerning this project will be the Specific Plan, the Mitigation Monitoring Program which is part of the CEQA process, the Conditions of Approval, and the Development Agreement. Not all projects that are approved by cities involve development agreements. When you have very large scale projects that are going to take place over a number of years they require the development of a lot of infrastructure and there are a lot of uncertainties to how all of that will be carried out. There is a huge amount of risk for a developer to start building a project if over this very long period of time the rules change along the way so the State legislature years ago created something beyond the zoning which everybody is used to and beyond the specific plan which is called a Development Agreement. The thing that is different about a development agreement is that in essence it is a contract between the City and the developer and the successors and interest to the developers who own the land. The normal rule

for cities is that one Council can't bind a future Council. In the case of a development agreement this is a mechanism which is a contract and it runs with the land and it is put in place and then future Council's are bound by that document. The trick in doing a development agreement is everyone can understand why the developer would want a certain amount of certainty. On the other hand there needs to be some flexibility built into these plans because there will be some changes that occur along the way.

City Attorney said that basically the staff negotiated this development agreement with the developer and there were a number of meetings and probably 12 different drafts of the document and it took about three months to negotiate the agreement. The agreement has a 40-year term to it and it is expected to be built out over a 35 to 40 year period. This document is broken into 4 ten-year periods and for each of those ten-year periods there is a production that is required of the developer. The first ten-year goal is 1200 units, the second ten-year goal is 1600 units, the third ten-year goal is 1400 units and that would leave 1187 units in the last ten years. In the first phase of the project there are things that the City wanted to cause to occur early in the project so for example, the commercial site is supposed to be developed in the first phase. The commercial site will generate revenue to the City which helps pay for the project cost. The City also wants a major recreation center and emergency center and wanted this located in an area where it could be used not only by residents of the project but the surrounding area. You saw the designated area for the satellite wastewater treatment plant and an alternative use of that site would be the recreation center which would then be on the edge of the project. The sewer plant could even be located off-site of the project. Also other improvements such as some of the water improvements, the water tanks are in the first phase. If the developer does not meet these production thresholds, there is the potential of the term of the agreement being shortened 5 years for each of these phases if the goal is not met. However, there is an alternative provision that also deals with the fact that you could be in a recession so you can actually add on in any ten-year cycle up to three years if the economy is in economic distress which he explained. Also, the agreement has other phasing requirements and requires them to submit all of their subdivision maps within the next five years. When those maps are submitted there will be an opportunity to develop a more detailed phasing plan in terms of how each of the subdivisions are constructed and what the timing will be of the improvements with the individual phases. The City wanted to encourage this project to move forward as quickly as possible and obviously there are a lot of entitled projects out there right now that are not progressing so as an incentive the development impact fees for the first 500 units can be waived if the developer proceeds expeditiously during that first phase period with developing the units. Another flexibility issue is that at each of these ten-year review periods there is the opportunity to restudy, re-look at the fees and re-set the fees. The City has been under economic distress and there were a number of fee studies, traffic impact studies, and general plan changes which were studied that needed to be performed over the last three and four years and the developer spent over \$2 million dollars doing these studies and the benefit of these studies extends not just to this project but other projects that the City is going to do. Many of the analysis that Duane Burk indicated of all these traffic intersections a lot of that work will be beneficial to other developers so this developer basically said that he should get reimbursed some amount of these fees so there is a provision that on the first 1200 units for no more than 12 years the developer can be reimbursed a portion on a per unit basis up to these \$2 million dollars in fees that were advanced by the developer. He also explained financial incentives in regards to land

sites that may not be needed right now but can be held over time as this project develops and went over special assessments for City services and setting up community facilities districts and landscaping and lighting districts. These districts will not be paid for by existing residents; they will be paid for by the future owners of this property. There are complex provisions in the development agreement where we will be doing studies of setting up these districts and it has been Council's stance that the project has to pay for itself; we can't have the rest of the community paying for it. He also explained the series of provisions under "Reservation of Rights" and he also went over default of the contract and the remedy process. If we get sued on this project, there is a provision that provides that the developer has to pay the cost of the defense of the entitlements and actually deposit 150% of the estimated cost into a fund and that cost potentially also has to include any adverse award of attorney's fees and they potentially have to secure the deposit by pledging land. The development agreement for the City can be somewhat scary because you have to work all of this out in advance and thereafter you don't get to kind of make it up year by year but we feel this development agreement is very comprehensive and has fair and reasonable balance of the interest of the developer and certainly in the interest of the City in having a degree of flexibility.

At this time there were multiple questions asked by the Council and staff responded to the questions in regards to water sources, possible drought, where we receive water and water supplies, recycled water use in the proposed parks in this project, water storage tanks above and underground, status of wastewater treatment plant, satellite or drop-in plants, clarification of reclaimed water and sewer water, letter received from City of Beaumont regarding traffic circulation (see Exhibit D) and dealing with other agencies and traffic problems, Highland Home Road being possible interchange, Sunset Grade Separation and Hargrave underpass, impacts at Highland Springs and mitigation measures and funding sources, signalization on Highland Springs between Wilson Street and First Street, how does density change under this new plan, concerns in regards to the 21 acres in the County, and reduction of traffic emissions and conditioning the project to work with Pass Transit to get more people to use public transportation.

Mike Taylor, Vice President of Pardee Homes addressed the question asked by Mayor Pro Tem Franklin in regards to the use of public transportation and the program in Temecula. He also responded to questions asked by Councilmember Botts in regards to streets being too wide or narrow but wider streets would allow for bicycle lanes, golf cart lanes, etc. and if that is encouraged, that has an impact on emissions or less emissions within a project.

There were further questions asked by the Council and staff responded to the question in regards to school sites, how much of the base of the mountain would be disturbed in the northern portion of the development, concerns of Highland Home Road going north and the building of a frontage road, conditioning commercial area to be done first, and fees attached to those homes, community facilities districts and development impact fees to be paid by the owners of those new homes.

Director Zai said she wanted to mention that in the technical corrections (see Exhibit E) given to the Council by the City Clerk this evening there was a replacement letter in response to the school district comments and as of 12:06 p.m. today another comment letter was received from

the school district and that was also placed on the dais for Council's review and wanted to make sure that is was made a part of the record (see Exhibit F).

Meeting recessed at 7:12 p.m. and reconvened at 7:22 p.m.

Mayor Robinson opened the item for public comments and asked that the developer to come up and give a short talk.

Mike Taylor, Vice President of Pardee addressed the Council stating that as you can see the amount of detail that has gone into the staff's presentation shows how much time and detail effort has been put in by the City staff, by their consultants, by the consulting team that Pardee has put together for this project and he thanked all of those people. They have owned the project since 2000 and the project was approved in 1985 originally. The project was originally approved with a specific plan that was put together by someone that originally had no intention of developing the property and that happened a lot the last time there was a major development boom. There were lots of specific plans that were put together by property owners who went out and hired planners to do a plan on their property, bring in some technical studies, have an EIR done, submit it to some city and have the city approve it and then that project was then put on the market and sold to a developer and if you went and looked at most of those projects probably 99% of them don't look a lot like the plan that was originally approved. Someone asked if the property was the same density as the previous project and in terms of the total number of possible units yes. The fact is the original Deutsch Specific Plan is so different because it wasn't founded on a whole lot of solid engineering and technical design work. It was a planning document and an environmental document for what if we build these and certainly everyone knows the environmental world has changed significantly today. He said their company has been in business for over 91 years this year. They are a master-planned developer and know how to do the planning, engineering work, land development and home building. He said that Pardee has been building here in the Pass Area for a decade now and they do a very good job in building communities. They are not just here to build a few houses and leave town. They are here to work together with the City, the community, the schools and all of the public agencies to build a community that all different types of people can live in. The master-planned communities provide opportunities and housing types for every different walk of life. They have doubled the amount of open space in this project, provided a whole lot of flexibility in the plan to provide all the schools necessary, student generations will change whether part of the community becomes an active adult community. Those neighborhoods all have flexibility built in and they absolutely mitigated for a total amount of units that can never be exceeded. Even if the density per acre were to change in an individual planning area, the total number of units would never exceed the 5,387. The likelihood is that the project if it was to build out without apartments and condominiums and just have single-family homes which is typically the type of development that this is, the project would only bring about a density of 4,200 or 4,300 units or over a 1,000 units actually less than what it is approved for but all the infrastructure, all the roadways, all the water systems, all the sewer systems, all of the long-term water concerns have the ability to mitigate for that full number of units. He feels that they have built in a lot of flexibility in the plan and it has a very good solid design behind it and they really look forward to not only working with the City but the community in building a long-term community here.

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

- Ed Ball, 4678 W. Hoffer Street asking the Council to reject the plan and if not, asked for two specific changes (see Exhibit G).
- Luwana Ryan, Cherry Valley Acres and Neighbors and Cherry Valley Environmental Planning Group, Cherry Valley, CA stated that the EIR is highly deficient in its analysis of the environmental impacts to the project and went over her points and should not certify this willfully inadequate environmental impact report.
- Patsy Reeley, 10065 Frontier Trail, Cherry Valley representing Cherry Valley Acres and Neighbors and Cherry Valley Environmental Planning Group agreed with prior speakers and said the Draft EIR and Final EIR are willfully inadequate and please do not certify this document.
- Barbara Hanna, 4678 Hoffer Street urged the Council to approve the 20% reduced density alternative and expressed her other concerns (see Exhibit H).
- George Eldridge, Highland Springs Country Club expressed his concerns about the project and things we may or may not get as a result of this development.
- Mary Daniel, 14250 S. Beaumont Ave., Beaumont, CA expressed her concerns about rapid development and responses to the Draft EIR for this project and mitigation of impacts and impacts to the schools in the Pass.
- Fred Sakurai, 4985 Bermuda Dunes, Banning thanked Pardee for their confidence in Banning and in the Pass Area to spend all this effort in coming up with a decent plan that will help the City and the Pass Area grow.
- Don Smith, resident of Banning said that he is in agreement with Ed Ball in regards to Highland Home Road, and expressed his concerns in regards to other item (see Exhibit I).
- Steve Grimes, resident of San Diego addressed the Council representing a group of subcontractors who do work in this area and the work that a project like this provides to the subcontracting community.
- Ken Menton, subcontractor who has worked for Pardee for many years addressed the Council and the high standards that Pardee has in their development of homes.
- Sharon Hamilton, Cherry Valley addressed the Council regarding her concerns of this development and her concerns mainly on the affects on the schools, traffic and water. She urged the Council to vote no.
- Bert Hinkle, Highland Springs Country Club address his concerns about high pressure gas lines hat run through the project and are they going to be inspected.
- Tom Chong, Highland Springs Resort gave some history about the resort, kids that attend the science camp there, and his concerns that this will be lost if this project gets built and impacts to the visitors to the resort and this has no benefit to the citizens that live in and around Banning. He urged the Council to vote no on this project.
- Kevin Freck representing Pacific Utility Installation based out of Anaheim stated he worked for Pardee Homes for approximately 15 years and was here to affirm the assertions and comments made by his fellow subcontractors.

- Lady from the audience addressed her concerns with the parcel called 43.B which is still on the map and includes the part of Highland Springs Country Club's golf course and her concerns with the State Water Project.
- Henri De Roule, Banning expressed that growth is inevitable and Banning needs growth, improvement and expansion and needs to become a modern city. One major issue is the traffic mitigation.
- Chris McCallum, Banning and owner of Dream Makers Limousine expressed his concerns about growth and that Pardee is in business to make a profit just like he is with his business. He said growth is tough and we need proper development and this is a project that we need in the Pass.
- Nancy Sappington, 10650 Deerfield Dr., Cherry Valley addressed her concerns about this development and asked the Council to really think and visualize what this project is going to look like 20 years from now and expressed her mitigation concerns and consideration for sustainable growth. She urged a no vote or at least send it back to staff for further consideration.
- Jan Kielmann a resident of Beaumont, and an employee at Highland Springs Resort, addressed the Council and submitted some plans of the project which went over pointing out some small details problems with the project and talked about his planning experience in Germany. He also expressed his other concerns with the project.
- Tina Kummerle, representing Highland Springs Resort addressed the Council to consider revised density for the northern part of the project in regards to the views from Highland Springs Resort and she urged the Council to consider an alternative.

Mayor Robinson closed the item for public comments seeing no one coming forward.

At this time staff, consultants and the developer addressed the concerns made by the public in regards to traffic impacts and mitigation, conditions of approval, funding for streets, trip distribution and mitigation measures, Highland Home Road to Highland Springs, water availability, satellite treatment plant, things we may or may not get in regards to the project, gas line issue, 21 acres and working with other regional agencies in regards to the road, sustainable growth, density, air quality and noise, park location, school district, density, and the alternative on Highland Home Road.

Councilmember Botts asked if it was appropriate for the Council to make a motion and an addendum to this development agreement that says this Council's position is that we want Highland Home Road development as is, four lanes, etc. with the frontage road. At some point it will be appropriate to modify what you brought to us by simply saying this is policy decision and here is what we want on that segment.

Director Burk said that he thinks the Council will have the ultimate control when the conditions move forward, however he would say that if you do adopt this tonight this would be the rendition you use because it is acceptable to the community and gives you the surface road, landscape median, and the median in the middle so this is what you are saying is going to replace that piece.

City Attorney Aleshire said that the development agreement has an exhibit which identifies the public improvements and absolutely the Council is here as the final decision making body so if we want to specify something with respect to what the cross section of this street ought to look like he thinks there is a place easily in the development agreement where that can be identified.

There was some further discussion about the schools and the fees indicated by state law.

**Motion Botts/Machisic in favor of continuing the meeting past 9:00 p.m. Motion carried, all in favor.**

Mayor Pro Tem Franklin asked in regards to the park area under the electric lines in regards to the health issues and whether or not that could be changed over to open space.

Director Zai said that she spoke with Pardee today and if the golf course does not occur or is not built there is a possibility that we can move the sports fields into the future open space areas.

Mayor Pro Tem Franklin said but if there is a golf course, then what is the other alternative.

Director Zai said then they would have to look at the plan and adjust it accordingly.

Mayor Pro Tem Franklin asked if there has been any decision made in regards to the time frame for deciding about the golf course.

Director Zai said that would depend on the developer and the market condition.

City Attorney Aleshire said the development agreement says that the developer is not required to build it. It says the developer is going to figure that out in the first phase but again the first phase is a 10-year period.

Councilmember Botts said he had a questions about Highland Home Road's connection to Highland Springs and westward on. He agreed with Mr. Ball when he suggested that Highland Home be connected to Highland Springs because if it was run straight through, would impact the golf course. However, he would like the Council to consider a policy or direction to solve circulation problems or issues or improve them to turn Highland Home Road, the four lanes as proposed, which he assumes ultimately will go up on the Bench for future development but to turn that westward but when it comes to the Highland Springs Golf Club that we tell staff that we don't want to take that property and we simply curve it and it comes back to Highland Springs. Staff has said that we could do that but he thinks at some point, if we agree, he would like to see Highland Springs Golf course off the issue. As he reiterated, he wasn't passing the buck to the County. We are all in this together. Is that a possibility if the Council were to say lets put that into the menu of what we would like to see happen?

Mr. Burk said he believes it can be put in the menu. He pointed to where Highland Home Road and Cougar Way were located so we would make some minor tweaks.



Councilmember Botts said he was referring to Brookside and not Cougar Way but we ought to consider Cougar Way also. It is there now and he understands that it would be expanded over time in Beaumont. He said that Cougar Way does not touch on the golf course and is he correct.

Mr. Burk pointed out Brookside and pointed out what he felt Mr. Ball was referring to. He said that there is earthquake fault lines and other things that would have to be looked at it relates to this area and if this didn't get built we could look at going from Cougar Way. As you asking staff to go ahead and keeping working on getting the connection put in, in regards to Brookside?

Councilmember Botts said if it were to be considered and that is a County issue and we keep saying the reason why it is in Pardee's plan is that they had to abide by our General Plan and because it is in our General Plan they had no option and had to put it in there and is that correct. Mr. Burk said that was correct. He is suggesting that if that were to be an option and would improve circulation that we simply state but we would want to be certain that it did not bisect the Highland Springs Country Club golf course which means it would swing down south of that.

Mr. Burk said to use your menu idea he believes staff can look at that.

Mayor Robinson asked for comments from the Council on this item.

Mayor Pro Tem Franklin said that she is concerned about the size of the housing but she knows that the developer has talked about the quality of housing because she wants to make sure that we are competitive with our neighbors. She doesn't want anybody to say that they are getting lower quality houses or less market rate houses because the lot sizes are smaller. It is her understanding that is going to be changed through the density piece of it. She is concerned, as everybody else is regarding the traffic but if there are ways to move this around so that we can get not only funding but more ways to move the traffic through the city. She thinks that when we are able to open up Sun Lakes Boulevard over to Sunset that that is going to mitigate some of the traffic also, as well as, if there is commercial development on the corner of Wilson and Highland Springs that will eliminate some of the traffic that moves all the way down south and that will keep people staying in the same general area so that shouldn't be as much as a problem hopefully. It doesn't sound like there is any way that we are going to completely mitigate traffic. What we have to do is try to work to see what is going to work some for everybody for right now.

Councilmember Machisic said that Henri De Roule mentioned a point of view about growth. Growth is coming whether it be slow, fast or in between and change is a very difficult thing for people to handle. He thinks it is important, for instance growth, a lady got up and mentioned about Beaumont where they approved 2,200 without anyone's knowledge and they built 8,000 and there are 14,000 more and he would like to tie it into another comment that someone asked about the benefits of a housing development. When Sundance was built he was applauding because it was growth for the Pass area and we probably get something from it but as a result of this growth in Beaumont they got a shopping center and a lot of business over there. Also,

Beaumont was one of the few cities that had a surplus in their treasury. In fact, the last time he was with the Mayor about a year ago they talked about having \$22 million dollars in their reserve and we have about \$1.5 million in our reserve. So when you talk about benefits of growth those are the benefits and we have to look at growth in this city. For instance, what do you think it would be like if we didn't have the Sun Lakes development? That community of 3,327 houses adds a lot of economic muscle to the city of Banning. They even created that small shopping center when they opened and that is what housing does. Besides that the Sun Lakes Project was built on a farm. There was absolutely nothing there. Now you have 6,000 people and that is what growth is all about and it is coming and we have to adjust to it. He said that he has talked to a lot of people in the city of Banning and one of things that they would like to have are some of the kinds of stores that Beaumont has; some small and large stores. The City has talked to a number of businesses and he said that Director Zai mentioned it earlier and the first thing they do is to draw a circle and what they say is that within that one mile, two miles, five miles or whatever it is, they want to know how many rooftops there are with people in them. We have tried to get a major grocery store close to the center of our town and we have probably been rebuffed by at least ten grocery stores because we don't have enough rooftops and he thinks that is critical. He is looking ahead at Banning and this development even though you are talking about 30 to 40 years, it will eventually get there. When Beaumont went with Sundance, no one said a word. Now they are approved for 22,000 houses but they get the growth, they get the businesses and he is looking for the same thing for the city of Banning.

Councilmember Botts said he was little surprised that one of the speakers was sort of attacking our City Manager and saying that we ought to reject the City Manager's plan. He is looking at 25 people of staff that developed this plan and though he is the City Manager and leads the whole group he just wants to say that if you agree with the project or not and he doesn't know what direction the Council is going to go, approve or disapprove and while he appreciates Cherry Valley residents and we need to try to accommodate them his immediate concern is the City of Banning. What he would hope that those that are listening tonight know that this has been an approved project for years and years and years and he doesn't think that anybody misunderstands that Pardee is in this to make money and if they didn't make money, they wouldn't be here. Some of you would like that because there wouldn't be development. But those of us, and he would suggest 6,000 at Sun Lakes, the majority of the citizens of Banning, don't want a little light spot in the road, they would like to see well-planned growth and see this community grow. He would agree with Councilman Machisic until tonight, he never looked at this project as some way to fix our budget. He looked at what is the benefit of this. We want to grow Banning and not stay static. He would agree with Chris McCallum that you either move forward or you die. But he thinks a majority of Banning voters and taxpayers want to see us grow and expand residentially and he can say that a day does not go by that he is not nicely talked to or accosted in the grocery store about when are we going to get retail, when are we going to get the restaurants, etc. He is simply responding to the people that elected him and the Council to be here saying we want those amenities. And again, some of you can say we don't want them and you are welcomed to that opinion but he thinks that it is important that we focus on the importance of this project and he is looking at it as something that is simply good for the community. He thanked staff because this has been going on for years and the hundreds of hours put in by everyone to bring this project to this point.

Mayor Robinson said that we have a responsibility in this community. We are at 16% unemployment in Banning, 16% unemployment in Beaumont and in Cabazon they are at 29%. What did we decide to do to help that situation? We helped Mt. San Jacinto College come here and they are at 97% capacity right now and that is our chance to get people educated and get them into a position where they can afford good homes. There are 50 acres sitting over there of college grounds and we are only using two acres right now and it is full. When that 50 acres is built out with this college you are going to have professors and staff and they are going to want to have nice homes to live in the city where they work and that is Banning. We had to do the police station, the downtown redevelopment because all of that brought the Mid-County Justice Center to Banning and with that it brought 180 jobs. We are doing a retail center across the street, Paseo San Geronimo, and that is going to bring more jobs and more retail. All of this is because we have seeded the city with development and that development is starting to pay off but those people have to have a place to live and shop. He said that 140,000 cars pass by the city everyday and they should be coming into our city and we should have something to offer them. We look at the medical facilities and as you drive the other way on Highland Springs you see the Loma Linda property out there and you see that the Beaver Medical Clinic has increased. The hospital is going to increase to a six-floor facility and that means doctors, nurses, staff and they need a place to live. They want to live to close to where they work. This project in his mind is a responsible approach to greenhouse gas emissions and all the things that get people working where they are going to live and that is what this does. In regards to the Goods Movement we are going to vote next week at the SCAG (Southern California Association of Governments) conference in Los Angeles and what they are looking at is bringing out low emission trains or vehicles to bring goods to this area and then they are going to put them in trucks and send them across the rest of the United States. There are going to have to be facilities to handle that and they are going to be large facilities and that is going to happen out here in the Pass Area. You saw recently a 2.5 million square foot facility go through planning in a neighboring city and that is here in the Pass and this is all part of a plan and we have to fit into that plan with housing. He thinks this is a good movement to do just that and he thanked the staff also for all of their work and patience to get to this point.

Mayor Pro Tem Franklin thanked everyone who spent this evening with us and all of the previous conversations that you have had with us as Council Members to share your opinions and as we move forward the decisions we make tonight will be based on what do we think will be in the best interest of our city. It would be nice to say that we would like to keep the property the way it is but the only way we can guarantee that would be if any one of us was able to buy that property to keep it the same. Unfortunately she doesn't think anybody is going to do that. But when we look at what is best in the long run for the city we are looking at not only improving our housing stock, increasing the number of people who are able to visit our current businesses but bring new business in also. She knows that they are not going to be able to please everybody but they are trying to figure out what works best in the long run for our city and it was stated earlier and Chris McCallum really hit on it that if we do not plan to grow smartly, our city is not going to survive. There are some things that have been brought up tonight that she thinks needs to go back to the drawing table which would be the golf course for one making sure that is not impacted, making sure that we do have adequate, as much as possible, mitigation for the circulation and then dealing with the open space and making sure that we do have open space that deals with all the issues and watching the density. In the long

run we have to think of what is best for our city understanding that this has been a part of our General Plan. The General Plan was approved by Banning residents and everybody is expecting us to move forward. She has talked to several people in the city and they have all said that if you don't do this, then you do not care about the growth of Banning because we cannot stay the same and grow and improve. We want Banning to have a higher quality of life and without moving forward on a project like this it is not going to happen.

Councilmember Botts said that someone brought up the fact of why build these; it is just another bedroom community. He said he would like to piggyback on what has been said here. We hired an Economic Development Director and we are paying very significant dollars and upgraded that position because what we are aggressively going after is to produce new jobs. We don't want to be a bedroom community. If you are against the development, that is okay but we are going to produce jobs. We have this full time staff even though redevelopment is going away; economic development is still our top priority and that is to bring commercial/retail, industrial jobs and as we all know every community out this way hates to have their residents drive into Orange County and LA and this Council is very dedicated to producing good, clean industrial jobs. He said that former speaker, Councilmember Hanna was extolling the virtues of an article in the Press Enterprise dealing with the head of SCAG who was talking about how important transportation was and paying for it. What she failed to mention is his proposal that he supports is that we make sure that we have a black box computer in every one of your cars and you will start paying transportation tax by the mileage that you drive on roads and if it is a road with a higher number of cars, it will calculate and raise the rate that you are being charged. So the gentleman that was quoted that was his plan to fix transportation.

Mayor Robinson asked for motions on the recommendations.

**Motion Machisic/Franklin that the Utility Authority adopt Resolution No. 2012-04UA, Approving the Water Supply Assessment for The Butterfield Specific Plan and Making Findings that the Water Supply Analysis was prepared consistent with SB 610. Motion carried, all in favor with Council Member Hanna not voting.**

Mayor Robinson adjourned the joint meeting of the Banning City Council and the Banning Utility Authority and reconvened the regular City Council Meeting.

**Motion Machisic/Franklin that the City Council adopt Resolution No. 2012-27, Approving the Water Supply analysis for the project based on findings of fact as indicated in the resolution. Motion carried, all in favor with Council Member Hanna not voting.**

**Motion Botts/Machisic that the City Council adopt Resolution No. 2012-24, Adopting a Statement of Overriding Considerations and CEQA Findings of Fact, Certifying the Final Environmental Impact Report, and adopting the Mitigation Monitoring and Reporting Program for the Butterfield Specific Plan. Motion carried, all in favor with Council Member Hanna not voting.**

**Motion Franklin/Machisic that the City Council adopt Resolution No. 2012-25, Approving General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 to Update the City of Banning General Plan Land Use and Zoning Overlay Map and Designate the Project Site from "Deutsch Specific Plan" to "Butterfield Specific Plan." Motion carried, all in favor with Council Member Hanna not voting.**

Ordinance No. 1450

City Attorney said before you act on this there was some comments made by the Council Members and he doesn't think that there were relevant to your prior actions but in terms of the Specific Plan and the Development Agreement he heard the comment that potentially you want to relocate Brookside southerly.

Councilmember Botts said the comment was to give direction to staff that we did not want to bisect the Highland Springs golf club. The intent was not to direct that as far as moving forward on that potential area.

City Attorney said yes but there are numerous exhibits and so forth that show maps. You can approve it with the understanding that we are going to correct that so that it doesn't bisect it, if that is what the understanding is. If there isn't any understanding, it will be approved in the form that it is presented. As part of making the motion, that would be given in the instruction to make that correction. But beyond that there were some things that Mayor Pro Tem Franklin brought up and that idea was clear enough to him. The comment, not impacting the golf course, is that the same comment or was that a different comment.

Mayor Pro Tem Franklin said her concern about the golf course when they were talking about exchanging the land under the electric lines for other parks that that definitely be an area that is not used for regular parks, regular youth activities; just leave it as an open area because of the possible impacts that have been shown.

City Attorney said that if that is the Council instruction he is not sure how we accomplish that. What you heard was that if there is no golf course, there is plenty of space to put the parks and that is not going to be a problem but if the golf course is there it may be a problem.

Mayor Pro Tem Franklin said she would still want to see some other kind of alternatives so that it is still just natural space under the emission lines.

City Attorney said that he doesn't have a land use plan sitting here tonight that would say that is alternative B that accomplishes that.

Councilmember Botts said can we take another cut at it. Though he appreciates Mr. Smith and he is the one that proposed that what he said was that all he cared about is kids so lets not put kids under there but Sun Lakers live under those high tension lines and have for the past 23 years and he doesn't want to get into the debate of the energy issue but it is certainly a very unproven science. Rather than say move the parks and move this and that, ask staff to revisit or look at the issue but he doesn't want to dismiss it though.

Mayor Robinson said aren't we going to be having maps coming back to them. City Attorney said the maps that come back to you are supposed to be consistent with the Specific Plan and we have attachments to the Development Agreement which show the plan so he thinks that those can be approved if there is language that permits there modification in some way. The Development Agreement of course says that everything has to be in accordance with what is here and you can't change it without the developer's consent.

Councilmember Machisic said that when they changed the transmission lines through Sun Lakes several people went to Sacramento when Edison was asking about those and one of the questions dealt with the effect of high tension lines and they pretty much discarded that because that was the point that was made at the Public Utilities Commission but it was discounted at that time.

Mayor Pro Tem Franklin asked if it would be possible to just add wording like you said where this could be something that could still be open for further discussion but it is not left necessarily just exactly like it is but there is a possibility to further discussion it.

Councilmember Botts said could we just simply put in something asking staff to review that and minimize the utilization of that property for youth activities. It doesn't say that they can't do something but to minimize it.

Mayor Pro Tem Franklin agreed. Just as long as there is wording there that allows some flexibility.

City Attorney said you want to look at the park location and minimize the locations under the transmission lines to the extent feasible. **There was Council consensus to what the City Attorney said.**

City Attorney asked if there was anything else. He has language on two issues.

Councilmember Botts said the other one Duane Burk clarified that we are clear on Highland Home Road frontage road that we are adopting what appears before us and striking the language that he read that said there was some flexibility to move it some place else.

City Attorney said those are the three points. **City Council agreed.**

City Attorney said the Specific Plan and the Development Agreement are both ordinances so you could act on them with one motion with the comment that those three points be added.

Mayor Robinson asked the City Clerk to read the title of Ordinance No.1450. City Clerk read: Ordinance No. 1450, An Ordinance of the City Council of the City of Banning, California, Amending the Deutsch Specific Plan and Superseding it with the Butterfield Specific Plan and Adopting Conditions of Approval and Making Findings in Support Thereof with the added three points.

**Motion Botts/Machisic to waive further reading of Ordinance No. 1450. Motion carried, all in favor with Councilmember Hanna not voting.**

**Motion Franklin/Robinson that Ordinance No. 1450 pass its first reading. Motion carried, all in favor with Councilmember Hanna not voting.**

Ordinance No. 1451

Mayor Robinson asked the City Clerk to read the title of Ordinance No. 1451. City Clerk read: Ordinance No. 1451, An Ordinance An Ordinance of the City Council of the City of Banning, California, Adopting the Development Agreement Superseding the Deutsch Specific Plan Development Agreement and Making Findings in Support Thereof with the added three points.

**Motion Franklin/Machisic to waive further reading of Ordinance No. 1451. Motion carried, all in favor with Councilmember Hanna not voting.**

**Motion Franklin/Robinson that Ordinance No. 1451 pass its first reading. Motion carried, all in favor with Councilmember Hanna not voting.**

City Attorney said the record will reflect that the motions on the ordinances included the additional three points.

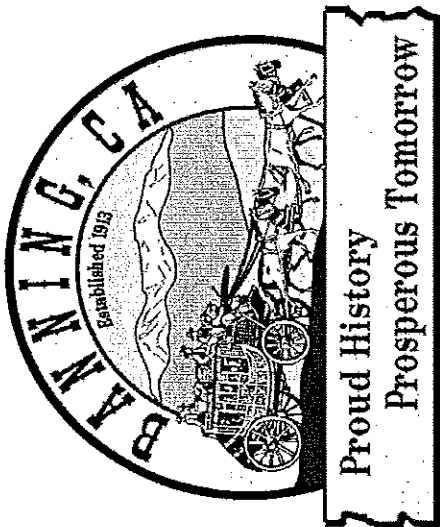
ADJOURNMENT

By common consent the meeting adjourned at 9:44 p.m.

---

Marie A. Calderon, City Clerk

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



# Butterfield Specific Plan

## Master Planned Community



**Applicant:**

Pardee Homes

**Location:**

NEC of Wilson Street & Highland  
Springs Avenue

**Specific Plan Size:**

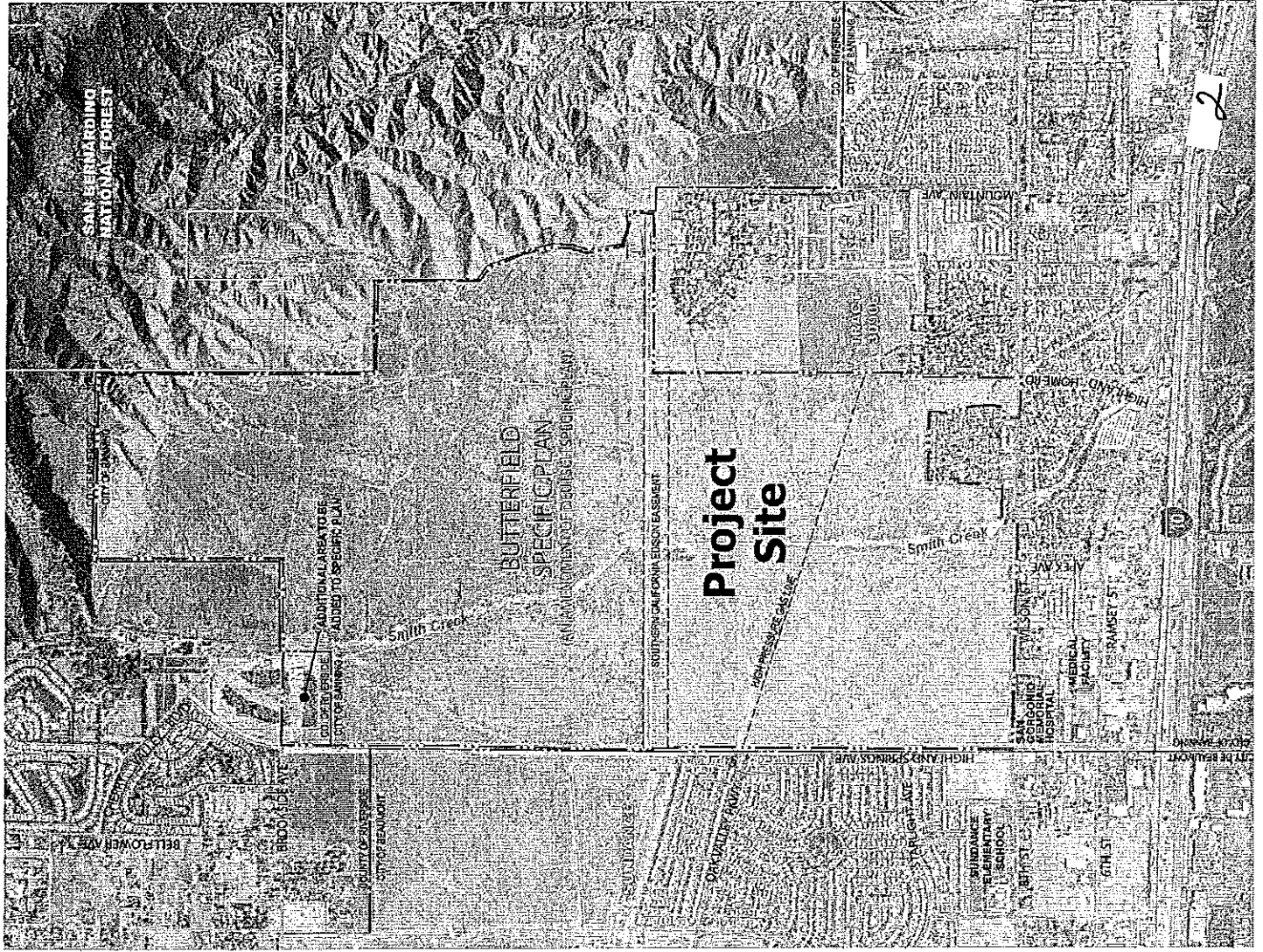
1,543 acres

**APNs:**

408-060-06, -007 & -008 (por.);  
408-030-001 & -005; 408-120-001  
through -020, -022, -024, -025,  
-027 & -033; and 531-080-013 &  
-014

**Existing General Plan & Zoning:**

Deutsch Specific Plan (DSP)





[illegible]

## 27

- Exhibit "A"  
24  
reg.mtg.-03/27/12

**The project will be developed overtime for the next 35 to 40 years.**

# Existing Land Use Plan

## vs.

## Proposed

	Deutsch Specific Plan	Butterfield Specific Plan
Density	3.5 units/acre	3.5 units/acre
No. of homes	5,400	5,387
Gross Residential Acreage	1,151 acres	937.4 acres
Open Space/Parks	268 acres	428.8 acres
Uses other than above	133 acres	176.8 acres

## **Approvals Requested from the City Council:**

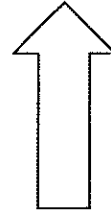
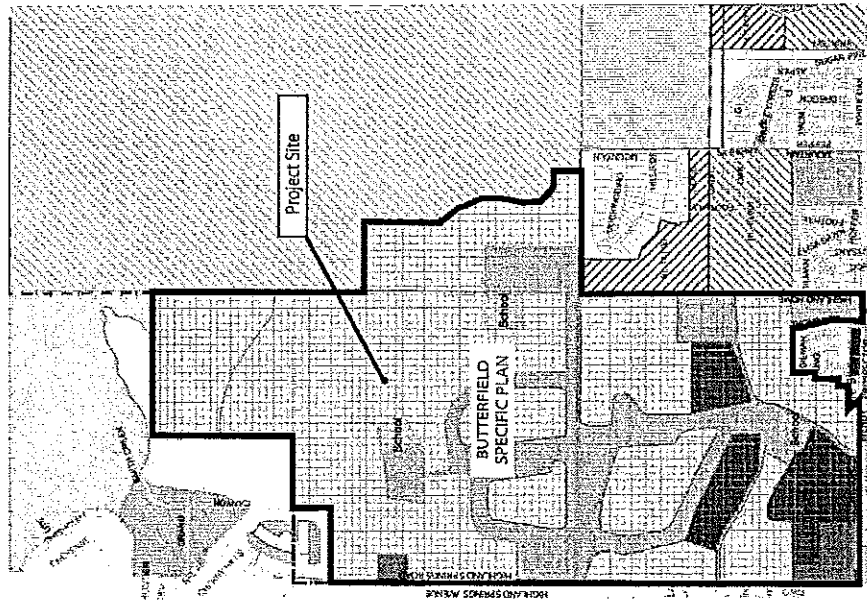
- Water Supply Assessment
- General Plan Amendment No. 11-2501
- Zone Change No. 11-3501
- Amendment to the Deutsch Specific Plan
- Amendment to the previous Development Agreement
- Certification of the Final EIR, Findings of Fact, Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program

## **Planning Commission Action on 3/7/12:**

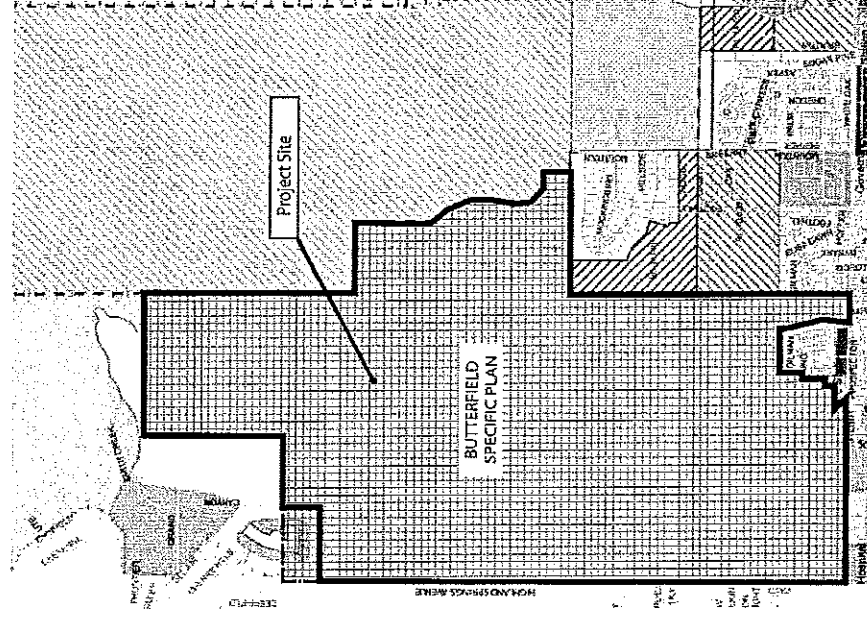
- Recommended approval to the City Council



## Current General Plan/Zoning

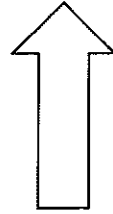
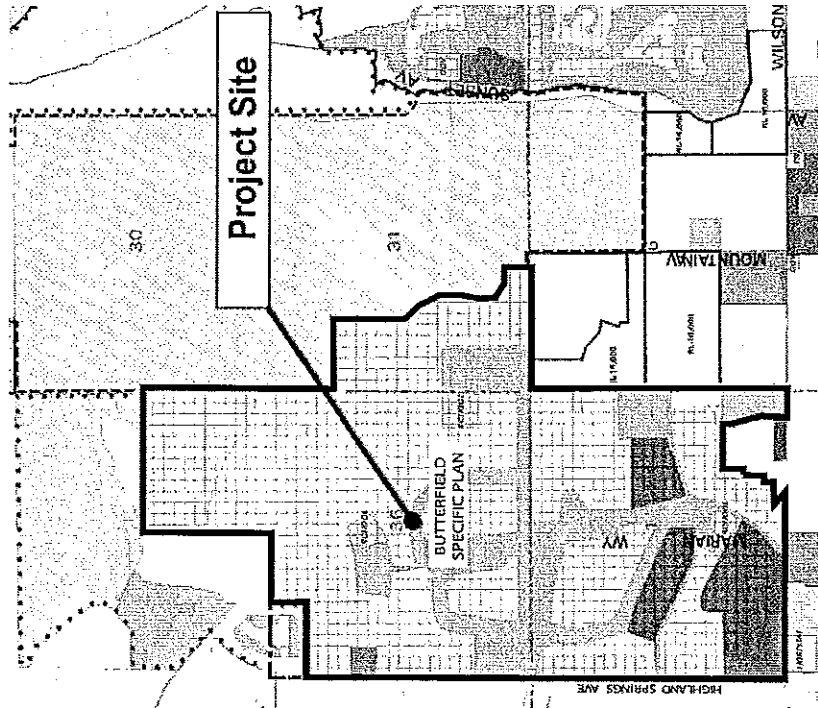


## Proposed Butterfield Specific Plan

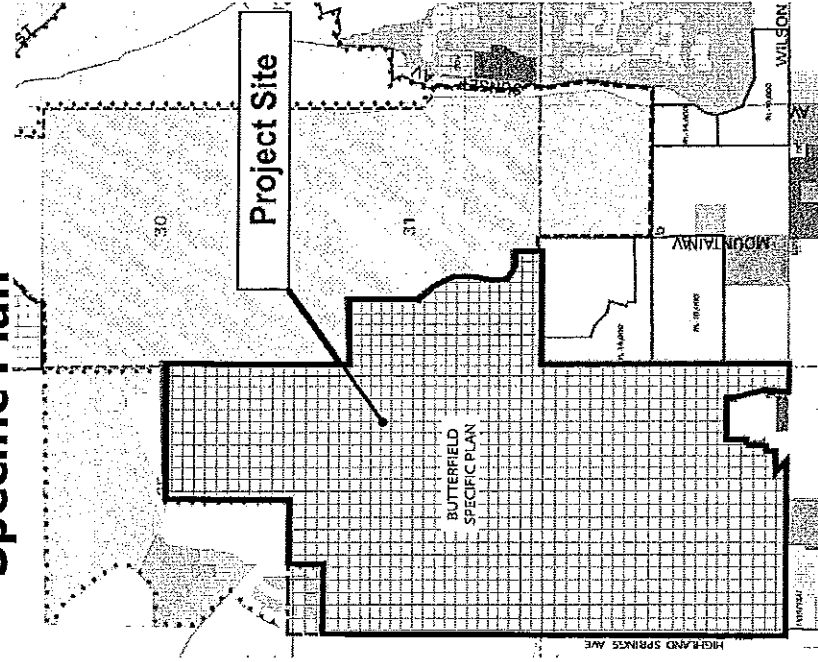


## General Plan Amendment No. 11-2501

# Current General Plan/Zoning



# Proposed Zoning - Butterfield Specific Plan



Zone Change No. 11-3501

8

31

9

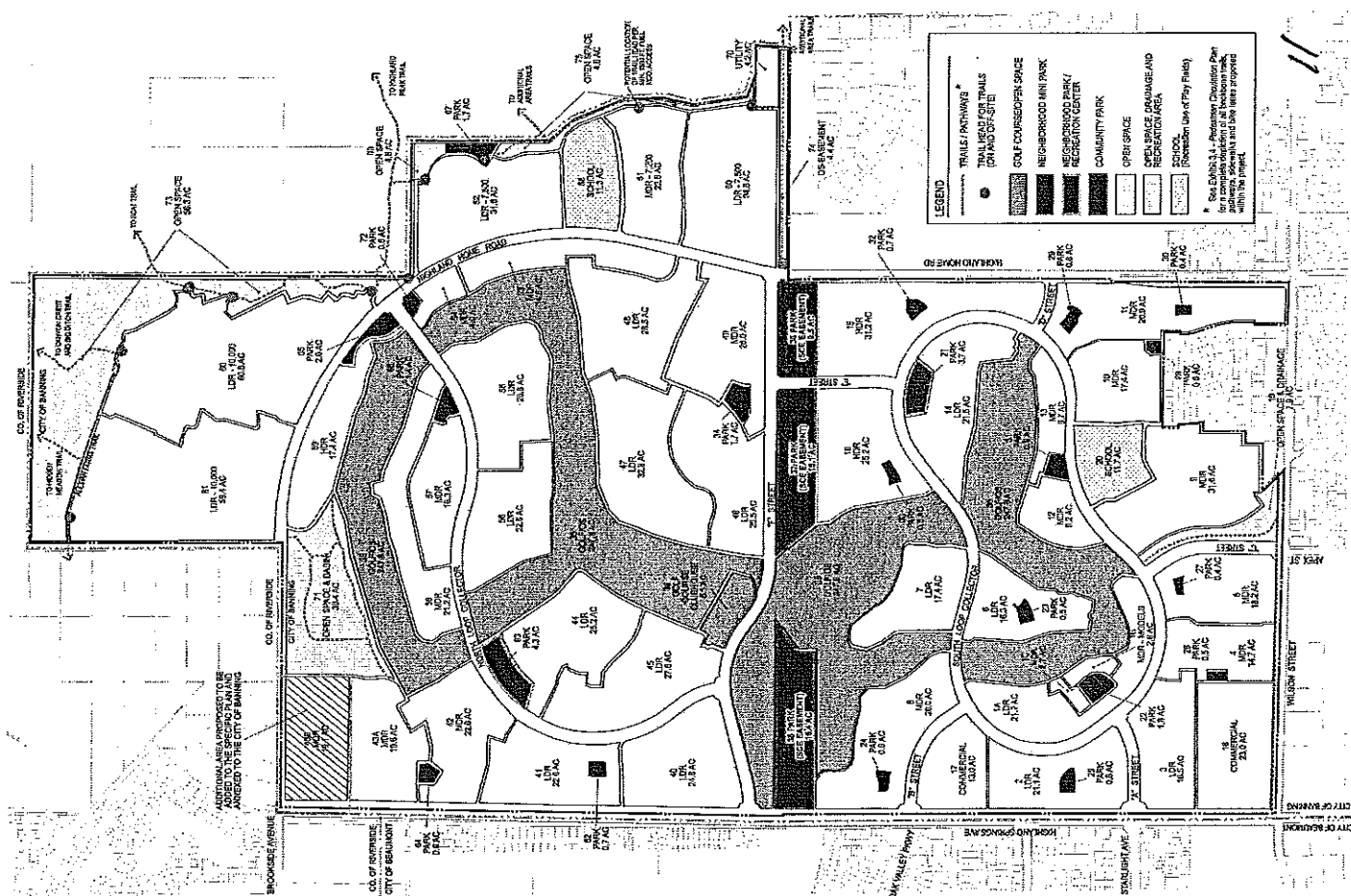




## Amenities:

- Golf Course/Open Space provides north-south view windows through the middle of the project
- Improved park land
- Natural Open Space and Trails
- "Complete Streets" incorporates all modes of transportation
- Thematic /Hierarchy of Parkway & Median Landscaping
- Fire Station and Community Center Sites

# Potential Golf Course/Open Space Plan

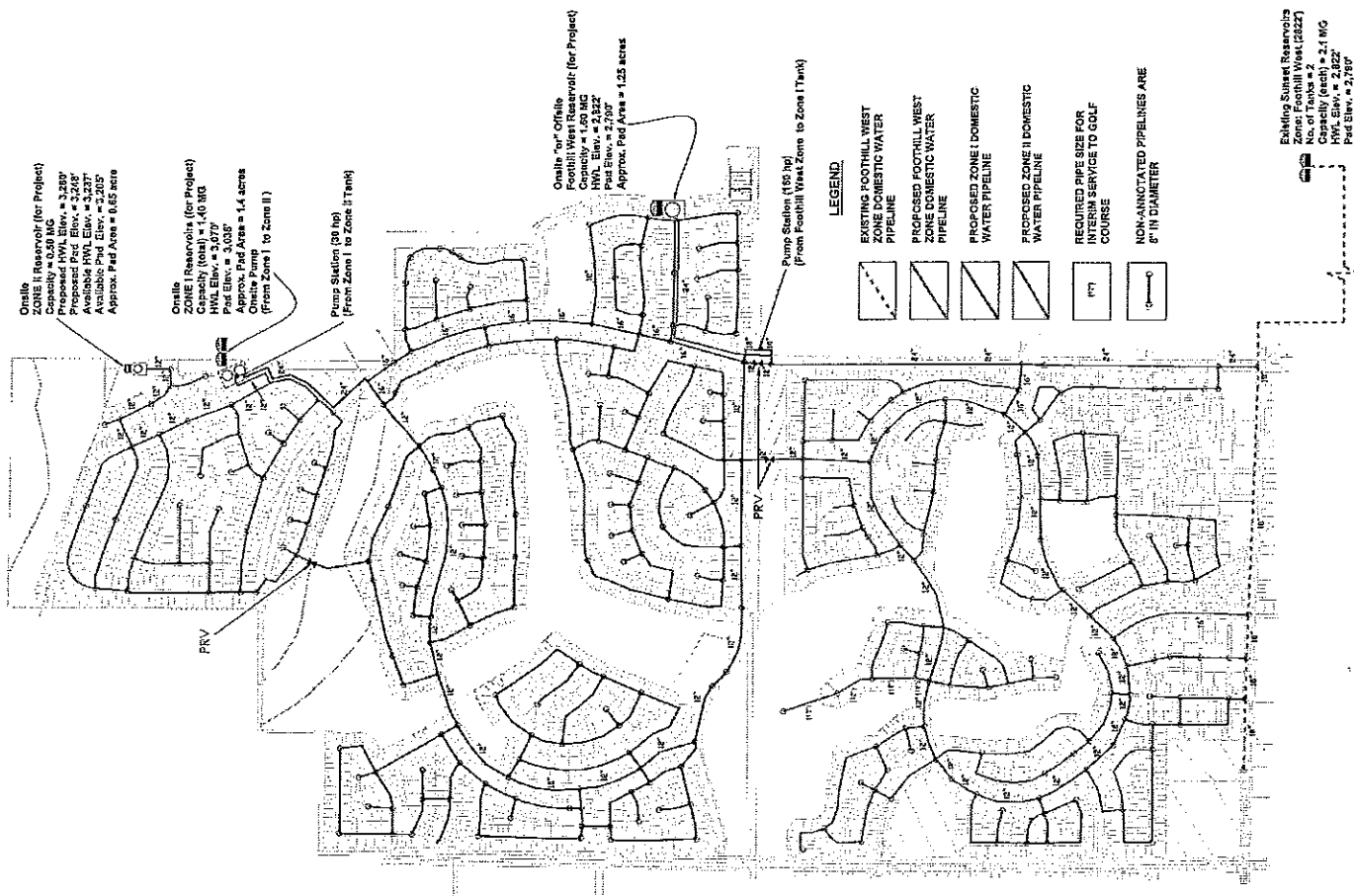


**Infrastructure Plan**

**Domestic & Recycled Water, including Water  
Supply Assessment, Drainage,  
Sanitary Sewer,  
&  
Traffic Circulation**

# Domestic Water Plan

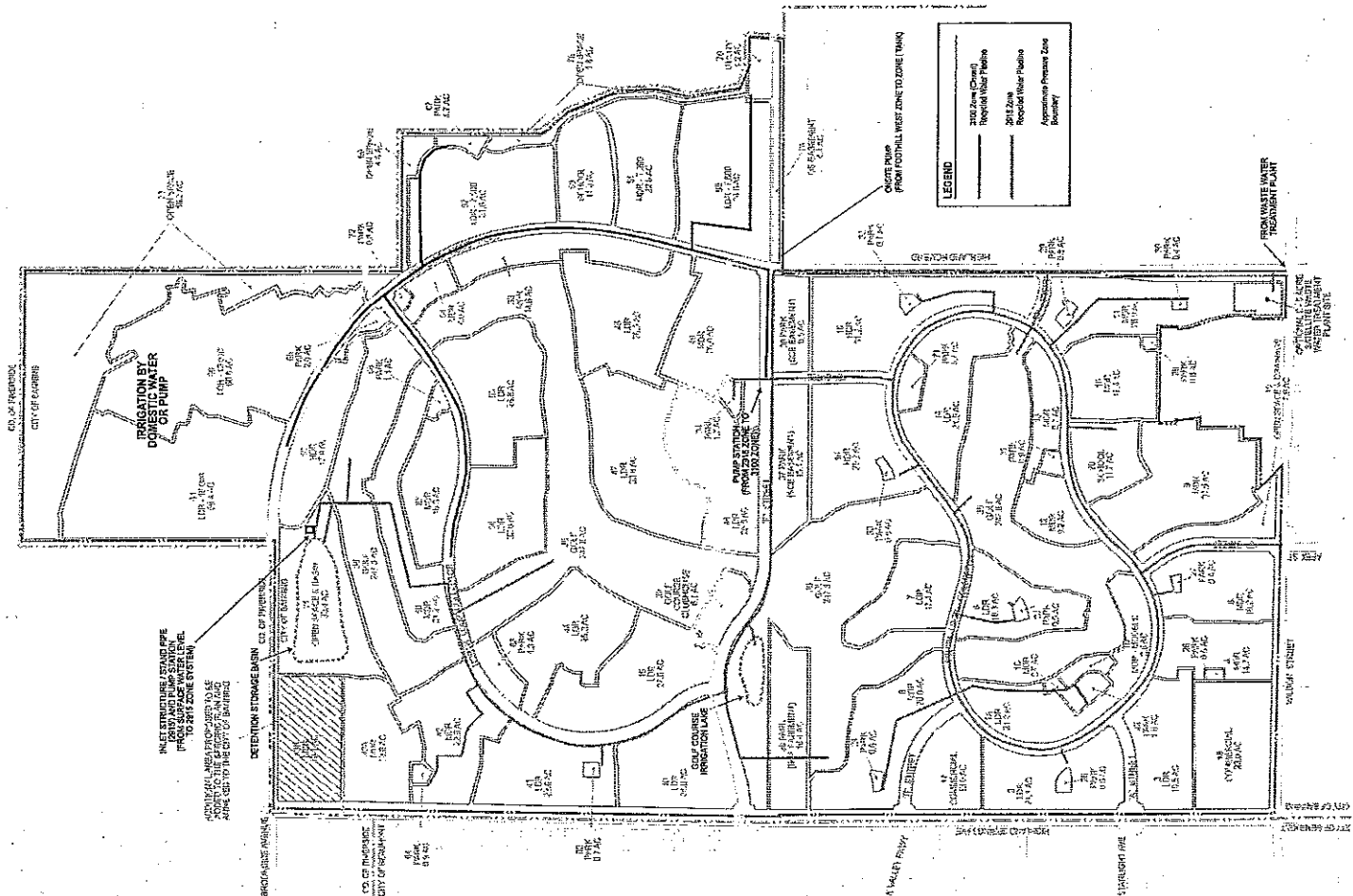
Exhibit "B"  
33  
reg.mtg.-03/27/12



2

36

# Recycled Water Plan



3

37

# Water Supply Assessment (WSA) for the Project

The project WSA was prepared in compliance with Water Code Section 10911(b) and CEQA Section 15155. The City adopted its 2010 Urban Water Management Plan (UWMP) on June 28, 2011.

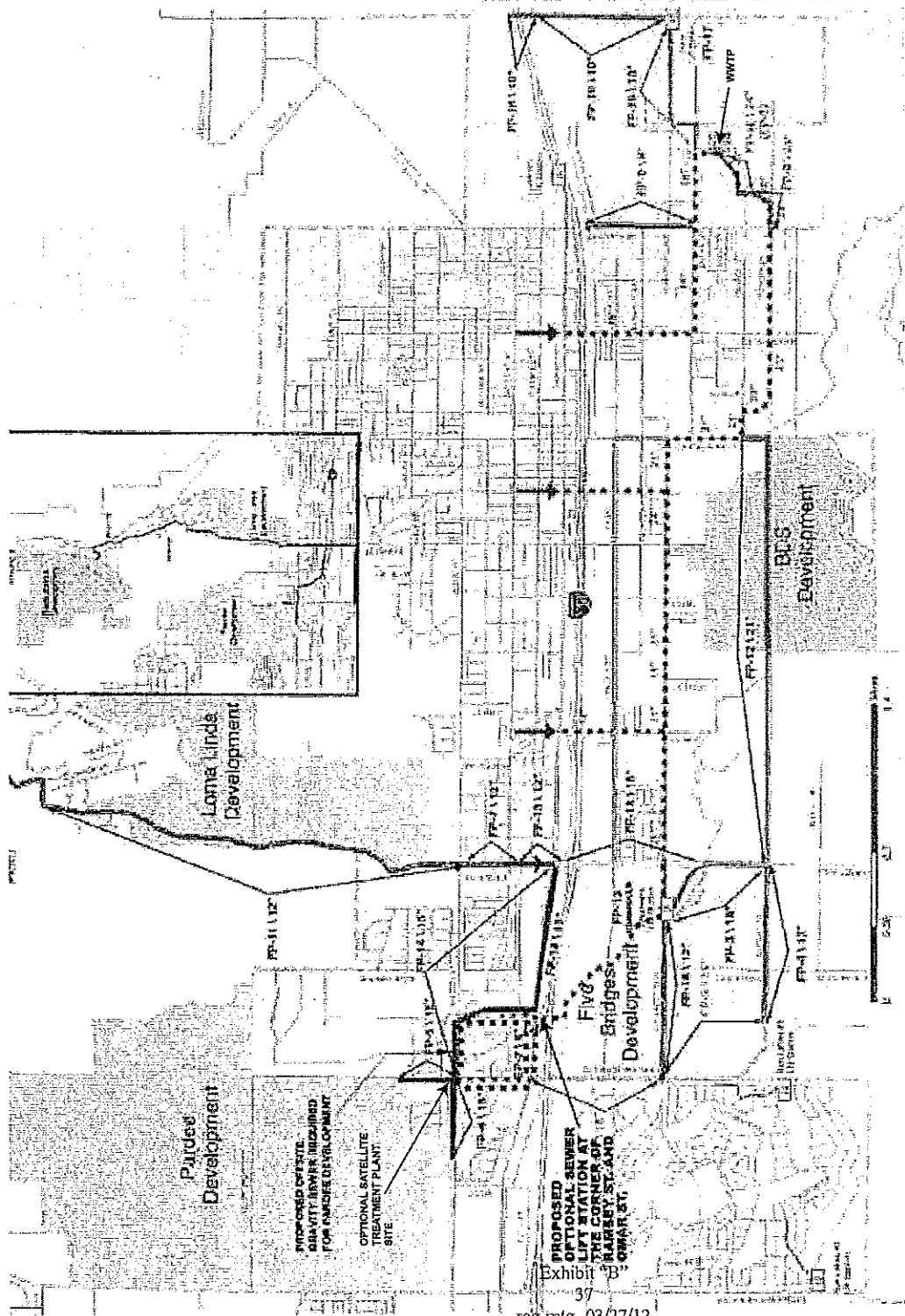
The project WSA analyzed in detail the project demand at build-out conditions and compared the demand to existing and future water supplied, and the reliability of the supply.

The WSA detailed analysis concluded that there is adequate water supply to meet the demand of the project.

The entire WSA is included in Appendix J of the Draft EIR.

## 5





# Offsite Sewer Plan



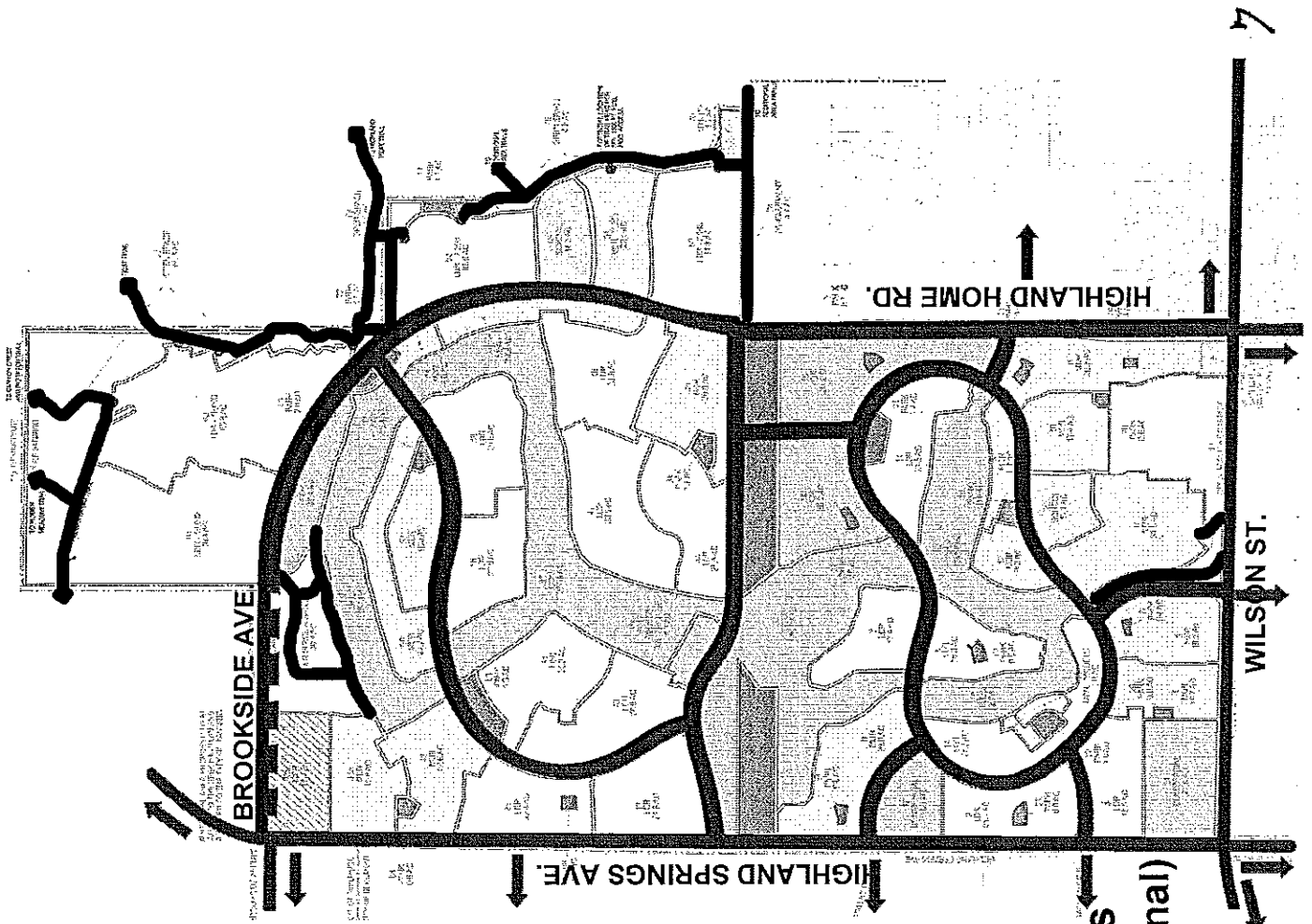
# Circulation

Street Network

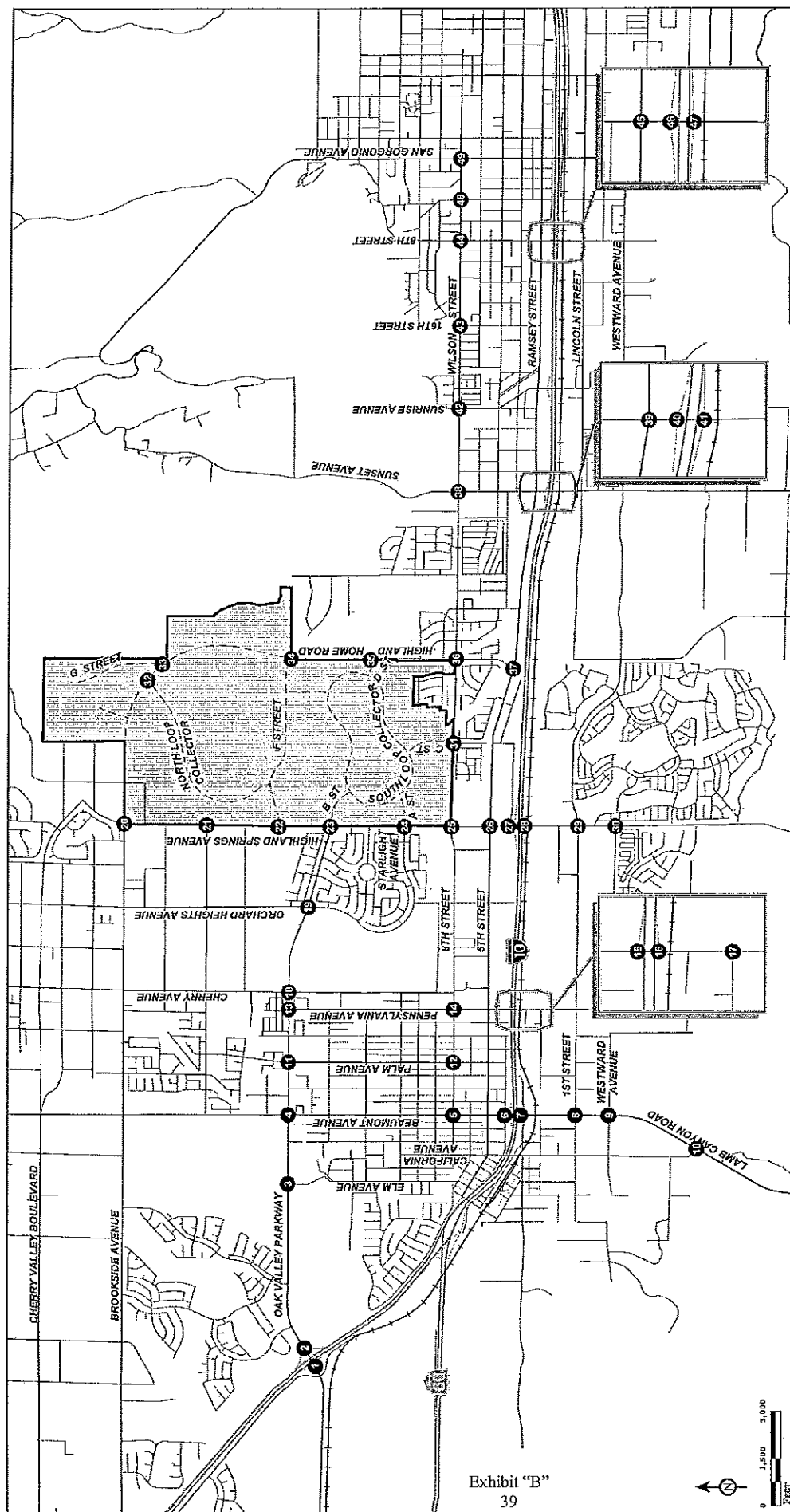
Pedestrian Access

Onstreet Electric Vehicles  
/Bike Lanes (10' each internal)

Off Site Open Space  
Access Trails



41



# Analyzed Intersections



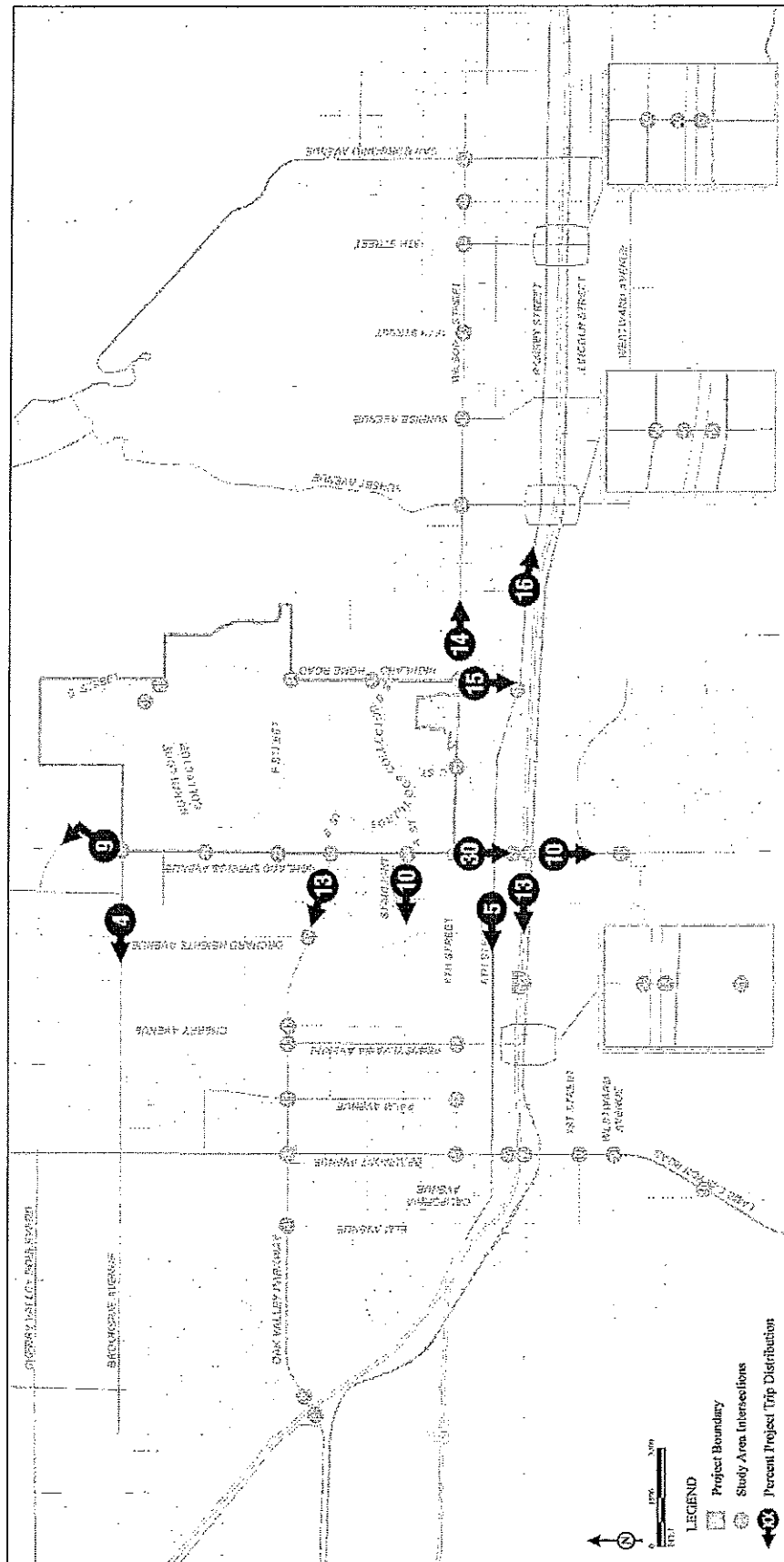
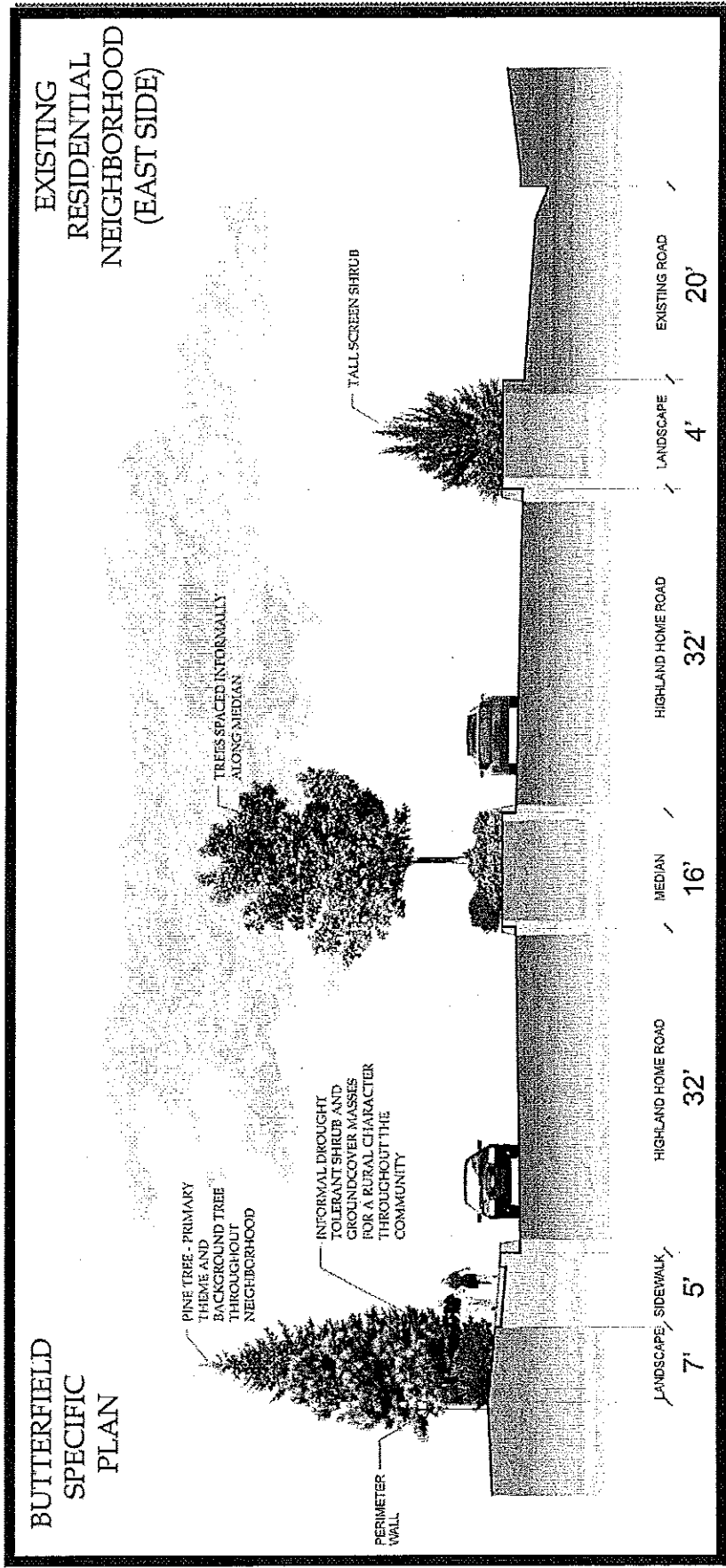


Exhibit "B"  
40  
reg.mtg.-03/27/12

# Funding Mitigation Measures

- Pardee Obligations (on/off site)
- Western Riverside Council of Governments (WRCOG) Transportation Uniform Mitigation Fee (TUMF)
- City of Beaumont Road and Bridge Fee
- City of Beaumont Traffic Signal Fee
- City of Banning Development Impact Fee (being updated to incorporate General Plan mitigation measures)

44



# Highland Home Road – Near Wilson

45

**Certification of the Final Environmental Impact  
Report, Findings of Fact, Mitigation Monitoring  
and Reporting Program, and Statement of  
Overriding Considerations  
&  
Approval of Water Supply Assessment**

**Required by the California Environmental Quality Act (CEQA)**

# Objectives of the California Environmental Quality Act:

- Disclosure of environmental impacts to the decision makers and the public before they take action on the project.
- Mitigate the project impacts to the extent feasible.
- If there are impacts that cannot be mitigated, the environmental document must disclose those impacts which requires that the decision makers weigh the public benefits of the project versus the environmental impacts of the project.

2

47

## Final EIR:

- The Draft EIR, technical appendices, and Final EIR were prepared consistent with the CEQA Guidelines and Process. It analyzed all of the environmental issue areas as required by CEQA.
- The EIR disclosed all of the project impacts, impacts that are mitigated and impacts that cannot be mitigated, including cumulative impacts when the City is built out.
- There are three areas of environmental impacts that cannot be avoided despite the mitigations: aesthetics, light and glare; air quality; & traffic circulation.
- At the build-out of the City, the above issue areas plus climate change and noise cannot be mitigated to less than significant which requires the Council to consider when they make a decision on the project.



## **Project Alternatives:**

- CEQA requires that the EIR address alternatives to the proposed project.
- These alternatives are:
  - No Project/Existing Specific Plan – Future development subject to the existing Deutsch Specific Plan
  - Reduced density – 20% reduction of the residential and commercial development
  - Active Adult Alternative (PAs 40-49 and 53-59)
  - No Golf Course Alternative – Open Space and Trails

## **Fiscal Considerations:**

- Willdan Financial prepared a Fiscal Impact Analysis to determine fiscal impact to the City for providing City services.
- Based on the financial analysis, the property taxes for each home within the project will be required to pay annually, a special assessment, for City services: Single Family \$115/unit and Multiple Family \$92/unit.
- The project will finance infrastructure and City services, including police, fire and landscaping.
- Private amenities and landscaping to be maintained by Homeowners Associations

## Late Comments Received Prior to Planning Commission Hearing (3-7-12):

- Soboba Band of Luiseno Indians (2/27/12)
- Federal Emergency Management Agency (2/28/12)
- Janelle Singleton, Banning Resident (2/28/12)
- Chatten-Brown & Carstens representing Highland Springs Resort (3/6/12)
- Bowie, Arneson, Wiles & Giannone representing Beaumont/Banning Unified School Districts (3/7/12)
- These documents were made available for Planning Commission review and information.
- Responses to each of the comment letters are attached to the Staff Report.

# Planning Commission & Staff Recommendations

- Adopt Resolutions No. 2012-27 and No. 2012-04UA by the City Council and Banning Utility Authority, respectively, the Water Supply Assessment for the Butterfield Specific Plan (SCH. No. 2007091149);
- Adopt Resolution No. 2012-24 by the City Council Certifying the Final Environmental Impact Report for the Butterfield Specific Plan (SCH No. 2007091149) and adopting Findings of Fact, a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program;
- Adopt Resolution No. 2012-25 by the City Council for General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 relating to the "Butterfield Specific Plan" and making findings in support thereof;
- Adopt Ordinance 1450 by the City Council amending the Deutsch Specific Plan and superseding it with Butterfield Specific Plan and adopting the Conditions of Approval and making findings in support thereof;
- Adopt Ordinance 1451 by the City Council adopting the Development Agreement superseding the Deutsch Specific Plan Development Agreement and making findings in support thereof.

# Technical Corrections to the Staff Report

- Super page 86 of the staff report (list of attachments) – References to Water Supply Addendum. The correct reference to Water Supply Addendum in Attachments #5 and #6 is Section 4.1 Errata of the Final EIR (not 4.0).
- Super pages 414 and 415 of the staff report – Replace the existing response to the Beaumont/Banning Unified School District letter with the revised response.



# City of Beaumont

550 E. 6th Street  
Beaumont, CA 92223  
(951) 769-8520

FAX (951) 769-8526

Email: [cityhall@ci.beaumont.ca.us](mailto:cityhall@ci.beaumont.ca.us)

[www.ci.beaumont.ca.us](http://www.ci.beaumont.ca.us)

March 27, 2012

Don Robinson  
Mayor City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

**Subject:** Improvement to Traffic Circulation in Beaumont and Banning area

Dear Don,

I want to take this opportunity to let you and the Banning City Council know that the City of Beaumont City Council and its staff are committed to working together with the City of Banning City Council and its staff to improve traffic circulation in and around Highland Springs Avenue and other areas that affect both cities for economic development and quality of life for our residents.

Highland Springs Avenue is a major thoroughfare and a gateway to both Banning and Beaumont. Highland Springs Avenue provides a north-south connection to the I-10 freeway and is a hub for east-west connections to other streets in Banning and Beaumont.

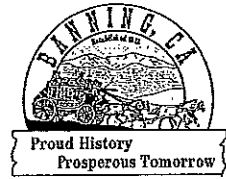
As Pardee is developing in both cities, this is an opportune time to work together with Caltrans to improve traffic circulation in both cities. Please be assured that as Mayor of Beaumont, I am committed to working with you and your City Council on this matter.

Sincerely,

David Castaldo  
Mayor-Pro-Tem  
City of Beaumont

---

**CITY of BANNING**  
**M E M O R A N D U M**



---

**DATE:** March 27, 2012  
**TO:** City Council  
**FROM:** Zai Abu Bakar, Community Development Director  
**CC:** Andy Takata, City Manager  
**RE:** Technical Corrections to the Staff Report for Agenda Item V.

The following are technical corrections to the staff report.

1. The correct reference to Water Supply Addendum in Attachments 5 and 6 as listed on super page 86 of the Staff Report is Section 4.1 Errata of the Final EIR (not 4.0). A copy of Section 4.1 Errata is attached.
2. Please replace the current Response to the Beaumont/Banning Unified School District letter (Super pages 414 & 415) with the attached response.

Attachments

*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.*

3. Ordinance No. 1450 with Exhibit "A" - Butterfield Specific Plan (Under Separate Cover) and Conditions of Approval
4. Ordinance No. 1451 with Exhibit "A" - Development Agreement
5. City Council Resolution No. 2012-27 with Exhibit "A" - Water Supply Assessment, Also shown as Appendix J of the Draft EIR (Under Separate Cover) and Water Supply Addendum (*Section 4.1 Errata of the Final EIR*)
6. Banning Utility Authority Resolution No. 2012-04 UA with Exhibit "A" - Water Supply Assessment, Also shown as Appendix J of the Draft EIR (Under Separate Cover), and Water Supply Addendum (*Section 4.1 of the Final EIR*).
7. Comment letters received after the Final EIR and the City's responses to them: Chatten-Brown & Carstens representing Highland Springs Resort; Bowie, Arneson, Wiles & Giannone representing Banning and Beaumont School Districts; Janelle Singleton; Soboba Band of Luiseno Indians; and FEMA
8. Public Hearing Notice and Mailing Labels



***REVISED***

**ATTACHMENT 5**

**Resolution No. 2012-27 with  
Exhibit “A” – Water Supply Assessment,  
Also shown as Appendix J of the Draft EIR (Under  
Separate Cover) and Water Supply Addendum  
(*Section 4.1 Errata of the Final EIR*)**

## 4.1 Appendix J, Water Supply Assessment for Butterfield Specific Plan - Addendum

This Addendum provides minor technical changes, clarifications and updates to existing analysis; none of which constitute significant new information or trigger the need for further environmental review.

General Errata to be corrected throughout the document:

- Delete all "Draft 2010 UWMP;" replace with "2010 UWMP."
- Delete all "forthcoming 2010 UWMP;" replace with "2010 UWMP."
- Remove Appendix A: Draft 2010 UWMP; replace with Appendix A: 2010 UWMP.

### Page 2, Section 1.4 (The Project)

Revise footnote 3 as follows:

The terms "basin" and "storage unit" have the same meaning. See also footnote 189127.

### Page 7, Section 1.7 (Water Supplies)

Revise 4th full paragraph as follows:

... To date, the City has already accumulated approximately 25,00030,000 AF in storage.

### Page 24, Section 4.2.2 (Project Components)

Revise second full paragraph as follows:

The Project also proposes: (1) 36 acres (2.3% of the Project site area) of commercial space to accommodate retail and service uses for the proposed Project and surrounding areas; (2) two elementary school sites on approximately 23 acres (1.5% of the Project area); and (3) an 18-hole golf course and clubhouse on approximately 254 acres (located throughout the central portions of the Project area and comprising 16.5% of the Project site). The golf course identified within the Specific Plan is considered an option within the Specific Plan. There is no guarantee that this facility would be constructed. However the improvements proposed within the Smith Creek drainage that are located within the golf course are required and will be constructed to ensure adequate drainage throughout the project.

Page 26, Section 4.3.3 (Drainage System: Realignment of Smith Creek and Drainage Improvements)

*Revise second full paragraph as follows:*

The Project proposes a system of drainage improvements, which will utilize the available capacity of both Smith Creek and Pershing Channel to transport controlled Project drainage [FN 53] (stormwater and urban runoff) from and through the Project site in its developed condition. A major component of the drainage system is the re-alignment and improvement of Smith Creek, which will convey drainage via (1) basins, (2) realigned drainage ways restored to a natural-type condition, and (3) small culverts. These improvements would become are a function of the proposed golf course design, if it is constructed. If the golf course is not constructed the proposed improvements to Smith Creek would still be implemented. After realignment, Smith Creek will consist of a large open soil bottom with vegetated channel side sections that will run generally in a north to south direction through the golf course.

Page 75, Section 6.1.5.7 (State of the Basin)

*Revise first full paragraph as follows:*

The Watermaster's latest report does not identify undesirable results associated with annual production of 8,650 AF, or even 10,290 AF. [FN 277] The Watermaster's Draft Combined 7th and 8th Annual Report indicates that in general, water levels have declined across the basin. (See Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster, Section 3.5 (Dec. 7, 2011). Water levels rose slightly in 2009. [FN 278] Watermaster has not reported any appreciable land subsidence over the Beaumont Basin. [FN 279]

Page 82, Section 6.1.5.9.4 (New Yield)

*Revise footnote 313 as follows:*

Watermaster's most recent projections (on file with the City; see also Watermaster Memorandum 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster, Table 6 (Dec. 7, 2011)) are available through 2040 only. Although the percentage of decrease in the City's Appropriative Right is projected to get smaller over time, for purposes of this WSA, the City conservatively assumes that the City's right will continue to decrease by an additional 1.34% by 2040, the same percentage of decrease as the Watermaster projects between 2039 and 2040.

Page 82, Section 6.1.5.9.4 (New Yield)

Revise text following Table 6.1.5.9.4A as follows:

If the Project is approved and constructed, the City will request Watermaster approval and credit for this New Yield supply pursuant to the Beaumont Basin Judgment, Part I, 5, V. If approved by the Watermaster, New Yield will be credited to the City's Beaumont Basin Stored Water account on an annual basis. No other approvals are required.

Additionally, the capture of stormwater from the Project site and recharge of that supply into the Beaumont Basin requires compliance with the Santa Ana Region Basin Plan, and that Region's permitting approvals, specifically, Order R8-2010-0033, the municipal storm water permit for Riverside County. Order R8-2010-0033 prescribes waste discharge requirements for urban runoff from the cities and the unincorporated areas in Riverside County within the jurisdiction of the Santa Ana Regional Board. The City is not currently covered under this general permit. To recharge stormwater into the Beaumont Basin, the City must file a Notice of Intent (NOI) for coverage of its activities under Order R8-2010-0033, submit monitoring data and follow best management practices as part of the Stormwater Management Program for the region.

Page 83, Section 6.1.5.10 (City's Stored Water Account)

Revise footnote 316 as follows:

Minutes of Beaumont Basin Watermaster Meeting (Sept. 14, 2010); Watermaster Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster (December 7, 2011).

Page 84, Section 6.1.5.10 (City's Stored Water Account)

Revise footnote 320 as follows:

See generally, Beaumont Basin Judgment, Part VI. The Watermaster has not developed a methodology to estimate losses of water in storage. (Watermaster Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster (December 7, 2011).) As such, it is possible that the Watermaster may adopt rules for this purpose in the future which could reduce the quantity of water the City maintains in storage. The City would be entitled to extract from its Stored Water Account only that quantity of supply that represents "New Yield" to the basin. It is not possible to speculate as to what methodology might be developed in the future to account for any outflow of stored water from the basin, or when, or to quantify the precise amount of losses as this will depend on a number of factors not known at this time (i.e., total quantity of water in storage, inflows, rate of outflows

and hydrologic conditions at any given time). However, the Judgment's authorized use of available storage capacity is designed to avoid losses. The Judgment provides that there is significant unused or available storage space in the Beaumont Basin that may be filled with imported water. Section 1(bb) of the Judgment defines "Temporary Surplus as "additional storage capacity to prevent the waste of water." Also, Section 5(b) of the Judgment obligates Watermaster to operate groundwater storage capacity in the Beaumont Basin in such a way as to "prevent the waste of water." To date, the Watermaster has approved the storage of up to 260,000 AF in the basin, of which the City has been allocated 80,000 AF. As a result, any losses that might be assessed by Watermaster in the future on the City's water in storage in the Beaumont Basin are not anticipated to materially decrease the City's stored water account balance. Moreover, a portion of any losses of water from the Beaumont Basin would flow to the Banning Basins, in which the City has production wells.

Page 86, Section 6.1.5.10 (City's Stored Water Account)

*Insert the following text after Table 6.1.5.10B:*

Given the projections presented in Table 6.1.5.10B above (see also Watermaster Memorandum No. 11-13, Table 7 (Dec. 7, 2011) [indicating that the City's Ending Account Balance for Fiscal Year 2010/11 is 31,320]) . . . .

Page 86, Section 6.1.5.10 (City's Stored Water Account)

*Revise 7th Bullet as follows:*

The City's currently maintains approximately 25,00030,000 AF in its Stored Water account. As the City continues to purchase imported water from the Pass Agency, the City's Stored Water account balance will increase over time.

Page 107, Section 6.2.3 (City Diversion of Surface Water Rights)

*Insert at the end of the section:*

On or about April 7, 2011, Stephen I. Mascaro and Betty D. Mascaro filed a complaint against the City and others seeking a declaration of riparian rights to Whitewater River and also to quiet title to the flume. On May 31, 2011, the City demurred to the Mascaros' complaint and all causes of action therein against the City, which was sustained without leave to amend. The Mascaros amended their complaint, and the City and other defendants answered the complaint. Even if the court were to overrule (or deny) the City's demurrer, and after a trial on the merits, to enter a judgment in favor of Mascaros on all grounds, which the City believes is unlikely (based on legal and factual issues subject to attorney work product and related privileges), the Mascaro litigation cannot impact the City's own adjudicated rights in the supply as a matter of

law and also because the Mascaro litigation does not challenge the City's adjudicated water rights. Therefore, this litigation matter is not anticipated to impair the City's ongoing/recharge operations.

Page 117, Section 6.3.5.2 (Delivery Facilities for Imported Water)

*Insert at the top of page 117:*

The Water Quality Control Plans designate beneficial uses for each receiving water body and establish water quality objectives to ensure reasonable protection of the beneficial uses. All recharge operations must be conducted in accordance with applicable recharge standards and recycled water reuse standards. All State Water Project water used to recharge the Beaumont Basin must meet the water quality objectives (for the recharge of water) included in the Santa Ana Region, Region 8 Basin Plan. Recharged water must also be blended on a volume-weighted basis with other sources of recharge to ensure water quality levels achieve 5-year running average concentrations less than or equal to the "maximum benefit" objectives for the affected groundwater management zone. (Region 8 Basin Plan, at 5-77.)

DWR analyzes water quality samples from the SWP for dissolved solids, nutrients, chloride, sulfate, sodium, trace metals, and other constituents. (See Department of Water Resources, SWP Water Data Library.) Chapter 4 of the Region 8 Basin Plan sets water quality objectives for recharge of groundwater to the Beaumont Basin. Recharge of SWP water must meet the Management Zone TDS and Nitrate-nitrogen Water Quality Objectives (Amended by Resolution No. R8-2004-0001, January 22, 2004). Chapter 5 of the Basin Plan, which includes implementation measures, contains controls on salt loadings from all water uses. The plans include measures to improve water supply quality, including the import of high quality water from the State Water Project and recharge projects.

The Region 8 Basin Plan, at 5-18, supports importation of State Water Project water for recharge. It states, "The use of State Water Project water allows maximum reuse of water supplies without aggravating the mineralization problem. It is also used for recharge and replenishment to improve the quality of local water supply sources, which might otherwise be unusable. Thus, the use of high quality State Water Project water in the Region has water supply benefits that extend far beyond the actual quantity imported."

Page 125, Section 6.3.7 (City's Projected Imported Water Supply)

For 2012, and at least every five years thereafter, the City must file an amended Application for Service with the Pass Agency requesting the increased purchases. The City's request is subject to the Pass Agency's approval, which will be based on the availability of the supply to meet all requested demands. [fn. 468: Pass Agency Rules and Regulations for Water Service, Section 3.02.] In addition to the Pass Agency's approval of the amended Application for Service, To

date, the City has requested delivery of up to 2,400 AF of imported water from the Pass Agency. The City's continuing imported water service is subject to the Pass Agency's Rules and Regulations for Water Service. (See Pass Agency Ord. No. 8.) Delivery of the Pass Agency's full Table A entitlement of 17,300 AFY to the region will depend on DWR's construction of EBXII. No additional environmental review or other approvals are required.

Page 141; Section 6.5 (Water Shortage Emergency Planning)

*Revise bullet 3. as follows:*

The City has an approved Stored Water account of 80,000 AF in the Beaumont Basin. To date, the City has more than ~~25,000~~30,000 AF in storage — approximately 3 years of supply to meet 2010 demands...

***REVISED***

**ATTACHMENT 6**

**Resolution No. 2012-04 UA with  
Exhibit “A” – Water Supply Assessment,  
Also shown as Appendix J of the Draft EIR (Under  
Separate Cover) and Water Supply Addendum  
(*Section 4.1 Errata of the Final EIR*)**

64



## 4.1 Appendix J, Water Supply Assessment for Butterfield Specific Plan - Addendum

This Addendum provides minor technical changes, clarifications and updates to existing analysis; none of which constitute significant new information or trigger the need for further environmental review.

General Errata to be corrected throughout the document:

- Delete all "Draft 2010 UWMP;" replace with "2010 UWMP."
- Delete all "forthcoming 2010 UWMP;" replace with "2010 UWMP."
- Remove Appendix A: Draft 2010 UWMP; replace with Appendix A: 2010 UWMP.

### Page 2, Section 1.4 (The Project)

Revise footnote 3 as follows:

The terms "basin" and "storage unit" have the same meaning. See also footnote 180~~127~~.

### Page 7, Section 1.7 (Water Supplies)

Revise 4th full paragraph as follows:

... To date, the City has already accumulated approximately 25,000~~30,000~~ AF in storage.

### Page 24, Section 4.2.2 (Project Components)

Revise second full paragraph as follows:

The Project also proposes: (1) 36 acres (2.3% of the Project site area) of commercial space to accommodate retail and service uses for the proposed Project and surrounding areas; (2) two elementary school sites on approximately 23 acres (1.5% of the Project area); and (3) an 18-hole golf course and clubhouse on approximately 254 acres (located throughout the central portions of the Project area and comprising 16.5% of the Project site). The golf course identified within the Specific Plan is considered an option within the Specific Plan. There is no guarantee that this facility would be constructed. However the improvements proposed within the Smith Creek drainage that are located within the golf course are required and will be constructed to ensure adequate drainage throughout the project.

Page 26, Section 4.3.3 (Drainage System: Realignment of Smith Creek and Drainage Improvements)

*Revise second full paragraph as follows:*

The Project proposes a system of drainage improvements, which will utilize the available capacity of both Smith Creek and Pershing Channel to transport controlled Project drainage [FN 53] (stormwater and urban runoff) from and through the Project site in its developed condition. A major component of the drainage system is the re-alignment and improvement of Smith Creek, which will convey drainage via (1) basins, (2) realigned drainage ways restored to a natural-type condition, and (3) small culverts. These improvements would become a function of the proposed golf course design, if it is constructed. If the golf course is not constructed the proposed improvements to Smith Creek would still be implemented. After realignment, Smith Creek will consist of a large open soil bottom with vegetated channel side sections that will run generally in a north to south direction through the golf course.

Page 75, Section 6.1.5.7 (State of the Basin)

*Revise first full paragraph as follows:*

The Watermaster's latest report does not identify undesirable results associated with annual production of 8,650 AF, or even 10,290 AF. [FN 277] The Watermaster's Draft Combined 7th and 8th Annual Report indicates that in general, water levels have declined across the basin. (See Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster, Section 3.5 (Dec. 7, 2011).) Water levels rose slightly in 2009. [FN 278] Watermaster has not reported any appreciable land subsidence over the Beaumont Basin. [FN 279]

Page 82, Section 6.1.5.9.4 (New Yield)

*Revise footnote 313 as follows:*

Watermaster's most recent projections (on file with the City; see also Watermaster Memorandum 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster, Table 6 (Dec. 7, 2011)) are available through 2040 only. Although the percentage of decrease in the City's Appropriative Right is projected to get smaller over time, for purposes of this WSA, the City conservatively assumes that the City's right will continue to decrease by an additional 1.34% by 2040, the same percentage of decrease as the Watermaster projects between 2039 and 2040.

Page 82, Section 6.1.5.9.4 (New Yield)

*Revise text following Table 6.1.5.9.4A as follows:*

If the Project is approved and constructed, the City will request Watermaster approval and credit for this New Yield supply pursuant to the Beaumont Basin Judgment, Part I, 5, V. If approved by the Watermaster, New Yield will be credited to the City's Beaumont Basin Stored Water account on an annual basis. ~~No other approvals are required.~~

Additionally, the capture of stormwater from the Project site and recharge of that supply into the Beaumont Basin requires compliance with the Santa Ana Region Basin Plan, and that Region's permitting approvals, specifically, Order R8-2010-0033, the municipal storm water permit for Riverside County. Order R8-2010-0033 prescribes waste discharge requirements for urban runoff from the cities and the unincorporated areas in Riverside County within the jurisdiction of the Santa Ana Regional Board. The City is not currently covered under this general permit. To recharge stormwater into the Beaumont Basin, the City must file a Notice of Intent (NOI) for coverage of its activities under Order R8-2010-0033, submit monitoring data and follow best management practices as part of the Stormwater Management Program for the region.

Page 83, Section 6.1.5.10 (City's Stored Water Account)

*Revise footnote 316 as follows:*

Minutes of Beaumont Basin Watermaster Meeting, (Sept. 14, 2010); Watermaster Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster (December 7, 2011).

Page 84, Section 6.1.5.10 (City's Stored Water Account)

*Revise footnote 320 as follows:*

See generally, Beaumont Basin Judgment, Part VI. The Watermaster has not developed a methodology to estimate losses of water in storage. (Watermaster Memorandum No. 11-13: Presentation of Draft Combined 7th and 8th Annual Report of the Beaumont Basin Watermaster (December 7, 2011).) As such, it is possible that the Watermaster may adopt rules for this purpose in the future which could reduce the quantity of water the City maintains in storage. The City would be entitled to extract from its Stored Water Account only that quantity of supply that represents "New Yield" to the basin. It is not possible to speculate as to what methodology might be developed in the future to account for any outflow of stored water from the basin, or when, or to quantify the precise amount of losses as this will depend on a number of factors not known at this time (i.e., total quantity of water in storage, inflows, rate of outflows

and hydrologic conditions at any given time). However, the Judgment's authorized use of available storage capacity is designed to avoid losses. The Judgment provides that there is significant unused or available storage space in the Beaumont Basin that may be filled with imported water. Section 1(bb) of the Judgment defines "Temporary Surplus as "additional storage capacity to prevent the waste of water." Also, Section 5(b) of the Judgment obligates Watermaster to operate groundwater storage capacity in the Beaumont Basin in such a way as to "prevent the waste of water." To date, the Watermaster has approved the storage of up to 260,000 AF in the basin, of which the City has been allocated 80,000 AF. As a result, any losses that might be assessed by Watermaster in the future on the City's water in storage in the Beaumont Basin are not anticipated to materially decrease the City's stored water account balance. Moreover, a portion of any losses of water from the Beaumont Basin would flow to the Banning Basins, in which the City has production wells.

Page 86, Section 6.1.5.10 (City's Stored Water Account)

*Insert the following text after Table 6.1.5.10B:*

Given the projections presented in Table 6.1.5.10B above (see also Watermaster Memorandum No. 11-13, Table 7 (Dec. 7, 2011) [indicating that the City's Ending Account Balance for Fiscal Year 2010/11 is 31,320]) . . . .

Page 86, Section 6.1.5.10 (City's Stored Water Account)

*Revise 7th Bullet as follows:*

The City's currently maintains approximately 25,000~~30,000~~ AF in its Stored Water account. As the City continues to purchase imported water from the Pass Agency, the City's Stored Water account balance will increase over time.

Page 107, Section 6.2.3 (City Diversion of Surface Water Rights)

*Insert at the end of the section:*

On or about April 7, 2011, Stephen J. Mascaro and Beety D. Mascaro filed a complaint against the City and others seeking a declaration of riparian rights to Whitewater River and also to quiet title to the flume. On May 31, 2011, the City demurred to the Mascaros' complaint and all causes of action therein against the City, which was sustained without leave to amend. The Mascaros amended their complaint, and the City and other defendants answered the complaint. Even if the court were to overrule (or deny) the City's demurrer, and after a trial on the merits, to enter a judgment in favor of Mascaros on all grounds, which the City believes is unlikely (based on legal and factual issues subject to attorney work product and related privileges), the Mascaro litigation cannot impact the City's own adjudicated rights in the supply as a matter of

law and also because the Mascaro litigation does not challenge the City's adjudicated water rights. Therefore, this litigation matter is not anticipated to impair the City's ongoing/recharge operations.

**Page 117, Section 6.3.5.2 (Delivery Facilities for Imported Water)**

*Insert at the top of page 117:*

The Water Quality Control Plans designate beneficial uses for each receiving water body and establish water quality objectives to ensure reasonable protection of the beneficial uses. All recharge operations must be conducted in accordance with applicable recharge standards and recycled water reuse standards. All State Water Project water used to recharge the Beaumont Basin must meet the water quality objectives (for the recharge of water) included in the Santa Ana Region, Region 8 Basin Plan. Recharged water must also be blended on a volume-weighted basis with other sources of recharge to ensure water quality levels achieve 5-year running average concentrations less than or equal to the "maximum benefit" objectives for the affected groundwater management zone. (Region 8 Basin Plan, at 5-77.)

DWR analyzes water quality samples from the SWP for dissolved solids, nutrients, chloride, sulfate, sodium, trace metals, and other constituents. (See Department of Water Resources, SWP Water Data Library.) Chapter 4 of the Region 8 Basin Plan sets water quality objectives for recharge of groundwater to the Beaumont Basin. Recharge of SWP water must meet the Management Zone TDS and Nitrate-nitrogen Water Quality Objectives (Amended by Resolution No. R8-2004-0001, January 22, 2004). Chapter 5 of the Basin Plan, which includes implementation measures, contains controls on salt loadings from all water uses. The plans include measures to improve water supply quality, including the import of high quality water from the State Water Project and recharge projects.

The Region 8 Basin Plan, at 5-18, supports importation of State Water Project water for recharge. It states, "The use of State Water Project water allows maximum reuse of water supplies without aggravating the mineralization problem. It is also used for recharge and replenishment to improve the quality of local water supply sources, which might otherwise be unusable. Thus, the use of high quality State Water Project water in the Region has water supply benefits that extend far beyond the actual quantity imported."

**Page 125, Section 6.3.7 (City's Projected Imported Water Supply)**

For 2012, and at least every five years thereafter, the City must file an amended Application for Service with the Pass Agency requesting the increased purchases. The City's request is subject to the Pass Agency's approval, which will be based on the availability of the supply to meet all requested demands. [fn. 468: Pass Agency Rules and Regulations for Water Service, Section 3.02.] In addition to the Pass Agency's approval of the amended Application for Service, To

date, the City has requested delivery of up to 2,400 AF of imported water from the Pass Agency. The City's continuing imported water service is subject to the Pass Agency's Rules and Regulations for Water Service. (See Pass Agency Ord. No. 8.) Delivery of the Pass Agency's full Table A entitlement of 17,300 AFY to the region will depend on DWR's construction of EBXII. No additional environmental review or other approvals are required.

**Page 141; Section 6.5 (Water Shortage Emergency Planning)**

*Revise bullet 3. as follows:*

The City has an approved Stored Water account of 80,000 AF in the Beaumont Basin. To date, the City has more than 25,000~~30,000~~ AF in storage — approximately 3 years of supply to meet 2010 demands...

**Beaumont/Banning Unified  
School Districts  
March 7, 2012 Letter  
Response**

By letter dated March 7, 2012, Beaumont Unified School District and Banning Unified School District (Districts) restate their request for school funding beyond fees established by Senate Bill 50. The Districts further state that there is insufficient capacity to meet the demand resulting from the Project and that the EIR does not adequately address the indirect interim impacts associated with the use of existing school facilities pending construction of new school facilities. The Districts' letter does not raise any significant new comments or significant new environmental impacts not previously addressed in the EIR. Therefore, no further review or analysis is required.

The City refers the Districts to the FEIR, Response to Agency Comment Letter No. 5 and Master Response 2. Based on the availability of school sites, the payment of school fees, the conservative assumptions on student generation rates and the long-range Project buildout, the Districts (including Beaumont USD independently) would have sufficient flexibility to plan for and accommodate the additional students generated by the proposed Project.

As set forth in Table 4.12-2 of the FEIR, excess capacity currently exists within the Beaumont USD at Sundance Elementary School (111 seats), San Geronio Middle School (414 seats) and Beaumont High School (118 seats). In addition, planned expansion of Beaumont High School would accommodate an additional 300 students. Banning USD has excess capacity at Hemmerling Elementary (171 seats), Susan B. Combs Intermediate (66 seats), Nicolet Middle School (344 seats) and Banning High School (567 seats). See Draft EIR, Table 4.12-3. Total existing excess capacity within the Districts is 1,791 seats.

The Butterfield Specific Plan designates one school site within Beaumont USD (an 11.7 acre parcel in Planning Area 20 [Draft EIR, Exhibit 3.0-4]), which in conjunction with the two proposed school sites previously reserved within the adjacent Sundance Specific Plan, provide capacity for an additional 1,800 elementary school students and 1,200 middle school students. The Butterfield Specific Plan also designates a school site with Banning USD (an 11.3 acre parcel in Planning Area 68 [Draft EIR, Exhibit 3.0-4]). Additional school sites can be provided within the Butterfield Specific Plan if determined they are needed. Accordingly, Project approval would not cause overcrowding at existing schools and the construction of new schools can accommodate additional students as the Project is built out over the next 35 years.

Because there is existing excess capacity in the Districts and the Project provides sufficient sites for new school facilities, the Project would not cause indirect interim impacts associated with the use of existing school facilities pending construction of new school facilities. In addition, the traffic impacts generated by students travelling to existing schools was analyzed the Traffic Impact Analysis, and appropriate mitigation has been recommended to reduce those effects to acceptable service levels.

In addition, Senate Bill 50, which amended Government Code Section 65995(a), prohibits local agencies from imposing school impact mitigation fees, dedications, or other requirements in excess of those provided in the statute in connection with any legislative or adjudicative act. Consistent with prior statutes, school districts are limited to imposing only the school impact fees authorized by statute. In addition, the legislation amended Government Code Section 65996(b) to prohibit local agencies from using the inadequacy of school facilities as a basis for denying or conditioning approvals of any 'legislative' or 'adjudicative' act involving the planning, use, or development of real property. As identified in Government Code Section 65995 (h), payment of fees is deemed to be full and complete mitigation of the impacts of any legislative or adjudicative act, or both, involving, but not limited to, the planning, use, or development of real property.

Despite SB 50's legislative cap on school funding, the Districts request additional funding due to the current economic climate and unreliable state matching funds. The Beaumont USD has asserted that it has a \$26.2 Million short fall in the costs of constructing new facilities to house students generated by the project. The short fall is based on a number of faulty assumptions and omissions that raise doubt about the accuracy of the number including, but not limited to, the following:

- The claimed short fall does not account for taxes that the owners of parcels in the Butterfield Specific Plan must pay to cover General Obligation (GO) bonds of the Beaumont USD. According to February 9, 2012 Beaumont School Facilities Needs Assessment (SFNA), on November 4, 2008, the voters of the Beaumont USD approved Measure Z, which authorized the issuance of \$125 Million in GO Bonds. Of the \$125 Million authorization, \$42 Million has been identified to construct new school facilities. Owners of residential or commercial property within the Butterfield Specific Plan are obligated to pay their portion of the taxes necessary to service bonds issued pursuant to Measure Z.
- The claimed short fall is based on an assumption that all units will be single family detached (SFD) units (SFD units generate .6077 students per unit [ 2012 rates]) while the Project includes 1,205 single family attached (SFA) units ( SFA units generate .2250 students per unit [2012 rates]) and allows for active adult units that generate no students. Overstating the number of SFD units overstates the need for new facilities and the costs of construction of those facilities.
- The claimed short fall does not account for commercial property that will generate fees and taxes but no students.
- The claimed short fall assumes that current economic conditions and state funding will stay at depressed levels over the life of the project.

Based on the provision of school sites, the payment of GO Bond taxes and the payment of school fees required by SB 50, the Project fully mitigates any direct or indirect impacts of the Project on school facilities.





500 Graco Avenue  
Beaumont, CA 92223  
Telephone: (951) 845-1631  
General FAX: (951) 845-2039  
Superintendent's Office FAX: 951-845-2319

## BEAUMONT UNIFIED SCHOOL DISTRICT

### BOARD OF TRUSTEES

*Mrs. Susie Lara*  
President

*Mr. Wayne Hackney*  
Vice President

*Mr. Mark Orozco*  
Clerk

*Mrs. Janelle Poulter*  
Member

*Mrs. Margaret De Longchamp*  
Member

### ADMINISTRATION

*Dr. Barry L. Kayrell*  
District Superintendent

*Mrs. Lisa Norman*  
Assistant Superintendent  
Personnel Services

*Dr. Maureen Latham*  
Assistant Superintendent  
Instructional Support Services

*Mr. Wael Elatar*  
Assistant Superintendent  
Business Services

March 27, 2012

Zai Abu Bakar  
Community Development Director  
City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

*Re: City Council March 27, 2012 Hearing on FEIR for the Butterfield Specific Plan*

Dear Ms. Bakar:

As you know, on behalf of the Beaumont Unified School District ("District"), comments were previously provided to the City of Banning ("City") in regard to the Environmental Impact Report ("EIR") for the Butterfield Specific Plan ("Specific Plan") and the adverse impacts, both direct and indirect, on the District's ability to provide school facilities for the students who will be generated by the planned development within the Specific Plan ("Project"). The District requests that you make this letter a part of the proceedings of the City Council hearing scheduled for March 27, 2012, so that the City Council members may consider the additional comments herein prior to making any determination in regard to the final EIR.

As previously noted, a single elementary-school site within the Project will be insufficient to accommodate the number of District students expected to be generated by the Project, and the EIR falsely assumes that existing capacity in District schools will be available to accommodate Project students. In order to accommodate expected student growth attributable to the Project, the District anticipates that it will require at minimum two school sites of approximately 21 net acres (exclusive of slopes, rights of way, utility easements, *et cetera*). These schools must meet all CDE requirements and standards at the time of construction and to be strategically located in the project to allow easy access to these schools. The District anticipates that it would phase the development of the school sites to accommodate development within the Project, initially serving students in Kindergarten through 5<sup>th</sup> or 6<sup>th</sup> Grade, with the potential to serve students in Kindergarten through 8<sup>th</sup> Grade if deemed necessary by the District.

The District respectfully requests that the City Council require reservation for the District of at minimum two such school sites within the Project, as the City is permitted to do in accordance with Government Code Section 65998. We request that one such site be located in the northern portion of the Project and the other in the southern portion of the Project, and that they be sufficient to satisfy California Department of Education ("CDE") site selection standards. The District has discussed this possibility with the developer of the Project, Pardee Homes. Both the District and the developer have mutual understanding to reach mitigating

agreements based on the District's request above. By requiring reservation of such school sites, the City will ensure that the District can acquire sites that can be approved by CDE and that are in areas that can serve the student population generated by the Project. In addition, the requested locations also will further the goal of creating a safe and self-contained walking community.

Without repeating in full the comments set forth in our July 21, 2011, and March 7, 2012, letters to the City regarding the inadequate analysis in the EIR of the indirect impacts arising from the Project, we reiterate that such analysis in the EIR is insufficient and, as the County of Madera, California, learned in *Chawanakee Unified School District v County of Madera* (2011) 196 Cal. App. 4<sup>th</sup> 1016, such inadequacies can result in a decision to approve an environmental impact report being overturned by a court. The District believes that the City Council should approve the final EIR for the Specific Plan when taking into consideration the District's requests and the mutual understanding of both the District and the developer.

As noted, the District has been in contact with Pardee Homes, and we will continue to pursue a mutually acceptable mitigation agreement with Pardee Homes. The District believes that a mitigation agreement can address all of the District's concerns as have been expressed to the City. Therefore, the District further requests that the City Council allow sufficient time for the District and Pardee Homes to engage in those discussions and come to agreement.

We greatly appreciate your attention and consideration of this matter. We believe that it will be in the best interests of both the City and the District to ensure that students generated by the Project are provided with adequate school facilities as such development occurs. Therefore, in summary, the District asks that the City Council require reservation of the school sites as described herein, that the City Council notate in the final EIR that the District and Pardee will enter into a mutually-acceptable mitigation agreement for the Project based on the District's requests of additional schools sites to adequately meet and mitigate the needs of students generated from this project.

Please do not hesitate to contact the undersigned if you have any questions or comments.

Sincerely,



Wael Elatar  
Assistant Superintendent of Business Services

Enclosures

cc: Dr. Barry Kayrell, Superintendent  
Alice Grundman, Director of Facilities Planning

EXHIBIT "G"

Rec'd 3-27-12  
Council mtg.

My name is Ed Ball. I live at 4678 West Hoffer.

I am here tonight to plead with you to reject the Butterfield Specific Plan.

I believe the Plan before you tonight is flawed. It is my opinion that the City Manager's recommendation for you approve it shows no concern for the impact of this project on the existing residents nor does it require any mitigation of the impact of the project's projected 63,000 vehicle trips per day.

I believe you should reject this plan and require the developer to come back with a plan that mitigates the traffic impact of the project – even if that mitigation requires roadwork in the City of Beaumont and / or the County.

If you don't reject this Butterfield Specific Plan tonight, I ask that you require two specific changes to the Plan.

1. Safety Issue (Exhibit 3.3B)

- Require the Developer to retain the current configuration of Highland Home from Wilson to 155' north of Gilman and make it a frontage road for the 4-lane divided highway that will go from Wilson north to where it deadends at the Highland Country Club east of Highland Springs near Brookside.
- The driveways of the current Highland Home residents north of Wilson load directly to / from the street. It would be unsafe for them to enter and exit their driveways from a 4-lane highway. The Developer provided the concept of the Highland Home frontage road on Exhibit 3.3B – take them up on their offer.
- **Action Item:** Just go to the Specific Plan's Roadway Cross Sections (Exhibit 3.3B), cross out the Highland Home Road Alternative B and require the Developer to use Alternative A and make the existing roadway a frontage road to the 4-lane divided highway.

2. Safety and Traffic Circulation Issue (Exhibit 3.1)

- Require the Developer to provide a connection of the 4-lane divided highway called Highland Home to Highland Springs.
- This lack of a connection will increase the response time of fire and police to the entire project north of the SCE transmission lines. A connection will allow emergency vehicles that are east-bound on Brookside to enter the project without going south on Highland Springs to then head north to service this area of the project.
- The lack of a connection from Highland Home to Highland Springs will require much of the traffic from the northern portions of the project onto Highland Springs when going south or west. Without a direct connection the developer is asking you to accept all the responsibility for all of the increased traffic congestion on Highland Springs since Pardee indicates none of their proposed traffic mitigation measures will mitigate the impacts of the project's projected 63,000 daily vehicle trips.

**Action Item:** Just go to the Specific Plan's page 3 (Exhibit 3.1), take a Sharpie and draw in a connection from Highland Home to Highland Springs within the City of Banning and require the Developer to make all necessary changes in the plan to provide the connection.

Thank you.

Pardee Homes Butterfield Development

By Barbara Hanna

March 27, 2012

I understand that this City Council supports growth. I do too. But I urge you today to approve the 20% reduced density alternative.

State law prohibits me from participating in voting in this matter because I live 305 feet from the development. I can't speak to staff or council members but I can speak at this public hearing.

Take a moment and consider that huge parcel being discussed today. Imagine that there was no City boundary between Banning and Beaumont right there at the center of Highland Springs Avenue, north of Wilson St. Would a developer be expected to make all the improvements necessary to mitigate the impact of the proposed 5,387 homes and the traffic it will generate?

Of course they would!

Perhaps you read the article by the CEO of SCAG in this Sunday's Press Enterprise entitled "Inland Lifelines." What he wrote about regional transportation issues is relevant to this development. If you approve the development as recommended, you will be condemning this area to "a perpetual nightmare", as Hasan Ikharta wrote, that could have been avoided if you had required "thoughtful, collaborative planning."

It is not too late to require it. And not just planning but Pardee should pay for their impact on local traffic circulation. Adding over 63,000 trips a day without mitigation is not acceptable.

Of the 19 circulation improvements with potentially significant impacts and/or feasibility concerns, seven have a phrase similar to: "This improvement may not be feasible due to extensive right-of-way acquisition and commercial and residential impacts including substantial impacts to access, frontage, parking and possible direct and indirect structure takes."

The last statement of the EIR clinches the nightmare: "Also, due to the speculative nature of the timing of implementation and availability of funding to implement the planned improvements listed above to less than significant levels cannot be guaranteed, and, as such, remain potentially significant and unavoidable. Further many of the recommended improvements are located in jurisdictions outside the City of Banning. So successfully completing these improvements cannot be guaranteed."

But wait, you might be thinking, Pardee assumes that 180 homes will be built a year over 30 or more years. By the time the impact becomes significant, we'll be long gone – at least off the City Council. But you still are responsible for the decision you make today. What kind of legacy will you leave the next generation?

However it may not take 30 years before the full impact is experienced. According to John Husing in the latest WRCOG Economic Quarterly, "The logic of the Inland Empire's housing market indicates that 2015-2016 is the most probable time frame for the influence of the mortgage crisis on it to have dissipated. A looming housing shortage is being created." Thousands of homes may be under construction by the end of this decade.

In fact this agreement says you want to encourage early development of homes so if Pardee builds 500 homes early – it is not clear to me how that is defined – then they don't have to pay the City's development impact fees. Those fees are developed based on the City's cost of providing that service. How much could the fees from 500 homes be worth? And that credit goes to the developer, not the residents. The **City** really needs that money.

I encourage the Council to re-consider the CFD agreement, Exhibit H starting on page 339 of your packet. You are being asked to agree that Pardee could establish CFDs to pay their costs for construction of public streets, water facilities, storm drain facilities, public parks, electrical facilities and any public facility to be constructed by the City for which the Developer is required to make a cash contribution. The costs shall include the actual hard costs, grading costs, design, engineering, environmental evaluations and mitigation, fees paid to governmental agencies, construction, administration, professional costs and any other costs allowed by law! And the Facilities Special Taxes may escalate up to 2% per year.

So rather than the developer paying these costs of developing this project they will be passed on to the homeowners. You think the new residents of Beaumont are crying under the weight of that City's assessments, wait until this takes affect here. City staff has agreed to the most generous development agreement I can imagine.

And remember this will be what every other residential developer will expect in the future.

And finally, Rick Bishop's in his last column in the WRCOG e-communicator asked each elected to take a pretend lie detector test. Two of his questions are relevant here:

1. Do you think it is o.k. to support a development project without conditions that mitigate impacts?
2. Do you consider the long-term impacts of the decisions you make?

This is a bad plan. Fees will be imposed on the residents to pay for the **developer's** costs. And even with these ever-increasing fees, there is no mitigation planned for the impact on traffic circulation.

Perpetual nightmare indeed.

**Marie Calderon**

From: Don Smith [donsmith05@aol.com]  
 Sent: Monday, March 26, 2012 5:04 PM  
 To: drkr@verizon.net; bbotts@dc.rr.com; johnmachisic@verizon.net; debbiefranklin4u@hotmail.com  
 Cc: Andy Takata; Duane Burk; Marie Calderon  
 Subject: Specific Plan

Dear Council

Due the Five minute limitation on public comments, I hereby submit this email to be included in the public record for the hearing on 3/27 regarding the Butterfield Specific Plan. I was unable to get through my points at the Planning Commission meeting within the allotted time.

There are four items which I strongly feel need to be considered and in my opinion changed during your hearing.

1. Items that would negatively affect Mt Air Estates and the Kingswell Tract. I stongly believe that new development should improve the town and not negatively effect current owners.

A. Exhibit 3.9A on page 3.66 of the Specific plan and other places discuss an "optional" 5 acre satellite waste water treatment plant directly between and adjacent to the two tracts on the Northwest corner of Highland Home Road and Wilson. As you are well aware, there has been some consideration of building such a site about halfway between Sun Lakes and Serrano Del Vista on the unpaved portion of Westward near the current lift station at Smith Creek. The city and the Council has made it clear that the proposed facility would not affect current property owners due to the distance of the proposed facility from current residences. The property owners of the Kingswell tract and Mt Air Estates deserve the same consideration and respect from the City Council. The Council should direct staff to amend the documents to require that any such facility cannot be built within 2000 feet of any house currently existing in the City of Banning as of 3/27/12 and cannot be built were shown on the current document. Mr Burk has informed me that this was only an option and not one he would recommend for a location. The project proponent told me that they were considering a Community Facility for that Site. Based on those comments I do not see why anyone would object to the Council protecting our current residents by restricting the location of the facility away from the current residences.

B. Section 3.2.1.2 on Page on page 3.29 of the Specific Plan and the exhibits that precede it show alternatives for Highland Home Road north of Wilson where the Road currently exists as neighborhood road.

Alternative A requires the Developer to keep the current road as a frontage road and to build an adjacent major arterial to the west of the existing road. This alternative would keep the existing driveways which the exiting homeowners use and back out of off of the major arterial and avoid a dangerous situation for these existing homeowners. The Council should direct staff to amend the documents to require that the road be built with the arterial to protect the ingress and egress of the existing homeowners.

At the Planning Commission meeting the project proponent showed me the drawing of how it would be built. My concern is that it only says that its an alternative and the Council should make it the only alternative.

2. Location of Park Sites. The Original Deutsch Specific Plan had a large community park on the East of the Development North of the existing Mt Air Estates off of Mountain. That location was picked for 2 reasons. One to not put smaller lots directly next to Mt Air Estates which are zoned for animals to avoid any incompatibilities and two to avoid negative viewscape issues looking towards this part of the project which is at a higher elevation. This new Butterfield Specific Plan move the community park to a stretch of land under the High Voltage Transmission lines. This obviously allowed them to maximize the amount of houses they could build by moving the parks to a location where they could not build houses. I have several problems with this move of location, but the main one is the health and welfare of the future children of Banning who in all likelihood will spend the most time in the parks. I know the science involved is not settled but the mere fact that there is a belief that parks under such lines have in the past caused children cancer clusters concerns me greatly. I for one would not want to be responsible for such an occurrence in Banning. As a compromise to moving the park back to the original location, which I feel

3/26/2012

would be the best solution, I would suggest as a compromise that the Council require that the golf course be reconfigured to include the easement and the parks be moved to locations currently shown as golf course. I might point out that there isn't even a guarantee that the area shown in green will be a golf course. It may be left as open space which would make it even sillier to leave parks under the transmission lines.

3. Circulation Element. I do not understand the Circulation element north of the Transmission lines. South of the Transmission lines A street is the Banning Side of Starlight in Beaumont, B street in Banning is an extension of Oak Valley Parkway in Beaumont, C Street is an extension of Apex and D Street would connect to a road that goes through the Fiesta project to Mountain Ave. While I do not doubt that this plan would result in much more traffic on Highland Springs Road than currently exists and least it uses access to existing roads. I see no such coordination of the north side of the Transmission lines. It shows all traffic going north to potential extensions to Brookside and/or Cherry Ave in Cherry Valley. The problem with this is that to extend to Brookside would require the road to go through the Highland Country Club golf course and they have indicated that they are not willing to sell the property for the use. The extension to Cherry Valley Blvd would require the permission of the Highland Springs Resort and no such permission has been obtained. So basically we have a major road that dead ends. There is no third alternative for how Highland Home Road actually connects with Highland Springs Blvd. Further if you look at the maps of the circulation element I see no coordination between the Beaumont side of the development and the Banning side at Highland Springs for signal and traffic coordination. Maybe that's because both sides are still in flux. However, at a minimum, The council should require that the documents require that major streets go through to get traffic east and west including but not limited to Cougar Way. Further more the City Council should require that as alternative number 3 if they developer cannot build the extension to Brookside or Cherry Valley Blvd that Highland Home Road be moved south so that it connects to Highland Springs Blvd south of the Highland Country Club Golf course or that some other major arterial be added north of Cougar Way. The council needs to be aware that the plan clearly shows that the traffic on Highland Springs Blvd cannot be mitigated and will become much worse than currently exists. You will need to decide if that is acceptable or if the reduced option should be considered. However, these minor changes could help get some of the traffic moving east west rather than down Highland Springs Road.

If the Council intends to approve the items listed on the agenda I would request that these minor changes be made to protect the interests of existing homeowners and current children.

Don Smith

3/26/2012

2

79

## CITY COUNCIL AGENDA

**DATE:** April 10, 2012  
**TO:** City Council  
**FROM:** Fred Mason, Electric Utility Director  
**SUBJECT:** Second Amendment to the Professional Services Agreement with Saddleback Realty Analysis, Inc. DBA, Integra Realty Resources

### **RECOMMENDATION:**

That the City Council ("City"):

- (1) Authorize the Administrative Services Director to make necessary budget adjustments and to increase the current Professional Services Agreement with Saddleback Realty Analysis, Inc. DBA, Integra Realty Resources by \$10,000 to a new total of \$41,000 to provide professional services with respect to the preparation of appraisal reports for the City's Electric Utility Land Development and activities within the City of Banning.

### **BACKGROUND/ANALYSIS:**

The City and Integra Realty Resources, Inc. previously entered into the Original Contract Services Agreement ("Agreement") on October 18, 2010. The Agreement was for one-year and provided for appraisal services for properties located at 280 E. Ramsey Street and for any future appraisals for properties within the City of Banning.

The contract was First Amended on January 24, 2012 to continue our professional relationship with Integra Realty Resources, Inc. to provide their services with respect to the preparation of appraisal reports for the City's Economic Development Program and activities within the City of Banning. The First Amendment provided for a two-year contract term in order to be more responsive to time sensitive transactions.

The current proposal of a Second Amendment is to increase the contract amount by \$10,000, therefore allowing the Electric Utility to utilize the services of Saddleback Realty Analysis, Inc. DBA, Integra Realty Resources.

### **FISCAL DATA:**

The Second Amendment requires a contract increase in the amount of \$10,000 from Account No. 670-7000-473.33-11 Professional Services to cover the cost of the Agreement.

### **RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

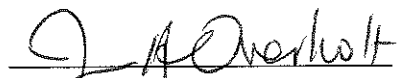
### **APPROVED BY:**



Andrew J. Takata  
City Manager



**REVIEWED BY:**

A handwritten signature in black ink, appearing to read "June Overholt", written over a horizontal line.

June Overholt

Deputy City Manager/Administrative Services Director

**Attachments:**

- A. Second Amendment to Professional Services Agreement with Saddleback Realty Analysis, Inc.  
DBA Integra Realty Resources

**SECOND AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT  
BETWEEN THE CITY OF BANNING AND SADDLEBACK REALTY  
ANALYSIS, INC. DBA, INTEGRA REALTY RESOURCES**

THIS SECOND AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT ("Second Amendment") is made and entered into as of the 10<sup>th</sup> day of April 2012, by and between the CITY OF BANNING ("City") and Saddleback Realty Analysis, Inc. DBA, INTEGRA REALTY ("Consultant").

**R E C I T A L S**

A. City and Consultant previously entered into an Original Consultant Services Agreement dated October 18, 2010, (the "Original Agreement") in an amount not to exceed \$16,000 to provide professional services with respect to the preparation of appraisal reports for properties located at 280 E. Ramsey Street and any future appraisals for properties within the City of Banning; and

B. The purpose of this Second Amendment is to provide for up to \$10,000 worth of additional professional appraisal services with respect to the City's Electric Utility Land Development and any future potential projects which would increase the not to exceed maximum to \$41,000; and

C. Collectively, the Original Agreement, the First Amendment, and this Second Amendment are hereinafter referred to as the "Agreement"; and

D. It now becomes necessary to further amend the Agreement and both parties are desirous of such amendment.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the parties agree that said Agreement be further amended in the following particulars only:

Section 1. Section 2.1 is hereby amended to increase the budget limit by \$10,000, to a new total of \$41,000 for the purpose of providing additional professional services with respect to the preparation of appraisal reports from Consultant with respect to the City's Electric Utility Land Development and any future potential projects.

Section 2. Except as expressly provided in this Second Amendment, all other provisions of the Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Consultant, through their duly authorized officers, have executed this Second Amendment, effective as of the date first above written.

"CITY"

CITY OF BANNING

By: \_\_\_\_\_  
Don Robinson, Mayor

ATTEST:

By: \_\_\_\_\_  
Marie Calderon, City Secretary

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
David Aleshire, City Counsel

"CONSULTANT"

Saddleback Realty Analysis, Inc.  
DBA, Integra Realty Resources -  
Orange & Riverside Counties

By: \_\_\_\_\_  
Name:  
Title: Larry D. Webb, MAI, FRICS  
Managing Director

Address: Integra Realty Resources  
24411 Ridge Route Drive, Ste. 100  
Laguna Hills, CA 92653-1694

## CITY COUNCIL AGENDA

**Date:** April 10, 2012

**To:** City Council

**From:** Jeff Stowells, Fire Services Battalion Chief

**Subject:** Resolution authorizing expenditure of funds obtained from American Medical Response Fine Money Distribution (April 2010 – March 2011).

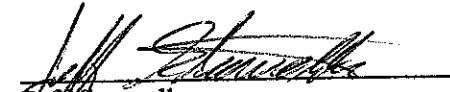
**RECOMMENDATION:** The City Council adopt Resolution No. 2012-13, authorizing the expenditure of \$8,224.00 received from American Medical Response.

**JUSTIFICATION:** The money obtained through late ambulance response penalty fees must be spent on medical and/or rescue equipment

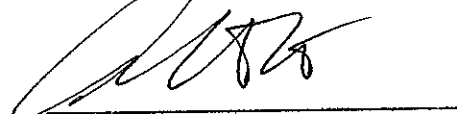
**BACKGROUND:** The fire department uses various types equipment in the rescue and treatment of people involved in medical and fire emergencies. Most of this equipment is reaching it useful life expectancy and is in need of replacement.

**FISCAL DATA:** Allocate the \$8,224.00 received from AMR in FY 2010-2011 to replace aging and/or broken EMS/Rescue equipment. The difference in the cost of replacement equipment will come out of the Fire Departments current approved budgeted funds if it is needed.


**RECOMMENDED BY:**

  
Jeff Stowells  
Fire Services, Battalion Chief

**APPROVED BY:**

  
Andrew Takata  
City Manager

**REVIEWED BY:**

  
June Overholt  
Administrative Director

**RESOLUTION NO. # 2012-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING THE EXPENDITURE OF LATE AMBULANCE PENALTY  
FEES FOR THE PURCHASE OF EMERGENCY MEDICAL AND RESCUE  
EQUIPMENT.**

**WHEREAS**, as set forth in the Emergency Medical Service Agreement (EMSA) penalty fees are assessed for late ambulance response times, and

**WHEREAS**, for the 2010-2011 reporting period, the City of Banning has recovered \$8,224.00 in late ambulance response penalty fees, and

**WHEREAS**, the recovered penalty fees are utilized to purchase Emergency Medical and Rescue Equipment to upgrade and enhance the Emergency Medical Service capabilities of the Fire Department to protect the citizens of Banning;

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning hereby authorize the expenditure of \$8,224.00 for the purchase of medical and rescue related equipment and authorize the City Finance Department to make the appropriate budget adjustments.

**PASSED, APPROVED, AND ADOPTED** this 10<sup>th</sup> day of April 2012.

\_\_\_\_\_  
Don Robinson, Mayor

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

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

**ATTEST:**

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Resolution 2012-13 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 10<sup>th</sup> day of April, 2012, and was duly adopted at a regular meeting of said City Council held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, City Clerk  
City of Banning

## CITY COUNCIL AGENDA

**Date:** April 10, 2012  
**TO:** Honorable Mayor and City Council  
**FROM:** Fred Mason, Electric Utility Director  
**SUBJECT:** Resolution No. 2012-19 Approving the Agreement for Consultant Services Between the City of Banning and SAIC Energy, Environment & Infrastructure, LLC

**RECOMMENDATION:** The City Council approve the Agreement for Consultant Services between the City of Banning and SAIC Energy, Environment & Infrastructure, LLC (formerly RW Beck), attached herewith as Exhibit "A" in the amount of two hundred ten thousand, six hundred seventy dollars (\$210,670.00).

**JUSTIFICATION:** It is essential that the City obtain project management services to oversee the Electric department's Downtown Undergrounding Project.

**BACKGROUND:** The City has been working on an overall project to beautify and revitalize Banning's downtown area. As a part of this effort, the City Council adopted resolution 2010-27 authorizing the Electric department to utilize a portion of its Electric Bond proceeds for the undergrounding of the Utility's distribution system in the area commonly referred to as the "Downtown Corridor". The boundaries for the Corridor are Fourth Street to the west, Alola to the east, Williams to the north and Livingston to the south.

While the Electric department staff has prepared much of the ancillary requirements in preparation for the commencement of the Downtown Undergrounding Project, the department management realized that it did not have available personnel with the expertise necessary to oversee a two-year project of this magnitude, and therefore began negotiations for project management services.

SAIC Energy, Environment & Infrastructure, LLC ("SAIC") formerly known as RW Beck, has done a significant amount of work for the Banning Electric department, including project management for the construction of the Sunset Substation, the Utility's 10-Year Master Plan, the Power Supply Plan, as well as some other distribution system maintenance/expansion projects. Because of this in-depth knowledge of the City's Electric Utility system, it was decided to utilize SAIC for the project management services required for the Downtown Undergrounding Project.

SAIC has assigned subject experts for the various elements of the project management functions to ensure that the Downtown Undergrounding Project is completed on-time, on-budget and maintains a high quality that will meet and/or exceed the City's specifications. SAIC personnel will interact with the outside contractors, as well as Electric department staff, to ensure that the project is completed efficiently and effectively.

Staff is recommending that the City Council approve the proposed Agreement for Consultant Services between the City of Banning and SAIC Energy, Environment & Infrastructure, LLC,

attached herewith as Exhibit "A" in the amount of two hundred ten thousand, six hundred seventy dollars (\$210,670.00). The Downtown Undergrounding Project will commence with approval of this Agreement, and is anticipated to last approximately two years.

**FISCAL DATA:** The cost of this proposal is two hundred ten thousand, six hundred seventy dollars (\$210,670.00). Funds are available in the Electric Bond Fund, and will be appropriated through the regular budget process for Fiscal Years 2012-2014.

**RECOMMENDED BY:**



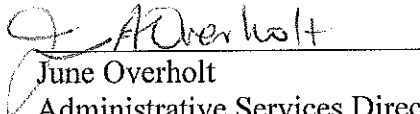
Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager



**RESOLUTION NO. 2012-19**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE AGREEMENT FOR CONSULTANT SERVICES BETWEEN THE CITY OF BANNING AND SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, LLC**

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

**WHEREAS**, the City desires to underground a portion of its electric distribution system in the Downtown Corridor; and

**WHEREAS**, the City of Banning desires to obtain project management services to oversee said Downtown Undergrounding Project; and

**WHEREAS**, the City has negotiated an Agreement for such services with SAIC Energy, Environment & Infrastructure, LLC (attached herewith as Exhibit "A"); and

**WHEREAS**, funds for said Agreement are available in the Electric Bond Fund and will be appropriated during the regular Fiscal Year 2012-2014 budget process;

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

SECTION 1: Adopt Resolution 2012-19 approving the consulting services agreement between SAIC Energy, Environment & Infrastructure, LLC and the City of Banning, and authorize the City Manager or his designee to execute and administer said Agreement.

SECTION 2: The Administrative Services Director is authorized to make the necessary budget adjustments related to these funds during the regular FY 2012-14 budget process.

**PASSED, APPROVED, AND ADOPTED** this 10<sup>th</sup> day of April 2012.

---

Don Robinson, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

---

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

**ATTEST:**

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-19 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

## **Exhibit “A”**

# **CONTRACT SERVICES AGREEMENT**

**By and Between**

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

**and**

**SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, LLC  
A DELAWARE LIMITED LIABILITY COMPANY**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, LLC**

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this \_\_\_\_ day of April, 2012 by and between the City of Banning, a municipal corporation (“City”) and SAIC Energy, Environment & Infrastructure, LLC, a Delaware limited liability company, (“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 Two Hundred Ten Thousand, Six Hundred Seventy Dollars (\$210,670.00) (the "Contract Sum"), 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:

Stephen C. Baumgart  
(Name)

Senior Project Manager  
(Title)

Steven S. Rupp  
(Name)

Assistant Vice President  
(Title)

(Name) \_\_\_\_\_

(Title)

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

#### 4.2 Status of Contractor.

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

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent Contractor.

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

#### 4.5 Prohibition Against Subcontracting or Assignment.

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

## ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

### 5.1 Insurance Coverages.

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

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

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

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

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

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

### 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days

prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

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

CANCELLATION:

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

[to be initialed]

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

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

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

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

### 5.3 Indemnification.

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

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

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

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

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



#### 5.4 Performance Bond.

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

#### 5.5 Sufficiency of Insurer or Surety.

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

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

#### 6.1 Records.

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

#### 6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost

of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

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

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

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

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other

discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

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

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

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

### **7.3 Retention of Funds.**

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

#### 7.4 Waiver.

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

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### 7.6 Legal Action.

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

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$\_\_\_\_\_) 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:**

SAIC ENERGY, ENVIRONMENT & INFRASTRUCTURE, LLC, a Delaware limited liability company

By:\_\_\_\_\_  
Name: Theresa A. Lawson  
Title: Vice President

By:\_\_\_\_\_  
Name: Charles H. Williams  
Title: Vice President

Address: 1001 4<sup>th</sup> Avenue, Suite 2500,  
Seattle, WA 98154

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.**

112



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	
TITLE(S)	
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	
_____	

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_

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

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

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

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	
TITLE(S)	
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	_____
<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	
_____	

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

\_\_\_\_\_  
SIGNER(S) OTHER THAN NAMED ABOVE

## **EXHIBIT "A"**

### **SCOPE OF SERVICES**

- I.** Contractor will perform the following Services:

#### **Task 1: SAIC Contract Administration**

SAIC's Project Manager will administer our contract with the City, monitoring performance of this scope of services, assigning resources as required for timely performance of this scope of services. SAIC will prepare a monthly report summarizing the activities performed by SAIC over the past month and the anticipated work to occur during the next billing cycle. The monthly report will be issued to the City in support of SAIC's monthly invoices for services performed. The monthly report will also identify any areas for potential concern that may impact the SAIC scope of services, schedule of performance or budget; although, any issues will also be proactively communicated by phone.

SAIC's Project Manager will also oversee the quality of the team's work, and that quality control of SAIC work products and activities is conducted by qualified persons and services are in line with industry standards and City expectations. In addition, SAIC's Project Manager will coordinate with City staff on a regular basis to confirm that the performance and involvement of SAIC is satisfactory and reasonable, respectively.

#### **Task 2: Program Management**

##### **Task 2.1: Program Schedule Development**

The City and SAIC will conduct a telephone meeting to review the Underground Conversion Project Schedules prepared by SAIC under the previous contract. As required, SAIC will update the Project Schedules to reflect the current status of work and progress to date. The updated Project Schedule will serve as the baseline schedule used in measuring the progress and performance of each phase of work as the designs are completed, bid and constructed, and to monitor the program as a whole.

It is assumed that the City will be responsible for providing to SAIC City resource and cost estimation information for the Underground Conversion Projects if needed.

The Project Schedules will remain in their current format (Microsoft Project Standard 2007).

##### **Task 2.2: Program Schedule Maintenance**

SAIC shall track project progress and performance against the baseline schedule. As necessary, SAIC will update the schedule each month throughout the Underground

Conversion Program lifecycle to reflect actual progress. Changes to the baseline schedule may be required under the following conditions:

- Changes in City's preferences of project priorities, resource assignments, resource allocations and project timelines
- Changes or delays in City's internal processes such as coordination with other City departments, contracting, procurement, approvals, authorizations and permitting
- Contract change orders
- Force majeure events

### **Task 2.3: Monthly Reporting**

As part of the construction progress meetings (see Task 5.3) and periodic site audits (see Task 5.4), SAIC will assess the actual project progress, resource assignment and allocation needs going forward. SAIC will identify any issues that may impact the project schedules, resource allocations and assignments going forward.

SAIC shall, as part of its monthly reporting to the City will summarize the progress and performance of the program implementation. The monthly report will:

- Identify any deviations from the baseline schedule, resource assignments and allocations
- Identify any issues requiring resolution and the recommended mitigation efforts taken or that need to be taken to minimize/avoid negative impact to the baseline schedule
- Summarize observations made during the periodic site audit

### **Task 3: Independent Review of Contract Packages**

The City is responsible for the design of each phase of work to be performed by contractors selected through a public bidding process. The information to be reviewed by SAIC includes bidding and contractual requirements, general construction requirements, technical specifications including material and execution requirements, and drawings.

SAIC shall perform an independent review of each package to be issued for bid. It is understood that the program will be implemented in five (5) separate phases, however one phase has already been bid and a contractor selected by the City, therefore requiring only up to four (4) construction package reviews. It is anticipated that after the first review by SAIC our efforts will be significantly reduced on subsequent review packages due to the use of comment elements.

SAIC shall provide our comments in memorandum format. Comments may include suggested Terms and Conditions and specification language modifications or additions to help the City minimize its risk. Comments will be reviewed with the City by conference call (no in-person meetings are anticipated to be required for this task). It is assumed that the City will implement any modifications to the design documents resulting from the independent review.

The City is not requiring SAIC to review the design, including calculations prepared by the City or confirming the design is sufficient to meet the City's customer needs in the downtown core.

#### **Task 4: Bid Process Facilitation**

SAIC shall administer the bid process for each of the four (4) remaining phases of construction to be bid. SAIC's responsibilities shall include:

- Preparing for (including development of an agenda), attending, and administering the (mandatory) pre-bid conference. One representative of SAIC will be present for each pre-bid conference. A work area site visit with all potential bidders will be conducted for each phase following the pre-bid conference.
- Preparing formal responses and/or meeting notes, which will be issued to all potential bidders in attendance following each meeting.
- Being the primary point of contact for potential bidder questions and requests for information/clarification.
- Preparing responses to potential bidder questions and requests for information/clarification. SAIC will coordinate with the City, for their development of any technical specification and drawing related modifications.
- Preparing the format of, packaging the content for, and issuing any Addenda. It is assumed that one (1) Addenda will be required for each phase of construction.
- Evaluating bids received and opened by the City. The bid evaluations shall include:
  - Confirmation that the bids are complete - that all required information has been provided
  - Verification of bidder qualification statements, if determined by SAIC and the City to be necessary; typically bidder qualifications will only be verified for the apparent low bidder (and other bidders as necessary if there are issues with a lower bidders bid)
  - Review of the bids for any inconsistencies or non-responsive issues
  - Preparation of a factual summary of each evaluation

- Identification of the apparent lowest responsive and responsible bidder for the City's use in determining the award of the contract, including justification to support the City in responding to any contested bids

It is assumed that the City will advertise each project, will receive the bids, and will open the bids.

## **Task 5: Construction Administration and Oversight**

### **Task 5.1: Contract Preparation and Execution**

For each phase of construction, SAIC shall confirm that the Contractor has submitted all required documents for contract execution (e.g., insurance certifications, licenses, etc.) and assist the City in preparing the final form of contract, including packaging of all supporting documents, ready for execution by the Contractor and City Council.

The City will prepare the Issued for Construction specifications and drawings incorporating any addenda issued during the bid phase.

### **Task 5.2: Pre-Construction Meeting**

SAIC shall prepare for, attend and facilitate the pre-construction meeting for four (4) phases of construction. One representative of SAIC will be present for each pre-construction conference. A site visit to discuss specific construction issues will immediately follow the meeting. SAIC shall prepare meeting notes for distribution and comment.

It is assumed that the City will be represented at the meeting which will occur at the City Electrical Department's office.

### **Task 5.3: Construction Progress Meetings**

SAIC shall participate in construction progress meetings. Given the relatively short duration of each phase of work, it is assumed that meetings will occur weekly.

SAIC shall facilitate the meetings, including preparation of an agenda and meeting notes. Except when meetings coincide with the periodic site audits, SAIC will participate by telephone.

In advance of each meeting, SAIC will review inspection reports prepared by the City or independent inspection agency.

**Task 5.4: Periodic Site Audits**

SAIC will conduct a monthly site audit to verify the status of construction compared to the Contractor's plan. If practical, monthly site audits will be scheduled to coincide with a construction progress meeting and receipt of the Contractor's monthly pay application request.

**Task 5.5: Contractor Submittals Process Administration**

SAIC shall process (receive, log, distribute and track) all submittals by the Contractor.

Upon receipt of each submittal, SAIC will first confirm that the submittal is complete. Incomplete submittals may be returned to the Contractor without further processing. After logging each submittal received, SAIC will route submittals to the City or other responsible party for review. SAIC will track the review progress to ensure a timely response is provided in accordance with contract requirements.

It is assumed that the construction documents for each phase will require up to twenty five (25) submittals from each Contractor. SAIC will review up to ten (10) submittals per construction phase, focused primarily on administrative submittals; the City will review the more-technically based submittals related to the design of the facilities (e.g., material and equipment submittals). The final list of submittals to be reviewed by SAIC will be determined with the City as the construction documents are finalized.

**Task 5.6: Change Requests and Orders**

SAIC shall assist the City in developing work change requests to be issued to the Contractor. SAIC will also be responsible for issuing work change requests and evaluating the reasonableness of the responses from the Contractor, specifically pertaining to cost increases or schedule extensions.

SAIC will also evaluate any change notifications by contractor for reasonableness and legitimacy with respect to the contract documents.

If warranted, SAIC will prepare change order paperwork for execution by the City and Contractor.

It is assumed that up to three contract changes may occur for each phase of work.

Support to the City for any dispute resolution proceedings is not included in this scope of services.

### **Task 5.7: Pay Application Review**

SAIC shall review each monthly pay application submitted by the Contractor. SAIC will confirm that all information provided is complete and correct; including verifying that the Contractor has submitted certified payroll documentation. SAIC's review will occur in conjunction with the periodic site audits. SAIC will independently verify the progress of work completion to ensure the request for payment is reasonable. Based on its review, SAIC will make a recommendation to the City for the amount of each application to be paid.

If necessary, SAIC will notify the Contractor of any issues with a submitted application or the reasons for its recommendation to reduce the payment amount requested.

### **Task 6: City Council Briefings**

SAIC shall attend two (2) City Council meetings, as requested by the City. It is assumed that the meetings will occur at about the midpoint of program implementation to brief the Council on progress to date and at the end of the program when all work is complete.

### **Scope of Services Clarifications:**

The following additional clarifications support the level of effort estimate.

1. The program is assumed to be up to 20 months in duration, implemented in five (5) separate construction phases running sequentially, not concurrently. However, the bidding phases may overlap with construction activity for the previous phase. The total duration of construction activity is estimated to be up to 18 months.
2. The City has bid and awarded the construction contract for the first phase or work, requiring SAIC's involvement for four (4) pre-bid meetings and four (4) pre-construction meetings.
3. The City is the responsible engineer and does not require SAIC to seal and sign design documents for bid or construction.
4. The City will prepare the conformed to construction record drawings based on redline as-built drawings and specification documents maintained by the construction contractors.
5. Site Visits are assumed to be 10 hours in duration, including travel (from Southern California), occurring on one day. Site visits occur for pre-bid meetings (4), pre-construction meetings (4), and periodic, monthly site audits (18).
6. It is not anticipated that additional site visits to the work site will be required during the construction periods. Site visits performed as part of contractor pay



application reviews and in-person participation at construction progress meetings will coincide with monthly site audits.

**Other Assumptions:**

SAIC recommends given the nature of underground work and possibility for issues resulting from unforeseen, unanticipated conditions or periods of unmonitored work, that the City provide full time inspection by making it a requirement of each contractor to employ the services of a qualified independent inspection agency approved by City. Although provided under the construction contract, the inspection agency will act on behalf of the City and have specific reporting functions to the City.

- II. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:
  - A. Monthly update on project status.
- III. All work products are 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.
- IV. Contractor will utilize the following personnel to accomplish the Services:
  - A. Steve Rupp, Client Manager
  - B. Steve Baumgart, Project Manager
  - C. Sebnem Tezsezen, Asst. Project Manager and Schedule Management
  - D. John (Dru) Ernst, Home-Office Construction Engineer
  - E. Garrett Moak, Underground Distribution Engineer
  - F. April Pendera, Field Observation / On-Site Representative
  - G. Alisha Langston-Bond, Administrative Support

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

1. Delete the last 3 sentences of section 1.1 and replace with the following:

"Contractor will perform services under this Agreement with the degree of skill and diligence normally practiced by professional engineers or consultants performing the same or similar services."

2. In section 1.5, replace the word "warrants" with "represents" where appearing.
3. At the end of section 1.6, add the following:

"or the negligence of a third party."

4. Delete section 1.7, and replace with the following:

"1.7. Reperformance of Services.

If City believes any of the services provided under this Agreement do not comply with the terms of this Agreement, City shall promptly notify Contractor to permit Contractor an opportunity to investigate. If the services do not meet the applicable standard of care, it will promptly reperform the services at no additional cost to City, including assisting City in selecting remedial actions. If City fails to provide Contractor with prompt notice of non-compliance and an opportunity to investigate and reperform its services, Contractor's total obligation to City will be limited to the costs Contractor would have incurred to reperform the services."

5. In section 4.5, replace the word "Agency" with "City" where appearing.
6. In section 5.2, delete all references to certificates of insurance, and replace with the following:

"Contractor shall provide City with its Memorandum of Insurance evidencing the required coverages and endorsements."
7. In section 5.2, delete the portion titled "CANCELLATION" and replace with the following:

"Contractor shall provide City at least 30 days' written notice of the cancellation of any policy required herein."

8. Amend the first paragraph of Section 5.3(c) as follows:

"In the event the City, its officers, agents or employees is made a party to any legal or administrative action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of the negligent performance of, or failure to perform the work, operation or activities of, Contractor required by this Agreement, 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 for the City's defense of such action or proceeding, which costs of defense include all costs and expenses to the extent they are reasonable in amount, are actually and necessarily incurred in good faith by the City and directly related to the legal or administrative action or proceeding filed or prosecuted against Contractor."

9. The last two sentences of the second paragraph of Section 5.3(c) shall be revised as follows:

"The provisions of this Section do not apply to claims or liabilities to the extent they are the result of City's negligence or willful acts or omissions. The 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."

10. In section 5.3, add the following:

"(d) No employee of Contractor shall have individual liability to City."

11. In section 5.3, add the following:

"(e) In no event and under no circumstances shall Contractor be liable to the City for any principal, interest, loss of anticipated revenues, earnings, profits, increased expense of operation or construction, loss by reason of shutdown or non-operation due to late completion or otherwise or for any other economic, consequential, indirect or special damages."

12. Delete section 5.4.

13. In section 5.5, delete all after the first sentence.

14. In section 7.3(i), delete the following:

"or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City"

15. Delete section 7.7.
16. In section 7.8, replace the word "Agency" with "City" where appearing.
17. In section 7.8, delete the 6<sup>th</sup> sentence and delete the following in the 5<sup>th</sup> sentence:  

"Except where the Contractor has initiated termination,"
18. In section 7.10, delete the last sentence.
19. In section 8.1, replace the word "Agency" with "City" where appearing.

**EXHIBIT "C"**

**COMPENSATION**

- I.** The budget includes the estimated hours (level of effort) to perform the scope of services described in Exhibit A. Labor will be billed based on actual time and expenses will be billed at cost.

Task No.	Task Description	Est. Hours	Est. Labor	Est. Expenses	Total
1	SAIC Contract Administration	88.00	\$11,704		\$11,704
2	Program Management				
2.1	Program Schedule Development	9.00	\$1,074		\$1,074
2.2	Program Schedule Maintenance	39.50	\$4,831		\$4,831
2.3	Monthly Reporting	39.50	\$4,831		\$4,831
3	Independent Review of Construction Packages	193.50	\$26,299		\$26,299
4	Bid Process Facilitation				
4.1	Pre-Bid Conference	74.50	\$10,187	\$656	\$10,843
4.2	Response to RFI and Addenda	97.00	\$13,121		\$13,121
4.3	Bid Evaluation and Recommendation	75.00	\$10,424		\$10,424
5	Construction Administration and Oversight				
5.1	Contract Preparation and Execution	88.00	\$11,599	\$250	\$11,849
5.2	Pre-Construction Meeting	92.00	\$12,492	\$656	\$13,148
5.3	Construction Progress Meetings	160.00	\$22,921		\$22,921
5.4	Periodic Site Audits	180.00	\$23,580	\$3,654	\$27,234
5.5	Submittals Process Administration	254.50	\$29,130		\$29,130
5.6	Change Requests and Orders	77.00	\$11,605		\$11,605
5.7	Pay Application Review	85.50	\$11,656		\$11,656
6	Council Meetings	20.00	\$0		\$0
	<b>Total</b>				<b>\$210,670</b>

- II.** 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.
- III.** The City will compensate Contractor for the Services performed 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.
- IV. The total compensation for the Services shall not exceed two hundred ten thousand, six hundred seventy dollars (\$210,670.00), as provided in Section 2.1 of this Agreement.
- V. The Contractor's billing rates for all personnel are attached as Exhibit C-1.

**EXHIBIT "C-1"**

**CONTRACTOR BILLING RATES**

<b>Title / Role</b>	<b>Billing Rate</b>
Project Manager	\$177.00
Construction Engineer (Home-Office)	\$131.00
On-Site Representative	\$131.00
Schedule Manager	\$122.00
Distribution Engineer	\$122.00
Administrative Support	\$89.00

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

- I. Contractor will begin work on the project immediately following receipt of the authorization to proceed. It is estimated that implementation of the Underground Conversion Project will take up to twenty (20) months to complete. Estimated completion date is December 31, 2013.
- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2 of the Agreement.



**ORDINANCE NO. 1450**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA AMENDING THE DEUTSCH SPECIFIC PLAN  
AND SUPERSEDING IT WITH THE BUTTERFIELD SPECIFIC PLAN  
AND ADOPTING CONDITIONS OF APPROVAL AND MAKING  
FINDINGS IN SUPPORT THEREOF**

**WHEREAS**, the City of Banning received an application on August 20, 2007 for an amendment to the Deutsch Specific Plan to provide zoning regulations for the Butterfield Specific Plan including a General Plan Amendment and Zone Change, amendment to the Development Agreement, and approval of an EIR to allow the development of up to 5,387 dwelling units (937.4 acres of residential), a golf course and open space (253.9 acres), parks (66.5 acres) and other open space (108.4) acres, two school sites (23.0 acres), and existing utilities substation facility (4.2 acres), a fire station site (1.6 acres) and backbone roadways (113.6 acres). The project also includes the construction of major on-site and off-site infrastructure, including, but not limited to: various on-site and off-site street improvements to provide access to and from the project site; designation of a site for a potential waste water treatment facility; various on-site and off-site conveyance pipelines for sewer, water, storm drain; a multi-purpose detention basin, and drainage improvements to Pershing Channel and Smith Creek immediately upstream and downstream of the 1,543-acre project site to accommodate the mixed-use master planned community.

Project Applicant: Pardee Homes (Authorized Agent Mike Taylor, Vice President of Pardee Homes, 10880 Wilshire Boulevard, Suite 1900, Los Angeles, CA 90024)

Property Owners: Pardee Homes owns 1,522 acres within the Butterfield Specific Plan.  
Highland Springs Country Club Owners Association owns the 21-acre property that is located at the northwest corner of the Butterfield Specific Plan (APN: 408-060-006, 007 & 008 portion).

Project Location: Northeast Corner of Highland Springs Avenue and Wilson Street

APN Number: The project includes 34 parcels: 408-060-006, 007 & 008 (por.); 408-030-001 & 005; 408-120-001 through 020, 022, 024, 025, 027 & 033; and 531-080-013 & 014.

Specific Plan Size: 1,543 Acres

**WHEREAS**, Pardee Homes requests an amendment to the Deutsch Specific Plan by superseding it with the zoning regulations for the Butterfield Specific Plan so that future development within the project site conforms to the Butterfield Specific Plan.

**WHEREAS**, the Butterfield Specific Plan and Conditions of Approval (Exhibit "A") including its companion entitlement applications for General Plan, Zone Change, and Development Agreement amendment, and Water Supply Assessment are considered a Project pursuant to CEQA Guidelines sections 21065.

**WHEREAS**, Government Code Sections 65450 through 65454 establish the authority for the adoption a Specific Plan, identify the required contents of the Specific Plan and mandate consistency with the General Plan.

**WHEREAS**, Chapters 17.44 and 17.96 of the Banning Zoning Code specifies the purpose, the content of the Specific Plan, procedures for the preparation and adoption of the Specific Plan, and findings.

**WHEREAS**, the City of Banning development team has reviewed the Butterfield Specific Plan and associated entitlement and determined that the Specific Plan meets the requirements of Government Code Sections 65450 and 65454 and Chapters 17.44 and 17.96 of the Banning Zoning Code.

**WHEREAS**, the approval of an amendment to the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan as referenced herein, including its companion applications for General Plan Amendment No. 11-2501 and Zone Change No. 11-3501, and Development Agreement amendment, is considered a project pursuant to CEQA Guidelines Section 21065.

**WHEREAS**, consistent with Section 15083 of CEQA and prior to completing the draft Environmental Impact Report ("EIR"), the City held an early consultation or scoping meeting regarding the environmental issue areas to be considered in the EIR. The City published the Notice of Preparation ("NOP") including the Scoping meeting in the Record Gazette and on the City's website. The City also mailed the NOP to residents who are located within 300' of the Project site and to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held three (3) public scoping meetings. Two (2) scoping meetings were held on October 16, 2007, from 2 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. Another scoping meeting was held on October 22, 2007, from 6 p.m. to 8 p.m.

**WHEREAS**, a Final EIR (SCH No. 2007091149), including Draft EIR and Mitigation Monitoring and Reporting Program were prepared in accordance with the California Environmental Quality Act Sections 15000-15387 (Title 14, Chapter 3 of California Code of Regulations), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines.

**WHEREAS**, consistent with Sections 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made the Draft EIR available for a 45-day public review period from June 6, 2011, to July 21, 2011. The NOA was published in the Press Enterprise and the City's website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies. Also, the City mailed the NOA to the residents, who live within

300' radius of the Project boundaries, groups and organizations, and members of the public who requested to be on the mailing list of the Project.

**WHEREAS**, prior to the close of the comment period, the City held a public workshop on June 21, 2011 to provide information and answer questions from interested members of the public regarding the Project and the Draft EIR.

**WHEREAS**, during the public workshop of June 21, 2011, the City received questions and comments mostly on traffic, among other questions about the Project. In response to the oral comments on traffic, the City held another workshop on July 14, 2011 to respond to questions from members of the public regarding the traffic analysis report and conclusions.

**WHEREAS**, the City received 31 comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project for the Draft EIR and the impacts of the Butterfield Specific Plan, including its associated applications as referenced herein.

**WHEREAS**, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses, which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on Friday, February 24, 2012. The Final EIR was made available at City Hall Community Development Counter, the Banning Public Library, and the City's website.

**WHEREAS**, on March 7, 2012, the Banning Planning Commission held a duly-noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR, and all other documentation relating to the Project, and the Commission unanimously recommended approval of the Project and certification of the Final EIR to the City Council.

**WHEREAS**, on March 16, 2012, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning the Project to be held before the City Council. On March 27, 2012, the City Council held its public hearing on the Project and Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR and all other documentation relating to the Project.

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

#### SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2007091149), including Draft EIR and Mitigation Monitoring and Report Program was prepared in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines Sections 15000 through

15387, and the City of Banning Environmental Review Guidelines. Whereas, the City Council Resolution No. 2012-24 as referenced herein provides environmental findings for the Project.

SECTION 2. REQUIRED FINDINGS FOR AN AMENDMENT TO THE EXISTING REGULATIONS FOR THE DEUTSCH SPECIFIC PLAN AND REPLACE IT WITH THE BUTTERFIELD SPECIFIC PLAN

**Finding No. 1:** The proposed Specific Plan is consistent with the General Plan, as amended.

**Findings of Fact:** The proposed Specific Plan is partially inconsistent with the existing General Plan. The current General Plan Land Use and Zoning designations for the project site is Deutsch Specific Plan. The proposed General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 will change the land use designations and zoning of the project site from Deutsch Specific Plan to Butterfield Specific Plan which will make the Butterfield Specific Plan consistent with the General Plan Land Use and Zoning. With approval of the General Plan Amendment No. 11-2501 and Zone Change No. 11-3501, the proposed Butterfield Specific Plan would be consistent with the intent of the General Plan through designation of the site as Specific Plan. Consistency of the Butterfield Specific Plan pertaining to the proposed project is assessed in Section 7.0 of the Butterfield Specific Plan dated November 21, 2011 and is attached herein.

**Finding No. 2:** The proposed Specific Plan would not be detrimental to the environment, or to the public interest, health, safety, convenience, or welfare of the City.

**Finding of Facts:** In compliance with State law (Government Code Sections 65450 et. seq.) the proposed Butterfield Specific Plan includes the following information:

(1) *The distribution, location, and extent of land uses, including residential, commercial, open space and trails, golf course, a site for fire station, a public community center, and sites for two elementary schools.* Specifically, Section 1.0, pages 1-1 to 1-17 includes maps and diagrams for the distribution, location, and extent of the uses of land, including open space. In addition, the text accompanies the maps and diagrams providing detail information as to the specific plan land uses, their location, and intensity/density of the uses. Furthermore Sections 3.0 through 3.1.2, pages 3-1 through 3-16 of the Specific Plan provide detailed development plans for each of the land uses. Detail information of the distribution, location, and extent of the parks and open space development is provided in Section 3.6 through 3.6.6, pages 3-85 through 3-98.

(2) *The distribution, location and extent and intensity of major components of public and private transportation, water, sewer, drainage, solid waste disposal, energy, and other essential facilities within the*

*project area required to support the land uses described in the Specific Plan.* Specifically, Section 3.2 through 3.5.5, pages 3-17 through 3.84 provide detail information via text and diagrams/maps showing distribution location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan. Other public services and essential facilities for the project including schools, fire and police protection, library, cable, gas, and health services are provided in Section 3.7.1 on pages 2-97 through 3-99.

(3) *Standards and criteria for which the development will proceed; and* Specifically, the following sections of the Butterfield Specific Plan provides standards and criteria for which the development will proceed:

- a. Section 3.7.2, pages 3-99 through 3-105 provide phasing for each development
- b. Sections 4.1 through 4.13.9, pages 4-1 through 4-139 provide detail development design guidelines for the community, neighborhood, and individual buildings and how they are to be developed.
- c. Sections 5.0 through 5.8.1 provide specific details development regulations for each of the land use districts and how they are to be developed.

(4) *A program for implementation including regulations, programs, public works projects and financing measures necessary to carry out the project;* Specifically, Section 6.0 through 6.2.2, pages 6-1 through 6-4 of the Butterfield Specific Plan provides details information on the administration and implementation of the Specific Plan that includes regulations, programs, public works projects, and financing measures necessary to carry out items (1), (2), and (3). The financing measures include Community Facility District which is described in detail in Section 3.7.3 on page 3-105. Details of the finding of facts are included in Ordinance No 1450.

(5) *A Statement of Relations of the Specific Plan to the adopted General Plan.* Specifically, Section 7.0 of the Butterfield Specific Plan findings of consistency with the General Plan as referenced herein, the proposed General Plan Amendment and Zone Change would maintain the appropriate balance of land uses within the City and specifically, it will implement the Citywide goal of “a balanced well-planned community including business which provides a functional pattern of land uses and enhances the quality of life for all Banning residents.”

Additionally, the Specific Plan has been reviewed to ensure that there are adequate two-points of access within each of the neighborhoods/ planning areas of the Plan to provide access for public safety emergency vehicles during an emergency.

As required by the California Environmental Quality Act (CEQA) Section 20165, an environmental impact report (EIR) [State Clearinghouse No. 2007091149] was prepared for the project. The EIR identified potentially significant effects on the environment and on the public interest, health, safety, convenience, and welfare of the City and identified mitigation measures that shall be incorporated into the Project to reduce impacts. In certain instances incorporation of mitigation measures were unable to reduce impacts to less than significant. Section 15091 allows the City to approve a project that has significant impacts on the environment and that which the impacts cannot be mitigated when there are economic, social, or other considerations that make it infeasible to mitigate the significant effects of the projects. Findings for approval must be provided consistent with Section 15093 of the CEQA Guidelines in that the City Council will need to adopt a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts

The City has prepared a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts associated with aesthetics, light and glare, air quality, and traffic and circulation and the cumulative impacts associated with aesthetics, light and glare, air quality, climate change, noise, and traffic and circulation. (Refer to City Council Resolution No. 2012-24).

Based upon the Statement of Overriding Considerations, sixteen (16) areas of Public Benefit related to the proposed Butterfield Specific Plan Project outweigh the seven (7) areas of significant unavoidable adverse impacts. The significant unavoidable adverse impacts are considered acceptable.

**Finding No. 3:** The subject property is physically suitable for the requested land use designation(s) and the anticipated development(s).

**Findings of Fact:** The project site is 1,543 acres and the majority of the site is located on flat land. The project site has been analyzed for constraints and opportunities for development including compatibility of the various densities and intensity of land uses surrounding the development, flood zone, earthquake fault, proximity to natural open space, availability of water and utilities to serve the development.

The proposed Project would continue a pattern of development that is already in place to the south, southeast, west and northwest of the site, providing desirable linkages between existing developments, extending

and improving the City's circulation system, and providing additional parks, schools, and other public facilities that would serve both proposed and existing land uses in the area. The Butterfield Specific Plan is proposing to substantially increase the open space to 428.8 acres, compared to the previously designated 268 acres of open space in the previously approved Deutsch Specific Plan. The Project would not physically divide an established community since the Project site is currently vacant and undeveloped.

As part of the community input and public review process for the preparation of the Specific Plan and at the request of the residents who live on Mockingbird Lane, the developer modified the lot sizes for the area that is located on the east side of the Highland Home Road and north of the "F" Street. Planning Area 50 of the Butterfield Specific Plan (refer to Exhibit 3.1, Land Use Plan, in the Specific Plan) which is the area to the north of the Mockingbird Lane has been designated as Low Density Residential, with a minimum average lot size of 7,500 sq. ft. Furthermore, starting at the back of lots along the existing lots on the north side of Mockingbird Lane, there would be approximately 390 ft. of open space between the rear property lines of lots located on Mockingbird Lane and the southern boundary of Planning Area 50.

Access to and from the project has been evaluated consistent with the General Plan policies and the County Master Plan of Roadways. Internal circulation systems have been reviewed to provide automobile, low speed electric vehicles, pedestrian, and bikeway connections within the project site. Additionally, each of the neighborhoods have been reviewed and provided two points of access for public safety vehicles during an emergency. Necessary utilities that include water, sewer, gas, electricity, cable, and telephone that will serve the development will be provided through the implementation of the Specific Plan.

**Finding No. 4:** The proposed Specific Plan shall ensure development of desirable character which will be compatible with existing and proposed development in the surrounding neighborhood.

**Finding of Fact:** The project site is 1,543 acres and is adequate and suitable to develop with the proposed land uses which are described in detailed in the Butterfield Specific Plan as incorporated herein by reference. The land use plan for the project takes into consideration the physical constraints and opportunities of the site including surrounding land uses, topography, geology, seismic hazards, soils, groundwater, drainage and flood control channels – Smith Creek and Pershing Channel, paleontology and archeology, biology, circulation and access, and utilities as described in detailed in Sections 2.1 through 2.7.2 of the Specific Plan.

The proposed Project would continue a pattern of development that is already in place to the south, southeast, west and northwest of the site, providing desirable linkages between existing developments, extending and improving the City's circulation system, and providing additional parks, schools, and other public facilities that would serve both proposed and existing land uses in the area. The Butterfield Specific Plan is proposing to substantially increase the open space to 428.8 acres, compared to the previously designated 268 acres of open space in the previously approved Deutsch Specific Plan. The Project would not physically divide an established community since the Project site is currently vacant and undeveloped.

The location of the various land uses has been distributed and placed to provide compatibility within the neighborhoods in the project and the surrounding area, including the neighborhood on the north side of the Mockingbird Lane as this neighborhood provided input as to compatibility of the previous lot sizes which were smaller compared to lot sizes in their neighborhood. Specifically, to improve compatibility with the existing residential development on the north side of Mockingbird Lane, the Project has designated Planning Area 50 (refer to Exhibit 3.1, Land Use Plan, in the Specific Plan) as Low Density Residential, with an minimum average lot size of 7,500 sq. ft. Furthermore, starting at the back of lots along the existing lots on the north side of Mockingbird Lane, there would be approximately 390 ft. of open space between the rear property lines of lots located on Mockingbird Lane and the southern boundary of Planning Area 50.

Access to and from the project has been evaluated consistent with the General Plan policies and the County Master Plan of Roadways. Internal circulation systems have been reviewed to provide automobile, low speed electric vehicles, pedestrian, and bikeway connections within the project site. Additionally, each of the neighborhoods have been reviewed and provided two points of access for public safety vehicles during an emergency. Necessary utilities that include water, sewer, gas, electricity, cable, and telephone that will serve the development will be provided through the implementation of the Specific Plan.

In compliance with SB 610 (Water Code Section 10910 et seq.), a Water Supply Assessment was prepared for the project, which is consistent with the City's Urban Water Management Plan, and which is incorporated herein by reference. The Water Supply Assessment concluded that the City's total projected water supplies are adequate to meet the projected water demand associated with the project, in addition to the City's existing and planned future uses.



Based on the facts indicated in this subsection and subsections above and the administrative record, the project site is suitable for requested land use designation(s) and the anticipated land use development(s).

**SECTION 3. CITY COUNCIL ACTION.**

The City Council hereby takes the following action:

Adopt Ordinance No. 1450 and introduce the first reading of the Ordinance adopting an amendment to the Deutsch Specific Plan and superseding it with the Butterfield Specific Plan and adopting the Conditions of Approval attached hereto as Exhibit "A" and making findings in support thereof.

**PASSED, APPROVED AND ADOPTED this \_\_\_\_\_ day of March, 2012.**

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

**ATTEST:**

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

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

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1450 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the \_\_\_\_ day of March 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie Calderon, City Clerk  
City of Banning, California

**Butterfield Specific Plan  
Draft Conditions of Approval**

**I. GENERAL/ONGOING**

**COMMUNITY DEVELOPMENT DEPARTMENT**

1. **Approved General Plan Amendment and Zone Change.** The General Plan Amendment and Zone Change are approved as shown in Exhibit "A" to Resolution No. 2012-03. An amended Development Agreement (the "Development Agreement") was approved concurrent with the General Plan Amendment and Zone Change. Capitalized terms used herein bear the same meaning as defined in the Development Agreement.
2. **Approved Butterfield Specific Plan.** This approval includes development of up to 5,387 new residential units on approximately 937.2 acres, a minimum of 36 and up to 88 acres of commercial/office, 253.9 acres of golf course or open space, 66.5 acres of park, 70.1 acres of natural/landscape/easement, 38.3 acres of drainage and open space areas, potentially two or more elementary school sites, as determined needed by the school districts, a 4.2 acre utility substation site, and approximately 113.6 acres of backbone roads as shown in the table below ("Project").

Land Use	Gross Acres	% of Area	Dwelling Units	% of Dwelling Units	Average Gross Density
<b>Residential<sup>3</sup></b>					
Low Density (LDR) 0-5 DU/AC	539.2	35.0%	2,222	41.2%	4.1
Medium Density (MDR) 0-10 DU/AC	324.4	21.0%	1,960	36.4%	6.0
High Density (HDR) 11-18 DU/AC	73.8	4.8%	1,205	22.4%	16.4
<b>Residential Subtotals</b>	<b>937.2</b>	<b>60.8%</b>	<b>5,387</b>	<b>100.0%</b>	<b>5.7</b>
<b>Open Space</b>					
Golf Course/Drainage/Open Space	253.9	16.5%			
Parks	66.5	4.3%			
Natural/Landscape/Easement	70.1	4.5%			
Drainage/Open Space	38.3	2.5%			
<b>Open Space Subtotals</b>	<b>428.8</b>	<b>27.8%</b>			
<b>Schools<sup>1</sup></b>	<b>23.0</b>	<b>1.5%</b>			
<b>Commercial/Office<sup>2</sup></b>	<b>36.0</b>	<b>2.3%</b>			
<b>Utility Substation – Existing</b>	<b>4.2</b>	<b>0.3%</b>			
<b>Backbone Roads</b>	<b>113.6</b>	<b>7.4%</b>			
<b>SPECIFIC PLAN TOTALS</b>	<b>1,543</b>	<b>100.0%</b>	<b>5,387</b>	<b>100.0%</b>	<b>3.5</b>

<sup>1</sup> Alternate Residential use of School sites at up to 10 DU/AC is provided.

<sup>2</sup> Alternate Residential use or mixed use of the Commercial sites is provided for with PA 17 at up to 4.5 DU/AC (LDR) and PA 18 at up to 10 DU/AC (MDR). The overall DU total for the Specific Plan shall not exceed 5,387 DU. In addition, Commercial use is allowed as an alternate use for all or a portion of Residential PAs 3, 4 and 5 (51.4 acres combined), and Park PAs 26 and 27 (0.9 acres combined).

<sup>3</sup> The Specific Plan allows for cluster development and Active Adult residential within certain Planning Areas, as described in detail within the Specific Plan (Section 3.1.1.1, Residential).

- 2a. **The Phasing Plan.** The phasing and timing requirements for the construction of all public improvements shall be in accordance with the Master Phasing Plan and the developed pursuant to the Development Agreement. Although the overall timing of Project development remains subject to the Developer's discretion based on market conditions, there is a logical sequence to the development and certain improvements are required to be complete before phases of the Project can be considered complete and ready for occupancy. The Master Phasing Plan will contain the following elements:

- a. **Project Phases.** The Developer must achieve certain goals and objectives in terms of Project development in order to keep the Agreement in place for the full term of the agreement, as set forth in the Development Agreement. The development of the Project will be reviewed at each Ten Year Anniversary Review. The Development Goals are as follows:

Phase I (10 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ Development will begin near the corner of Highland Springs and Wilson unless otherwise agreed.</li><li>▪ 1,200 Residential Units to be constructed.</li><li>▪ Commercial retail development of a minimum 23-acre retail-commercial site at the corner of Highland Springs and Wilson (Planning Area 18).</li><li>▪ Outlet for Smith Creek and other commercial, recreation and/or emergency center improvements.</li></ul>
Phase II (20 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,600 residential units to be constructed.</li></ul>
Phase III (30 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,400 residential units to be constructed.</li></ul>
Phase IV (40 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,187 residential units to be constructed.</li></ul>

Within each Phase, as defined above, more detailed phasing plans for each subdivision shall be developed in accordance with Section 6.5 of the Development Agreement, and are subject to the City's review and approval as conditions of approval of the Tract or Subdivision Map and, as approved, shall become a part of the Existing Approvals.

- b. **Development of Phasing Plans During Subdivision Map Approvals.** The phasing and timing requirements for the construction of all development including public improvements shall generally be in accordance with the Development Approvals and applicable provisions of the Development Agreement (For example, Sections 6.2, 6.4, 6.5, 7.3, 8.0, etc.) and be developed over time in accordance with the following process:

i. **Master Phase Tract Map.** Each Phase shall have a Master Tract Map which shall be submitted for financing and conveyance purposes only and no improvements may be constructed nor shall development be permitted pursuant to such approved Tract Map except through submission and approval of tentative and final Subdivision Maps. Concurrently with processing of the Master Tract Map, all tentative Subdivision Maps for the Tract shall be submitted and processed.

ii. **Subdivision Maps.** Each Master Tract Map shall designate future subdivisions within the Tract and the order of subdivision development to the extent that the need for development of public infrastructure dictates the logical progression of subdivision development. Each Subdivision Map shall show all infrastructure necessary for the development of the Subdivision. Each subdivision will have a written Phasing Plan approved by the Director and the City Engineer prior to commencement of development of the subdivision specifying when the lots within the subdivision will be developed and when all public infrastructure within the subdivision will be constructed. Generally all

streets, lighting, curbs and gutters, sidewalks, parkway landscaping, asphalt concrete paving, traffic signs and stripping, medians, landscaping, drainage facilities, storm drains, water lines, sewer lines, utility lines, trails and other facilities within the subdivision must be completed before release of any occupancy permits within the subdivision. All conditions which require the provision of Backbone Infrastructure and Subdivision Improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provision of suitable security, prior to the approval and recordation of the Subdivision Map.

*iii. Backbone Infrastructure.* Attached as Exhibit "A" is a list of Backbone Infrastructure, including roadways, detention basins, water lines, sewer lines, recycle water lines, utilities, storm drains and drainage facilities, treatment plants, power substations, community parks, community centers, fire stations, and other infrastructure serving area-wide populations. Backbone Infrastructure serves multiple subdivisions, and may need to be constructed in the initial phase of a particular Tract, or even before certain Tracts can be developed. The detailed phasing of construction will be provided through the Master Tract and Subdivision Phasing Plans. Exhibit A outlines the Backbone Infrastructure and when in the development of various Tracts it must be constructed.

3. **Precedence of Conditions.** If any of the Conditions of Approval alter a commitment made by the Developer in the Butterfield Specific Plan text or map exhibits, the conditions enumerated herein shall take precedence unless superseded by the Development Agreement, which shall govern over any conflicting provisions of any other approval.
4. **Compliance with City Codes and Conditions.** Development of the property shall conform substantially to the approved Butterfield Specific Plan as filed in the Planning Division, unless otherwise amended. Should the regulations in the Specific Plan differ from the City of Banning Zoning Ordinance, the regulations in the Specific Plan shall take precedence. Regulations that are not addressed in the Butterfield Specific Plan shall be subject to the City of Banning Zoning Code.
5. **Outside Agencies.** Development of the property shall be in accordance with the plans and procedures of various responsible agencies. These include the following:
  - a. **State and Federal Standards.** The Project shall conform to all disabled access requirements in accordance with the State of California, Title 14, and Federal Americans with Disabilities Act (ADA).
  - b. **Southern California Edison.** If construction is proposed within the area of the Southern California Edison power transmission easement or immediately adjacent thereto, the Developer shall contact the area service planner for Southern California Edison to coordinate construction related activities.
  - c. **School Districts.** The Developer shall demonstrate payment of standard requirements and mitigation fees established by the State of California and the Banning Unified and Beaumont Unified School Districts.
  - d. **Riverside County Flood Control.** Prior to approval of any Final Tract or Parcel Map for which a Riverside County Flood Control master plan facility is included, the Developer shall obtain a written statement from the Riverside County Flood Control District, in a form satisfactory to the City, indicating that the Developer has adequately

demonstrated the viability of proposed drainage facilities. The written statement could be the approval of the facility by RCFCD.

- e. **Caltrans District 8.** Prior to issuance of applicable roadway improvement or encroachment permits, the Developer is required to receive approval of any construction or work within the Caltrans right-of-way(s).
  - f. **California Department of Fish and Game.** The Developer shall apply for and receive approval of an agreement under Section 1602 of the California Fish and game Code.
  - g. **United States Army Corps of Engineer.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 404 of the Clean Water Act.
  - h. **Regional Water Quality Control Board.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 401 of the State Porter-Cologne Act from the Colorado River basin Regional Water Quality Control Board.
  - i. **Riverside Conservation Authority.** The owner, Developer, or successor in interest shall comply with the Multi-Species Habitat Conservation Program mitigation fees.
  - j. **South Coast Air Quality Management District (SCAQMD).** The owner, Developer, or successor in interest shall comply with the air quality regulations promulgated by the SCAQMD.
6. **Mitigation Measures and Mitigation Monitoring Program.** The owner, Developer, or successor in interest shall comply with the Mitigation Measures and Mitigation Monitoring Plan as approved in the Final Environmental Impact Report (SCH# 2007091149) as certified by the City Council on March 27, 2012 and incorporated herein by reference. The owner, Developer, or successor in interest shall pay for the cost of implementing and monitoring the mitigation measures.
7. **City Approvals.** All approvals by City, unless otherwise specified, shall be by the department head of the department requiring the condition. All agreements, covenants, easements, deposits and other documents required herein where City is a party shall be in a form approved by the City Attorney. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
8. **Homeowner's Associations.** The owner, Developer, or successor in interest shall form a Home Owner's Association (HOA) to maintain private amenities and areas that are determined by the City to be under the area of responsibility of the Homeowners Association.
9. **Property Management Association.** The owner, Developer, or successor in interest shall form a Property Management Association for maintenance of common areas within the commercial/office component of the Project.
10. **Covenant, Conditions, and Restrictions (CC&Rs).** Covenants, Conditions, and Restrictions (CC&Rs) shall be established for residential and commercial development. The owner, Developer, or successor in interest shall pay for the cost of review and approval of the CC&Rs by the City Attorney. The CC&Rs shall provide for proper maintenance of all property and include other necessary conditions to carry out the terms herein, and shall be enforceable by City, and recorded prior to development of any parcels. An initial deposit of \$5,000 is required to cover processing costs. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

11. **Reciprocal Ingress and Egress.** Reciprocal ingress and egress shall be established between the parcels within each of the commercial areas, in a form approved by the City Attorney.
12. **Mandatory Solid Waste Disposal.** Mandatory solid waste disposal services shall be provided by the City franchised waste hauler to all parcels/lots or uses affected by approval of this Project.
13. **Community Facilities District (CFD).** This Project is not within an existing Community Facilities District (CFD). As a requirement of this Project, one or more CFD's (and LMDs) shall be required to fund the maintenance of infrastructure, landscaping, police, and fire services. The formation of the CFD must be completed prior to recordation. An initial deposit of \$5,000 is required to cover processing costs associated with the proceedings for the establishment of the CFD. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
14. **Tentative Tract Map(s) or Tentative Parcel Map(s).** The Developer or successor in interest shall submit Master Tentative Tract Maps for each Planning Area and concurrently therewith tentative subdivision map(s) and/or tentative parcel map(s) for review and approval by the Planning Commission and City Council. The maps shall be developed consistent with the development standards as established in the Butterfield Specific Plan and the Development Agreement.
15. **Addresses.** All numbered lots shall have addresses assigned by the Building and Safety Department.
16. **Project Phasing.** The Project phasing shall be in conformance with the approved Butterfield Specific Plan and the approved Final EIR. A master phasing plan(s) will be developed as per the Development Agreement. Projects subject to a building permit shall have all required on and off-site improvements that will facilitate the ability to safely occupy or utilize said construction, required for each phase, completed and approved prior to final inspection of any buildings or structures. The term "phase" as used here shall mean the following: "The block of building permits drawn on less than the whole Project" or "A plan of building construction which indicates blocks of construction of less than the whole Project". In each phase, the installation of any off-site improvements shall be sufficiently completed so as to assure protection from storm or drainage run off, a safe and drivable access for fire and safety, and the ordinary and intended use of the buildings or structures. The phasing plans shall be further developed as provided in the Development Agreement.
17. **Recycled Water.** All recycled water service is subject to compliance with all rules, regulations, and conditions of all regulatory agencies and payment for all charges and fees in effect at the time service is applied for.
18. **Fair Share Agreements, Reimbursement and Covenant Agreements.** All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized. The City may require the Developer to enter into fair share and reimbursement and other covenant agreements which may be recorded against property and bind owners of property and their successors. A "fair share" agreement shall provide for Developers of property to pay their fair share for infrastructure improvements as determined by an independent study of the respective benefit received by the benefited property. A reimbursement agreement requires the initial Developer to install infrastructure which will also serve other property when it is developed, and the initial Developer is reimbursed by the future development in accordance with the benefit received by the future development. The benefit formulas and terms of the fair share and reimbursement agreements shall contain provisions for securitization

and enforcement and shall be in form and content approved by the City Attorney in accordance with law. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.

19. **Development Impact Fees.** The development is required to comply with the provisions agreed upon in the Development Agreement regarding the payment of and timing of Development Impact Fees ("DIFs").
20. **Disclosure Statement.** A Disclosure Statement shall be submitted to the City for review and approval and made available to all prospective buyers of homes within the development.
21. Such a Disclosure Statement shall at least include the disclosure that every transferor of property within the Project site shall, upon transfer, also provide to any transferee the notice of future Southern California Edison (SCE) improvements recited below in writing. This notice may be contained in any form of agreement or contract; however, the notice need be given only once in any transaction. The transferor shall acknowledge delivery of the notice and the transferee shall acknowledge receipt of the notice. The notice shall read as follows:

***"NOTICE OF SOUTHERN CALIFORNIA EDISON (SCE)***

***RIGHT-OF-WAY FUTURE PROJECTS***

*You are hereby notified that the property you are acquiring an interest in is located within close proximity to Southern California Edison right-of-way easement. SCE expects to apply to the California Public Utilities Commission (CPUC) for a Certificate of Public Convenience and Necessity to construct electrical facilities associated with the West of Devers Upgrade Project (or similarly defined project), as well as any other future utility project(s) that require construction of new or upgraded facilities within the SCE right-of-way easement."*

22. **School District Fees.** The Developer shall provide certification from the appropriate school district as required by California Government Code Section 53080(b) that any fee, charge, dedication or other form or requirement levied by the governing board of the district pursuant to Government Code Section 53080(a) has been satisfied.
23. **Processing Fees.** The development is subject to all appropriate City Processing fees, charges, deposits for services to be rendered, and securities required pursuant to the adopted fee schedule, as amended or superseded prior to final inspection.
24. **Twenty-one (21) Acre Property.** The 21-acre property that is part of the Butterfield Specific Plan and designated Planning Area 43B is for the establishment of pre-zoning for the property if it was to be proposed for annexation to the City of Banning in the future, such as by its property owners; however, it is not planned for annexation at this time. If the property is annexed into the City; the property shall be annexed into the Community Facilities District as established.



25. **Fire Station Site.** The Developer, owner, or successor in interest shall dedicate the fire station site to the City of Banning. The Owner will receive fee credits as provided in the appraised value of the property at the time of purchase. The dedication shall occur in accordance with the phasing plan in the Development Agreement.
26. **Bicycle Path and Neighborhood Electric Vehicle and Walking Trails.** The development shall provide bicycle paths/lanes, neighborhood electric vehicle/golf cart lanes, and walking trails in substantial conformance as shown in Exhibit 3.4 of the Butterfield Specific Plan. The dedication shall occur in accordance with the phasing plan in the Development Agreement.
27. **Fire Department Conditions of Approval.** The Developer shall comply with the conditions in the transmittal from the Fire Department which is under contract from the County through California Department of Forestry.
- 27a. **Trust Deposit Accounts.** Trust deposit accounts shall be established for future submittal and review of tentative tract or parcel maps. All trust deposits shall be maintained no deficits. The trust deposits shall be governed by deposit agreements. The trust deposit account shall be maintained separate from other City funds and shall be non-interest bearing. City may make demands for additional deposits to cover all expenses over a period of 60 days and funds shall be deposited within 10 days of the request therefore, or work may cease on the Project.
28. **Indemnification.** The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suites, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agent for any such Claims or Litigation (as defined in Section 1.10 of the Development Agreement) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

29. **Community Center/Emergency Site.** An approximately 6-acre site shall be dedicated to the City of Banning for a community or emergency housing center within either Planning Areas 35 or 39 or the site shall be provided within the surplus sites that may include the optional satellite waste water treatment plant site that is located at the northwest corner of Highland Home Road and Wilson Street. [Ultimate size of site will be adjusted to not adversely affect development area of surrounding property] The site shall be graded and be provided with a finished pad. Utilities will be stubbed to the property according to the requirements of the Public Works department. In the event that the City requests the Community Center within any of the residential Planning Areas that allow for such uses, per the provisions stated within the Specific Plan, the Owner and City shall enter into an agreement for the acquisition of the otherwise developable land. This site would be in addition to the parks and open space sites that are shown on Exhibit 3.1B of the Specific Plan. The dedication shall occur in accordance with the Phasing Plan in the Development Agreement. Developer shall not receive development fee credit for the value of the site, and may be asked to construct the improvements in accordance with the Development Agreement.
30. **Paleo/Archeological Conditions.** In the event that Native American cultural resources are discovered during project development/construction, all work in the immediate vicinity of the find shall cease and a qualified archeologist meeting the Secretary of Interior Standards shall be hired to access the find. Work on the overall project may continue during this assessment period. If significant Native American cultural resources are discovered, for which a Treatment Plan must be prepared, the developer or his archeologist shall contact the Morongo Band of Mission Indians ("Tribe"). If requested by the Tribe, the developer of the project archeologist shall, in good faith, consult on the discovery and its disposition."

#### **PARKS, RECREATION, AND OPEN SPACE**

31. **Parks, Recreation and Open Space.** The Land Use Plan includes development of a total of 66.5-acres of neighborhood parks, neighborhood recreation centers, community parks, and an 18-hole golf course or open space as depicted in Table 3-3 and described in Section 3.6 of the approved Butterfield Specific Plan. All dedications and improvements shall be in accordance with the Phasing Plan in the Development Agreement except as specifically provided herein.
32. **Parks Completion and Use by the Public:**
- a. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer's plans for near-term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commissions. The Developer shall complete the construction of neighborhood parks and utility easement parks (park improvements which will go in beneath the SCE easement area in the middle of the project in Planning Areas 36, 37 and 38), Planning Areas 22 through 34, 36 through 38, 62, 64 through 67 and 72, no later than the issuance of the final Certificate of Occupancy for residential units within the adjacent subdivisions. Active use park improvements may not be placed in the SCE easement parks if the Director and Commissions believe there are issues of public health with electro magnetic radiation. A subdivision separated from a park by a street shall not be considered to be adjacent to the park. The City and Developer shall, mutually, determine what constitutes the adjacent subdivision if a park adjoins more than one subdivision. Upon completion of each neighborhood park, the City shall after the one-year maintenance period has expired, within 10 working days, develop final punch lists of items to be corrected prior to acceptance by the City. Upon

correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

- b. The City's Parks Master Plan identifies the need in the Project for a community recreation and/or emergency response center (the "Center"), and this is even more necessary if the Golf Course is not developed. This Center would be on an approximately six (6) acre parcel in Planning Area 39 in lieu of the golf clubhouse, or alternatively could be located as a part of a community park or other available site including in Planning Area 71, or in lieu of the waste water treatment plant site in Planning Area 11. Depending on the site selected, the six (6) acres may be reduced so as to not adversely affect the development area of adjacent parcels from the development areas shown in the Specific Plan. The Center is contemplated as a 30,000 sq. foot facility. The plan for the Center shall be included in the Park Master Plan and the site plan shall be processed at the time the chosen Planning Area is developed, subject to approved Phasing Plans, and provided that if the City chooses to put the Center in Planning Area 11, it may be developed as part of Phase I provided that Developer shall satisfy the Phase I obligation by providing a developed site, and need not fund the construction of the improvements if there are insufficient DIF's for credit. The Developer shall dedicate the site to City without charge. If developed as part of a park it shall be developed at the time required for parks in Section 8.1.1 of the Development Agreement. The Center may include emergency operations and shelter components, and will also include appropriate landscaped grounds and facilities as specified in the Master Plan. Except as provided in this Condition, the Center may be developed and constructed by Developer in the same manner as for the waste water treatment plant.
33. **Golf Course Alternative.** Any alternative plan for the development of the golf course open space within Planning Areas 35 and 39 shall be subject to the City's discretionary Design Review process as provided for in the Specific Plan and City Code. The determination on the golf course use shall be in accordance with the Phasing Plan in the Development Agreement except as specifically provided herein.
34. **Alternative Use of the School Sites.** If the school site(s) is not needed, then any alternative use(s) of the site(s) shall be subject to the City discretionary Design Review process as provided for in the Specific Plan and City Code.
35. **Design Review for Parks, Recreation, and Open Space.** Review for improvement of applicable parks, recreation and open space for each development phase shall be approved by the Community Services Department and Community Development Department prior to recordation of final subdivision maps for that phase, in accordance with the phasing schedule and procedures specified in these conditions of approval. Nothing herein shall prevent submission of plans for review by the appropriate commission. Generally, parks and open space shall include youth oriented amenities and designed as illustrated in the Conceptual Park Plans in the Butterfield Specific Plan. The Community Recreation Center in Planning Areas 21 and 63 could include amenities such as a clubhouse, tennis courts, pool and, basketball courts. The 34-acre land in Planning Area 71 that is reserved for the detention basin/lake shall be provided with looped multi-use trails adjacent to the basin as deemed acceptable by the Public Works Department with picnic areas and shade structures. Plans for the amenities within Planning Area 71 shall be submitted for review and approval prior to the issuance of grading permit for the lake. The detention basin/lake shall be constructed consistent with any changes made to Smith Creek and in accordance with the Phasing Plan in the Development Agreement.

36. **One Year Maintenance of Parks and Open Space.** The Developer shall maintain all parks, parkways, medians, berms, lakes, drainage facilities not accepted by Riverside County Flood Control District and irrigation systems within streets or otherwise annexed into the Maintenance Districts, excluding facilities maintained by the Homeowners Association (HOA), for a period of one year after construction until accepted by the receiving agency. All facilities shall be operable and in good working order and any dead or dying landscaping shall be replaced with like materials. If these conditions are not met, or if landscaping has not been in a consistently healthy condition, the one year period can be extended. The Developer shall pay one year cash deposit or post a bond in an amount equal to one year's maintenance plus City administrative costs (value to be determined prior to recordation of each final map) to ensure maintenance for one year, and shall securitize the obligation in a form approved by the City Attorney. After one year, these operations shall be accepted by the appropriate Maintenance District. That maintenance district will then maintain the facilities to the same level as required by Owner during the maintenance period.
37. **North Basin within Planning Area 71.** The Developer, owner, or successor in interest shall develop amenities around the basin for recreational purposes to include multi-purpose trails, picnic shelter(s) with picnic tables and benches for seating. Maintenance of the amenities shall be provided by the Community Facilities District (CFD), Landscape Maintenance District (LMD), or other private funding mechanism.
38. **Installation of Plant Material.** Landscaping and permanent irrigation facilities shall be installed with street improvements including landscaped median on Highland Springs Avenue and Wilson Street in accordance with the approved Butterfield Specific Plan as they pertain to plant and irrigation standards. The Developer shall have appropriate right-of-way improvements, landscaping, street lighting and irrigation installed and in good working order prior to final release of occupancy of the homes subject to agreed upon phasing between the City and the Developer and in accordance with the Development Agreement.
39. **Content of Plans.** Landscape Improvement plans shall conform to the concepts, features, and standards established in the approved Butterfield Specific Plan and the conditions enumerated herein, and shall be prepared by a licensed landscaped architect.
40. **Water Conservation.** In accordance with the Banning Municipal Code, all landscape and irrigation plans shall provide drought resistant and/or native vegetation, automatic irrigation systems which minimize runoff, and, where feasible, a separate irrigation system for the conveyance and distribution of recycled water.
41. **Recycled Water.** All landscaping within the golf course open space shall be irrigated with non-potable water. The Developer shall install infrastructure for a recycled water system on site (conveyance and distribution facilities), as approved by the City and the Environmental Health Department. The Phasing Plan shall be in accordance with the Development Agreement. Developer will work with City Public Works Department if special watering needs are required by golf course operator. (See Condition 61 Below)
42. **Security Camera.** For security reasons, the Developer, property owner or successor in interest shall provide a security camera at the City's discretion in selected neighborhood and/or community parks where restroom facilities and other structures are provided. Specifications of the security camera shall be subject to review and approval of the Police Department. The cameras, once installed, will be maintained and operated by the City of Banning Police Department. Developer shall convey the equipment to City with all warranties thereon.

**SITE AND ARCHITECTURAL DESIGN**

43. **Architectural Styles.** The architectural styles for the Project shall be consistent with the conceptual architectural design as approved in the Butterfield Specific Plan. Any major significant deviations from the architectural styles in the Butterfield Specific Plan are subject to review and approval of a Design Review by the Planning Commission.
44. **Community Entry Monument Program and Project/Tract Identification.** Consistent with the Butterfield Specific Plan, community entry statements, including theme walls, monumentation, and enhanced landscaping at each entrance to the Project shall be consistent with the locations as approved in the Butterfield Specific Plan. Theme walls and monuments shall not occur within the public right-of-way. All entry monumentation programs shall be submitted for review and approval by the Community Development Department and shall be in substantial conformance with the approved Butterfield Specific Plan. Construction of the monumentation shall occur based on phasing and shall be completed and open prior to final occupancy of the first home in each phase.
45. **Unit/Building Identification.** Each building and unit in the Project shall include a lighted address fixture. This fixture shall allow for replacement of the bulbs, and shall be reviewed and approved by the Community Development Department, the Fire Department, and the Police Department.
46. **Phasing.** Any Phasing Plan shall be reviewed and approved by the Community Development Department and Public Works Department. Each Phase of the Project shall provide adequate drainage, domestic water, and at least two points of access to all lots. A phasing plan shall be submitted with the Design Review application. The phasing plan shall be in accordance with the Master Phasing Plan in the Development Agreement and shall include the installation of any necessary backbone infrastructure.
47. **Commercial Sites.** Developer shall use its best efforts in planning for the development of the commercial sites within the Butterfield Specific Plan to include a big-box retailer such as Target or equivalent major tenant and as the commercial sites produce tax revenue to City and are important to alleviate the fiscal impact of the Project. Developer shall develop the commercial sites as more specifically described in the Development Agreement. In particular, Planning Areas 17 and 18 shall be developed for a big box user such as Target, Lowes, Costco, or equivalent, and shall be developed in the first phase of the Project per the Phasing Plan in the Development Agreement. The development on the commercial sites shall be subject to Design Review and approval by the Planning Commission.
48. **Multi-Family Sites.** Plans for the development of the multi-family sites shall be subject to review and approval by the Planning Commission through discretionary Design Review or other entitlement as necessary to comply with the Butterfield Specific Plan as approved and the City's Municipal Code as applicable.
49. **Active Adult Community.** Plans for the development of the active adult community within the Specific Plan shall be subject to review and approval by the Planning Commission in accordance with the approved Butterfield Specific Plan and the City's Municipal Code as applicable.
50. **Satellite Waste Water Treatment Facility.** The architecture of the building for the satellite wastewater treatment facility, if the construction of such a facility is requested by City, shall be designed to be compatible with the architecture of residential homes and the surrounding environment. The facility shall be constructed on a site approved by the Director of Public Works and dedicated to City, in accordance with the terms of the Development Agreement. If

built off site, Developer will pay its fair share fees for such development in accordance with an approved fair share agreement. Plans for construction shall be prepared by appropriately certified architects and engineers and approved by the Director of Public Works.

51. **Window Treatments.** Per Sections 4.5.2.1 and 4.8.2 within the Specific Plan, building facades abutting a public street, tract boundary, or a downhill slope having an elevation change in excess of 20 feet shall provide elevation enhancements which could include window treatments such as shutters, awnings, or similar on the facades.
52. **Garage Door(s).** Garage Doors shall be provided with various door designs and colors that are compatible with the design of each home.
53. **Mechanical Equipment.** All mechanical equipment, including air conditioning units, pool equipment, etc., shall be screened from the public right-of-way by a view obscuring fence, wall, or landscaping to the satisfaction of the Community Development Department.
54. **Spark Arresters.** All spark arresters in the proposed tract shall be screened by enhanced architectural enclosures or other material acceptable to the Building Official and Planning Division and painted according to the approved paint palette.
55. **Decorative Paving within Streets at the Primary and Secondary Entries.** Decorative paving could be provided within the right-of-way at sufficient distance at the primary and secondary entries. The type of enhancement could include stamped asphalt or other similar applications.
56. **Street Paving.** Public streets in each tract, planning area, or phase of development shall be paved and accessible prior to the issuance of building permits for the first production unit.
57. **Setbacks.** The minimum setbacks shall be as set forth in the Butterfield Specific Plan.
58. **Lighting for the Garages and Porches.** Light fixtures for the garage exteriors and porches shall be provided with decorative light fixtures.
59. **Trash Enclosures for Commercial and Multi-Family Residential Development.** Trash enclosures for the commercial development and multi-family residential development shall be provided with a walk-in enclosure with decorative cap and lattice covers.

#### **LANDSCAPE DEVELOPMENT**

60. **Landscape Construction and Water Conservation.** All landscape architecture documents and landscape construction shall comply with the City of Banning Municipal Code with regard to water conservation in landscaping.
61. **Registered Landscape Architect Licensed by the State of California.** All landscape architecture documents, used as part of the entitlement and landscape construction process, shall be designed by a registered landscape architect licensed by the State of California.
62. **Review and approval of Landscape Architecture Documents.** All landscape architecture documents shall be submitted to Community Development Department for review and approval.
63. **Recycled Water for the Golf Course Open Space and Common Landscaping Irrigation.** All common open space landscape irrigation shall use reclaimed or recycled water, where available. The golf course must use recycle water for general irrigation of the fairways. The greens may use potable water.

64. **Future Changes to Approval Landscape Architecture Documents.** All future changes, to the landscape architecture documents after City approval, shall be reviewed by the City for conformance to all laws. If major changes are proposed, the Developer, owner, or successor in interest shall submit the landscape plans and shall deposit funds in the City's trust deposit account for review and approval of the plans. The determination of whether a change is major or minor shall be made by the Director.
65. **Landscape Maintenance.** The owner, Developer, or its successors agrees to maintain the landscape construction, including trails, in accordance with the following:
- A. The landscape construction shall be neat, of good quality and design, and show good horticultural practice.
  - B. The landscape construction shall preserve the design intent in accordance with the approved landscape architecture documents.
  - C. The landscaped areas shall have appropriate irrigation and drainage systems to assure healthy landscaping and prevent runoff and debris flows.
  - D. The landscape construction shall be maintained in good 1st class condition in accordance with the approved Landscape Maintenance Guidelines approved with the Project.
  - E. The landscape maintenance shall be provided by the owner, the owner's representatives, or by the proper professionals registered with the State of California until such time that the appropriate entity accepts the areas for maintenance.
  - F. Any diseased or dead landscaping shall be replaced by landscaping of similar size and in good and healthy condition.
66. **Clear Sight Triangles.** All vehicular sight line triangles shall be shown on the landscape construction planting plans.
67. **Trail Easement.** Trail easements shall be dedicated to the City of Banning, where appropriate, and shall be shown on the final map in accordance with the requirements of the City of Banning. The Developer shall provide information sufficient to confirm to the City of Banning that the trails are terminated in a safe manner at the tract boundaries. Trail crossings shall be shown on the road improvement plans and the final map, where appropriate. Unless otherwise approved by City, all trails shall be fully improved, when dedicated in accordance with Butterfield Specific Plan and all Project approvals. The Developer may be required to provide temporary trail connections to be replaced by permanent improvements in accordance with agreements approved by the City Attorney.
68. **Landscape Inspection.** All landscape inspections shall be requested at least 48 hours in advance.
69. **Avoidance of Trees Conflict with Light Standard and Utility Lines.** Trees shall be planted in such a way as to avoid conflict between light standards and electric utility distribution lines. Street tree size shall be a minimum 15-gallon and at least 50% of all street trees should be a minimum of 24-inch box size consistent with the provision of Section 4.3.2 of the Butterfield Specific Plan dated November 21, 2011. All residential landscaping shall conform to Chapter 17.32, Landscape Standards of the Banning Municipal Code. All residential lots for single-family residential development shall be provided with a minimum of one 15-gallon front yard tree, one, 15-gallon accent tree. The plant list shall be provided consistent with Section 4.6.2. If there are

conflicts between the landscaping requirements of the Banning Municipal Code versus the Butterfield Specific Plan, the requirements in the Butterfield Specific Plan shall prevail.

70. **Landscape Inspections.** The Project Developer shall be aware and inform the on-site project or construction manager and the landscape contractor of their responsibility to call for landscape inspections. A minimum of three (3) landscape inspections are required in the following order, and the landscape inspection card shall be signed by the City's landscape inspector to signify approval at the following stages of landscape installation:
- A. At installation of irrigation equipment, when the trenches are still open;
  - B. After soil preparation, when plant materials are positioned and ready to plant; and,
  - C. At final inspection, when all plant materials are installed and the irrigation system is fully operational.

#### **PUBLIC WORKS DEPARTMENT**

71. **Landscape Maintenance District ("LMD").** The City shall require the Developer to participate in a landscape and maintenance district for the maintenance of landscaping within public rights of way or easements in a form approved by City Attorney.
72. **Plan Submittal for Public Works.** The issuance of these Conditions of Approval do not negate the requirements of the Public Works Department for submittal, review, and approval of street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the Public Works Director.
73. **Public Works Permit.** A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.
74. **Improvement Plans.** The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California; and, submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below and for each phase of the Project area. Unless otherwise authorized in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar film. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the Developer may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

Rough Grading Plans	1" = 40' horizontal
(All applicable conditions of approval shall be reproduced on last sheet of set)	
Haul Route Plans	1" = 40' horizontal
Clearing Plans	1" = 50' horizontal
(Include fuel modifications zones)	
(Include construction fencing plan)	
Erosion Control & Storm Water	
Pollution Prevention Plan (SWPPP)	1" = 40' horizontal
(Note: a, b, c & d shall be reviewed and approved concurrently)	



Storm Drain Plans	1" = 40' horizontal
Street Improvement Plans	1 " = 40' horizontal
Water & Sewer Plans	1 " = 40' horizontal
1" = 4' vertical	
Traffic Signal Plans (Caltrans Standard)	1" = 20' horizontal
Signing & Striping Plans	1" = 40' Horizontal
Construction Traffic Control Plan	1" = 40' Horizontal
(Major or arterial highways only)	
Precise Grading Plans	1" = 40' Horizontal
Landscaping Plans-Streets	1 " = 20' Horizontal

75. **Other Engineered Improvement Plans.** Other engineered improvement plans. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.
76. **Street Plans.** All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the Project limits, or at a distance sufficient to show any required design transitions.
77. **Signs & Striping.** All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.
78. **Index Map.** A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.
79. **Granting of Easements.** The Developer shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer of dedication to the City of Banning or the Riverside County Flood Control and Water Conservation District (RCFCD) unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFCD. Prior to granting any of said easements, the Developer shall furnish a copy of the proposed easements to the City Engineer for review and approval.
80. **Transitions.** All street improvement design shall provide pavement and lane transitions per City standards for transition to existing street sections.
81. **Driveway Grades.** Driveway grades shall not exceed eight percent unless approved by the City Engineer.
82. **Construction Debris.** Construction debris shall be disposed of at a certified recycling site. It is recommended that the Developer shall contact the City's franchised solid waste hauler for disposal of construction debris.
83. **Plan Check Fees.** Required plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal and the Development Agreement.
84. **Recycled Water Usage.** All lots on final maps for common open space, parks, and golf courses shall be served by a recycled water system. Recycled water shall be used when available for the Project golf course, parks and common open space. Should recycled water become available from City sources, the proposed Project shall have the capability to connect to these facilities and

such connection shall be made within 90 days of request therefore by City. This condition shall be contained in the CC&Rs.

85. **School Site Grading.** Should the Banning and Beaumont Unified School Districts and the Project proponent come to an agreement on the conveyance of land within the Specific Plan to the Districts, the Developer shall cause that land to be rough-graded prior to conveyance and prior to issuance of the last building permit for the phase in which the site is located.
86. **Road Design.** Roadways shall be designed as depicted in the Specific Plan. The Developer shall be responsible for the acquisition of all necessary rights of way for streets within and adjacent to the Project; subject to Gov't Code section 66462.5 and the Development Agreement. Additionally, the road specifications and exhibits in the Specific Plan shall be modified as follows, and these changes shall be deemed to apply to all other Project Approvals, as they were made by the Council at the public hearing on the approval of the Project:
- A. **Highland Home Road Widening.** Notwithstanding that the Specific Plan outlines two potential cross sections for the roadway, Alternative B shall not be used and Highland Home Road shall be constructed to the specification shown in Alternative A on Exhibit 3.3B.
- B. **Highland Home Road Extension and Connection to Highland Springs Road.** The Specific Plan suggests that Planning Area 43B might be annexed to Banning and that Highland Home Road might be extended and connect with Highland Springs Road at Brookside Ave. Such an alignment would require that the roadway cross the existing golf course of the Highland Springs Golf Club. The City does not want to interfere with the existing Golf Course, nor wish that right of way be acquired through the Golf Course. Either the extension of Highland Home Road must swing southerly below the Golf Course and connect with Highland Springs Road, or potentially a connection can be designed from the North Loop Collector through Planning Areas 41 or 42 and connecting with Highland Springs Road. This connection point will be North of F Street and South of City of Banning/County of Riverside boundary. The configuration shall be in a design recommended by the Directors of Community Development and Public Works, and approved by the City Manager, and meet all appropriate traffic circulation and design standards.

#### ELECTRIC UTILITY DEPARTMENT

87. **Electric Installations.** The Developer shall be responsible for all trenching, backfill, and compaction of electric installations in accordance with the phasing plan as provided in the Development Agreement.

## II. PRIOR TO THE ISSUANCE OF GRADING PERMITS

#### COMMUNITY DEVELOPMENT DEPARTMENT

88. **Retaining Walls.** Plans for the construction of retaining wall plans shall be reviewed and approved by the Building and Safety and Planning divisions.

#### PUBLIC WORKS DEPARTMENT

89. **Flood Risks.** If any of the development's lots are located within a mapped flood plain, the lots are subject to flood insurance rates (premiums) until such time that a map revision has been accomplished removing the lot from the flood plain.

90. **Construction Access.** The Developer shall submit a construction access plan and schedule for the development of the Project for Community Development Director and Public Works Director approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.
91. **Grading Standards.** Grading of the subject property shall be in accordance with the City of Banning grading standards, and accepted grading practices as reviewed and approved by the City Engineer. Final grading plans shall be in substantial conformance with the approved Specific Plan.
92. **Preconstruction Meetings.** A preconstruction meeting shall be held for all participating field personnel, including all appropriate City staff, prior to the commencement of construction activities.
93. **Soils/Geologic Reports.** Soils reports and geological reports shall be prepared by a qualified engineer and geologist, respectively, licensed by the State of California to perform such work. Said report shall be reviewed and approved by the City Engineer. The Developer shall be required to comply with all recommendations of said reports.
94. **Other Permitting Agencies.** Prior to the issuance of any grading, construction, or building permit by the City, the Developer shall obtain any necessary clearances and/or permits if required from the following agencies:
- Fire Marshal
  - Public Works Department (Grading Permit, Improvement Permit)
  - City Water, Sewer and Electric Departments
  - Community Development Department
  - Riverside Co. Flood Control and Water Conservation District
  - Banning / Beaumont Unified School Districts
  - California Water Quality Control Board (CWQCB)
  - California Department of Fish and Game
  - US Fish and Wildlife Service
  - US Army Corps of Engineers
  - SCAQMD

The Developer is responsible for all requirements of the permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the Developer shall furnish proof of such approvals when submitting those improvement plans for City approval.

95. **Utility Systems.** All utility systems including gas, electric, telephone, water, sewer, storm drain, and cable TV shall be provided underground, with easements provided as required, designed and submitted for review and approval. Said items shall be constructed in accordance with City codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired.
96. **Conferred Rights.** In accordance with the approved plans, the Developer shall acquire or confer property rights necessary for the construction or proper functioning of the proposed Project development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements. All agreements shall be in a form approved by the City Attorney. Dedications shall be made on the map or by recorded instrument prior to issuance of grading permits.

97. **Drainage Study.** The Developer shall submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval for each phase of the Project. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with the Butterfield Specific Plan, the EIR Mitigation Measures, and the Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFCD), RCFCD Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed to the satisfaction of the Director.
98. **Flood Area.** Portions of the site are located in a Flood Area as identified in the current Flood Insurance Rate Map. The Developer is responsible for providing a certification by a registered professional engineer or architect demonstrating to the satisfaction of the Director that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
99. **Natural Drainage.** The Project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The Project shall accept and convey storm flows from the adjacent property to the north and east. Drainage design shall be consistent with condition #97.
100. **Stormwater Management and Discharge Controls.** The Developer shall comply with Chapter 13.24 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules, and regulations.
101. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the Developer shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
102. **SWPPP.** The Developer's SWPPP shall include provisions for all of, including but not limited to, the following Best Management Practices ("BMPs"):
- Temporary Soil Stabilization (erosion control).
  - Temporary Sediment Control.
  - Wind Erosion Control.
  - Tracking Control.
  - Non-Storm Water Management.
  - Waste Management and Materials Pollution Control.
103. **Erosion and Sediment Control BMPs.** All erosion and sediment control BMPs proposed by the Developer shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this Project. The approved SWPPP and BMPs shall remain in effect for the entire duration of Project construction until all improvements are completed and accepted by the City. The Developer shall ensure that the required SWPPP is available for inspection at the Project site at all times through and including acceptance of all improvements by the City.
104. **Grading and Excavations in the Public Right-of-Way.** Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional

engineer or geologist licensed by the State of California. A grading permit shall be obtained prior to commencement of any grading activity. Prior to issuance of any grading or building permit a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2008-0001.

105. **Fire Marshal Approval.** The Developer shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access roads, drives, streets, and alleys. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted. Secondary Access for certain Planning Areas, as depicted in the Specific Plan (Exhibit 3.3D, Secondary Access Drives) and reviewed and approved by Fire Marshall, shall be constructed accordingly. at the time of construction of all other improvements in the tract.

#### **ELECTRIC UTILITY DEPARTMENT**

106. **Plan Submittal Requirements.** Prior to the issuance of grading permit, the Developer, owner, or successor in interest shall submit detailed plans indicating lot lines, streets, easements, building layout, etc. These plans are required in electronic format AutoCAD 2010 or equivalent at the time of development.
107. **Electric Utility Backbone Infrastructure.** Prior to the issuance of grading permit, electric utility infrastructure backbone plans for this Project must be completed.

### **III. PRIOR TO FILING FINAL MAPS**

#### **PUBLIC WORKS DEPARTMENT**

108. **Bordering Roadways.** Roadways bordering and fronting the specific plan area on one side shall be designed and constructed, with right-of-way dedication offered, a minimum half width in substantial conformance with the approved Butterfield Specific Plan, including Section 3.2, Circulation Plan, Exhibit 3.2, Vehicular Circulation Plan, Exhibits 3.3 A&B, Roadway Cross Sections, and Section 3.2.5, Circulation Plan Development Standards, as well as in conformance with City of Banning requirements and standards as determined by the Public Works Director or designee. These roadways include Highland Springs Avenue, Wilson Street, and Highland Home Road (between Wilson Street and Future "F" Street). Improvements shall include street lighting, curb and gutter, sidewalk, parkway landscaping, asphalt concrete paving, traffic signs and striping, medians, and landscaping where required, and any transitions. Developer's geotechnical engineering shall provide the design of the pavement section based upon the Caltrans method. Prior to filing of the final subdivision maps, the Developer(s) will work with the City of Banning Public Works Department to identify phasing and timing requirements for the design and construction of all roadway improvements in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement as determined by the Public Works Director or designee. Roadways bordering the Specific Plan area shall be constructed at minimum half width in conjunction with adjacent development as it occurs in the Specific Plan area. City master planned roadway improvements that are part of a city improvement fee program or will serve other separate development that are designed and constructed by the

Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.

109. **Internal Roadways.** Roadways internal to the specific plan area shall be designed and constructed, with right-of-way dedication offered, full width in substantial conformance with the approved Butterfield Specific Plan, including Section 3.2, Circulation Plan, Exhibit 3.2, Vehicular Circulation Plan, Exhibits 3.3B, C & D Roadway Cross Sections, and Section 3.2.5, Circulation Plan Development Standards, as well as in conformance with City of Banning requirements and standards as determined by the Public Works Director or designee. Improvements shall include street lighting, curb and gutter, sidewalk, parkway landscaping, asphalt concrete paving, traffic signs and striping, medians, and landscaping where required, and any transitions. Developer's geotechnical engineering shall provide the design of the pavement section based upon the Caltrans method. Prior to filing of the final subdivision maps, the Developer(s) will work with the City of Banning Public Works Department to identify phasing and timing requirements for the design and construction of all roadway improvements in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement as determined by the Public Works Director or designee. Roadways interior to the Specific Plan area shall be constructed full width in conjunction with adjacent development as it occurs in the Specific Plan area. City master planned roadway improvements that are part of a City improvement fee program or will serve other separate development that are designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement. Prior to recordation of the first parcel or tract map, the Developer shall form, to the satisfaction of the City Engineer and the City Attorney, a homeowners' association, assessment district, landscaping and lighting district, or other vehicle, for the maintenance of all common areas, including landscaped parkways within public rights of way, in perpetuity.
110. **National Flood Insurance Program.** A portion of the proposed Project is in a flood plain, therefore, in accordance with the requirements of the National Flood Insurance Program and related regulations and Riverside County regulations.
- A. A flood study consisting of HEC-2 calculations, cross sections, maps and other data shall be prepared to the Satisfaction of the Federal Emergency Management Agency (FEMA) and the City of Banning for the purpose of recalculating the floodway and revising the effective Flood Insurance Rate Map(s) of the Specific Plan site. The submittal of the study shall be concurrent with the initial submittal of the related Project improvement plans. City approval of any final maps within the flood plain or unmapped area of Specific Plan shall not be given until a Conditional Letter of Map Revision (CLOMR) has been received.
- B. Projects outside the established Flood Plain or unmapped area of the Specific Plan may be approved for development by the City, provided that studies required by Conditions of Approval for the Specific Plan or subsequent parcel/tract maps demonstrate to the satisfaction of the City Engineer and/or Riverside County Flood Control and Water Conservation District, that acceptable flood protection for said project(s) exist or will exist after installation of measures identified by the studies. The Developer acknowledges that existing downstream drainage infrastructure is inadequate to accommodate additional flows and that additional flows shall be retained onsite.
111. **Street Improvement Plans.** Developer shall submit Street Improvement Plans, prepared by a licensed professional engineer, to the Engineering Division for review and approval. Construct street improvements, consisting of new A.C. pavement, landscaped areas within the parkway between the curb and property line and in any open spaces, sidewalks where required, curb,

gutter, driveway approaches, handicap access ramps, streetlights, traffic signs, striping, street name signs and roadway striping, etc. The Geotechnical Engineer shall determine the traffic index and R value for pavement design on all the streets.

112. **Water Improvement Plans.** Developer shall submit Water Improvement Plans to the Public Works Department for review and approval. Waterlines to be constructed to and across property boundaries of the Project per the City of Banning Standard Specifications. During phasing of the Project, all waterlines are to be looped for each phase (two points of connection).
113. **Hydraulic Analysis.** Developer shall submit a hydraulic analysis, prepared by a licensed Civil Engineer, showing that the Project or Project phase will meet all required water pressures and fire flows.
114. **Landscape Sprinklers.** Automatic sprinkler systems shall be installed within the landscaped parkway and median in the right of way on any street.
115. **Approval by City Engineer.** All public improvement plans shall be reviewed and approved by the City Engineer.
116. **City Easement Dedications.** Developer shall offer to dedicate to the City of Banning easements to maintain any slopes supporting public right-of-ways. Maintenance easements shall extend 10 feet beyond the toe of slope. All easements shall be in a form approved by the City Attorney.
117. **Potable Water.** A potable water system for the Specific Plan area shall be designed and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.1, Water Service Plan Description, Exhibit 3.8, Conceptual Potable Water Plan, and Section 3.5.5, Water Plan Standards, as well as in conformance with the City of Banning Water Master Plan, and other requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract water system layouts. Prior to filing of final subdivision maps, the Developer(s) will work with the City of Banning Public Works and Water Utilities Departments to identify phasing and timing requirements for the design and construction of all Specific Plan backbone master water system improvements, including required off-site improvements, in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement and as determined by the Public Works Director or designee. City master potable water system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.
118. **Recycled Water Distribution System.** A recycled water distribution system for the Specific Plan area shall be designed and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.2, Recycled Water Service Plan Description, Exhibit 3.9A, Conceptual Onsite Recycled Water Plan, and Section 3.5.5, Water and Sewer Plan Standards, as well as in conformance with the City of Banning requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract recycled water system layouts. Prior to filing of final subdivision maps, the Developer(s) will work with the City of Banning Public Works and Water Utilities Departments to identify phasing and timing requirements for the design and construction of all master recycled water system improvements, necessary to serve the Specific Plan area in substantial conformance with the Specific Plan and Phasing Plan per the Development Agreement and as determined by the Public Works Director or designee. The source and supply of recycled water for the Butterfield Specific Plan, when available, and which may include the City's proposed Main Treatment Plant Upgrade or a potential satellite treatment

plant, as well as required conveyance infrastructure, shall be determined by the Public Works Director or designee. City master recycled water system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.

119. **Sewer Collection System.** A sewer collection system for the Specific Plan area shall be designated and constructed in substantial conformance with the approved Butterfield Specific Plan, including Section 3.5.4, Sewer Service Plan Description, Exhibit 3.11A, Conceptual Onsite Sewer Plan, and Section 3.5.5, Water and Sewer Plan Standards, as well as in conformance with the City of Banning requirements and standards as determined by the Public Works Director or designee. Proposed tentative subdivision maps in the Specific Plan area shall include preliminary in-tract sewer system layouts. Prior to filing of final subdivision maps, the Developer(s) will work with the City of Banning Public Works and Wastewater Utilities Departments to identify phasing and timing requirements for the design and construction of all master sewer system improvements, including required off-site improvements, necessary to serve the Specific Plan Area in substantial conformance with the Specific Plan and City of Banning Master Sewer Plan and Phasing Plan per the Development Agreement, as determined by the Public Works Director or designee. City master sewer system improvements designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursements and fee credits in accordance with the provisions of the Development Agreement.
120. **Wastewater Treatment.** The ultimate treatment of wastewater (sewer) from the Butterfield Specific Plan area, as well as required conveyance infrastructure, shall be determined by the Public Works Director or designee. Wastewater treatment facilities may include the City's Main Treatment Plant or a satellite treatment plant. Required wastewater infrastructure may include existing city systems and/or proposed new systems in substantial conformance to those described in the Specific Plan and the City of Banning Master Sewer Plan. City master sewer system improvement designed and constructed by the Butterfield Specific Plan Developer(s) shall be subject to reimbursement and fee credits in accordance with the provisions of the Development Agreement.
121. **Sewer Check Valves.** A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.
122. **CC&Rs.** A property owners' association shall be established following grading permit issuance and the applicable Conditions, Covenants & Restrictions ("CC&Rs"), shall be prepared for review and approval of the City Engineer and City Attorney providing for maintenance of the parkways, slopes adjacent to public right-of-ways, drainage areas, water quality facilities, detention basins, debris basins, common area landscaping, and median island landscaping. The Developer shall appoint the members of the Board of Directors of the property owners' association, or take such other steps as may be reasonably necessary to assure that members have been appointed or elected to such Board of Directors, until under the terms of the applicable CC&Rs individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC&Rs.
  - A. CC&Rs shall contain provisions which prohibit dissolution of the property owners' association unless another entity has agreed to assume the operation and maintenance responsibilities of the property owners' association. The CC&Rs shall contain provisions that prohibit the Developer and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval, City codes and/or standards.



- B. CC&Rs shall be subject to prior review and approval of the City Attorney. The Developer shall bear the cost of the review and make a deposit pursuant to a deposit agreement. The City shall be a party of the CC&Rs with full rights to enforce the provisions pertaining to the City including lien rights. The CC&Rs shall be submitted for review prior to issuance of grading permits and recorded prior to issuance of building permits unless approved by the City Attorney.
123. **Driveways.** Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.
124. **Inspection Fees.** Required Public Works Inspection fees shall be paid in accordance with the fee schedule in effect at time of time of scheduling and the Development Agreement; water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the fee schedule in effect at that time and the Development Agreement; a plan storage fee shall be paid for any engineering plans that may be required in accordance with the fee schedule in effect at the time the fee is paid; a traffic mitigation fee shall be paid in accordance with the Development Agreement; a fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes if necessary for the proposed Project.
125. **Government Code Section 66499.** Security for the construction of public improvements including grading may be submitted in accordance with Government Code Section 66499 and shall be as follows:
- Faithful Performance Bond - 100% of estimated cost  
Labor and Material Bond - 100% of estimated cost  
Monumentation Bond - \$7,500.00
- Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.*
126. **Right-of-Way Documents.** Developer shall submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to final map approval.
127. **Scale for Street Maps.** Maps of the proposed subdivisions drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.
128. **Final Map Form.** An original Mylar of the final map (after recordation) shall be provided to the City for the record files.
129. **Monumentation Records.** A record of all street centerline monument ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of Monumentation Bond.
130. **Right-of-Way Acquisitions.** Right-of-way or easement acquisitions necessary to implement any portion of the maps, including public improvements, shall be obtained by the Developer at its sole expense prior to the City's consideration of the final map which encompasses the particular improvement. The Developer shall notify the City in writing no more than 120 days and no less than 60 days in advance of filing the final map related to the acquisition if City assistance is

needed to complete the acquisition pursuant to Government Code Section 66462.5 and shall document in writing all acquisition efforts. Funds in an amount of 100% of the estimated acquisition costs shall be deposited with the City in accordance with a deposit agreement to cover appraisal, right of way agent, and legal fees and costs incurred to secure the necessary property. Additional deposits will be made if needed and City will document the expenditure of all funds.

131. **Existing Plus Project Improvements.** If not constructed by the City or others, the Developer shall construct road improvements identified in Table 4.13-9, Summary of Future Improvements ("Existing plus Project" improvements in the City of Banning only), of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011) and as described in the Traffic Impact Analysis for the Butterfield Specific Plan, prepared by LSA Associates Inc. (September 15, 2010). These improvements include portions on Highland Springs Avenue in the City of Beaumont, between I-10 and Brookside, but exclude locations that are deemed by the affected jurisdiction(s) to be infeasible due to impacts of ROW acquisition. If constructed by the Developer, the cost of these improvements shall be credited against applicable City fees, and/or shall be eligible for reimbursement agreements with the City and/or third parties in accordance with the Development Agreement. The Improvements listed in DEIR Table 4.13-9 shall be consistent with the General Plan Circulation Element. (FEIR Mitigation Measure TRF-1). Improvements shall be constructed in accordance with the Phasing Plan in the Development Agreement.
132. **Validation Report.** As part of each Final Tract Map, or appropriate group of maps, the Developer shall prepare a TIA Validation Report (TVR) based on the criteria provided herein for review and approval by the City Engineer. Final Tract Map approvals resulting in less than 500 p.m. peak hour trips (Exempt Maps) shall not require a TVR unless the cumulative total of prior approved Exempt Maps exceeds 1,000 p.m. peak hour trips since the last TVR.

The TVR shall identify which of the Existing Plus Project improvements identified in Table 4.13-9 of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011) and the Traffic Impact Analysis for the Butterfield Specific Plan, prepared by LSA Associates Inc. (September 15, 2010), are required to be constructed for the respective Final Tract Map, to ensure adequate emergency access and satisfactory levels of service. "Existing plus Project" improvements in the City of Banning identified in an approved TVR shall be conditions of Final Tract Map approval. To the extent that any of the improvements mentioned above are included in a fee program, the cost for those improvements, if constructed by the Developer, will be eligible for fee credits in accordance with the Development Agreement.

The ongoing traffic impact assessment program will be based on the p.m. peak-hour trip threshold. The Final Tract Maps' total number of p.m. peak hour trips will be established based on the trip generation listed in Table 4.13-7, Project Trip Generation, of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011). If a portion of commercial development and some residential development is included in the Final Tract Map, the total number of trips generated by each use (commercial and residential) will be calculated for the p.m. peak hour and compared to a predefined threshold.

Recognizing the variety of land use options, overlays and permitted or conditionally permitted uses, the TVR will also be used to verify, as the Project builds out, that the Project's total peak hour trips are consistent with the assumptions in the Project TIA. (FEIR Mitigation Measure TRF-2).

133. **Offsite Traffic Improvement Plans.** Improvement plans shall be prepared for each Project-related offsite traffic improvement and approved by the City Engineer. Improvement plans shall incorporate the following considerations, as applicable:

- Obtain encroachment permit(s) from the applicable jurisdiction(s) for offsite improvements; Through creative design techniques, where determined appropriate and consistent with City policy, modify roadway geometry to reduce potential impacts to existing developed areas (such as reduced lane widths, reduced or eliminated medians, reduced turn lane transition zones, and/or shifting intersection approaches to widen intersection quadrants where associated impacts would be reduced);
- Maintain access for existing residences and businesses at all times;
- Replace landscaped areas within the affected parcel and along the parcel frontage wherever practical;
- Assist the affected property owner in re-striping affected parking areas and/or reconfiguring affected driveways to avoid or offset improvement-related impacts;
- Follow applicable Project EIR mitigation measures related to biological resources (i.e., BIO-1 through BIO-5 of the Butterfield Specific Plan Environmental Impact Report), with respect to minimizing loss of native vegetation, replacement or relocation of mature trees, use of native and/or drought tolerant vegetation in new landscaped areas, and ensuring consistency with applicable MSHCP and regulatory agency permitting provisions; and
- Compensate the affected property owner based on fair market valuation of the acquired ROW in accordance with applicable local, State and federal regulations. (FEIR Mitigation Measure TRF-3).

134. **Fair Share of Cumulative Impacts.** The Developer shall pay a fair share toward cumulative impacts not otherwise captured in existing fee programs, funding sources or in lieu improvements noted above, if such a program is in place at the time of building permit issuance, based on Project contribution percentages identified in Table 4.13-16 of the Butterfield Specific Plan Draft Environmental Impact Report (June 3, 2011). (FEIR Mitigation Measure TRF-4).

#### **IV. PRIOR TO THE ISSUANCE OF BUILDING PERMIT**

##### **COMMUNITY DEVELOPMENT DEPARTMENT**

135. **Alternative Street Accommodations.** If the City of Banning elects not to pursue the Highland Home Road connection to Brookside Avenue, or Riverside County does not approve, the Project Developer would be required to redistribute traffic via proposed F Street in the Butterfield Specific Plan area by constructing additional turning lanes at the intersections of Highland Springs Avenue/F Street and Highland Home Road/F Street (which are intersections located within the Project boundary to meet City LOS standards.

a) If requested by the City and after full discretionary review and approval, the developer will complete interim improvements to Highland Springs Avenue between Ramsey Street and the I-10 Freeway. These improvements may include synchronization of traffic signals along Highland Springs Avenue, relocation of traffic signals, closing and relocation of Joshua Palmer Way and the restriping and repaving of Highland Springs Avenue. The City will use its best efforts to coordinate with the City of Beaumont an agreement to reimburse a portion of the improvements either through the appropriate transportation fee credits or other mechanism.

136. **Model Homes.** Prior to the issuance of building permits, the Developer shall submit a model home plan that shows building elevations, plotting plan(s), and precise grading for review and approval for each phase of development, or per neighborhood, or per each master or merchant builders for review and approval by the Community Development Director as long as the plans conform to the Design Guidelines depicted in the Specific Plan. Subsequent minor technical change/adjustment after approval of the model homes and plotting is subject to an additional

approval of the Community Development Director. If Owner would like to propose architecture that is not depicted in or consistent with the Design Guidelines, the approval will be subject to both Planning Director and Planning Commission Approval.

137. **Landscaping.** Prior to issuance of building permits, the Developer shall submit and obtain approval of three (3) copies of construction level Landscape and Irrigation Plans to the Community Development Department accompanied by the appropriate trust deposit. The plans shall be prepared by a registered landscape architect and include the location, number, genus species, and container size of the plants. Plants shall be consistent with the Banning Municipal Code. The cover page shall identify the total square footage of the landscaped area and note that it shall be maintained in accordance with the City Code. Water efficient fixtures and drought tolerant plants shall be utilized where possible. Required landscape areas specific to this Project include front yards of all lots; side yards of corner lots; streetscapes on the Project side for Highland Springs Avenue, Wilson Street, and Highland Home Road; landscaping of slopes and entry theme walls; streetscapes for both sides of all in-tract roadways; and landscaping of all lettered lots including the detention basin, and all drainage channels which include Smith Creek and Pershing Channel.
138. **Walls & Fences.** Prior to issuance of building permits, the Developer shall submit and obtain approval from the Community Development Department of block wall or vinyl fence plans. These plans shall be consistent with intent of the Butterfield Specific Plan.
139. **Disclosure Statement.** The Developer, property owner or successor in interest shall submit the disclosure statement for review and approval by the City Attorney prior to the issuance of building permit for the first home within the Specific Plan. (See also Condition No. 19)

#### **PUBLIC WORKS DEPARTMENT**

140. **Sewer Capacity.** No building permits shall be issued unless the Public Works Director or designee determines that all on- and off – site sewer and water facilities exist with sufficient capacity necessary and reliably to serve the proposed construction are available or will be constructed as a part of the Project, and will continue to be available during the life of the Project.
141. **Undergrounding Utilities.** All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City codes and the requirements of the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired. All necessary easements shall be dedicated and granted to the necessary party with evidence provided to City.
142. **Rough & Precise Grading Plans.** Rough and precise grading plans shall be submitted to the City Engineer for review and approval. Precise grading plans shall include perimeter walls with top of walls and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions.
143. **Lot Pad Certification.** The Developer shall provide to the City Engineer a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the differences between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.
144. **Water Conservation Plan.** The Developer shall prepare a water conservation plan to reduce water consumption in the landscape environment in compliance with the City of Banning's landscape standards in the Municipal Code and all applicable current city and state codes, using

xeriscape principles. "Xeriscape" shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living ground-cover, a low percentage of turf coverage (limited to 25% of the planted area), permeable paving and water conserving irrigation techniques and systems. A low water-using drought tolerant plant includes species suited to our climate, requiring less water in order to grow well.

145. **Fire Hydrants.** Fire hydrants shall be installed within and on the Project boundaries as per the approval plans, at a 250' maximum spacing.
146. **Fire Flow Calculations.** The Developer shall provide fire flow calculations for the Project to the City and construct the necessary facilities to meet those flows for the Project to the satisfaction of that Director.
147. **Water Connection Fees.** Developer shall pay the current required Water Connection Fees. Fees shall be paid per EDU (EDU is based upon meter size required). Sewer Connection Fees shall be paid per EDU (EDU is based upon the estimated quality and quantity of discharge), and payment of current required Water Meter Installation Charges for each building pad in accordance with the fee schedule in effect at the time the fees are paid and the Development Agreement. Also, Developer shall pay all current water and sewer frontage fees and recycled/irrigation water fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted and the Development Agreement.

#### **ELECTRIC UTILITY DEPARTMENT**

148. **Permit Fees.** Developer shall pay current required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension in accordance with the city policies and the Development Agreement.
149. **Electricity Easements.** Developer shall dedicate all easements for electric facilities installation/maintenance, etc.
150. **Electric Utility Infrastructure.** Electric Utility Infrastructure for each Phase in accordance with the Phasing Plan in the Development Agreement. The dedication shall be in a form approved by the City Attorney. Prior to the issuance of building permit, electric utility infrastructure (conduits, vaults, etc.) must be completed as well any temporary or permanent electric infrastructure to supply power to each phase as constructed.

#### **V. PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY.**

#### **PUBLIC WORKS DEPARTMENT**

151. **Form of Plans.** The Developer shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer..
152. **Damaged Improvements.** Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.
153. **Testing.** All required public improvements for the Project shall be completed, tested, and approved by the Engineering Division.
154. **Landscape Sprinklers.** Automatic sprinkler systems and landscaping shall be installed within the street parkways. The systems shall include landscape controllers, separate water meters, and

electric meters, and plantings as approved by the Community Development Director. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.

155. **Landscaping.** Landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The Developer shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.
156. **Street Signs.** Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer.
157. **Intersection Improvements.** Developer shall construct required intersection improvements including traffic signals. The Developer may request a Reimbursement Agreement for the design and construction of the improvements in this condition. The Reimbursement Agreement is subject to prior review and approval by the City Attorney. The Developer shall bear the cost of the review.
158. **Monuments.** Monuments and center line ties shall be certified and submitted to the City Engineer for review and approval.

#### **ELECTRIC UTILITY DEPARTMENT**

159. **Electric Utility Materials.** The Developer shall provide install all conduits, vaults, and other materials associated with electric facility installations (except cables and their terminations).
160. **Streetlights.** The Developer shall install, complete and test streetlight poles and conduits.
161. **Secondary Service Entrance Conductors.** Secondary service entrance conductors to be provided and installed by the Developer. The Developer shall install, complete and test secondary service entrance conductors.
162. **Completion of Electric Utility Infrastructure prior to Issuance of Certificate of Occupancy.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interest shall install, complete and test all electric utility infrastructure including primary and secondary cabling, transformers, etc.
163. **Cost of Electrical Line in Aid of Construction.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interests shall pay the required cost of electrical line extension and in aid of construction for the particular phase under construction.

**CITY OF BANNING FIRE SERVICES  
STANDARD CONDITIONS OF APPROVAL**

**As amended for the proposed Pardee Project locate at Highland Springs/West Wilson Street**

The following are the minimum Banning Fire Marshal's office requirements. These requirements will satisfy for the Club House, Commercial Occupancies, and Park Buildings for this Project. There may be additional requirements when the Project specifics are defined and the final proposal is submitted for approval.

**FIRE DEPARTMENT DEVELOPER FEES:**

Any fees will be set pursuant to the Development Agreement. The current fee schedules at this time are as follows:

Commercial, Industrial and/or Office Complex --	\$579.00 for 50,000 square feet or less
	\$ 25.00 per unit Disaster Planning
Plan Check and Inspection -	\$ 134.00 per hour

**CITY OF BANNING BUSINESS LICENSE AND PROOF OF INSURANCE:**

All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

**CODE COMPLIANCE:**

All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws and ordinances as applicable.

**PLAN SUBMITTAL:**

Three (3) sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.

**SPRINKLER SYSTEMS REQUIRED:**

Fire Sprinkler Systems shall be installed as required by the CFC or in any and all structures that are thirty six hundred (3,600) sq. ft. or more, or if the applicable codes require a more restrictive system.

With the adoption of the 2010 codes, all residential homes shall be protected with fire sprinkler systems.

**SPRINKLER AND ALARM SYSTEMS:**

Three (3) sets of plans and calculations, including three (3) sets of manufacturer's hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

**SPRINKLER AND ALARM SYSTEM FEE SCHEDULE:**

Inspections - Fire Department: per the current rate per hour, per person. (One-hour minimum)  
Additional fees as charged by the designated Fire Protection Engineering Firm.

Plan Checks - Fire Department: per the current rate per hour, per person. (One-hour minimum)  
Additional fees as charged by the designated Fire Protection Engineering Firm.

**SPRINKLER SYSTEM UNDERGROUND:**

No fire sprinkler work shall be started prior to issuance of the permit.

The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.

An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.

The Water Department shall approve all plans involving water main service.

**FIRE HYDRANTS:**

Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.

All hydrants must be installed, working and inspected by the Public Works Department and the Banning Fire Marshal's office before any combustible materials can be placed at the worksite.

Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards. (Maximum 250 feet between hydrants)

Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.

The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

Fire Hydrants are to be painted by the Developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

**WATER SUPPLY:**

Fire flow shall be established by the Fire Department using the information provided in the CFC Appendix B. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours)

**FIRE DEPARTMENT ACCESS:**

Fire department access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site.



Minimum unobstructed width shall be 20 feet.

Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

Minimum turning radius shall be 42 feet.

All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

Maximum grade shall be established by the Banning Fire Marshal's office.

Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus. Surfaces shall have all-weather driving capabilities, including bridges. All roads must be placed and meet the above standard before any combustible materials can be delivered to the site, and approved by the Banning Fire Marshal's office. See Secondary Access Plans as depicted Exhibit 3.3D, Secondary Access Drives, in the approved Butterfield Specific Plan.

The requirements for this segment are covered in CFC Chapter 5.

A "Knox" box will be required for fire department access and location approved by the Banning Fire Marshal's office.

#### **PREMISES IDENTIFICATION:**

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

Commercial - 6" mm. Size

#### **INSPECTIONS:**

Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

The current fee for each inspection is \$134.00 per hour per person, (One-hour minimum). If fees changed, the Developer shall pay the fees that are effective at that time.

Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.

#### **HAZARDOUS MATERIALS:**

The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of CFC Chapter 27 and CBC in addition to all federal, state and local laws or ordinances.

Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.

**OTHER REQUIREMENTS:**

If there are no existing fire hydrants within 150 feet of the proposed building, then there will be a requirement for the installation of two commercial grade hydrants as described above. If a hydrant then only one additional hydrant will be required.

A fire alarm system, designed to NFPA 72 standards, will be required.

---

Doug Clarke  
Assistant Fire Marshal  
Banning Fire Services  
(951) 922-3210  
[dclarke@ci.banning.ca.us](mailto:dclarke@ci.banning.ca.us)

## ORDINANCE NO. 1451

### AN ORDINANCE OF THE CITY COUNCIL CITY OF BANNING, CALIFORNIA ADOPTING THE DEVELOPMENT AGREEMENT SUPERSEDING THE DEUTSCH SPECIFIC PLAN DEVELOPMENT AGREEMENT AND MAKING FINDINGS IN SUPPORT THEREOF

**WHEREAS**, Pardee Homes filed an application with the City for an amendment to the Development Agreement for the Deutsch Specific Plan in conjunction with General Plan Amendment No. 11-2501, Zone Change No. 11-3501, and an amendment to the Deutsch Specific Plan to provide for Zoning regulations for the Butterfield Specific Plan, and approval of an EIR to allow the development of up to 5,387 dwelling units (937.4 acres of residential), a golf course and open space (253.9 acres), parks (66.5 acres) and other open space (108.4 acres), two school sites (23.0 acres), an existing utilities substation facility (4.2 acres), a fire station site (1.6 acres) and backbone roadways (113.6 acres). The project also includes the construction of major on-site and off-site infrastructure, including but not limited to: various on-site and off-site street improvements to provide access to and from the project site; various on-site and off-site conveyance pipelines for sewer, water, storm drain; a multi-purpose detention basin, and drainage improvements to Pershing Channel and Smith Creek immediately upstream and downstream of the 1,543 acre project site to accommodate the mixed-use master planned community.

Project Applicant:	Pardee Homes (Authorized Agent Mike Taylor, Vice President of Pardee Homes, 10880 Wilshire Boulevard, Suite 1900, Los Angeles, CA 90024)
Property Owners:	Pardee Homes owns 1,522 acres within the Butterfield Specific Plan.
Project Location:	Northeast Corner of Highland Springs Avenue and Wilson Street
APN Number:	The project includes 34 parcels: 408-030-001 & 005; 408-120-001 through 020, 022, 024, 025, 027 & 033; and 531-080-013 & 014.
Specific Plan Size:	1,543 Acres

**WHEREAS**, Pardee Homes requests an amendment to the Deutsch Specific Plan Development Agreement as restated in the Development Agreement for the Butterfield Specific Plan in conjunction with General Plan Amendment No. 11-2501, Zone Change 11-3501, and the Butterfield Specific Plan, which would provide the Applicant with a vested right to develop their property consistent with the Butterfield Specific Plan in exchange for the public benefits to the City.

**WHEREAS**, Chapter 17.60 of the Banning Municipal Code provides for the purpose, application and public hearing procedures, content of the Development Agreement, and environmental review.

**WHEREAS**, the City Attorney and the City Manager have negotiated the Development Agreement with the Applicant.

**WHEREAS**, the City Attorney has prepared the Development Agreement consistent with the requirements of Section 17.60.040 of the Banning Zoning Code.

**WHEREAS**, the approval of the Development Agreement including its companion applications for the General Plan Amendment No. 11-2501, Zone Change No. 11-3501, and an amendment to the Deutsch Specific Plan to replace its zoning regulations with Butterfield Specific Plan Zoning regulations as referenced herein, is considered a project pursuant to CEQA Guidelines Section 21065.

**WHEREAS**, consistent with Section 15083 of the California Environmental Quality Act ("CEQA") and prior to completing the draft Environmental Impact Report (EIR), the City held an early consultation regarding the issue areas to be considered in the EIR. The City published the Notice of Preparation ("NOP") including the Scoping Meeting in the Record Gazette and on the City's website. The City also mailed the NOP to residents who are located within 300' of the Project site and to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held three (3) public scoping meetings. Two (2) scoping meetings were held on October 16, 2007 from 2 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. Another scoping meeting was held on October 22, 2007 from 6 p.m. to 8 p.m.

**WHEREAS**, consistent with Section 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made available for a 45-day public review period from June 6, 2011, to July 21, 2011. The NOA was published in the Press Enterprise and the City's website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies. Also, the City mailed the NOA to the residents who live within 300' radius of the Project boundaries, groups and organizations, and members of the public who requested to be on the mailing list of the Project.

**WHEREAS**, prior to the close of the comment period, the City held a public workshop on June 21, 2011, to provide information and answer questions from interested members of the public regarding the Project and the Draft EIR.

**WHEREAS**, during the public workshop of June 21, 2011, the City received questions and comments mostly on traffic, among other questions about the Project. In response to the oral comments on traffic, the City held another workshop on July 14, 2011 to respond to questions from members of the public regarding the traffic analysis report and conclusions.

**WHEREAS**, the City received 31 comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project regarding the Draft EIR and the impacts of the Butterfield Specific Plan, including its associated applications referenced herein.

**WHEREAS**, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for a 10-day public review on Friday, February 24, 2012. The Final EIR was made available at City Hall Community Development Counter, the Banning Public Library, and the City's website.

**WHEREAS**, on March 7, 2012, the Planning Commission held a duly-noticed the noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR and all other documentation relating to the Project, and the Commission unanimously recommended approval of the Project and certification of the Final EIR to the City Council.

**WHEREAS**, on March 16, 2012, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning the Project to be held before the City Council. In addition, the City mailed public hearing notices to the owners of properties that are located within a 300' radius of the project boundaries and to interested persons who requested to be on the mailing lists for the project. On March 27, 2012, the City Council held its public hearing on the Project and the Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR and all other documentation relating to the Project.

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:

#### SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2007091149), including Draft EIR and Mitigation Monitoring and Reporting Program was prepared in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2012-24 as referenced herein provides environmental findings for the project.

#### SECTION 2. REQUIRED FINDINGS FOR DEVELOPMENT AGREEMENT:

**Finding No. 1:** The proposed Development Agreement is consistent with the General Plan and Applicable Specific Plan

**Finding of Facts:** The current zoning for the project is Deutsch Specific Plan. The proposed Development Agreement is inconsistent with the General Plan and the Deutsch Specific Plan in that the Agreement provides for the developer's vested right to develop the property in accordance with the Butterfield Specific Plan. However, in conjunction with the proposed Development Agreement for the Butterfield Specific Plan, the Applicant is requesting a General Plan Amendment No. 11-2501 and Zone Change No. 11-3501 and an amendment to the Deutsch Specific Plan. The General Plan

Amendment and Zone change would replace the zoning on the general Plan Land Use and Zoning Overlay Map and replace it with the Butterfield Specific Plan. The amendment to the Deutsch Specific Plan would replace the Specific Plan with the Butterfield Specific Plan. With approval of the General Plan Amendment No. 11-2501 and Zone Change No. 11-3501, and amendment to the Deutsch Specific Plan, the Development Agreement would be consistent with the intent of the General Plan through designation of the site as Butterfield Specific Plan.

**Finding No. 2:** The proposed Development Agreement would promote the welfare and interest of the City.

**Finding of Facts:** The development of the Butterfield Specific Plan requires an up-front and substantial investment in public infrastructure costs. The total initial infrastructure investment cost for the project is estimated to be \$100 million. The ultimate infrastructure investment is approximately \$460 million. The infrastructure to be developed includes streets, sewer, water, storm drain and flood control. In exchange for the investment, the developer is requesting approval of an amendment to the existing development agreement to provide a vested right to develop the project consistent with the Zoning (Butterfield Specific Plan) for the property without worrying that the Zoning will change during the 30-year period.

With the vested right to develop the property, the City will receive the following benefits that promote general welfare and interest of the City:

- A substantial investment in infrastructure as mentioned above.
- New master-planned community that provides a cohesive, well-coordinated development that would provide a sense of place.
- New and variety of home types that includes single-family homes with various lot sizes, homes sizes and design. Additionally, there will be high density housing that could include apartments and condominiums with various designs for existing and future residents.
- Revenue from property tax, sales tax, and development fees since the property will be developed and improved from the current vacant state.
- The developer will provide the City with fully improved parks as part of the development.
- Provide construction jobs for the construction of the homes and for the various trades that are associated with home building which include draftsman, architects, engineers, electricians, plumbing, roofing, interior designer, and home furnishing.
- More home construction provides incentives for future retailers and restaurants to locate in Banning once the homes are occupied. The project would incentivize the local economy.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby adopt Ordinance No. 1451 amending the Deutsch Specific Plan Development Agreement and supersede it with the Development Agreement for the Butterfield Specific Plan as attached hereto as Exhibit "A", based on the findings of facts indicated in this resolution and the administrative record.

**PASSED, APPROVED AND ADOPTED this 27<sup>th</sup> day of March, 2012.**

---

Don Robinson, Mayor  
City of Banning

ATTEST:

---

Marie Calderon, City Clerk  
City of Banning, California

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

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

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1451, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the \_\_\_ day of March 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie Calderon, City Clerk  
City of Banning, California



RECORDING REQUESTED BY, )

AND WHEN RECORDED MAIL TO: )

)

CITY CLERK )

City of Banning )

99 E. Ramsey Street )

Banning, CA 92220 )

No Recording Fee Required – Government Code § 27383

---

## DEVELOPMENT AGREEMENT

between

THE CITY OF BANNING

("City")

and

PARDEE HOMES

A California Corporation

("Developer")

## TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	3
1.1 <u>Acquisition Agreement</u> .....	3
1.2 <u>Anniversary Date</u> .....	3
1.3 <u>Annual Review</u> .....	3
1.4 <u>Applications</u> .....	3
1.5 <u>Appraisal of Land Value</u> .....	4
1.6 <u>Assignment</u> .....	4
1.7 <u>Authorizing Ordinance</u> .....	4
1.8 <u>Building Permit</u> .....	4
1.9 <u>CC&amp;R's</u> .....	4
1.10 <u>Certificate of Compliance</u> .....	4
1.11 <u>Certificate of Occupancy</u> .....	4
1.12 <u>CFD</u> .....	4
1.13 <u>CFD Act</u> .....	4
1.14 <u>City</u> .....	4
1.15 <u>City Council</u> .....	4
1.16 <u>City Development Agreement Ordinance</u> .....	4
1.17 <u>City Manager</u> .....	4
1.18 <u>City Wide Traffic Improvements</u> .....	5
1.19 <u>Claims or Litigation</u> .....	5
1.20 <u>Dedicate or Dedication</u> .....	5
1.21 <u>Default</u> .....	5
1.22 <u>Developed Property</u> .....	5
1.23 <u>Development Goals</u> .....	5
1.24 <u>Developer's Property</u> .....	5
1.25 <u>Development</u> .....	5
1.26 <u>Development Agreement Statute</u> .....	5
1.27 <u>Development Approvals</u> .....	5
1.28 <u>Development Impact Fees</u> .....	6
1.29 <u>Development Plan</u> .....	6
1.30 <u>Director</u> .....	6
1.31 <u>Economically Distressed Year</u> .....	6
1.32 <u>Effective Date</u> .....	6
1.33 <u>Eligible Facilities</u> .....	6
1.34 <u>Exaction</u> .....	6
1.35 <u>Existing Development Approvals</u> .....	6
1.36 <u>Existing Land Use Regulations</u> .....	7
1.37 <u>Financing Plan</u> .....	7
1.38 <u>Force Majeure</u> .....	7
1.39 <u>Future Development Approvals</u> .....	7
1.40 <u>General Plan</u> .....	7
1.41 <u>Goals and Policies for Financing</u> .....	7
1.42 <u>Golf Course/Active Open Space</u> .....	7

## TABLE OF CONTENTS (cont.)

		<u>Page</u>
1.43	<u>Grading Permit.</u>	7
1.44	<u>Improvement Area.</u>	7
1.45	<u>Innocent Owner.</u>	7
1.46	<u>LAFCO.</u>	7
1.47	<u>Land Use Regulations.</u>	7
1.48	<u>Legal or Equitable Interest.</u> “	8
1.49	<u>LMD.</u>	8
1.50	<u>Local Agency.</u>	8
1.51	<u>Lot.</u>	8
1.52	<u>Master Tract Map.</u>	8
1.53	<u>Mortgage.</u>	8
1.54	<u>Mortgagee.</u>	8
1.55	<u>Mortgagee Successor.</u>	8
1.56	<u>Municipal Code.</u>	9
1.57	<u>Non-Defaulting Party.</u>	9
1.58	<u>Owner.</u>	9
1.59	<u>Park fees.</u>	9
1.60	<u>Phase.</u>	9
1.61	<u>Phasing Plans.</u>	9
1.62	<u>Planning Area.</u>	9
1.63	<u>Planning Commission.</u>	9
1.64	<u>Pre-Qualified Buyer.</u>	9
1.65	<u>Property Owner’s Association or POA.</u>	9
1.66	<u>Processing Fees.</u>	9
1.67	<u>Project.</u>	10
1.68	<u>Proposed Project Facilities.</u>	10
1.69	<u>Reimburse or Reimbursement.</u>	10
1.70	<u>Reservations of Authority.</u>	10
1.71	<u>Services Special Tax.</u>	10
1.72	<u>Specific Plan.</u>	10
1.73	<u>Subdivision Map.</u>	10
1.74	<u>Subdivision Map Act.</u>	10
1.75	<u>Taxes.</u>	10
1.76	<u>Ten or 10<sup>th</sup> Year Anniversary Review.</u>	10
1.77	<u>Term.</u>	10
1.78	<u>Traffic Control Facility Fee.</u>	11
1.79	<u>Transfer.</u>	11
1.80	<u>Trigger Percentages.</u>	11
1.81	<u>TUMF.</u>	11
1.82	<u>Zoning Code.</u>	11

## TABLE OF CONTENTS (cont.)

	<u>Page</u>
2. EXHIBITS. ....	11
3. TERM. ....	11
3.1 Term. ....	11
3.2 Termination Upon Completion of Construction. ....	12
3.3 Termination for Default. ....	12
3.4 Extension of the Term: ....	12
3.5 Effective Date. ....	12
4. DEVELOPMENT OF THE DEVELOPER'S PROPERTY. ....	12
4.1 Right to Develop. ....	12
4.2 Right To Future Approvals. ....	12
4.3 Existing Development Approvals. ....	13
4.4 Specific Plan. ....	13
4.5 Priority Of Specific Plan. ....	13
4.6 Later Enacted Measures. ....	13
4.7 Impact Fee Studies. ....	13
5. FINANCING AND THE CITY'S OBLIGATIONS. ....	13
5.1 Formation of CFD(s) and LMDs. ....	13
5.2 Adoption of Goals and Policies ....	14
5.3 Services Special Tax. ....	15
5.4 Planning Area 19, 35, 39 and 71 Drainage Facilities. ....	15
5.5 Reimbursement Agreements. ....	15
5.6 Landscape Maintenance Districts. ....	16
5.7 Reimbursement for Pre-Approval Costs. ....	16
5.8 Obligations of Developer Respecting Financing; No Speculation. ....	17
6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT. ....	17
6.1 Timing of Development. ....	17
6.2 Development Goals. ....	18
6.3 Development Goals Satisfied By Commencement of Construction. ....	19
6.4 Public Improvements. ....	19
6.5 Development of Phasing Plans During Subdivision Map Approvals. ....	20
6.6 Ten Year Anniversary Review. ....	21
6.7 Failure to Satisfy Phasing Goals and Objectives. ....	22
6.8 Developer Incentives for Expedited Development. ....	23
7. FEES, TAXES AND ASSESSMENTS. ....	23
7.1 Processing Fees. ....	23
7.2 Development Impact Fees. ....	23
7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees. ....	24
7.4 Park Fees. ....	25
7.5 Traffic Impact Mitigation. ....	26
8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS ....	27
8.1 Park Improvements. ....	27
8.2 Drainage Facilities. ....	28

## TABLE OF CONTENTS (cont.)

	<u>Page</u>
8.3 Satellite Water Treatment Plant. ....	28
8.4 Fire Station Site. ....	29
8.5 Water Tanks. ....	29
9. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS. ....	29
9.1 Processing. ....	29
9.2 Developer to Pay for Expedited Processing. ....	30
9.3 General Time Periods for Processing. ....	30
9.4 Precise Grading/Plot Plan Revisions. ....	30
9.5 Additional Inspectors and Plan Checkers. ....	30
9.6 Tentative Subdivision Maps. ....	31
9.7 Multiple Final Subdivision Maps: ....	31
9.8 Financing and Conveyance Maps: ....	31
9.9 Water Availability. ....	31
9.10 Other Governmental Permits. ....	31
9.11 Public Agency Coordination. ....	31
9.12 Annexation. ....	31
10. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT. ....	31
10.1 Initiation of Amendment. ....	32
10.2 Procedure. ....	32
10.3 Consent. ....	32
10.4 Minor Modifications. ....	32
10.5 Effect of Amendment to Development Agreement. ....	32
11. RESERVATIONS OF AUTHORITY. ....	32
11.1 Limitations, Reservations and Exceptions. ....	33
11.2 Regulation by Other Public Agencies. ....	34
11.3 Fees, Taxes and Assessments. ....	34
12. ANNUAL REVIEW. ....	34
12.1 Annual Monitoring Review. ....	34
12.2 Certificate of Compliance. " ....	34
12.3 Failure to Conduct Annual Review. ....	35
13. DEFAULT, REMEDIES AND TERMINATION. ....	35
13.1 Rights of Non-Defaulting Party after Default. ....	35
13.2 No Recovery for Monetary Damages. ....	35
13.3 Recovery of Monies Other Than Damages. ....	36
13.4 Compliance with the Claims Act. ....	36
13.5 Notice and Opportunity to Cure. ....	36
13.6 Dispute Resolution. ....	37
13.7 Waiver of Breach. ....	38
13.8 Limitations on Defaults. ....	38
13.9 Venue. ....	38

## TABLE OF CONTENTS (cont.)

	<u>Page</u>
14. ASSIGNMENT.....	38
14.1 Right to Assign. ....	38
14.2 Sale to Pre-Qualified Buyer. ....	41
14.3 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public. ....	41
14.4 Declaration of Covenants, Conditions and Restrictions. ....	41
15. RELEASES AND INDEMNITIES. ....	41
15.1 The City's Release As To Actions Prior To Effective Date. ....	41
15.2 The Developer's Release As To Actions Prior To Effective Date. ....	42
15.3 Third-Party Litigation. ....	42
15.4 Hold Harmless: Developer's Construction and Other Activities. ....	43
15.5 Survival of Indemnity Obligations. ....	43
16. EFFECT OF AGREEMENT ON TITLE. ....	43
16.1 Covenant Run with the Land. ....	44
17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.....	44
17.1 Non-liability of City Officers and Employees. ....	44
17.2 Conflict of Interest. ....	44
17.3 Covenant Against Discrimination. ....	44
18. MORTGAGEE PROTECTION. ....	44
18.1 Definitions. ....	44
18.2 No Encumbrances Except Mortgages to Finance the Project. ....	45
18.3 Developer's Breach Not Defeat Mortgage Lien. T.....	45
18.4 Holder Not Obligated to Construct or Complete Improvements. ....	45
18.5 Notice of Default to Mortgagee. ....	45
18.6 Right to Cure. ....	45
18.7 City's Rights upon Failure of Holder to Complete Improvements.....	46
18.8 Right of City to Cure Mortgage Default. ....	47
18.9 Right of the City to Satisfy Other Liens on the Developer's Property After Conveyance of Title. ....	48
19. MISCELLANEOUS.....	48
19.1 Estoppel Certificates. ....	48
19.2 Force Majeure. ....	48
19.3 Interpretation.....	48
19.4 Severability. ....	49
19.5 Joint and Several Obligations. ....	49
19.6 No Third Party Beneficiaries. ....	49
19.7 Notice.....	49
19.8 Relationship of Parties. ....	50
19.9 Attorney's Fees.. ....	50
19.10 Further Actions and Instruments. ....	50
19.11 Time of Essence.....	51
19.12 Waiver. ....	51
19.13 Execution. ....	51

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into on March 27, 2012, between the CITY OF BANNING (the "City"), a municipal corporation, and PARDEE HOMES (the "Developer"), a California corporation, pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, §§ 65864 through 65869.5 of the Government Code. The City and the Developer shall be referred to within this Agreement jointly as the "Parties" and individually as a "Party."

### RECITALS:

A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Development of the Developer's Property. Concurrent with the approval of this Agreement, the City has approved the Specific Plan, which contemplates low, medium and high density residential development, to a maximum total of 5, 387 dwelling units, 36 acres of commercial/retail development, schools, parks and supporting infrastructure on 1,543 acres, and a general plan amendment and a zone change and has certified a Final Environmental Impact Report, State Clearinghouse No. 2007091149, for the area described in Exhibit "A" (the "Developer's Property").

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

D. Intent of the Parties. The Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer's Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City and the public benefits of the development of the Developer's Property, the Developer will receive assurances that the City shall grant all permits and approvals required

for total development of the Developer's Property and will provide for the assistance called for in this Agreement in accordance with the terms of this Agreement.

E. Public Benefits of the Project. This Agreement provides assurances that the public benefits identified below in this Recital E will be achieved in accordance with the terms of this Agreement. The Project will provide local and regional public benefits to the City, including, without limitation:

1. Increased Tax Revenues. The development of the Developer's Property in accordance with the terms of this Agreement will result in increased real property and sales taxes and other revenues to the City.

2. Reduced Vehicle Miles Travelled. The Project will reduce vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

3. Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of walking paths, through signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that will encourage walking.

4. Sustainable Design. The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards for residential construction.

5. Pedestrian Connection. The Project will include a series of public pedestrian trails throughout the Developer's Property.

6. Reduced Traffic Congestion. The Project will include improvements and contribute fees to improvements that will reduce congestion on local streets and the regional transportation network.

7. Public Schools. The Project will allow for the construction of elementary schools in both the Beaumont Unified School District and Banning Unified School District, which will benefit residents both within and outside the Project.

8. Natural Open Space. Over 56 acres of natural open space will be preserved in perpetuity.

9. Parks and Recreation. Park and recreation improvements include:

- a. 58.5 acres of community and neighborhood parks
- b. 8.0 acres devoted to private recreation centers.
- c. 254 acres of public golf course or active open space amenity
- d. 108.4 acres of other open space.



10. Financial Impact Mitigation. Based upon a study of financial impacts on the City, the Project will pay a Services Special Tax to alleviate negative financial impacts of the Project on the City.

F. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, et seq. ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a public hearing on March 7, 2012, recommended, and the City Council, after making appropriate findings, certified, by Resolution No. 2012-24 adopted on March 27, 2012 a Final Environmental Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Butterfield Specific Plan, State Clearinghouse No. 2007091149, as having been prepared in compliance with CEQA . On March 7, 2012, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement. On March 27, 2012, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

G. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, Developer and City desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

1. DEFINITIONS

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 Acquisition Agreement. "Acquisition Agreement" shall have the meaning set forth in Section 5.1 below.

1.2 Anniversary Date. "Anniversary Date means the date of the anniversary of each year following the Effective Date established in Section 3.5.

1.3 Annual Review. "Annual Review" means the annual review of the Developer's performance of the Agreement in accordance with Section 12.1 of the Agreement and Government Code § 65865.1.

1.4 Applications. "Application(s)" means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.5 Appraisal of Land Value. "Appraisal of Land Value" when referred to herein shall mean the determination by an experienced and independent MAI appraiser retained by City (Developer may veto any appraiser selected by City for good cause), in a written appraisal at fair market value based upon comparable sales of unimproved land, and serviced by the existing infrastructure, and with the development restrictions of the Specific Plan, and with the understanding that such value shall not exceed \$80,000 per acre.

1.6 Assignment. "Assign" shall have the meaning set forth in § 14.1.1 below. All forms of use of the verb "assign" and the nouns "assignment" and "assignee" shall include all contexts of hypothecations, sales, conveyances, transfers, leases, and assignments.

1.7 Authorizing Ordinance. "Authorizing Ordinance" means Ordinance No. 1450 approving this Agreement.

1.8 Building Permit. "Building Permit," with respect to any building or structure to be constructed on the Developer's Property, means a building permit for not less than the shell and core of such building or structure issued by the City's Division of Building and Safety.

1.9 CC&R's. "CC&R's" shall have the meaning set forth in Section 14.4 below.

1.10 Certificate of Compliance. "Certificate of Compliance" shall have the meaning set forth in Section 12.2 below.

1.11 Certificate of Occupancy. "Certificate of Occupancy," with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.12 CFD. "CFD" means a community facilities district for the Project allowed to be formed pursuant to the CFD Act by a Local Agency.

1.13 CFD Act. "CFD Act" means the Mello Roos Community Facilities Act of 1982 (Government Code § 53311 et seq.), as it may be amended from time to time, authorizing the imposition of special taxes to fund capital facilities and services.

1.14 City. "City" means the City of Banning, California.

1.15 City Council. The "City Council" means the governing body of the City.

1.16 City Development Agreement Ordinance. "City Development Agreement Ordinance" means Chapter 17.60 of the Zoning Ordinance which establishes a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.17 City Manager. "City Manager" means the City Manager of City.

1.18 City Wide Traffic Improvements. “City Wide Traffic Improvements” means those traffic improvements identified in the Traffic Impact Mitigation Fee established in Article 7.

1.19 Claims or Litigation. “Claims or Litigation” means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason.

1.20 Dedicate or Dedication. “Dedicate” or “Dedication” means to offer the subject land to the City .

1.21 Default. “Default” refers to any material default, breach, or violation of a provision of this Development Agreement as defined in Section 13 below. “City Default” refers to a Default by the City, while “Developer Default” refers to a Default by the Developer.

1.22 Developed Property. “Developed Property” shall mean residential property for which a certificate of occupancy has been issued or a final inspection conducted.

1.23 Development Goals. “Development Goals” shall have the meaning set forth in Section 6.2 below.

1.24 Developer’s Property. “Developer’s Property” means the 1543 acres of land, more or less, described in Exhibit A in which Developer holds a legal or equitable interest and upon which the Project will be developed.

1.25 Development. “Development” means the improvement of the Developer’s Property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s Property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

1.26 Development Agreement Statute. “Development Agreement Statute” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.27 Development Approvals. “Development Approvals” means all site-specific (meaning specifically applicable to the Developer’s Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals includes, but is not limited to, specific plans, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans,

maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.28 Development Impact Fees. "Development Impact Fees" means the monetary consideration, other than a tax or assessment, charged by the City in connection with mitigating the Project's specific impacts and the development of the public facilities related to the Development of the Project, including those fees, calculated on the basis of the number of residential units or square footage of non-residential development to be constructed, as set forth on Exhibit "D" attached hereto as well as those Development Impact Fees set forth in Exhibit B and being revised. Development Impact Fees do not include Processing Fees.

1.29 Development Plan. "Development Plan" means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.30 Director. "Director" means the City's Director of Community Development or equivalent official.

1.31 Economically Distressed Year. "Economically Distressed Year" means any calendar year in which the number of building permits for single family dwelling units issued in Western Riverside County (includes all cities and unincorporated county territory) are less than 50% of the average number of building permits issued during the prior 25 years, based on the annual report of the California Construction Industry Research Board. For example, for the 25 year period from 1987 to 2011, inclusive, total permits issued were 235,455 and the annual average was 9418. In 2008, 2009, 2010 the total permits issued were 2794, 2717 and 3321, so all three years would have been declared "Economically Distressed" hereunder. If the number of building permits issued in any calendar year are not available from the California Construction Industry Research Board, then the City shall obtain them from any other reliable source measuring the same data over the period.

1.32 Effective Date. "Effective Date" means the date this Agreement becomes effective as set forth in Section 3.5.

1.33 Eligible Facilities. "Eligible Facilities" means the Proposed Project Facilities and other public facilities, fees and contributions for public facilities, as described in the Financing Plan.

1.34 Exaction. "Exaction" means Dedications, payment of Development Impact Fees and/or construction of public infrastructure by the Developer as part of the Development of the Project. The development will be subject to all development and/or in lieu fees currently in the process of being studied by the City as indentified in Section 7.22 so long as they are adopted prior to the issuance of building permits for specific portions of the development proposed herein. The amount of the fees shall be as required at the time of issuance of building permits.

1.35 Existing Development Approvals. "Existing Development Approvals" means only the Development Approvals which are listed on Exhibit "B."

1.36 Existing Land Use Regulations. “Existing Land Use Regulations” means those Land Use Regulations applicable to the Property in effect on the Effective Date.

1.37 Financing Plan. “Financing Plan” means Exhibit “H” attached hereto.

1.38 Force Majeure. “Force Majeure” shall have the meaning set forth in Section 19.2 below.

1.39 Future Development Approvals. “Future Development Approvals” means those Development Approvals applicable to the Developer’s Property approved by the City after the Effective Date such as tentative tract maps, subdivision improvement agreements and other more detailed planning or engineering approvals.

1.40 General Plan. “General Plan” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment 11-2501 and Zone Change 11-3501 approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Developer’s Property, if permitted, by Article 11.

1.41 Goals and Policies for Financing. “Goals and Policies for Financing” or “Goals and Policies” means the City’s goals and policies adopted in accordance with Section 5.2.1.

1.42 Golf Course/Active Open Space. “Golf Course/Active Open Space” means the area containing all of Planning Area 35 and Planning Area 39 as described in the Specific Plan and Sections 5.3 and 5.9.10 below.

1.43 Grading Permit. “Grading Permit” means a permit issued by the City’s Division of Building and Safety which allows the excavation or filling, or any combination thereof, of earth.

1.44 Improvement Area. “Improvement Area” shall have the meaning set forth in Section 5.1 below.

1.45 Innocent Owner. “Innocent Owner” shall have the meaning set forth in Section 13.6 below.

1.46 LAFCO. “LAFCO” means the Riverside County Local Agency Formation Commission.

1.47 Land Use Regulations. “Land Use Regulations” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City which affect, govern, or apply to the Developer’s Property or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, the Specific Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and

improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.48 Legal or Equitable Interest. "Legal or Equitable Interest" means (i) an option or purchase agreement or (ii) fee title evidenced by appropriate title insurance issued in favor of the Developer.

1.49 LMD. "LMD" means the Landscape and Maintenance District established pursuant to Streets and Highways Code § 22500 et seq. to fund parks, parkways, City rights of way landscaping and common areas.

1.50 Local Agency. "Local Agency" means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Project, including, but not limited to, the City.

1.51 Lot. "Lot" means any of the parcels legally created within the Project as a result of any approved final subdivision, parcel or tract map, pursuant to the Subdivision Map Act or recordation of a condominium plan pursuant to Civil Code § 1352 .

1.52 Master Tract Map. "Master Tract Map" (or "A Map") means a large scale tract map covering one or more complete Planning Areas which will include all infrastructure necessary to develop the tract and a phasing plan as to the development of the infrastructure and the subsidiary subdivisions within the tract. The Master Tract Map is a subdivision map within the meaning of the Subdivision Map Act and shall meet the requirements of the Act and of this Agreement. The Master Tract Map may also be a financing map for purpose of financing the development of the Project or the conveyance of large lots and may not require the actual construction of improvements.

1.53 Mortgage. "Mortgage" means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which all, or any portion of, or any interest in, the Developer's Property is pledged as security.

1.54 Mortgagee. "Mortgagee" refers to the holder of a beneficial interest under a Mortgage.

1.55 Mortgagee Successor. "Mortgagee Successor" means a Mortgagee or any third party who acquires fee title or any rights or interest in, or with respect to, the Developer's Property, or any portion thereof, through foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise from, or through, a Mortgagee. If a Mortgagee acquires fee title or any right or interest in, or with respect to, the Developer's Property, or any portion thereof, through foreclosure, trustee's sale or by deed in lieu of foreclosure and such Mortgagee subsequently conveys fee title to such portion of the Developer's Property to a third party, then such third party shall be deemed a Mortgagee Successor.

1.56 Municipal Code. "Municipal Code" means the City's Municipal Code as it existed on the Effective Date and as it may be amended from time to time consistent with the terms of this Agreement.

1.57 Non-Defaulting Party. "Non-Defaulting Party" shall have the meaning set forth in Section 13.1 below.

1.58 Owner. "Owner" means Pardee Homes and any successors during the period of time that each such person or entity owns fee title to any portion of the Developer's Property prior to the development of such portion of the developer's Property and subject to the terms of this Agreement.

1.59 Park fees. "Park Fees" means Development Impact Fees levied by the City for Open Space and Park Development pursuant to Chapter 15.68 of the Municipal Code.

1.60 Phase. "Phase" shall have the meaning set forth in Section 6.2 below.

1.61 Phasing Plans. "Phasing Plans" shall mean the detailed plans for development of the Proposed Project Facilities and other infrastructure and for the Project which are developed pursuant to Section 6.5 as a part of processing the Subdivision Maps.

1.62 Planning Area. "Planning Area" means each of the 75 planning areas described in the Specific Plan, and shown on Exhibit "A."

1.63 Planning Commission. "Planning Commission" means the City's Planning Commission.

1.64 Pre-Qualified Buyer. "Pre-Qualified Buyer" means a publicly traded builder or developer or a privately held merchant builder with a minimum net financial worth of Five Million Dollars (\$5,000,000) who has constructed at least 75 homes in California during the preceding five year period.

1.65 Property Owner's Association or POA. "Property Owner's Association" or "POA" means one or more association formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including, but not limited to, one or more associations of homeowners and/or other associations of owners of industrial, commercial, educational and retail property.

1.66 Processing Fees. "Processing Fees" means (i) the City's normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City's costs associated with processing, review and inspection of applications, plans, specifications, etc., and (ii) fees and charges levied by any other public agency, utility, district or joint powers authority, whether or not City is a member of such body or such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.

1.67 Project. "Project" means the Development of the Developer's Property, pursuant to this Agreement and the Existing Land Use Regulations, as depicted on Exhibit "B" attached hereto.

1.68 Proposed Project Facilities. "Proposed Project Facilities" means those improvements set forth on Exhibit "F" attached hereto or otherwise included in conditions of approval of the maps.

1.69 Reimburse or Reimbursement. "Reimburse" or "Reimbursement" means the provision by the City of cash or credit in return for land, goods or services provided by Pardee Homes.

1.70 Reservations of Authority. "Reservation of Authority" shall have the meaning set forth in Article 11 below.

1.71 Services Special Tax. "Services Special Tax" shall mean the special tax authorized to be levied by the CFD(s) established over the Developer's Property to alleviate the negative fiscal impact of the Project on City services as established by the Fiscal Impact Analysis ("FLA") and as further described in Section 5.3 below.

1.72 Specific Plan. "Specific Plan" means the Butterfield Specific Plan, prepared by RBF Consulting and approved by the City Council by Ordinance No. 1450 introduced on March 27, 2012, adopted on April 10, 2012.

1.73 Subdivision Map. "Subdivision Map" (or "B Map") means the subsidiary subdivision maps for the development of any Tract which shall be consistent with the conditions of the Master Tract Map and shall contain its own phasing plan for the installation of the infrastructure and other improvements within the subdivision. All subdivision maps shall meet the requirements of the Subdivision Map Act including § 66473.7 (See 65867.5).

1.74 Subdivision Map Act. "Subdivision Map Act" means Government Code § 66412 et seq. as implemented by Title 16 of the Municipal Code.

1.75 Taxes. "Taxes" means general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general applicability citywide which do not burden the Developer's Property disproportionately to similar types of development in the City and which are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees, Processing Fees or Traffic Control Facility Fees.

1.76 Ten or 10<sup>th</sup> Year Anniversary Review. "Ten Year Anniversary Review" means the review performed upon each 10th anniversary of the Effective Date as provided in Section 6.6.

1.77 Term. "Term" means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 6.7 below.



1.78 Traffic Control Facility Fee. "Traffic Control Facility Fee" means the fee set forth in Exhibit "B" attached hereto.

1.79 Transfer. "Transfer" shall have the meaning set forth in Article 14 below.

1.80 Trigger Percentages. "Trigger Percentages" shall have the meaning set forth in Section 14.1.1 below.

1.81 TUMF. "TUMF" means the Transportation Uniform Mitigation Fee promulgated by the Western Riverside Council of Governments and implemented by Chapter 15.76 of the Municipal Code.

1.82 Zoning Code. "Zoning Code" means Title 17 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the Developer's Property approved concurrently with the approval of this Agreement, and (ii) as the same may be further amended from time to time consistent with this Agreement.

## 2. EXHIBITS.

The following are the Exhibits to this Agreement:

Exhibit "A": Map and Legal Description of the Developer's Property

Exhibit "B": Existing Development Approvals/Fee Studies

Exhibit "C": Estoppel Certificate

Exhibit "D": Development Impact Fees

Exhibit "E": Additional Agreements Concerning Development

Exhibit "F": Proposed Project Facilities

Exhibit "G": Highland Springs Avenue Improvements

Exhibit "H": Butterfield Project Financing Plan

## 3. TERM.

3.1 Term. The term of this Development Agreement (the "Term") shall commence on the Effective Date and shall continue for a period of forty (40) years, subject to review, as called for in Section 6.2 below, to determine whether the Development Goals have been met, and reduction in the Term of five (5) years for each time the Development Goals of a Phase are not met and extensions for Economic Distress, as provided in Sections 6.6.5 and 6.7 below.

3.2 Termination Upon Completion of Construction. This Agreement shall terminate with respect to any Lot, and such Lot shall be released and no longer subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the last building on the Lot or, if no certificate is issued, when the final inspection for the last building on the Lot has taken place.

3.3 Termination for Default. This Agreement may be terminated due to the occurrence of any default in accordance with the procedures in Article 13.

3.4 Extension of the Term: The Term shall be extended by one (1) year for each Economically Distressed Year occurring during any Phase up to a maximum of three (3) years for any Phase.

3.5 Effective Date. This Agreement shall become effective upon the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation have been filed which would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved in the City's favor, and the time for any further judicial review has run, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date is not otherwise tolled for any other Force Majeure as described in Section 19.2.

#### 4. DEVELOPMENT OF THE DEVELOPER'S PROPERTY.

4.1 Right to Develop. During the Term, the Developer shall have a vested right to develop the Developer's Property (subject to Article 11 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the development of the Developer's Property (including the uses of the Developer's Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The maximum number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code §§ 65915 through 65918 or other similar legislation or regulation, is 5,387 units and approximately 36-acres of commercial development. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any subsequent Owners, upon the sale, transfer, or assignment of any portion of the Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement.

4.2 Right To Future Approvals. Subject to the City's exercise of its police power authority as specified in Article 11 below, the Developer shall have a vested right: (i) to receive from the City all future Development approvals for the Developer's Property that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) to Develop the Developer's Property in a manner consistent with such approvals in accordance with the Existing Land Use

Regulations and this Agreement. All future Development Approvals for the Developer's Property, including without limitation General Plan amendments, zone changes, or parcel maps or tract maps, shall upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations, for the term of this Agreement.

4.3 Existing Development Approvals. Only those items specifically set forth on Exhibit "B" hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within Exhibit "B" shall not apply to the Project with the exception of those reservations set forth in Article 11 below.

4.4 Specific Plan. Land use and Development of the Property shall be governed by the Specific Plan and this Agreement. Notwithstanding any other provision of this Agreement, the Developer shall have the right, but not the obligation, to Develop the Developer's Property for the uses specified in the Specific Plan at the locations specified in the Specific Plan.

4.5 Priority Of Specific Plan. The City has determined that the Specific Plan is consistent with the General Plan and the Zoning Code. As such, the Specific Plan shall be the primary document governing the use and Development of the Developer's Property and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations except for this Agreement, which prevails over the Specific Plan.

4.6 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Article 11. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of all necessary Future Project Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise provided by State law.

4.7 Impact Fee Studies. As provided in Section 7.2, studies for certain Development Impact Fees, listed in Exhibit "D," will be performed after the Effective Date of this Agreement and shall become a part of the Existing Development Approvals. Additionally, Development Impact Fees are subject to review and adjustment as a part of the 10 Year Anniversary Reviews, in accordance with Section 6.6. The cost of performing the studies may be included in the fees.

## 5. FINANCING AND THE CITY'S OBLIGATIONS.

5.1 Formation of CFD(s) and LMDs. Subject to the provisions of this Article 5, some or all of the Eligible Facilities shall be funded through the City's formation of one or more CFDs and the levy of a special tax of the CFD(s) (the "Facilities Special Tax") and issuance of bonds secured by the Facilities Special Tax (the "Bonds") in accordance with the Financing Plan set forth in Exhibit H. Such CFD(s) shall, pursuant to Section 5.3, also be authorized to finance certain City public services costs (incurred as a result of Development of the Developer's Property) through the levy of a special tax, in the not to exceed amount set forth in the Financing Plan, on each residential unit located within the boundaries of such CFD(s) (the

“Services Special Tax”). Additionally, landscape maintenance districts (“LMDs”) may be formed under Section 5.6.

5.1.1. Procedures for Formation. The City and the Developer shall cooperate in good faith to form one or more (i) CFDs and/or designate improvement areas therein (the “Improvement Areas”), (ii) LMDs and designate improvement areas therein (also “Improvement Areas”), and (iii) CFDs for the Special Services Tax (collectively referred to herein as the “Financing Districts”), which are consistent with the Financing Plan and which in the aggregate will encompass and encumber the Developer’s Property. Final terms and conditions regarding the formation of the Financing Districts, their boundaries, Improvement Area boundaries, the rate and method of apportionment of the Services Special Taxes and Facilities Special Taxes to be levied in any CFD, LMD and/or Improvement Area (including any tax zones therein), any acquisition or construction agreements related thereto, and the terms of one or more series of Bonds to be issued in conjunction therewith shall be determined jointly by City and the Developer in accordance with the Financing Plan and the City’s Goals and Policies for Financing. In conjunction with the formation of any Financing District, the Developer and the City shall cooperate in good faith to negotiate and finalize any acquisition and funding agreement prior to the formation of the first Financing District addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the Financing District (such agreement to be referred to herein as the “Acquisition Agreement”). Developer shall cooperate in the establishment of the levy over Developer’s Property and not exercise any rights of protest.

5.1.2. Timing of Formation. Developer shall prepare all studies and submit all documents necessary to form the Financing Districts within one year after the adoption of City’s Goals and Policies for Financing. After Developer has initiated formation of the Financing Districts, City shall form the Financing Districts consistent with the City’s adopted Goals and Policies for Financing and State Law. City shall complete formation proceedings within 180 days after Developer makes the necessary submission. The Developer shall indemnify the City and hold it harmless against Claims or Litigation brought in connection with the formation of the Financing Districts.

5.1.3. Failure to Form Financing Districts. If any of the contemplated Financing Districts are not formed, or formed but not in accordance with the terms of this Agreement, through the failure of one Party to perform its obligations pursuant to Section 5.1, the other Party shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the Party which has failed to perform prior to the actual termination date.

5.2 Adoption of Goals and Policies for Financing. Before the Developer undertakes development of any units, the City shall retain a financial advisor and prepare a City-wide policy for undertaking land based CFD and assessment financing. The draft policy will be reviewed with the Developer and the City shall in good faith consider any comments made by the Developer on the draft policy. The goals and policies for Financing shall be adopted within 180 days after the Effective Date and shall be consistent with Exhibit H, including the Financing Parameters described therein. The goals and policies shall be adopted by Council by resolution and thereafter be the Goals and Policies for Financing. The City may amend the Goals and

Policies for Financing from time to time, and will be a part of the Existing Land Use Regulations hereunder, but such amendment shall not apply to the Development unless they are consented to by Developer.

5.3 Services Special Tax. The final Fiscal Impact Analysis prepared by the City's consultant, Willdan Financial Services, dated September 16, 2011, (the "FIA") demonstrates an overall negative fiscal impact on certain City public service costs incurred as a result of Development of the Developer's Property, including without limitation, the City's costs for police and fire services. The FIA demonstrates that such negative fiscal impact can fully be mitigated by an annual Services Special Tax, implemented as required by this Section 5.3 and the Financing Plan set forth in Exhibit "H" attached hereto. The annual services Special Tax shall not exceed \$ 115 per dwelling unit of greater than 1820 square feet of habitable area and \$92 per dwelling unit of 1820 or less square feet of habitable area in fiscal year 2013-14 and shall increase each fiscal year thereafter by 3%. The Services Special Tax may be levied in perpetuity and shall only be levied by the CFD(s) formed pursuant to Section 5.1 on residential parcels classified as Developed Property, but Developer shall cooperate in the establishment of the levy over Developer's Property and not exercise any rights of protest.

5.4 Planning Area 19, 35, 39 and 71 Drainage Facilities. In the event that the Developer, in its sole and absolute discretion, determines that the Golf Course is financially infeasible, the flood control improvements within Planning Areas 35 and 39 shall be considered Proposed Project Facilities and may be funded through the CFD(s). If this occurs, then portions of the land within Planning Areas 35 and 39 will be dedicated as public open space and the remaining portions dedicated to flood control appurtenances, to be transferred to the City or the Riverside County Flood Control District upon completion of the flood control facilities on such site and shall be improved to the Master Plan Standards of District. Plans for developing the necessary improvements shall be developed as a part of the Phasing Plans pursuant to Section 6.5, but improvements may not be required until the City Engineer determines that development will (i) intrude into the flood plan or (ii) cause the alteration of Smith Creek. The City Engineer may approve temporary improvements until the scale of the portion of the Project completed requires permanent structures. Upon transfer of the portions of the Planning Areas relating to the flood control facilities to the City or District, if the CFD(s) are formed or, as soon thereafter as the CFD(s) are formed, the City shall pay the agreed upon construction costs to the Developer from available CFD Proceeds in accordance with the Financing Plan. (Also see Sections 8.1.3. and 8.2.)

5.5 Reimbursement Agreements. If, and to the extent that, the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of that required to serve the Project or to mitigate its impacts, the City shall reimburse the Developer for all costs and expenses incurred by the Developer in constructing such improvements for that portion of the Dedications, public facilities and/or infrastructure that the City, pursuant to this Agreement, may require pursuant to the Existing Land Use Regulations. The City further shall adopt ordinances, including but not limited to those authorized by Government Code § 66485 et seq., as may be required in order to impose a reimbursement obligation on other properties which may be served or benefited by the oversized infrastructure or facilities. The terms of the Reimbursement Agreements shall otherwise be consistent with the City's forms generally used with all other development projects of over 200 units. Such

reimbursement shall be paid to the Developer at the earliest opportunity out, and upon collection, of available fees from benefited developments so long as consistent with City's other contractual obligations. Repayment shall not extend beyond the Term of this Agreement.

5.6 Landscape Maintenance Districts. The City shall take, and Developer shall support, all steps necessary to establish LMD(s) or other maintenance districts, to fund maintenance of City parks, parkways, City rights of way landscaping, and common areas as provided in Section 5.1. The Developer shall make a deposit to pay the cost for review and approval of all agreements, studies, analysis and actions necessary for the establishment of the LMD(s).

5.7 Reimbursement for Pre-Approval Costs. The City shall provide fee credits to the applicable DIFs, as set forth below, for those residential units for which Commencement of Construction occurs by the twelfth anniversary of the Effective Date, but not more than for the first 1200 units. "Commencement of Construction" as used herein shall have the same meaning as under Section 6.3. The units eligible for fee credits for reimbursement shall be those of the 1200 which are not eligible for the incentive provided for in Section 6.8. If the incentive is taken in accordance with Section 6.8, then the amount of the credit for each unit for each fee shall be determined by taking the amount of cost to be reimbursed and dividing it by 1200 minus the number of units eligible for the incentive. As an example, if the total amount of the cost to be reimbursed is \$227,500 and the number of units eligible for the incentive is 400, then the amount of the credit for each unit after the first 400 within the 12 years following the Effective Date will be  $\$227,500 / (1200 - 400) = \$227,500 / 800 = \$284$  rounded to the nearest dollar. These fee reimbursements may be included in the subsequent fee studies performed pursuant to Section 7.2.2. [The per unit figure shown below assumes the credit is taken over 1200 units.]

5.7.1.1 A fee credit against updated Sewer Sanitary Fee and Recycled Water Fee of \$227,500 or \$189.60 per unit for the Corollo Study related to the sewer and recycled water master plans.

5.7.1.2 A fee credit against the updated Domestic Water Fee of \$1,115,000 or \$929.17 per unit for the consultant time related to the preparation of the City's 2010 Urban Water Management Plan.

5.7.1.3 A fee credit against the proposed revised Traffic Control Facility Fee of \$105,000 or \$875 per unit for the consultant time related to the preparation of the Traffic Impact Analysis and related traffic fee prepared documents.

5.7.1.4 A fee credit against the proposed revised Traffic Control Facility Fee of \$45,000 or \$375 per unit for the development of Citywide fees related to the Traffic Impact Fees study or other fee studies required as a result of entitlement activities.

5.7.1.5 A fee credit against the proposed revised Traffic Control Facility Fee or other appropriate fee of \$550,000 or \$462.50 per unit for the consultant time and plan preparation for required studies related to pre-project improvements to Highland Springs near the I-10 freeway.

5.7.1.6 A fee credit against the General Plan Fee of \$187,500 or \$156 per unit for the General Plan Traffic Circulation Element Amendment preparation.

5.8 Obligations of Developer Respecting Financing; No Speculation. Except as specifically provided herein, it is expressly understood that the Developer is fully responsible for the cost of the Project and obtaining any necessary construction or long term financing therefore. The Developer's Property shall be used solely to support the development of the Project and may not be pledged as security to support financing for any other purpose, in accordance with Article 18.

## 6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

6.1 Timing of Development. The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Developer's Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Developer's Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Developer's Property will be Developed. The timing and rate of Development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which are not within the control of the developer or the City. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the Pardee case by acknowledging and providing in this Agreement that the Developer shall have the vested right to Develop the Developer's Property in such order and at such rate and at such time as the Developer deems appropriate, but in accordance with the Development Goals and the phasing plans developed in accordance with Section 6.5, and in accordance with other terms hereof or in the Development Approvals related to project phasing and timing. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Developer's Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Developer's Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of development of the Project; or (ii) restricting the City from exercising the powers described in Section 11 of this Agreement to regulate development of the Property. Nothing in this Section 6.1 is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not one or more Owners proceeds with any portion of the Project. The City acknowledges that the Project Phasing set forth in the Specific Plan does not require

that the Project be Developed in any specific order but, instead, are illustrative of how the Project may be Developed. The Project Phasing instead is controlled by this Agreement.

6.2 Development Goals. Notwithstanding the provisions of Section 6.1, the Developer must achieve certain goals and objectives in terms of Project development in order to keep the Agreement in place for the full term contemplated in Section 3.1. The development of the Project will be reviewed at each Ten Year Anniversary Review. The Development Goals are as follows:

Phase I (10 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ Development will begin near the corner of Highland Springs and Wilson unless otherwise agreed</li><li>▪ 1,200 Residential Units to be constructed</li><li>▪ Commercial retail development per 6.2.4</li><li>▪ Outlet for Smith Creek and other improvements in Section 6.2.3.</li></ul>
Phase II (20 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,600 residential units to be constructed</li></ul>
Phase III (30 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,400 residential units to be constructed</li></ul>
Phase IV (40 <sup>th</sup> Anniversary)	<ul style="list-style-type: none"><li>▪ 1,187 residential units to be constructed</li></ul>

6.2.1. Cumulative Measure of Units. The Development Goals for each Phase shall be cumulative, e.g., if the Developer has constructed 2000 Residential Units in Phase I and 1000 Residential Units in Phase II, then the Developer will have met the Development Goal for Phase II even though less than 1500 Residential Units were constructed during Phase II.

6.2.2. More Detailed Phasing Plans Developed. Within each Phase, as defined above, more detailed phasing plans for each subdivision shall be developed in accordance with Section 6.5, and are subject to the City's review and approval as conditions of approval of the Tract or Subdivision Map and, as approved, shall become a part of the Existing Approvals.

6.2.3. Additional Phase I Development. In addition to the residential unit Development Goals, Phase I shall also include: (i) commercial development as specified in Section 6.2.4, (ii) the outlet for the Smith Creek flood control improvements at Wilson, (iii) the preparation and dedication of the Recreation/Emergency Center site described in Section 8.1.4, (iv) the satellite water treatment plant described in Section 8.3, (v) the water tanks described in Section 8.5; and (vi) such other Proposed Project Facilities as required by the Specific Plan and the Phasing Plans approved pursuant to Section 6.5. Notwithstanding the specification of timing as provided herein, with the approval of the City Manager, any public improvement required herein may be deferred for good cause.

6.2.4. Commercial Development. A minimum 23-acre retail-commercial site at the corner of Highland Springs and Wilson (Planning Area 18) will be prepared as a part of Phase I, and concurrently with the development undertaken pursuant to Section 6.8. Site preparation

200



shall require the grading of the Site, construction of surrounding streets, and bringing all necessary utilities and infrastructure for development. Developer shall also demonstrate a good faith effort undertaken over at least a five (5) year period to market the site for sale or lease to a suitable user. Additionally, Developer shall maintain the potential to expand the site to as much as 88 acres to permit a larger commercial development, provided that such expanded project obtains any necessary entitlements. Developer shall advise City within five (5) years of the Effective Date as to what interest there might be in the expanded project and the parties will mutually agree as to the scope of the project. The timely preparation and attempts to market this site is required for completion of Phase I and is subject to the same treatment as the residential units (i.e. phasing period can be prolonged for economic distress and the Term of Agreement can be shortened pursuant to Section 6.7). The goal of the City is to locate a significant sales tax generating "big box user" as the major tenant of the project. Accordingly, City retains the right to approve the major tenant in the project (tenants over 75,000 sq. ft), in accordance with the provisions in Article 14 as a transferee by lease or sale.

6.2.5. Extensions of Phases. The length of each Phase for the purposes of this Section 6.2 shall be extended by one (1) year for each Economically Distressed Year occurring during the Phase, up to a maximum of three (3) years as provided in Section 6.6.5.

6.3 Development Goals Satisfied By Commencement of Construction. The Development Goals for residential units specified above are satisfied if construction has commenced. "Commencement of Construction" of a residential unit means that building plans have been approved, that a building permit has been issued and that construction has commenced on the unit. The unit shall not be counted if the building permit expires without completion of the unit.

6.4 Public Improvements. The Parties understand and agree that the Specific Plan identifies the public infrastructure and though it contains phasing concepts, it does not specify precisely the phasing of the construction of public infrastructure. The development phasing will be consistent with the Specific Plan and this Agreement. The City desires that required public infrastructure generally be constructed in the early portion of the applicable phase of the development cycle subject to the guidelines specified below. In consideration of the foregoing, notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Future Approvals to require Developer to dedicate necessary land, pay the development fees specified in Article 7, and/or to construct the required public infrastructure ("Exactions"), at such time as City shall determine in accordance with the process in Section 6.5 and subject to the following conditions:

A. The dedication, payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

B. The timing of the Exaction should be reasonably related to the phasing of the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public and the improvements shall be completed based upon the needs of the general public existing from time to time.

When the Developer is required by this Agreement and/or the Development Plan to construct any public improvements which will be dedicated to the City or any other public agency, upon completion, and if required by applicable laws to do so, the Developer shall perform such work in the same manner and subject to the same construction standards as would be applicable to the City or such other public agency should it have undertaken such construction work. The Developer shall pay prevailing wages as required by law.

6.5 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all development including public improvements shall generally be in accordance with the Development Approvals and applicable provisions of this Agreement (For example, Sections 6.2, 6.4, 6.5, 7.3, 8.0, etc.). Although the overall timing of Project development remains subject to the Developer's discretion based on market conditions in accordance with Section 6.1, there is a logical sequence to the development and certain improvements are required to be complete before phases of the Project can be considered complete and ready for occupancy. The Phasing Plan will be developed over time in accordance with the following process:

6.5.1. Master Phase Tract Map. Each Phase shall have a Master Tract Map which shall be submitted for financing and conveyance purposes only and no improvements may be constructed nor shall development be permitted pursuant to such approved Tract Map except through submission and approval of tentative and final Subdivision Maps. Concurrently with processing of the Master Tract Map, all tentative Subdivision Maps for the Tract shall be submitted and processed.

6.5.2. Subdivision Maps. Each Master Tract Map shall designate future subdivisions within the Tract and the order of subdivision development to the extent that the need for development of public infrastructure dictates the logical progression of subdivision development. Each Subdivision Map shall show all infrastructure necessary for the development of the Subdivision. Each subdivision will have a written Phasing Plan approved by the Director and the City Engineer prior to commencement of development of the subdivision specifying when the lots within the subdivision will be developed and when all public infrastructure within the subdivision will be constructed. Generally all streets, lighting, curbs and gutters, sidewalks, parkway landscaping, asphalt concrete paving, traffic signs and stripping, medians, landscaping, drainage facilities, storm drains, water lines, sewer lines, utility lines, trails and other facilities within the subdivision must be completed before release of any occupancy permits within the subdivision. All conditions which require the provision of Proposed Project Facilities and Subdivision Improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provision of suitable security, prior to the approval and recordation of the Subdivision Map.

6.5.3. Proposed Project Facilities. Attached as Exhibit "F" are diagrams showing Proposed Project Facilities and depicting the major public infrastructure of the development, including roadways, detention basins, water lines, sewer lines, recycle water lines, utilities, storm drains and drainage facilities, treatment plants, power substations, community parks, community centers, fire stations, and other infrastructure serving area-wide populations. The Proposed Project Facilities serve multiple subdivisions, and may need to be constructed in the initial phase of a particular Tract, or even before certain Tracts can be developed. The

detailed phasing of construction will be provided through the Master Tract and Subdivision Phasing Plans, and subject to Section 6.4.

6.5.4. Time for Map Submission. The Developer shall submit all applications for tentative, or vesting tentative, Master Tract Maps and, concurrently with each application for a Master Tract Map, the applications for tentative, or vesting tentative, Subdivision Maps thereof within five (5) years of the Effective Date for the City's review and approval.

## 6.6 Ten Year Anniversary Review.

6.6.1. Generally. On or about each Tenth Anniversary of the Effective Date as provided herein, the City shall conduct the "Ten Year Anniversary Review" the City and the Developer review to shall review the performance of this Agreement, and the development of the Project to see if the Development Goals have been met. The cost of the Annual Review shall be borne by the Developer and the Developer shall pay a reasonable deposit in an amount requested by City to pay for such review.

As part of each Ten Year Anniversary Review, sixty (60) days before each tenth anniversary of this Agreement, the Parties shall mutually meet and outline the review process, including (i) the information needed and formats, (ii) the schedule for performing the review, (iii) indentifying any needed consultants and studies, (iv) the adequacy of current DIFs and any anticipated need for changes, (v) any adjustments to needed public infrastructure, (vi) the estimated deposit needed to pay the City's costs of performing the review, and (vii) other matters necessary for the review.

The Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by this Agreement or the Existing Land Use Regulations. The Developer's submittal shall include a written explanation of any reasons why the Development Goals were or were not met, and any request for the modification of future Development Goals in the next 10 year period, and the reasons therefore.

The Developer shall submit its report on or before the Tenth Anniversary. Thereafter, the Director shall prepare and submit to City Council a written report on the performance of the Project. The Developer's written response shall be included in the Director's report. The report and recommendations to Council shall be made within 45 days of the anniversary, and a public hearing shall be held thereon.

6.6.2. Adjustment to DIFs. As provided in Section 7.2.2, all Development Impact Fees are subject to adjustment as put of the Ten Year Anniversary Review provided (i) the adjustment is based on the preparation a suitable analysis by an independent professional consultant experienced in performing such studies demonstrating the basis for the increase, (ii) the study is performed on a City-wide basis and applies to all development projects of 200 or more residential units, (iii) all infrastructure financed is included within the City's

General Plan and capital projects master plan, (iv) the study demonstrates a reasonable nexus to the Project and the fees are proportionate to the benefit received. The Development Impact Fees shall not contain any escalators but the studies justifying the fees may use cost numbers which recognize the ten year horizon of each study.

6.6.3. Parties Can Alter Development Goals Objectives. The Development Goals for the next Ten Year Anniversary Review period as set forth in Section 6.2 may be modified with the mutual agreement of the Parties at the time of the hearing set forth in Section 6.6.1. Unless the Parties reach agreement for modification, the Development Goals will remain as provided therein.

6.6.4. No Other Changes to Development Plan. Other than the Development Impact Fee adjustments provided in Section 6.6.2 which may be unilaterally approved by City subject to performing the required studies, no other changes to the Development Approvals may be made by City without the consent of Developer. Nothing herein shall restrict the City's reservations of rights under Article 11.

6.6.5. Extensions Due to Economic Distress.

6.6.5.1 Determination of Distress. As provided in Section 6.2.4, the Phases can be extended up to three (3) years due to the occurrence of an Economically Distressed Year(s). In any year in which Developer believes conditions exist to warrant Declaration of an Economically Distressed Year, within 30 days following the Anniversary Date, Developer shall submit his request therefore. Additionally, in support thereof, Developer shall provide City with a Report including the following: (i) a written analysis of County-wide data supporting the Declaration; (ii) publicly available reports concerning general market conditions affecting home building; (iii) analysis as to how general market conditions have affected the Project including demand, costs and financing; and (iv) forecasts concerning the next three (3) years. The Report is for informational purposes only and City shall not be permitted to disapprove the Declaration of Economic Distress if the data submitted meets the definition in Section 1.31. Within 30 days the City Manager shall review the Declaration and Report and determine if the data supports the declaration of an Economically Distressed Year. The City Manager's determination is appealable to the Council under Section 13.6.3, but not as a default thereunder.

6.6.5.2 Effect of Determination on 10-Year Review. Generally the effect of the declaration of an Economically Distressed Year shall also toll the performance of the 10 Year Anniversary Review. For example, if during any 10 year cycle, two years had been declared Economically Distressed, then the 10 Year Anniversary Review would be performed on or about the Anniversary Date of the 12<sup>th</sup> year, as otherwise provided in Section 6.6. The City, however, retains the right to elect to perform the DIF adjustments in accordance with Section 6.6.2 on the 10 Year Anniversary, or to defer the studies and do them in accordance with the general 10 Year Anniversary Review performed on the date to which the Phase has been extended due to the extensions for Economically Distressed Years pursuant to Section 6.2.4.

6.7 Failure to Satisfy Phasing Goals and Objectives. For reasons stated in Section 6.1, failure to achieve the Development Goals in any ten year period shall not be a

default hereunder, but it shall cause the term of the Agreement to be shortened five (5) years. Accordingly, a failure at the first Ten Year Anniversary Review shall cause the term of the Agreement in Section 3.1 to be reduced to 35 years, while a failure at the second review in year 20 (to achieve 3000 units) shall cause the Agreement to be shortened another five (5) years to 30 years (subject to any extension of the Term due to the occurrence of Economically Distressed Years as set forth in Section 3.4), but once the Term has been reduced, the lost time is not reinstated due to production of excess units in later phases.

The termination of this Agreement shall not alter the provisions of the Specific Plan concerning the zoning, density of development or any other regulatory provisions concerning the development of the Project, though the limitations provided in Article 4 on enactment of Future Land Use Regulations would be null and void.

6.8 Developer Incentives for Expedited Development.

6.8.1. Incentive for Early Development. The City wishes to establish new communities in the City and to encourage the early development of the Project, which, in light of current economic conditions, may require economic incentives to be provided to the Developer. Accordingly, the Developer shall be given a credit so that DIFs do not have to be paid for up to 500 residential units, if Commencement of Construction, as that term is defined in Section 6.3, occurs on or before the production dates in Section 6.8.4.

6.8.2. Conditions for Receipt of Credits. To receive the credits, the following conditions must be satisfied: (i) the units must be in Planning Areas 1 and 2 provided that, for good cause, City may approve building the units in alternative Planning Areas, (ii) each Tract containing residential units needs to be developed as a single unit with appropriate entry design features including walls, fountains, landscaping, signage and other features approved by City, (iii) the preparation of the commercial site in Planning Area 18 shall take place pursuant to Section 6.2.4, unless waived by City.

6.8.3. Fees Eligible for Credit. The DIFs eligible for credit are those identified as eligible in Exhibit "D."

6.8.4. Schedule. The credit shall be given for all units for which the Commencement of Construction, as that term is defined in Section 6.3, occurs within five (5) years after the Effective Date.

6.9 City Provided Assistance. The City shall provide the Developer with each of the items set forth in Exhibit "E."

7. FEES, TAXES AND ASSESSMENTS.

7.1 Processing Fees. During the Term of this Agreement, the City may require the Developer to pay all Processing Fees applicable to the Development of the Project at the rates in effect on the applicable application date or as described in this Agreement unless a specific amount is stated herein.

7.2 Development Impact Fees.

7.2.1. Limit on Exactions, Mitigation Measures, Conditions and Development Fees. Except for those fees expressly set forth in Sections 7.3 and 7.5 below, and for the reservations of authority in Article 11, the City shall charge and impose only those Exactions, mitigation measures and conditions, including, without limitation, dedications as are set forth in the Existing Land Use Regulations, and those fees relating to the Development of the Developer's Property as are expressly set forth in Exhibit "D" attached hereto, and no others. Per Section 7.4 below, Park Fees shall not be imposed during the life of this Agreement. The Developer shall pay the stated amount of all other fees shown in Exhibit "D" for the first 10 years of the Term, and subsequently adjusted amounts determined in accordance with Section 6.6.2.

7.2.2. Development Impact Fees to be Established Based on Studies. The City will study and establish DIFs within one year of the effective Date for the following: revised City Traffic Control Facility Fee, revised Domestic Water Fee, new Recycled Water Fee and revised Sanitary Sewer Fee. The Developer shall be obligated to pay the revised fees and the revised DIFs shall be considered part of the Existing land Use Regulations. The initial DIFs shall be established in accordance with fee studies meeting the requirements of Section 6.6.2.

7.2.3. Adjustment at 10 Year Anniversary Review. The Developer shall pay increased fees after the Ten Year Anniversary Review if those fees are adopted on a City wide basis after the preparation of, and are justified by, a suitable analysis demonstrating the basis for the increase in accordance with Section 6.6.2. The City shall be entitled to repeat the process of increasing the fees thereafter upon the same terms, during the Ten Year Anniversary Review in accordance with Section 6.6.2, throughout the Term of this Agreement.

7.2.4. Payment of Development Impact Fees. The Developer shall pay all Development Impact Fees with respect to Development commenced on the portion of the Developer's Property owned by the Developer. The Development Impact Fees set forth on Exhibit "D" attached hereto shall be paid at the issuance of the Certificate of Occupancy for each building. Unless otherwise specified herein, all other fees, including Processing Fees shall be paid when at issuance of building permits or otherwise when required by code.

7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees.

7.3.1. Wastewater Fees. The City levies two capital facilities fees related to wastewater: (i) a sewer collection fee; and (ii) a sewer frontage fee, but collectively such fees are referred to herein as sewer collection fees. The sewer collection fee shall be fixed in accordance with Section 7.2.1 above.

7.3.2. Construction of Wastewater Collection Infrastructure in Lieu of Fees. If any additions, improvements and/or upgrades to the City's wastewater collection system outside or within the boundaries of the Developer's Property are required in connection with any Development of the Project, then with the mutual agreement of the parties, the Developer shall have the option to elect to construct some or all of such additions,

improvements and/or upgrades at its sole cost and expense. The City shall develop the project specifications and shall undertake a design process to develop project plans and drawings meeting the City's specifications. The City may utilize the Developer to develop the plans and drawings if the design costs are competitive and Developer has retained competent design professionals who can timely perform the services. If, thereafter, the Developer wishes to construct the improvements, the Developer shall give City a fixed budget and construction schedule, while City obtains competitive bids. City may award the contract to the most competitive entity, considering price, financing, schedule and ability to perform. The contract may include liquidated damages provisions and other requirements to assure the timely and satisfactory completion of the project within budget. If performed by Developer, upon completion of such works of improvement, the Developer shall be entitled to offset the actual costs approved by City and incurred by it for the design, permitting, construction and installation of such works of improvement against any wastewater collection-related Development Impact Fees that may otherwise be payable in connection with future Development of the portion of the Developer's Property owned by the Developer.

7.3.3. Wastewater Treatment Capacity. The City shall use its best efforts to obtain the required permits and to construct the needed improvements to the City's wastewater treatment facilities in order to serve the Project as the need for additional facilities arises. The Developer shall include the construction of the wastewater treatment plant within the phasing plan developed pursuant to Section 6.5. The City estimates that a four year lead time is required with one year for design and one year for permitting with the remaining period needed for construction.

7.3.4. Wastewater, Domestic and Reclaimed Water Facilities and Fees. If any additions, improvements and/or upgrades to the City's water system, either domestic or reclaimed, outside or within the boundaries of the Developer's Property are required in connection with any Development of the Project, then with the City's approval, they may be undertaken by the Developer in accordance with the procedures in Section 7.3.2. Without limiting the generality of the foregoing, this includes the water tanks, pipelines and appurtenant facilities described in Section 8.5.

7.3.5. Recycled and Domestic Water Fees. Recycled and domestic water developer impact fees shall be established in accordance with Section 7.2.1 above. City does not currently have Development Impact Fees for reclaimed water facilities or for domestic water facilities for the Project. Within a year after the Effective Date, the City shall conduct a study to determine the reasonable charge and the Developer's pro rata share of the cost of such improvements. When adopted by the Council, the fees shall be considered incorporated herein as Existing Land Use Regulations, and shall be subject to further review at the Ten Year Anniversary Review as provided in Section 6.2.2.

#### 7.4 Park Fees.

7.4.1. Construction of Facilities. The Developer will be constructing, installing and improving the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code's park fee requirements. All parkland and open space shall be maintained by the

POA, the Developer, the City, the Golf Course operator or such other entity as approved by the City. Provided that all required parks and recreation facilities are constructed and installed in accordance with the Specific Plan and this Agreement, the Project shall not be subject to the imposition of Park Fees by the City. The City acknowledges that the value of the land and improvements for the park, recreation and open space land and facilities exceeds the aggregate of all park fees which may be charged by the City pursuant to the Municipal Code in connection with the proposed Development of the entire Project. The Developer shall construct and install within the Project's boundaries the following park and recreation facilities:

7.4.1.1 254-acre Golf Course or Active Open Space, as set forth in Sections 5.3 above and 8.1.3 below;

7.4.1.2 22 publicly accessible parks (each ranging in size from approximately less than 1 acre to over 16 acres), equipped by Developer with typical neighborhood park facilities, which may include picnic facilities, shade structures, playgrounds, turf areas, and related facilities as further defined in the Specific Plan and in accordance with the plans developed in Section 8.1;

7.4.1.3 Two private recreation centers, totaling approximately eight acres, which will be gated and accessible only to the residents of the Project. These centers may, but are not required to, include clubhouse facilities, restrooms, and other amenities as further defined in the Specific Plan; and

7.4.1.4 108.4 acres of additional open space as described in the Specific Plan.

7.4.2. Community Recreation Center. The City shall also be entitled to construct a community recreation center in Planning Areas 35 or 39, on any park or open space site or on any site identified for a public facility, such as a fire station or waste water treatment plant, if that site is not used for the public facility. Once the site has been identified, the Developer shall grade it and stub utilities to site. The Developer's obligations are further described in Section 8.1.4.

## 7.5 Traffic Impact Mitigation.

7.5.1. Fees to be Established. The City has established a Development Impact Fee for the purpose of collecting funds to pay for the cost of constructing localized transportation improvements. At the request of the City, the Developer may initiate a study to expand upon the existing Traffic Control Facility Fee to include additional improvements not currently covered in the fee. The fee includes signal costs and minor roadway improvements. The Developer shall pay the applicable Traffic Control Facility Fee established by the City in effect on the Effective Date or at the time that the new revised fee is established, pursuant to Section 7.2.1 above.

7.5.2. Highland Springs Interim Improvement Project. The Developer has initiated and will complete interim improvements to Highland Springs Avenue between Ramsey Street and the I-10 Freeway. These improvements include, but are not limited to, the synchronization of traffic signals along Highland Springs Avenue, relocation of traffic



signals, closings and relocation of Joshua Palmer Way and the restriping and repaving of Highland Springs Avenue. The City believes that the current traffic impacts are caused by the Developer's earlier project in Beaumont. The City shall use its best efforts to coordinate with the City of Beaumont an agreement to reimburse a portion of the improvements either through the appropriate transportation fee credits or other mechanism.

7.5.3. The Developer to Construct Traffic Improvements In Lieu of Paying City Fair Share Fees. In the event the Developer is required to construct traffic improvements in lieu of paying the City's fair share fees, City shall reimburse the Developer for the cost of the completed improvements through Reimbursement Agreements mandating that any project larger than 20 dwelling units pay a prorated share for benefits associated with completion of the Project.

## 8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS

### 8.1 Park Improvements.

8.1.1. Neighborhood/Community Parks. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer's plans for near term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commissions. The Developer shall complete the construction of neighborhood parks, Planning Areas 22 through 34, 62, 64 through 67 and 72, and the parks in the SCE easement, Planning Areas 36 through 38, no later than the issuance of the final Certificate of Occupancy for residential units within the adjacent subdivisions. Active use park improvements may not be placed in the SCE easement parks if the Director and Commissions believe there are issues of public health with electro magnetic radiation. A subdivision separated from a park by a street shall not be considered to be adjacent to the park. The Parties shall, mutually, determine what constitutes the adjacent subdivision if a park adjoins more than one subdivision. Upon completion of each neighborhood park, the City shall after the one-year maintenance period has expired, within 10 working days, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

8.1.2. POA Recreation Centers. The POA Recreation centers identified in Planning Areas 21 and 63 shall be constructed by the Developer in accordance with the Tract Phasing Plan pursuant to Section 6.5.

8.1.3. Golf Course/Active Open Space. The Golf Course shall be constructed at the sole and absolute discretion of the Developer. The determination to construct the Golf Course will take place within the first phase of Phase I of development due to the need to construct of the flood control improvements for Smith Creek. The Golf Course will be maintained by a Developer selected operator and open to the public. The operator may sell annual play memberships. If, as described in Section 5.4 above, the Golf Course is determined to be financially infeasible, the Developer shall notify the Planning Department in writing and

the open space and drainage provisions described in the Specific Plan shall dictate the uses allowed on Planning Areas 35 and 39. The revised use of Planning Areas 35 and 39 shall be approved by both the Planning Commission (as the recommending body) and City Council prior to construction. The revised plan shall incorporate active recreational use including biking and pedestrian trails, turnouts for exercise, viewing and educational facilities, all linkable to other tracts, parks and open space, landscaping and providing full public access.

8.1.4. Community Recreation/Emergency Center. The City's Parks Master Plan identifies the need in the Project for a community recreation center, and this is even more necessary if the Golf Course is not developed. This Center would be on an approximately six (6) acre parcel in Planning Area 39 in lieu of the golf clubhouse, or alternatively could be located as a part of a community park or other available site including in Planning Area 71, or in lieu of the waste water treatment plant site in Planning Area 11. Depending on the site selected, the six (6) acres may be reduced so as to not adversely affect the development area of adjacent parcels from the development areas shown in the Specific Plan. The Center is contemplated as a 30,000 sq. foot facility. The plan for the Center shall be included in the Park Master Plan and the site plan shall be processed at the time the chosen Planning Area is developed, subject to the Phasing Plans approved pursuant to Section 6.5, and provided that if the City chooses to put the Center in Planning Area 11, it may be developed as part of Phase I provided that Developer shall satisfy the Phase I obligation by providing a developed Site, and need not fund the construction of the improvements if there are insufficient DIF's for credit. The Developer shall dedicate the site to City without charge. If developed as part of a park it shall be developed at the time required for parks in Section 8.1.1. The Center may include emergency operations and shelter components, and will also include appropriate landscaped grounds and facilities as specified in the Master Plan. The Center may be developed and constructed by Developer in the same manner as for the waste water treatment plant in Section 7.3.2, except as provided above.

8.2 Drainage Facilities. Planning Areas 19 and 71 are required areas of detention, recharge and conveyance of Project created and natural storm flows through the Project as set forth in Section 5.4 above. Planning Area 19 will consist of water quality basins, habitat restoration and flood conveyance facilities as well as the head works for the culvert underneath Wilson Street. This Planning Area may be ultimately transferred to the Flood Control District or City for acceptance and maintenance, but the Developer shall have the right to utilize it until such time as Development has fully or partially occurred for erosion control purposes. Planning Area 71 may be constructed in Phase I of the Project if required for the realignment of Smith Creek. This Planning Area may also consist of a large open reservoir, detention basin and recharge facility that may ultimately be transferred to the City or other appropriate body for acceptance and maintenance. The City shall have no obligation to accept the facilities if they primarily benefit the Project and are for flood control purposes but City may do so if the recharge facility and reservoir facility is designed for water recharge purposes and City determines in its sole and absolute discretion that they are needed to enhance the City's water supply.

8.3 Satellite Water Treatment Plant. The Director of Public Works Director shall determine the location of a two to five acre portion of Planning Area 11 for the onsite treatment of Project-related and other localized wastewater flows. The City shall have an

Appraisal of Land Value determined within one (1) year of the signing of this Agreement. The City shall grant a credit equal to the fair market value determined by the appraisal to the City's waste water impact fee, when that fee is established, which credit may be used by the Developer on a unit by unit basis. Title to the site shall be transferred to the City after the site has been graded by the Developer and utilities are stubbed to the site.

8.4 Fire Station Site. The Specific Plan has identified a site in Planning Area 60 as the possible site for a fire station. The City shall have the an Appraisal of Land Value performed for a site of up to two (2) acres within one (1) year of the signing of this Agreement. The City shall grant a credit equal to the fair market value determined by the appraisal to the City's Fire Facilities Development Fee which credit may be used by the Developer on a unit by unit basis. Title to the site shall be transferred to the City after the site has been graded by the Developer and utilities are stubbed to the site.

8.5 Water Tanks. The City's water facilities and improvements described in Section 7.3.4 include certain water tanks, pipelines, access roads and appurtenant facilities which largely serve the Development and must be located at specific locations and elevations to make the water system function correctly and maintain public health and safety. The water tanks shall be developed as follows:

- A. A 500,000 gallon tank in Planning Area 73 at an high water elevation line of 3237 feet.
- B. A 1.4 million gallon tank in Planning Area 73 at an high water elevation line of 3070 feet.
- C. A 1.6 million gallon tank Planning Area 68 or 50 at an high water elevation line of 2822 feet.

Each tank will require a parcel from 1 to 1.5 acres in area and additional area for access, and shall be dedicated to City without charge after the site has been graded and stubbed out by Developer. The Developer may construct the improvements in accordance with Section 7.3.2 and receive fee credits to the water development impact fee on a unit per unit basis for the construction costs. The water tanks are considered part of the Proposed Project Facilities and shall be constructed in accordance with the Phasing Plans developed in accordance with Section 6.5 provided that the tanks in paragraph C above must be in Phase I.

9. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.

9.1 Processing. In reviewing Future Development Approvals which are discretionary, the City may impose only those conditions, exactions, and restrictions which are allowed by the Development Plan and this Agreement. Upon satisfactory completion by the Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project in accordance with the Existing Development Approvals. In this regard, the Developer, in a timely manner, will provide the City with all

documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Existing Development Approvals and those items set forth in Exhibit "E." Notwithstanding the foregoing, nothing contained herein shall be construed to require City to process Developer's Applications ahead of other projects in process in the City and City's obligations hereunder shall be subject to the City's workload and staffing at any given time.

9.2 Developer to Pay for Expedited Processing. If Developer elects, in its sole and absolute discretion, to request the City to incur overtime or additional consulting services to receive expedited processing by the City, the Developer shall pay all such overtime costs, charges or fees incurred by City for such expedited processing.

9.3 General Time Periods for Processing.

9.3.1. General Plan Review and Approval. The City shall provide comments within two weeks for all plan checks for required infrastructure, building, grading, both mass and finished, architectural, erosion control or any other required plan submittal and will not unduly extend amount of plan checks beyond three submittals provided that Developer's consultants are responsive. In the event that consensus between the City and the Developer regarding the content of the plans after the 3rd submittal can not be made, a meeting will be scheduled to discuss how to reconcile the differences.

9.3.2. Architectural Plan Submittal Process. The Developer shall submit architectural plans to the Planning Department for maximum two-week review of the entire plan set for each submittal for a maximum of three plan check reviews to ensure that they conform to the guidelines set forth in Specific Plan provided that Developer's consultants are responsive. In the event that consensus can not be made after the third plan check, a meeting will be coordinated with the plan checker, Planning Department and the Developer or the Developer's representative. The Planning Department, upon determining compliance with the guidelines set forth in the Specific Plan, shall approve the plans. This review is a ministerial action. Additional architectural enhancements that are above and beyond the design guidelines will be implemented at the Developer's sole and absolute discretion but are subject to review by City if proposed.

9.4 Precise Grading/Plot Plan Revisions. In the event that the Developer wishes to revise house plan type or elevation on an approved plot plan or revised grading plan, City Engineering and Planning staff review and approval shall be done over the counter.

9.5 Additional Inspectors and Plan Checkers. In the event that the Developer requests it, the City shall permit overtime, including both additional days and hours, for inspections and plan checking at the Developer's expense. In the event that the City is unable to provide inspectors or plan checkers capable of meeting the demand for inspections or plan checks required for the Development of the Project in a timely fashion, the City shall, if

requested to do so by the Developer and at the Developer's expense, employ additional private entities or persons to perform such services.

9.6 Tentative Subdivision Maps. The City shall extend through the Term hereof (pursuant to Government Code § 66452.6) all Master Tract Maps and all tentative and vesting tentative Subdivision Maps applied for by the Developer during the term of this Agreement and approved by the City in the future.

9.7 Multiple Final Subdivision Maps: The Developer may file as many final maps over a tentative Subdivision Map as it deems appropriate in its sole and absolute discretion.

9.8 Financing and Conveyance Maps: The Developer may have a Master Tract Map approved for the purpose of conveying portions of the Developer's Property to others and/or for the purpose of creating legal lots which may be used as security for loans to develop the Developer's Property and as provided in Section 6.5.1. Any such map shall not authorize any Development and shall not be subject to any conditions, Exactions or restrictions, other than monumentation and conditions which do not require the payment of money or the installation or construction of improvements.

9.9 Water Availability. Any final subdivision map prepared for the Developer's Property, or any portion of the Developer's Property, shall comply with the provisions of Government Code § 66473.7.

9.10 Other Governmental Permits. The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals.

9.11 Public Agency Coordination. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

9.12 Annexation. This Agreement's effectiveness over land within the Developer's Property that is currently not within the City nor within its sphere of influence is subject to the annexation of that land into the City. If the land is annexed into the City, the terms of this Agreement shall automatically apply to all portions of that land upon its annexation. In the event that annexation of portions of the Developer's Property not currently within the City is not approved by LAFCO, or for any other reason is not annexed to the City, then any such portions shall be excluded from this Agreement. With the exception of land within Planning Area 43B, the City shall, subject to the negotiation of a tax allocation agreement with the County of Riverside acceptable to City, use its best efforts to expeditiously accomplish the annexation of those portions of the Developer's Property not within the City, or such portions thereof as may be approved by the developer, to the City.

## 10. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

10.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

10.2 Procedure. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

10.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Riverside County.

10.4 Minor Modifications.

10.4.1. Flexibility Necessary. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties under this Agreement. The anticipated refinements to the Project and the Development of the Developer's Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan shall not require modification of this Agreement.

10.4.2. Non-Substantive Changes. A modification will be deemed non-substantive and/or procedural if it does not result in a material change in fees, maximum residential density, maximum intensity of use, permitted uses, the maximum height and size of buildings, the reservation or dedication of land for public purposes, or the improvement and construction standards and specifications for the Project, including density transfers between phases. A "material change" is generally one which does not change the standard by ten percent (10%) or more. For example, for a height limit of 20 feet, a change of less than two feet is deemed non-material.

10.4.3. Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Development Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

10.5 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

11. RESERVATIONS OF AUTHORITY.

11.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Developer's Property ("Reservation of Authority"):

11.1.1. Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, (ii) which would be applicable under the Development Agreement statute (§ 65866); (iii) if in conflict with the Existing Land Use Regulations but the application of which to the Development of the Developer's Property has been consented to in writing by Developer.

11.1.2. State and Federal Laws and Regulations. Where state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of the Development Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

11.1.3. Public Health and Safety/Uniform Codes.

11.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are uniform codes and are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes.

11.1.3.2 Adoption Regarding Public Health and Safety/Uniform Codes. This Development Agreement shall not prevent the City from adopting Future Land Use Regulations respecting public health and safety to be applicable throughout the City which directly result from findings by the City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety and that such Future General Regulations are the only reasonable means to correct or avoid such injurious or detrimental condition.

11.1.3.3 Adoption Automatic Regarding Regional Programs. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are regional codes and are based on recommendations of a county or regional organization and become applicable throughout the region, such as Western Riverside Council of Governments.

11.1.4. Amendments to Codes for Local Conditions. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City to make it more restrictive than the provisions of previous Uniform Construction Codes of the City, notwithstanding the fact that the City has the authority to adopt such more restrictive provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such amendment applies

City-wide. The City shall give Developer prior written notice of the proposed adoption of such amendment and Developer shall have the right to present its objections to the amendment.

11.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the Development of the Developer's Property separately from, or jointly with, the City and this Agreement does not limit the reasonable authority of such other public agencies.

11.3 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right (i) to impose or modify Processing Fees and Development Impact Fees as provided in Article 7, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses, (iii) to impose or modify taxes and assessments which apply City-wide such as utility taxes, sales taxes and transient occupancy taxes, (iv) to impose or modify fees and charges for City services such as electrical utility charges, water rates, and sewer rates, (v) to impose or modify a community wide or area-wide assessment district which does not predominately apply to the Developer's Property, and (vi) to impose or modify any fees, taxes or assessments similar to the foregoing.

## 12. ANNUAL REVIEW.

12.1 Annual Monitoring Review. Following commencement of construction, the City and the Developer shall review the performance of this Agreement, and the Development of the Project, on or about each anniversary of the Effective Date (the "Annual Review"). The cost of the Annual Review shall be borne by Developer and Developer shall pay a reasonable deposit in an amount requested by City to pay for such review. As part of each Annual Review, within ten (10) days after each anniversary of this Agreement, the Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

The Director shall prepare and submit to Developer and thereafter to City Council a written report on the performance of the Project, and identify any deficiencies. If any deficiencies are noted, or if requested by a Councilmember a public hearing shall be held before the City Council on the report to Council. The Developer's written response shall be included in the Director's report. The report to Council shall be made within 45 days of the anniversary date.

If the City determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review shall be concluded. If the City finds and determines that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Section 13.1.

12.2 Certificate of Compliance. If, at the conclusion of an Annual Review, the City finds that the Developer is in substantial compliance with this Agreement, the City shall,



upon request by the Developer, issue an Estoppel Certificate to the Developer in the form shown on Exhibit "C."

12.3 Failure to Conduct Annual Review. The failure of the City to conduct the Annual Review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

### 13. DEFAULT, REMEDIES AND TERMINATION.

13.1 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Article 13.

13.2 No Recovery for Monetary Damages. The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to the Developer. However, the original persons representing the parties and approving the transaction are only likely to be involved with the Project for a limited time in comparison to the over-all life of the Project.

It is highly likely that misunderstandings will develop over time. Moreover, municipal budgets are extremely constrained, and a threat of recovery of damages against a municipal entity may pressure a municipality with limited resources to settle in a manner adverse to its interests and those of its citizens. Finally, the municipal entity represents the public welfare of the entire community, a community who cannot directly represent themselves. The City Council has come to believe that entering into a development agreement with the Developer vesting the Developer with the extraordinary rights provided herein is in the best interests of the community through the Developer's active engagement with the community and open communications over several years. It is critical to the success of this Project that as inevitable obstacles are met, and the persons implementing the Project change over the 40 year time span of the Project, that close working relationships be maintained. Accordingly, in this Agreement, the rights of enforcement are limited as follows (i) the remedy of monetary damages is not available to either Party, and (ii) there is no shortcut to a mediation or arbitration procedure where a nonelected representative can arbitrarily determine land use development issues.

For purposes of enforcement, stated positively, the Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that the City has exceed its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 19.9 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in Section 13. 6.

### 13.3 Recovery of Monies Other Than Damages.

13.3.1. Restitution of Improper Exactions. In the event any actions, whether monetary or through the provision of land, good or services, are imposed on the Development of the Developer's Property other than those authorized pursuant to this Agreement, the Developer shall be entitled to recover from City restitution of all such improperly assessed exactions, either in kind or the value in lieu of the exaction, together with interest thereon at the rate of the maximum rate provided by law per year from the date such exactions were provided to City to the date of restitution.

13.3.2. Monetary Default. In the event the Developer fails to perform any monetary obligation under this Agreement, City may sue for the payment of such sums to the extent due and payable. The Developer shall pay interest thereon at the lesser of: (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

13.4 Compliance with the Claims Act. Compliance with this Article 13 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 et seq., pursuant to Government Code § 930.2 in any action brought by the Developer.

13.5 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of the Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by the Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice or ten (10) days for monetary defaults (or such lesser time as may be specifically provided in this Agreement). However, if such non-monetary Default cannot be cured within such thirty (30) day period, and if and, as long as the Defaulting Party does each of the following:

1. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;
2. Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the default;
3. Promptly commences to cure the default within the thirty (30) day period;
4. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure;
5. Diligently prosecutes such cure to completion, and

Then the Defaulting Party shall not be deemed in breach of this Agreement.

Notwithstanding the foregoing, the Defaulting Party shall be deemed in default under this Agreement if the breach or failure involves the payment of money but the Defaulting Party has failed to completely cure the monetary default within ten (10) days (or such lesser time as may be specifically provided in this Agreement) after the date of such notice.

### 13.6 Dispute Resolution.

13.6.1. Meet & Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

13.6.2. Termination Notice. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate the Agreement and such other Agreements as the Non-defaulting Party elects to terminate within thirty (30) days and state the reasons therefor (including a copy of any specific charges of default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Non-defaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 13.6.3 below.

13.6.3. Hearing Opportunity Prior to Termination. Prior to any termination, a termination hearing shall be conducted as provided herein ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

- A. Decide to terminate this Agreement.
- B. Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or
- C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party's fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to

exist without timely cure, (ii) that the Non-Defaulting Party's performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of the Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Article 13.

13.7 Waiver of Breach. By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final map on all or any portion of the Developer's Property, the Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

13.8 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a Default by one Owner shall not constitute a Default by an Owner of a portion of the Developer's Property, which is not the owner of the portion of the Developer's Property that is the subject of the Default (an "Innocent Owner"). Likewise, a Default by an Owner with respect to a Lot (or group of Lots) it owns or leases shall not constitute a Default by an Innocent Owner, nor shall the Default by another Owner of a portion of the Developer's Property not owned by an Innocent Owner constitute a Default of the Innocent Owner. Therefore, (i) no Innocent Owner shall have any liability to the City for, or with respect to, any Default by another Owner or any Default of any other Owner, (ii) an Innocent Owner shall have no liability to the City for, or with respect to, any Default by any other Owner, and (iii) the City's election to terminate this Agreement as a result of a Default by an Owner shall not result in a termination of this Agreement with respect to either (x) any portion of the Developer's Property not owned by such Owner or (y) those Lots owned or leased by an Innocent Owner until such time that this Agreement would otherwise terminate in accordance with its terms.

13.9 Venue. In the event of any judicial action, venue shall be in the Superior Court of Riverside County.

#### 14. ASSIGNMENT.

##### 14.1 Right to Assign.

14.1.1. General. Neither Party shall assign (as hereinafter defined) or transfer (as hereinafter defined) its interests, rights or obligations under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed. The term "assignment" as used in this Agreement shall include successors-in-interest to the City that may be created by operation of law. Notwithstanding the foregoing, the City shall have the right to sell, assign or transfer its interest in any real property dedicated or transferred to the City pursuant to the terms of this Agreement or to another public agency.

As used in this Section, the term "transfer" shall include the transfer to any person or group of persons acting in concert of more than seventy percent (70%) of the present equity ownership and/or more than fifty percent (50%) of the voting control of the Developer (jointly and severally referred to herein as the "Trigger Percentages") or any general partner of the Developer in the aggregate, taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of the Developer in amounts less than the Trigger Percentages shall not constitute a transfer subject to the restrictions set forth herein. In the event the Developer or any general partner of the Developer or its successor is a corporation or trust, such transfer shall refer to the transfer of the issued and outstanding capital stock of the Developer, or of beneficial interests of such trust; in the event that Developer or any general partner of the Developer is a limited or general partnership, such transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership interest; in the event that the Developer or any general partner is a joint venture, such transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

The Developer shall not transfer this Agreement or any of the Developer's rights hereunder, or any interest in the Developer's Property or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. In considering whether it will grant approval to any transfer by Developer, which transfer requires City approval, City shall consider factors such as (i) the financial strength and capability of the proposed transferee to perform the obligations hereunder; and (ii) the proposed transferee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects. In no event shall the City's approval of any transfer be unreasonably withheld or delayed.

In addition, no attempted assignment of any of the Developer's obligations hereunder shall be effective unless and until the successor party signs and delivers to the City an assumption agreement, in a form approved by the City, assuming such obligations. No consent or approval by City of any transfer requiring the City's approval shall constitute a further waiver of the provision of this Section 14.1.1 and, furthermore, the City's consent to a transfer shall not be deemed to release the Developer of liability for performance under this Agreement unless such release is specific and in writing executed by City. In no event shall the City's release of the Developer from liability under this Agreement upon a transfer be unreasonably withheld or delayed.

Notwithstanding any provision of this Agreement to the contrary, City approval of a Transfer or Assignment of any portion of the Developer's Property under this Agreement shall not be required in connection with any of the following provided that such person or entity transferee or assignee assumes in writing all of the Developer's obligations under this Agreement and notifies the City in writing of the same:

A. Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

B. The granting of easements or dedications to any appropriate governmental agency or utility or permits to facilitate the development of the Developer's Property.

C. A sale or transfer resulting from, or in connection with, a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

D. A sale or transfer of less than the Trigger Percentages between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries consist solely of immediate family members of the trustor or transfers to a corporation or partnership in which the immediate family members or shareholders of the transferor who owns at least ten percent (10%) of the present equity ownership and/or at least fifty percent (50%) of the voting control of Developer.

E. A transfer of common areas to a POA.

F. Any transfer to an entity or entities in which the Developer retains a minimum of 51% of the ownership or beneficial interest and retains management and control of the transferee entity or entities.

G. Any transfer of interests in Owner for estate planning purposes to the heirs of Owner, provided that the heirs retain a minimum of 51% of the ownership or beneficial interest of the transferor entity and retain management and control of the transferee entity.

H. Any transfer of interest to a Pre-Qualified Buyer.

14.1.2. Subject to Terms of Agreement. Following any such Transfer or Assignment of any of the rights and interests of the Developer under this Agreement, in accordance with Section 14.1.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer.

14.1.3. Release of Developer. Upon the written consent of the City to the complete assignment of this Agreement or the transfer of a portion of the Developer's Property and the express written assumption of the assigned obligations of the Developer under this Agreement by the assignee, the Developer shall be relieved of its legal duty from the assigned obligations under this Agreement with respect to the portion of the Developer's Property transferred, except to the extent the Developer is in default under the terms of this Agreement prior to the transfer.

14.1.4. No Approval of Terms of Loan by City. Notwithstanding anything to the contrary set forth herein with regards to the approval by the City of hypothecation, encumbrances or mortgages, the City shall only have the right to approve the identity of the Developer's lender, which approval will not be unreasonably withheld, taking into consideration such lender's financial strength, reputation, and other relevant factors. The City shall not have any right to approve any of the terms or conditions of the Developer's financing arrangements with third party lenders.

14.2 Sale to Pre-Qualified Buyer. Nothing herein shall prevent the Developer from selling a portion of the Developer's Property for residential development subject to any approved final subdivision map to a Pre-Qualified Buyer for construction of houses in accordance with the terms of this Agreement provided that the transferee must enter into appropriate agreements with the City to assure that all Development restrictions hereunder will be met.

14.3 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public. Notwithstanding any provisions of this Agreement to the contrary, this Agreement shall terminate as to any Lot which has been finally subdivided and improved with all required public improvements and which is individually (and not in "bulk") sold to an owner-user and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement; provided, however, that CC&R's are placed of record in accordance with Section 14.4 below.

14.4 Declaration of Covenants, Conditions and Restrictions. Prior to the transfer of any portion of the Project to a third party, the Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the applicable subdivision to the City for its review and approval ("CC&RS"). The CC&RS must be recorded prior to issuance of certificates of occupancy, and Developer shall pay City's review costs. It is anticipated that the CC&RS will contain, among other things, protective covenants to protect and preserve the integrity and value in the subdivision, including but not limited to use restrictions, maintenance covenants, EIR mitigation measures, restrictions under this Development Agreement which will continue to apply to the subdivision, covenants for construction and completion of the improvements and a provision giving the City the right to enforce the CC&RS, including the right to recover its enforcement costs if there is noncompliance following notice and the opportunity to cure.

## 15. RELEASES AND INDEMNITIES.

15.1 The City's Release As To Actions Prior To Effective Date. The City forever discharges, releases and expressly waives as against the Developer and its attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that it has now or has had in the past, arising out of or relating to this Agreement and

the development agreement approved in 1993, and the currently existing land use plans for the Developer's Property or any portion thereof.

15.2     The Developer's Release As To Actions Prior To Effective Date. The Developer forever discharges, releases and expressly waives as against the City and its respective councils, boards, commissions, officers, attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that they have now or have had in the past, arising out of or relating to this Agreement and the development agreement approved in 1993, and the currently existing land use plans for the Developer's Property or any portion thereof.

15.3     Third-Party Litigation.

15.3.1.     Non-liability of City. As set forth above, the City has determined that this Agreement is consistent with the General Plan and that the General Plan and Development Approvals meets all of the legal requirements of State law. The Parties acknowledge that:

- A.     In the future there may be challenges to legality, validity and adequacy of the General Plan, the Development Approvals and/or this Agreement; and
- B.     If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Developer's Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 15, the City shall have no liability under this Agreement for any failure of the City to perform under this Agreement or the inability of the Developer to develop the Developer's Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

15.3.2.     Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary, in order to comply with such judicial decision.

15.3.3.     Participation in Litigation: Indemnity. The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suites, claims, liabilities,



losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agent for any such Claims or Litigation (as defined in Section 1.10) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

15.4 Hold Harmless: Developer's Construction and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City's officers, employees, agents, contractors of subcontractors.

15.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than the City's Default.

## 16. EFFECT OF AGREEMENT ON TITLE.

16.1 Covenant Run with the Land. Subject to the provisions of Sections 14 and 18 and pursuant to the Development Agreement Statute (§ 65868.5):

A. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Developer's Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

B. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

C. Each covenant to do or refrain from doing some act on the Developer's Property hereunder (i) is for the benefit of and is a burden upon every portion of the Developer's Property, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.

17.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, 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 Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

17.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

17.3 Covenant Against Discrimination. The Developer 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. The Developer shall take affirmative action to insure that employees are treated during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

18. MORTGAGEE PROTECTION.

18.1 Definitions. As used in this Section, the term "mortgage" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security

interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

18.2 No Encumbrances Except Mortgages to Finance the Project. Notwithstanding the restrictions on transfer in Section 14, mortgages required for any reasonable method of financing of the construction of the improvements are permitted but only for the following: (i) for the purpose of securing loans of funds used or to be used for financing the acquisition of a separate lot(s) or parcel(s), (ii) for the construction of improvements thereon, in payment of interest and other financing costs, and (iii) for any other expenditures necessary and appropriate to develop the Project under this Agreement, or for restructuring or refinancing any for same. No map permitted herein, even if for financing purposes, shall permit financing for other than purposes of developing the Project solely. The Developer (or any entity permitted to acquire title under this Agreement) shall notify the City in advance of any future mortgage or any extensions or modifications thereof. Any lender which has so notified the City shall not be bound by any amendment, implementation, or modification to this Agreement without such lender giving its prior written consent thereto. In any event, the Developer shall promptly notify the City of any mortgage, encumbrance, or lien that has been created or attached thereto prior to completion of construction, whether by voluntary act of the Developer or otherwise.

18.3 Developer's Breach Not Defeat Mortgage Lien. The Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void the lien of any mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage whose interest is acquired by foreclosure, trustee's sale or otherwise.

18.4 Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

18.5 Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to the City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

18.6 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, and one hundred twenty (120) days after the Developer's cure rights have expired, whichever is later, to:

A. Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

B. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that, in the case of a default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 18.6, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

18.7 City's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Project or portion thereof has not exercised the option to construct afforded in this Section or, if it has exercised such option and has not proceeded diligently with construction, the City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses, incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the applicable portion of the Project, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

If the City has not purchased the mortgage within ninety (90) days of the expiration of the ninety (90) days referred to above, then the right of the City to purchase shall expire.

In the event that the holder does not exercise its option to construct afforded in this Section, and if the City elects not to purchase the mortgage of holder, upon written request by the holder to the City, the City shall use reasonable efforts to assist the holder in selling the holder's interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by the Developer, or such other improvements in their stead as shall be satisfactory to the City. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, including, but not limited to, payroll expenses, management expenses, legal expenses, and others;

(2) Second, to reimburse the City for all payments made by City to discharge any other encumbrances or liens on the applicable portion of the Project or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;

(3) Third, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section; and

(4) Fourth, any balance remaining thereafter shall be paid to the Developer.

18.8 Right of City to Cure Mortgage Default. In the event of a default or breach by the Developer (or entity permitted to acquire title under this Section) prior to completion of the Project or the applicable portion thereof, and the holder of any such mortgage has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer or other entity of all costs and expenses incurred by the City in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the applicable portion of the Project to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any Mortgage; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such Mortgages;

provided that nothing herein shall be deemed to impose upon the City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Project in the event of its enforcement of its lien.

18.9 Right of the City to Satisfy Other Liens on the Developer's Property After Conveyance of Title. After the conveyance of title and prior to completion of construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Project or any portion thereof to forfeiture or sale.

19. MISCELLANEOUS.

19.1 Estoppel Certificates. Either Party (or a Mortgagee under Section 18) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the Parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as Exhibit "C."

19.2 Force Majeure. The time within which the Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than the City, unusually severe weather, third party litigation as described in Section 15.3 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

19.3 Interpretation.

19.3.1. Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This

Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Developer's Property.

19.3.2. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

19.3.3. Recitals. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

19.3.4. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefitted thereby of the covenants to be performed hereunder by such benefitted Party.

19.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 15.3.3 above.

19.5 Joint and Several Obligations. All obligations and liabilities of the Developer hereunder shall be joint and several among the obligees.

19.6 No Third Party Beneficiaries. The only Parties to this Agreement are the Developer and the City and their successor and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

19.7 Notice.

19.7.1. To Developer. Any notice required or permitted to be given by the City to the the Developer under this Development Agreement shall be in writing and delivered personally to the Developer or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

Pardee Homes.  
10880 Wilshire Boulevard, Suite 1900  
Los Angeles, CA 90024  
Attention: Legal department

With a copy to:

Kenneth B. Bley, Esq.  
Cox, Castle & Nicholson LLP  
2049 Century Park East, 28th Floor

Los Angeles, CA 90067-3284

or such other address as the Developer may designate in writing to the City.

19.7.2. To the City. Any notice required or permitted to be given by the Developer to the City under this Development Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, addressed as follows:

City of Banning  
99 E. Ramsey Street  
Banning, CA 92220  
Attention: Planning Director

With a copy to:

David J. Aleshire, Esq., City Attorney  
Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 400  
Irvine, California 92612

or such other address as the City may designate in writing to the Developer.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service receipt.

19.8 Relationship of Parties. It is specifically understood and acknowledged by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

19.9 Attorney's Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, 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 a final judgment.

19.10 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required



instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.11 Time of Essence. Time is of the essence in:

A. The performance of the provisions of this Agreement as to which time is an element; and

B. The resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement.

19.12 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

19.13 Execution.

19.13.1. Counterparts. This Agreement may be executed by the parties in counterparts which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

19.13.2. Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Riverside County no later than ten (10) days after the Effective Date (Gov't Code § 65868.5). The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

19.13.3. Authority to Execute. 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 sign and deliver this Agreement on behalf of the Party he or she represents, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iv) the entering into of this Agreement does not violate any provision of any other Agreement to which the Party is bound and (v) there is no litigation or legal proceeding which would prevent the Parties from entering into this Agreement.

(SIGNATURES ON THE NEXT PAGE.)

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

**CITY OF BANNING**

BY: \_\_\_\_\_  
Don Robinson, Mayor

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

Approved as to form:  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David J. Aleshire, City Attorney

“DEVELOPER”

PARDEE HOMES, a California corporation

BY: \_\_\_\_\_  
President

BY: \_\_\_\_\_  
Secretary

On \_\_\_\_\_, \_\_\_\_\_, before me \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

(SEAL)

On \_\_\_\_\_, \_\_\_\_\_, before me \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

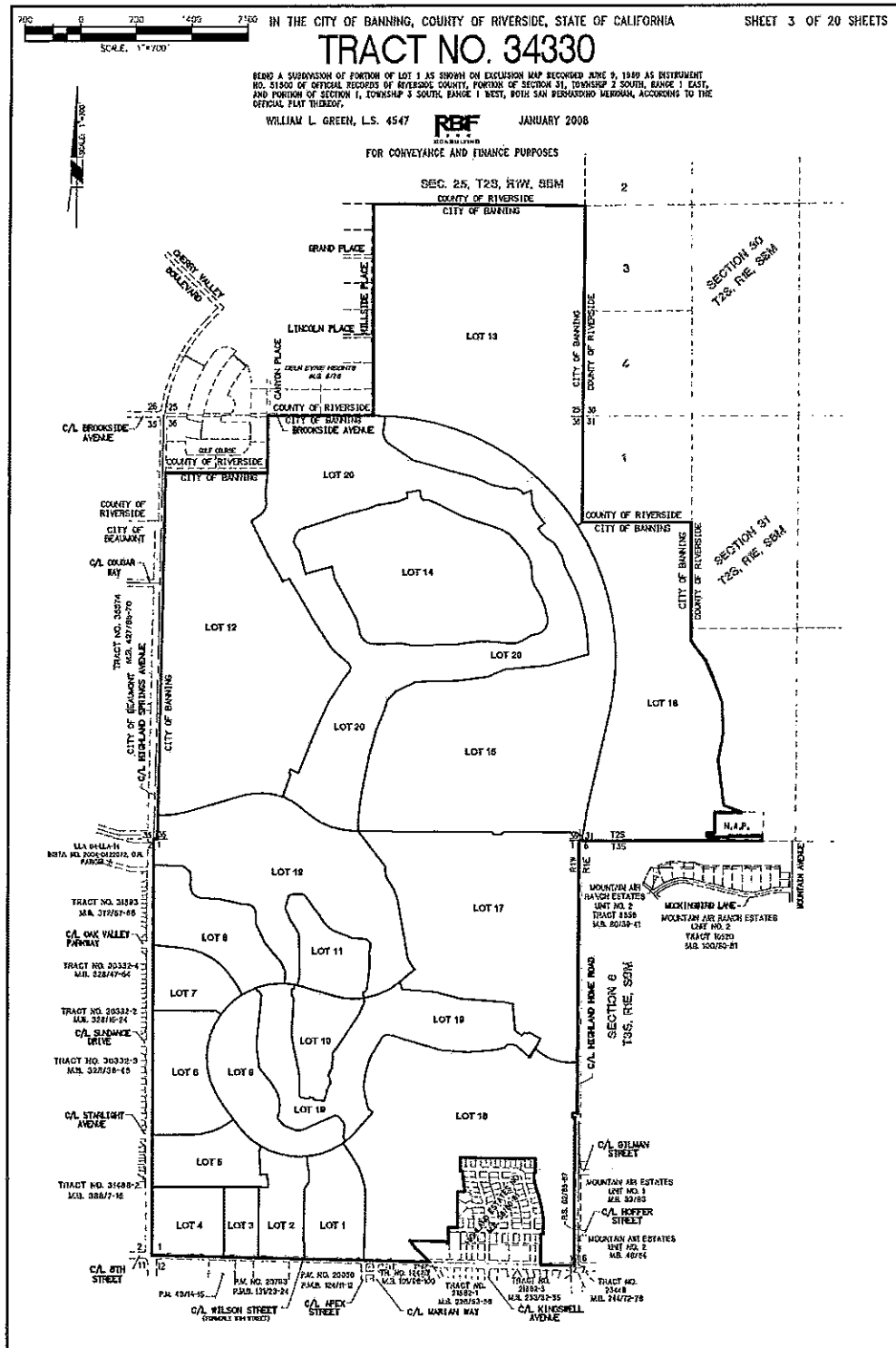
(SEAL)

**EXHIBIT "A"**  
**MAP AND LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY**

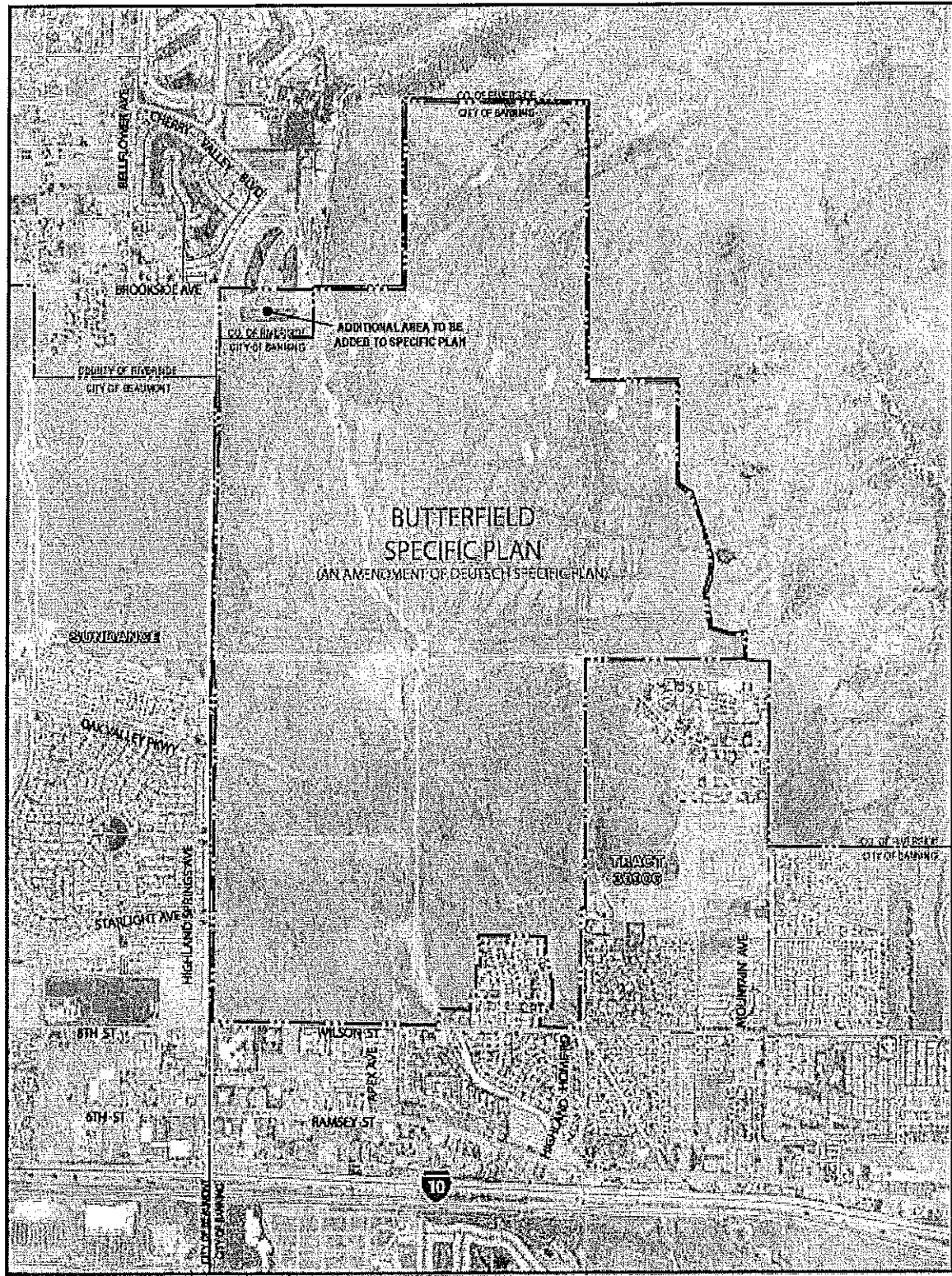
**LEGAL DESCRIPTION**

Those certain parcels of land situated in the City of Banning, County of Riverside, State of California, being Lots 1 through 20 of Tract No. 34330 as shown on a map thereof filed in Book 429, Pages 84 through 103 of Maps in the Office of the County Recorder of said Riverside County.

**EXHIBIT "A"**  
**MAP OF DEVELOPER'S PROPERTY**



**EXHIBIT "A"**  
**PARDEE BANNING PROPERTY**



### SPECIFIC PLAN MAP

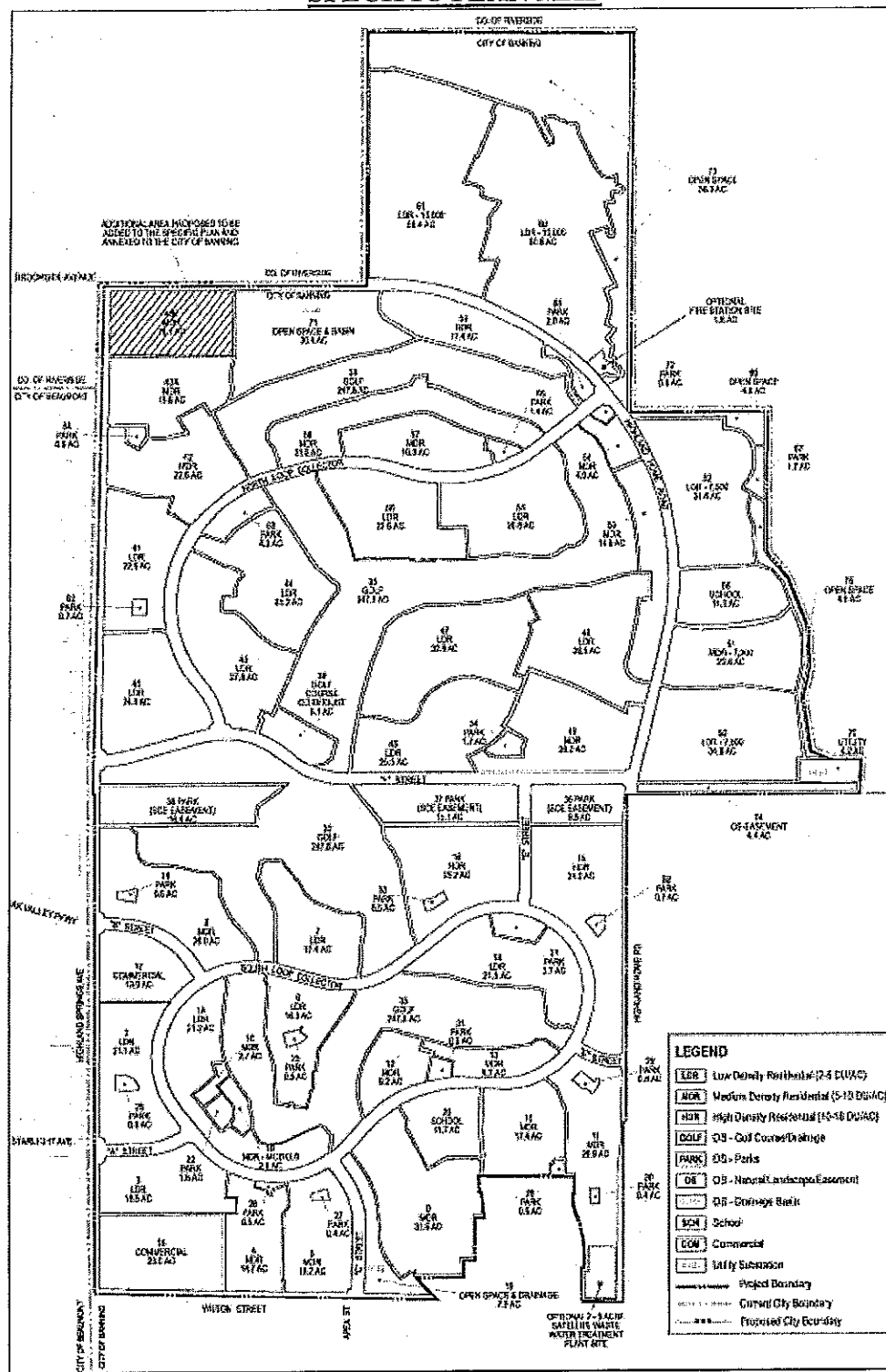


EXHIBIT B (page 240) is intentionally missing



**EXHIBIT "C"**  
**ESTOPPEL CERTIFICATE**

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

Date of Certificate: \_\_\_\_\_

On \_\_\_\_\_, 2012, the City of Banning approved the Development Agreement between Pardee Homes, a California corporation and the City of Banning (the "Development Agreement").

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

[CHECK WHERE APPLICABLE]

- \_\_\_\_\_ 1. The Development Agreement remains binding and effective.
- \_\_\_\_\_ 2. The Development has not been amended.
- \_\_\_\_\_ 3. The Development Agreement has been amended in the following aspects: \_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 4. To the best of our knowledge, neither Developer nor any of its successors is in default under the Development Agreement.
- \_\_\_\_\_ 5. The following defaults exist under the Development Agreement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Estoppel Certificate may be relied upon by an transferee or mortgagee of any interest in the property which is the subject of the Development Agreement.

CITY OF BANNING

BY: \_\_\_\_\_  
PLANNING DIRECTOR

EXHIBIT D (pages 242-244) is intentionally missing

**EXHIBIT "E"**  
**ADDITIONAL AGREEMENTS CONCERNING DEVELOPMENT**

In addition to the other terms and conditions concerning the City's assistance to the Project, the City shall accommodate and expedite the development of the Developer's Property as follows:

**1.0 CONSTRUCTION CONDITIONS**

1.1 Provision of Utility Connections. The City shall provide, at the Developer's expense, any necessary temporary and permanent utility connections requested by the Developer for power, water service and sewer service prior to recordation of final map.

1.2 Allowance of Transformers. The City shall allow the setting of transformers without requiring adjacent streets to be fully paved. It is anticipated that 6' feet of curb and gutter will be placed adjacent to the transformer to ensure correct elevation of the transformer pad. In the event that the location or elevation change, the Developer shall incur the full costs of relocation of both the curb and transformer.

1.3 Temporary Water Pipes. Temporary above ground pipes for construction water and temporary fire hydrants will be acceptable for model and production homes prior to the first certificate of occupancy in the construction phase being developed.

1.4 Provision of Construction Water. The City shall provide "jumpers" or temporary construction water at the City's normal rate.

1.5 Temporary Use of City Sewer System. The City shall allow the temporary connection of construction trailers to the permanent City sewer system.

1.6 Temporary Use of City Water System. The City shall allow temporary connection of construction trailers to the permanent City water system, provided that all required backflow devices are installed to protect the integrity of the system.

**2.0 MAINTAINENCE**

2.1 Maintenance of Construction Activities. The Developer shall contract directly for all work required for the maintenance of construction related activities, including but not limited to recycling of construction materials, erosion control, temporary fence installation, and temporary power installation. The selection and retention of the contractor, subcontractor or other person or entity to do such work shall be made by the Developer in its sole and absolute discretion. Trash removal will be coordinated directly with City franchisee. In regards to recycled materials, the Developer will produce for the City, at its request, a manifest to confirm the location, type and amount of materials recycled.

### 3.0 STREETS

3.1 Timing of Street Paving. The Developer shall be allowed to begin construction of model and production homes without first paving streets. Paved streets shall be required as a condition for the issuance of the certificate of occupancy for the first production home in each construction phase. The Developer shall install all-weather access for construction and emergency personnel, which, during dry months, may, include maintained dirt roads.

3.1 Final Lift of Pavement. The City shall allow the installation of the final 1" of asphalt pavement through coordination with the Developer and the City's Public Works officials. If the final 1" of pavement is installed early in the Development of specific in-tract or on backbone streets, and if no structural failures have occurred within the street system, the City may require a fog coat seal prior to exoneration of any outstanding bonds.

### 4.0 GRADING/DRAINAGE

4.1 At Risk Grading. After the first plan check comments on either the rough or mass grading plans are received by the Developer, the City shall allow the Developer to begin grading operations for the area that is the subject of the plan check. The Developer acknowledges that any changes that may be required by the City will be made at the sole expense of the Developer.

4.2 Erosion Control. The Developer shall Develop the Developer's Property in such a way as to confine all storm water within the Project and shall, do so in a manner which adequately protects all construction within the Project. The Developer shall prepare an erosion control plan that will demonstrate methods that may be incorporated in the Development of the Project to protect downstream watersheds. The Developer shall manage and determine when erosion control measures need to be installed and maintained, but Developer shall comply with any order of City.

4.3 Drainage. Reverse lot drainage on lots that back up to open space, the Golf Course or parks shall be allowed provided that these areas are privately maintained by the Property Owners Association.

### 5.0 DEVELOPMENT CONDITIONS

5.1 Lot Line Adjustments. In the event that lot line adjustments are required for model complexes or adjustments to open space lots after the recordation of a final map, the City shall review the requested adjustment over the counter with City Engineering staff and the Developer or the Developer's representative. This will not be allowed for the construction of regular production homes.

5.2 Rear Residential Slopes. The Developer shall stabilize according to the City Grading and Landscape Ordinance the rear slope of all residential Lots prior to issuance of a Certificate of Occupancy but shall not be required to landscape and/or irrigate the slopes. It is the intention that rear yard landscaping will be required and installed within the time specified in the CCC & R's by the homeowner.

5.3 Use of Joint Trenches. The City shall allow the Developer, to utilize joint trenches if it deems it necessary for Internet capabilities and/or telecommunication purposes.

5.4 Curbs. The construction of wedge, rolled curb, or mountable curbs within residential and multifamily zoned Planning Areas shall be permitted at the Developer's sole and absolute discretion.

## **6.0 GOLF COURSE**

6.1 Golf Course/Active Open Space Drainage Facilities. It is the Developer's intention that the flood control facilities proposed within this area will be constructed consistent with all applicable design standards for such facilities with their maintenance being the responsibility of the either the POA, the operator of the Golf Course, the Developer or the City and not the responsibility of the Riverside County Flood Control District (the "RCFCD") unless the facility has been identified as a Drainage Master Plan Facility by RCFCD.

6.2 Golf Course Water. The financial viability of the Golf Course will be dependent upon the costs to operate and maintain the Golf Course. The City shall provide water to the Project at a per unit rate not to exceed the cost highest tiered rate for irrigation water for the Golf Course for the Term of this Agreement.

## **7.0 PERMITTING**

7.1 Fire Sprinkler Inspections. The City's Building and Safety Division shall serve as Special Fire Marshall for this project. Building and Safety shall be responsible for enforcing the then applicable provisions of the California Fire Code, and the California Building Standards Codes.

7.2 Bond Exoneration. Upon request by the Developer, the City shall generate a one-time punch list of items required for the full or partial exoneration of all Project-related improvement bonds, for improvements both within and outside of the Property. The City shall, within 5 days of receipt of a written request from the Developer, provide an inspector to determine if the punch list items have been corrected. Once it has been determined that they have been corrected, the City shall expeditiously exonerate the bonds, partially or fully, as applicable. No additional punch lists shall be generated once an improvement has been inspected and a punch list generated.

7.3 Building Permit Refunds. If a Building Permit has expired without construction having started on the structure for which the Building Permit was issued, the Developer shall be entitled to a refund of the building permit fee less 20% for an administrative fee. No refund will be provided if the request for the refund has not been provided to the City within 30 days of the Building Permit's expiration.

## **8.0 PREVAILING WAGES**

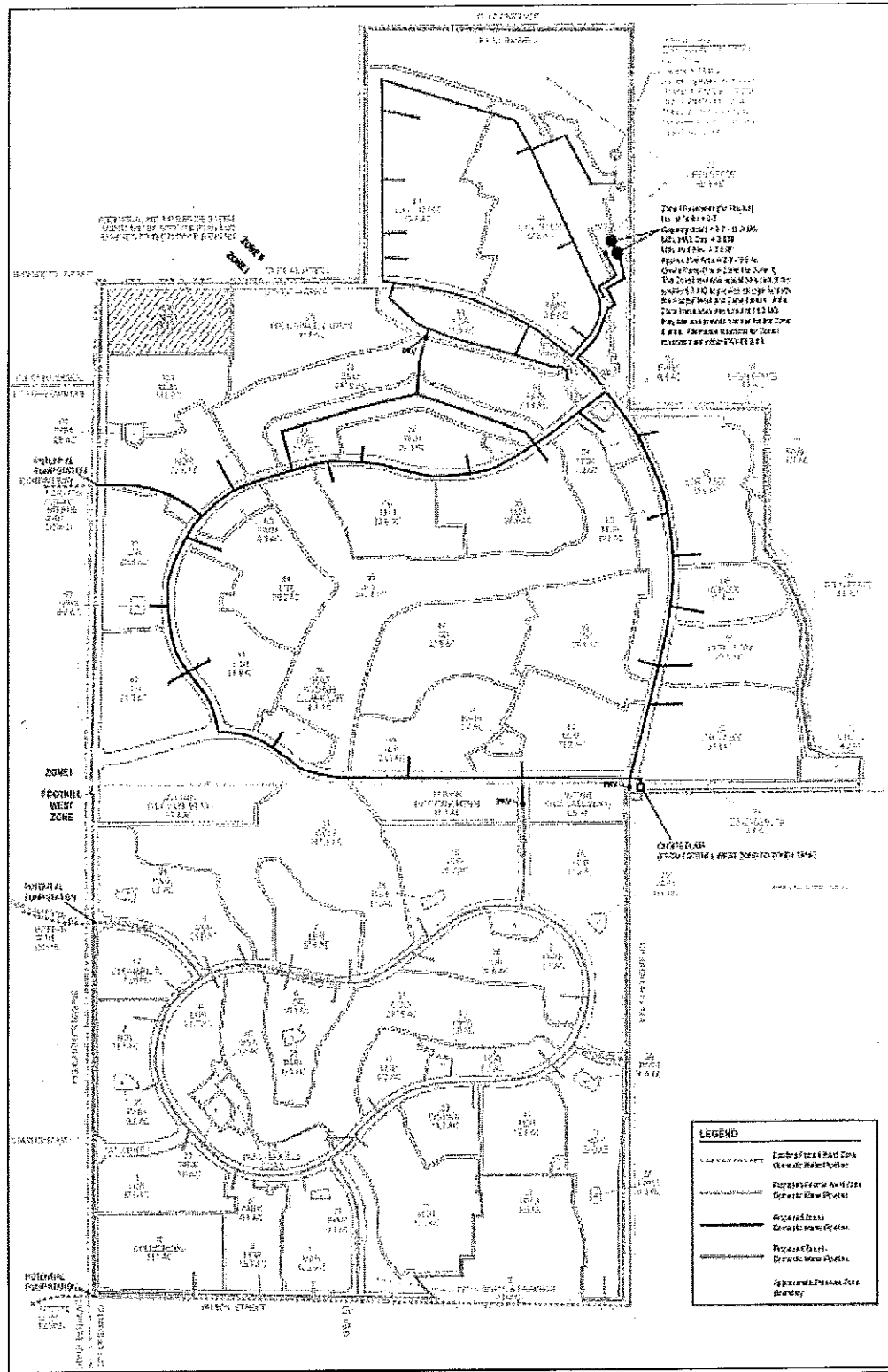
The Developer shall pay prevailing wages in connection with the construction of the Project as required by law. To the extent that it is determined that Developer has not paid, or does not pay, prevailing wages required by law for any portion of the Project, Developer shall defend and hold the City harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that the Developer failed to pay prevailing wages in connection with the construction of the Project.

Developer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Developer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Developer shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City makes no representation that any construction or Site uses to be undertaken by Developer are or are not subject to Prevailing Wage Law.

## **9.0 COST OF DEVELOPMENT AGREEMENT**

Developer has previously deposited approximately \$100,000 with the City to pay all the City's outside consulting costs, costs of the environmental and legal review, and costs to process and obtain the Development Approvals, including this Agreement. As of March 1, such costs in aggregate exceed the amount deposited by \$90,000, and additional cost of \$10,000 are anticipated by the end of the approval process. Accordingly, before this Development Agreement shall be approved by the City Council, Developer shall deposit \$120,000 in good money with the City's Finance Director.

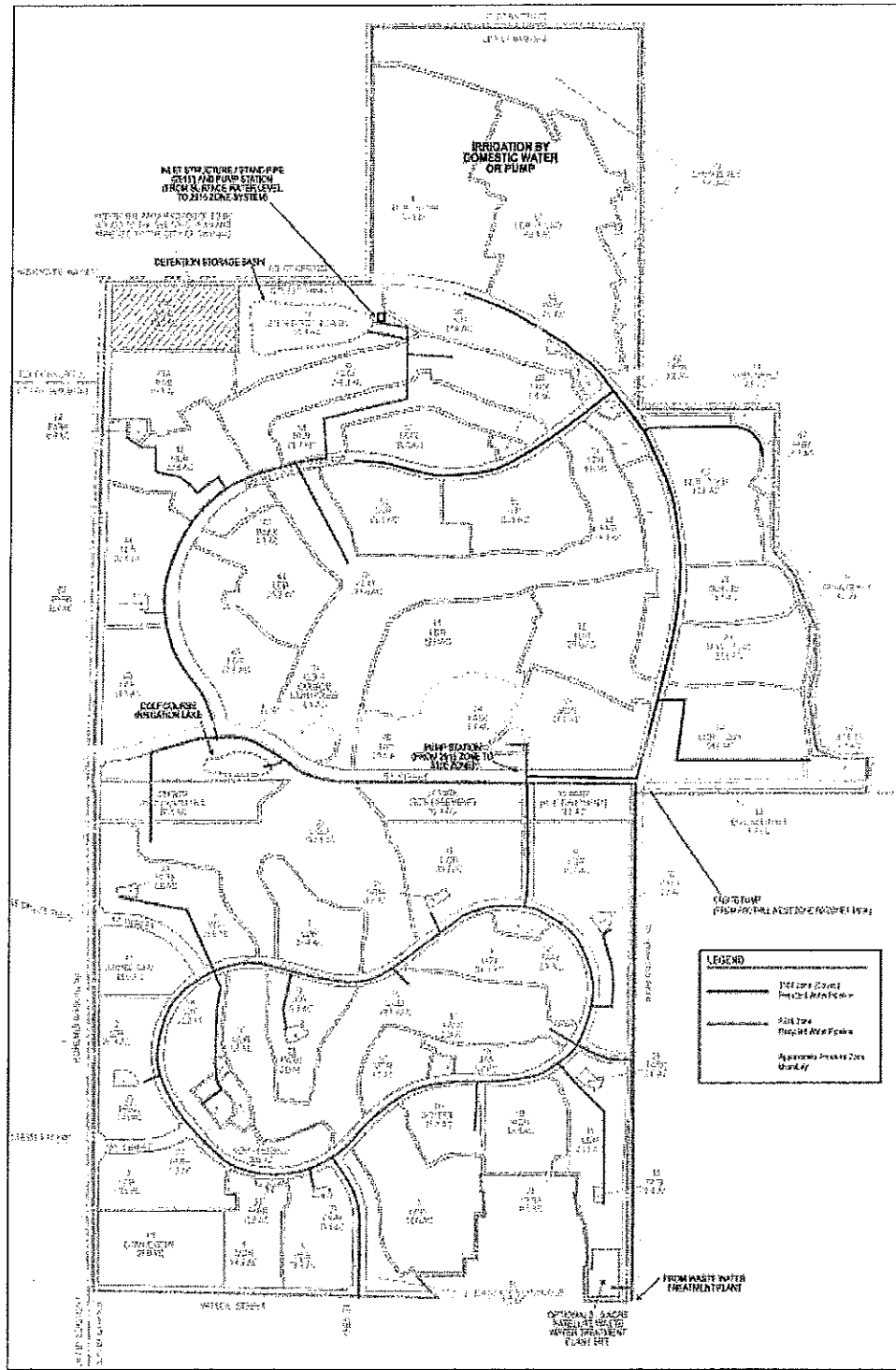
# **EXHIBIT "F"** **PROPOSED PROJECT FACILITIES**



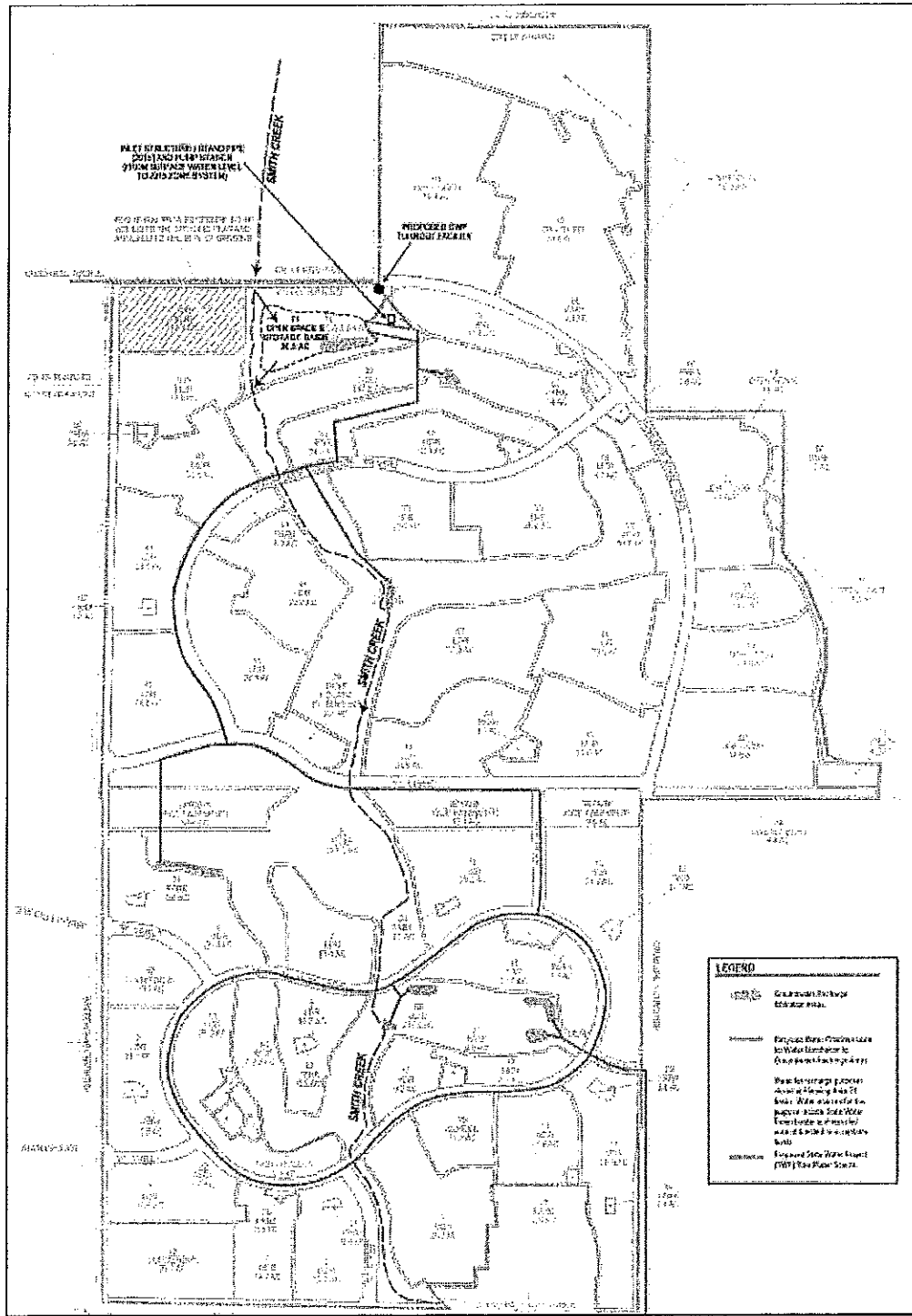
[illegible]



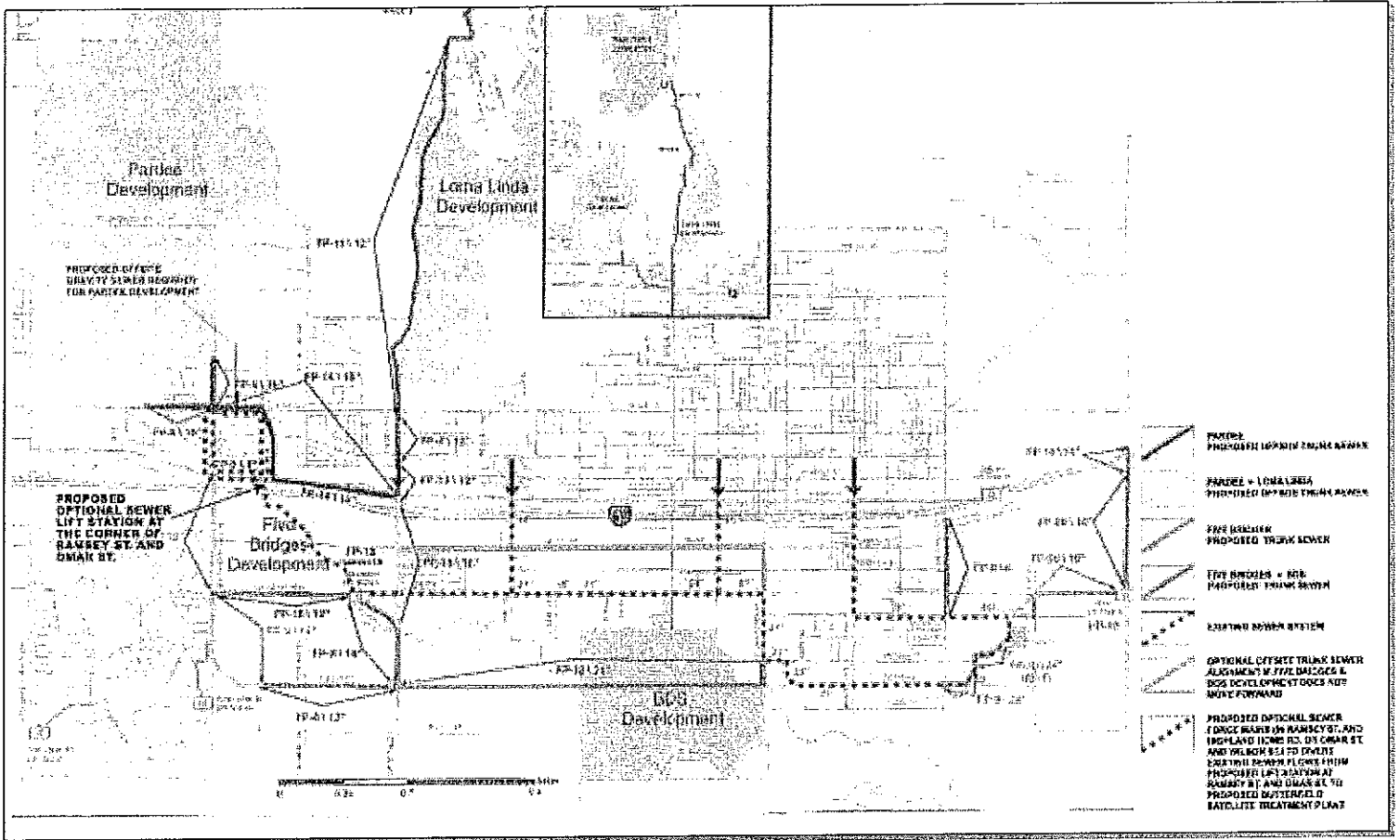
# **EXHIBIT "F"** **PROPOSED PROJECT FACILITIES**



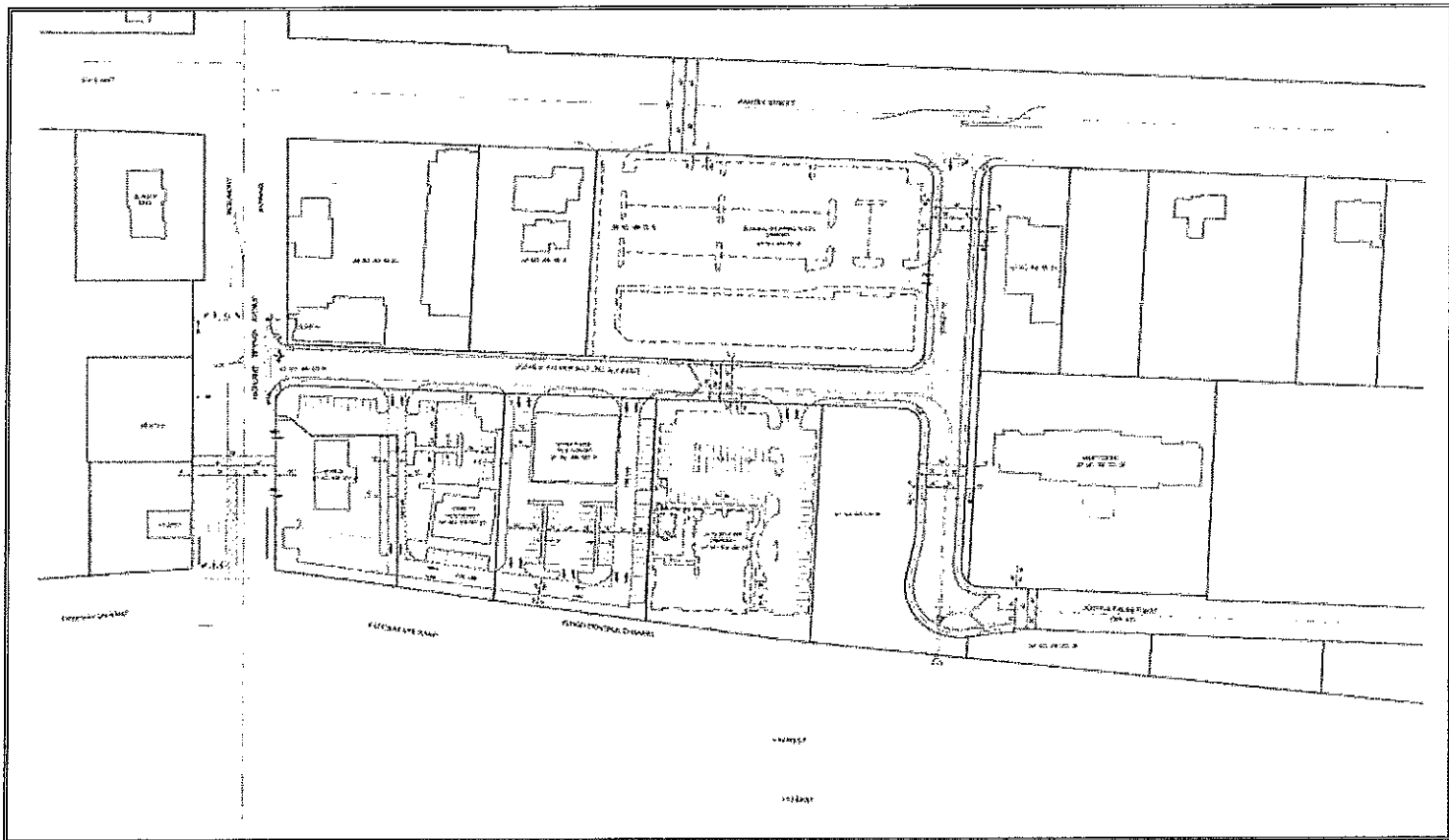
# **EXHIBIT "F"** **PROPOSED PROJECT FACILITIES**



**EXHIBIT “F”**  
**PROPOSED PROJECT FACILITIES**



**EXHIBIT "G"**  
**HIGHLAND SPRINGS IMPROVEMENTS**



**EXHIBIT "H"**  
**BUTTERFIELD PROJECT FINANCING PLAN**

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities in connection with the Project and to levy the Services Special Tax. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Development Agreement.

1. Goals and Policies for Financing. The City will adopt general Goals and Policies for establishing CFDs. The Goals and Policies for Financing shall apply on a City-wide basis and may be amended from time to time. This Financing Plan shall be consistent with the City's Goals and Policies for Financing. The principal objectives of this Financing Plan are to:

- a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.
- b. Provide basic parameters for the levy of (i) the Facilities Special Tax (defined below) within each CFD or Improvement Area to pay directly for Eligible Facilities and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Tax in order to finance the Eligible Facilities ("**Bonds**") and (ii) the Services Special Tax.
- c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

2. Formation. City shall initiate proceedings to establish a CFD, upon Developer's petition request pursuant to the CFD Act and submittal of City's standard application form and receipt of an advance from Developer in an amount determined by City to pay for City's estimated costs to be incurred in undertaking the proceedings to establish the CFD ("Formation Proceeding Costs"). City agrees that all such advances for Formation Proceeding Costs so long as the costs are reasonable and not due to the actions of developer, incurred in connection with the formation of such CFD shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD and/or Facilities Special Taxes to the extent approved by the City's Bond Counsel ("CFD Proceeds"). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City's receipt of Developer's complete application and deposit.

3. Boundaries. The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.

4. Eligible Public Facilities and Discrete Components. Subject to the City's adopted Goals and Policies for Financing, and review by Bond Counsel, conditions set forth in the following paragraph, City may authorize the CFDs to finance the acquisition or construction of the Eligible Facilities, which may include the following:

- a. public streets and other related improvements within the public right-of-way
- b. water facilities
- c. storm drain facilities
- d. sewer facilities
- e. public parks, open space and landscaping
- f. electrical facilities to be extent reasonable
- g. any public facility to be constructed by City for which Developer is required to make a cash contribution pursuant to the Project's conditions of approval or this Agreement or which is included in any City capital improvement fee program and which public facility is to be owned by the City, subject to credit against the corresponding fee.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds ("**Actual Costs**") shall include the following if permissible under the Act:

- (i) The actual hard costs for the construction or the value of the Proposed Eligible Facility, including labor, materials and equipment costs;
- (ii) The costs of grading related to the Eligible Facility;
- (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;
- (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;
- (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;
- (vi) Costs of construction administration and supervision;
- (vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and
- (viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

- (ix) Any other costs permitted by law.

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Policies for Financing and this Development Agreement, with respect to the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The Acquisition Agreement will also provide additional detail with respect to the financing of the City's construction of Eligible Facilities in satisfaction of corresponding City capital improvement fees, as elected by Developer. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City Capital improvement fee program or required by the Project conditions of approval, shall not preclude the Developer's receipt of corresponding fee credits.

5. Financing Parameters. Each CFD shall be authorized to levy Facilities Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

- a. A precondition to the issuance of Bonds shall be that the value of the real property subject to Facilities Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds.
- b. Each series of Bonds shall have a term of at least thirty (30) years and include escalating annual debt service commensurate with any annual escalation in the Facilities Special Taxes.
- c. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and community facilities districts under consideration and reasonably expected to be established (but excluding the Services Special Tax), the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established (but excluding assessments for maintenance and services), and the Facilities Special Taxes, shall equal two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable CFD, or such lesser amount requested by Developer. The Facilities Special Taxes may escalate by up to 2% per year.

## **CITY OF BANNING**

**DATE:** April 10, 2012

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

**FROM:** Bill R. Manis, Economic Development Director

**SUBJECT:** Approval of Exclusive Negotiations Agreement by and Between the City of Banning and the Banning Science & Technology Center, Inc.

### **RECOMMENDATION:**

That the City Council:

- (1) That the City Council approve the Exclusive Negotiation Agreement ("ENA") and direct staff to continue discussions with the representatives of the Banning Science & Technology Center, Inc. and work towards, in good faith, a Lease Agreement (Lease), that may provide for future development of the Banning Science & Technology Center.

### **BACKGROUND:**

Subsequent to the January 24, 2012 City Council Meeting the City Council directed staff and the City Attorney to review and explore the possibility of entering into an ENA with Mr. Henri De Roule to develop a 7.78 acre piece of vacant City owned property located at 226 South 22<sup>nd</sup> Street in Banning. It was determined that an appropriate way to move forward with the potential development was through the establishment of an ENA with the possibility of eventually working toward, in good faith, a Lease. A Lease, if subsequently approved by the City Council, will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan, applicable specific plans, and zoning regulations (which may necessitate amendment or other modification to accommodate Developer's proposed project) and the ENA, Attachment 1.

The subject property was gifted to the City in December of 1997 by Ford Leasing Development Company. The property has a thirty (30) year covenant in the Grant Deed that requires the property to be used only for "non-commercial, public service" purposes. Staff contacted Ford Leasing Development Company in January 2012 to confirm that the proposed development is consistent with the Grant Deed covenant. In February 2012 Ford Leasing Development Company responded, via letter, and gave their concurrence that the Banning Science & Technology Center use is in accordance with the terms outlined in the Grant Deed, Attachment 2.

At the February 14<sup>th</sup>, 2012 City Council Meeting Mr. De Roule made a public presentation outlining the potential development of the Banning Science & Technology Center on the subject City owned property. The project would consist of a 49,917 square foot facility to be used as a learning center that would integrate STEM (Science, Technology, Engineering, and Mathematics) disciplines through the use of interactive exhibits and hands-on learning. The building itself would be LEED Gold Certified and equipped with advanced technologies. The interior uses would be comprised of the following:



- Biology Lab
- Book Store & Gift Shop
- Bus Barn
- Conference Rooms
- Electronics Lab
- Exhibit Space
- Kitchen
- Offices
- Planetarium
- Reception/Gathering Area
- Wide Screen Theater & Stage
- Workshop

### **ANALYSIS:**

Over the last several months, staff and the City Attorney's office have worked with representatives of the Banning Science & Technology Center, Inc. on the terms contained within the attached ENA, Attachment 2. Both parties agree to the terms and the City Councils approval of the ENA will enable a more formal planning and negotiations process to take place and that anticipated process is summarized as follows:

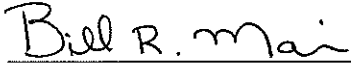
1. City Council's acceptance of this Agreement is merely an agreement to enter into a period of exclusive, good faith negotiations according to the terms hereof, reserving final discretion and approval by the City as to any actions required of it.
2. If the negotiations culminate in a Lease signed by the Developer, such Lease shall become effective only after and if the Lease has been considered and approved by City Council after a public hearing in accordance with law.
3. Nothing contained herein shall constitute a waiver, amendment, promise or agreement by the City (or any of its departments or boards) as to the granting of any approval, permit, consent or other entitlement in the exercise of any approval, permit, consent or other entitlement in the exercise of City's regulatory capacity or function.
4. It is expressly understood and agreed by the parties that this is an agreement regarding the conduct of contract negotiations only and does not convey any interest in the Site whatsoever. It is further agreed and understood that this Agreement does not imply any obligation on the part of the City to enter into any agreement that may result from negotiations contemplated herein.

The City of Banning is actively concerned with the quality of life offered to our citizens and is constantly striving to improve our level of service. On March 11, 2011, the City Council adopted the Banning Strategic Plan to address the vision for the future of Banning. One of the goals outlined in the Strategic Plan is "Generating new business opportunities and supporting existing businesses that generate jobs and revenue." The proposed Banning Science & Technology Center addresses this goal and the multi-million dollar investment in our community would not only serve our existing resident and business base, it would also attract outside interest in to our community.


**FISCAL DATA:**

There are no fiscal impacts associated with the approval and execution of the ENA.

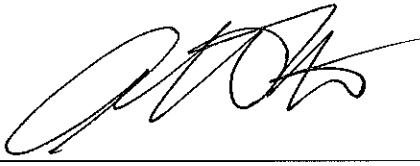
**RECOMMENDED BY:**

  
\_\_\_\_\_  
Bill R. Manis  
Economic Development Director

**REVIEWED BY:**

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

**APPROVED BY:**

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

**Attachment:**

1. Exclusive Negotiation Agreement
2. Letter of Endorsement

# **ATTACHMENT 1**

## **Exclusive Negotiation Agreement**

**(City of Banning & Banning Science and Technology Center)**

# EXCLUSIVE NEGOTIATION AGREEMENT

## BANNING SCIENCE CENTER

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("ENA" or "Agreement") is made this \_\_\_\_th day of \_\_\_\_, 2012, by and between the City of Banning, a California general law municipality ("City"), and Banning Science and Technology Center, Inc., a California non-profit corporation ("Developer").

### RECITALS

The parties enter into this Agreement on the basis of the following facts, understandings, and intentions:

A. The City owns that certain parcel of land located at 226 S. 22<sup>nd</sup> Street, Banning, California, which is more particularly described in Exhibit "A" hereto (the "Site"). The Site was donated to the City by the Ford Motor Company ("Ford") on December 31, 1997. Ford's donation of the Site is subject to the terms of a gift deed (the "Ford Deed"), which Ford Deed contains the following 30-year deed restriction:

For a period of thirty (30) years from and after the date hereof, Grantee, its successors and assigns, shall not, without the prior written consent of Grantor, directly or indirectly use or occupy the Premises or permit the same to be used or occupied for any purpose other than for non-commercial public service purposes.

(Hereinafter, the "Use Restriction".) The Site is currently vacant and under-utilized. The City seeks to utilize the Site in a manner that will maximize public benefits and welfare, consistent with the terms of the Use Restriction and/or subject to the prior written consent of Ford.

B. The term "Developer," as used herein, refers to the Banning Science and Technology Center, Inc., its board and any affiliate of such entities that may be involved, if at all, in Developer's activities under this Agreement, as elected by Developer in its discretion. Developer is experienced in the delivery of non-profit, public educational services relating to the disciplines of Science, Technology, Engineering, and Mathematics ("STEM"). There are only thirteen centers and museums in Southern California that are dedicated to education in at least one of the four STEM disciplines. However, no such center serves the Banning pass region within at least a sixty-five mile radius of Banning. Developer proposes to fill this void of STEM centers in the pass area by leasing, or otherwise occupying, the Site for purposes of constructing and operating an approximate 50,000 square foot, non-profit Science and Technology Center serving the region (the "Center"). The Center is proposed to serve the public, providing informal educational opportunities for students ages 8 through 20, senior citizens and all other members of the public.

C. Developer represents that it will submit a proposal to develop the Site consistent with all laws, ordinances, regulations, and requirements of the City of Banning, including but not limited to, the City's Zoning Code and General Plan. In addition, Developer's Site plan and business model must be presented to Ford and receive Ford's prior written consent in order to

ensure compliance with the Use Restriction. The parties hereto acknowledge that Ford has reviewed the initial business plan for the Center and indicated consent to the terms thereof, which consent shall require updated consent from Ford should plans or development components of the Project materially alter during the course of negotiations or planning, such that Ford's consent to all Site uses shall be fully-informed.

D. City and Developer desire, for the period set forth herein, to continue negotiating diligently and in good faith to prepare a lease, facility disposition and operation agreement, purchase and sale agreement, disposition and development agreement, owner participation agreement, or equivalent agreement effecting the conveyance of Site occupation to Developer and setting forth the terms of Center construction and operation (each and collectively, a "Conveyance Instrument"). The parties currently anticipate that Conveyance Instrument will, at least initially, convey Site occupancy to Developer via a lease rather than fee title transfer.

NOW, THEREFORE, and in consideration of the mutual covenants contained herein, the parties mutually agree to the following:

#### **SECTION 1. NATURE OF NEGOTIATIONS.**

A. **Good Faith.** City and Developer agree that, for the period set forth in Section 2 herein, they will negotiate diligently and in good faith to prepare and enter into a Conveyance Instrument for the development of the Site. The development will be subject to all rules, regulations, standards, and criteria set forth in the City's General Plan and other applicable specific plans and zoning regulations (which may necessitate amendment or other modification to accommodate Developer's proposed use), and this Agreement. City agrees, for the period stated below, not to negotiate with any other person or entity regarding redevelopment or development of the Site or any portion thereof without the prior written consent of Developer, which Developer may withhold in its sole and absolute discretion. Likewise, Developer agrees not to negotiate with any other community or property owner within a ten (10) mile radius of the Site for the development of a similar project, without the prior written consent of City. Notwithstanding the foregoing, the parties acknowledge that Developer may negotiate with the Mount San Jacinto Community College District to have the Center located upon a Site owned by the College District, so long as such site under negotiation lies within the jurisdictional boundaries of the City of Banning. Should the College District commit to provide Developer with alternative location for the Project in Banning, the City will thereafter be free to negotiate an alternative use for its Site with any third party and both parties released from this Agreement. Nothing in this Agreement shall be deemed a covenant, promise or commitment by the City of Banning, or any subdivision of the City or City, with respect to the conveyance of property or the approval of any development of the Site or otherwise. City's acceptance of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any actions required of it. Recital Paragraphs "A" through "D," inclusive are incorporated by reference as substantive provisions of this Agreement.

B. **Site.** The proposed Center shall be located upon all or a portion of the real property designated as the Site, substantially as shown in the "Site Map" included in the Scope of Development attached hereto as Exhibit "B" and incorporated herein by this reference. City

owns the entirety of the Site in fee. Currently, the Use Restriction limits Site uses such that, absent prior written consent of Ford, the Site may not be directly or indirectly used or occupied for any purpose other than for non-commercial public service purposes.

**C. Nature of the Center.** Developer intends to occupy the Site to develop the approximate 50,000 square foot, non-profit Center serving the Banning pass (and greater) region, as substantially described and shown in Exhibit "B" attached hereto and incorporated herein by this reference. It is the current intention of Developer that the Center include indoor and outdoor exhibits, areas dedicated to educational opportunities or research in at least one of the STEM disciplines, a non-IMAX theatre, planetarium, museum store and eatery. The Center is proposed as a non-profit operation to be consistent with the Use Restriction.

The design of the Center shall be consistent with the City's design guidelines. Developer shall also obtain architectural review and approval for the Center from the City's Planning Commission. Developer will be solely responsible for obtaining all approvals and entitlements for the Center, arranging the financing for the Center, and constructing all improvements upon the Site, subject to the terms and conditions of the Conveyance Instrument.

Signage shall be negotiated between the parties within the parameters of the City of Banning Sign Ordinance. If there will be freeway oriented signage, Developer is advised that the City wishes to negotiate the possibility of such signage (i) including opportunities for City advertising, and (ii) including employment and business opportunities for Banning residents and businesses. All signage must comply with the City of Banning Sign Ordinance.

**D. Environmental Review.** The parties intend to negotiate the terms of the Conveyance Instrument during the term of this Agreement. There are many unknowns concerning the Center at this time, and during the term of this Agreement the Developer will undertake the studies, reports and analysis contemplated in Section 3 to allow it to develop the project plan, project designs, traffic analysis, environmental impact analysis and financing plans necessary to determine whether to undertake the Center. Environmental analysis will occur when the Center's plans are developed. Developer will have the sole responsibility to pursue and obtain any necessary environmental approvals for the Center pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq. ("CEQA")). In the event that Developer is required, by applicable law, to undertake environmental review of any proposed development for the Site, the City shall be deemed the lead City for such review, and Developer shall deposit with the City all funds necessary to cover the cost of such environmental review and shall replenish the deposit as funds are drawn down.

**E. Financial Provisions.** Developer shall acquire a leasehold or fee interest in all or a portion of the Site at a price to be agreed upon by the parties with the actual net usable square footage determined through survey and with an offset for remediation costs. The parties further agree to the following, subject to the terms and provisions of the Conveyance Instrument:

1. Developer shall pay rent or a purchase price based upon appraisal information and other negotiated terms and which considers the Use Restriction on the Site, other topographic or regulatory restrictions on the Site, and the Center proforma, so that the Center is financially feasible.

2. Developer shall be responsible for financing and constructing all on-Site improvements.

3. Developer may be required to pay for all necessary public improvements and all of the City's fees incurred in processing the Center, without assistance of City.

4. If the financial provisions of the Conveyance Instrument result in the provision of City assistance to Developer, Developer may be required to pay prevailing wages in accordance with applicable law. Payment of all required prevailing wages in connection with the Center required to be developed by Developer under the Conveyance Instrument will be the sole responsibility of Developer.

**F. Schedule for Development.** During the period of negotiations, a specific schedule for development will be incorporated in the Conveyance Instrument. In general it is contemplated that it may take one (1) year to get all entitlements and permits and one (1) year to build the Center to completion (as such completion would be demonstrated by issuance of a Certificate of Occupancy by the City). The goal would be to open the Center within two and a half (2) years of the effective date of the Conveyance Agreement.

**G. Use and Transfer Restrictions.** The Conveyance Instrument will contain City's standard provisions restricting the use and transfer of the Site.

1. The Conveyance Instrument will restrict the use of the Site for Center-only purposes unless the City approves of a different use in writing. Neither this Agreement nor the Conveyance Instrument shall be assigned by Developer without the prior written approval of City, which approval would be based on the experience, expertise and financial capacity of the proposed transferee. The term "assignment" shall not include Developer's involvement of any affiliate of Developer in connection with Developer's activities under this Agreement.

2. During the course of negotiations, the parties shall resolve with Ford any and all disputes that may relate to the Center's consistency with the Ford Use Restriction. To this end, Developer acknowledges and agrees that the Center shall not proceed until fully informed written consent has been obtained from Ford for the construction and operation of the Center. Developer acknowledges and agrees that this requirement may require re-designs of the Center's anticipated and/or revisions in the Center business plan. For purposes hereof, the term "fully informed" means that Ford is apprised of the Center's actual design, business plan, proforma and expected revenues. The parties hereto acknowledge that Ford has reviewed the initial business plan for the Center and indicated consent to the terms thereof, which consent shall require updated consent from Ford should plans or development components of the Project materially alter during the course of negotiations or planning, such that Ford's consent to all Site uses shall be fully-informed.

## **SECTION 2. PERIOD OF NEGOTIATIONS**

**A. Period of Exclusive Negotiation.** City and Developer agree to negotiate for one (1) year after the execution date of this Agreement in order to enter into a Conveyance Instrument. If, upon the expiration of such initial and extended periods of time, City and Developer have not each approved and executed a Conveyance Instrument, then this Agreement

shall automatically terminate and Developer shall have no further rights regarding the subject matter of this Agreement or the Site, and City shall be free to negotiate with any other person or entity with regard to the Site; provided, however, that City and Developer may mutually agree in writing to further extend the exclusive negotiation period for such additional period as City's Board may approve, as evidenced by a writing signed by both parties.

**B. City Approval.** Developer understands and acknowledges that if negotiations culminate in a Conveyance Instrument, the Conveyance Instrument shall be effective only after, and if, the Conveyance Instrument has been considered and approved by City and City Council after public hearing thereon as required by law. Any Conveyance Instrument would require environmental analysis meeting the requirements of CEQA.

### **SECTION 3. DEVELOPER'S RESPONSIBILITIES.**

During the period of negotiation, Developer will prepare such studies, reports, and analysis as shall be necessary to permit Developer to determine the feasibility of the Center, subject to any further rights granted Developer with respect to the foregoing. During the period of negotiation, and as requested by City, Developer shall submit to City the following:

**A. Proforma.** An estimated proforma budget for the development and construction of the Center for at least a five (5) year period after opening of the Center.

**B. Site Plan.** A "Site Plan" specifying the conceptual framework to guide the overall development of the Site, the approved land uses on the Site, including generalized area of building pad, height of structure, total square footage, and parking and proposed circulation system for the Site. A preliminary conceptual plan for the Center is attached at Exhibit "B". In addition, the Developer shall prepare the preliminary design plan of the Center, including building elevations and design themes, as reasonably required by City, sufficient, to the extent feasible and practicable, to allow City to evaluate sign configuration, architectural design and similar issues.

**C. Partners.** Adequate disclosure of Developer's principals, partners, joint ventures, negotiators, consultants, professional employees, or other associates of Developer who are participants or principals of the Center, and other reasonable and relevant information, as requested by City, concerning the above.

**D. Financial Capability.** A statement of Developer's financial capabilities, including contemplated or potential sources of equity and construction and permanent loan financing. City agrees, to the maximum extent permitted by law, to keep confidential all proprietary financial and other information submitted by Developer to City in connection with Developer's satisfaction of its obligations under this Agreement, at all times during the term of this Agreement. Moreover, the parties agree that the financial information which is required to be submitted to City pursuant to this Section shall not be retained by City.

Developer shall negotiate exclusively with City's negotiating team and with no third parties unless expressly authorized in writing to do so by City's negotiating team. During the period of negotiations, no statements will be made by either Developer or City without first making reasonable efforts to consult with the other party (other than those statements made to



each party's agents, consultants and employees and, in the case of Developer, those statements made to prospective tenants or retailers for the Center, if any).

#### **SECTION 4. CITY'S DISCRETION; NON-WAIVER OF POLICE POWERS.**

Developer acknowledges that City is under no obligation to enter into any proposed Conveyance Instrument or other agreement, subject to City's obligations to negotiate in this Agreement, and that any actions taken or investments made by Developer in anticipation of a proposed agreement prior to such agreement being considered and approved by the City Council and signed and delivered, are undertaken at Developer's sole risk and expense. Prior to the execution and delivery of an agreement by City, any reliance by Developer on any representations or promises by City or City staff or consultants, or individual Council or Board members, is undertaken at Developer's sole risk and expense. City acknowledges that Developer is under no obligation to enter into any proposed Conveyance Instrument or other agreement, subject to Developer's obligations to negotiate in this Agreement, and that any actions taken or investments made by City in anticipation of a proposed agreement prior to such agreement being considered and approved by Developer and signed and delivered, are undertaken at City's sole risk and expense. Prior to the execution and delivery of an agreement by Developer, any reliance by City on any representations or promises by Developer or Developer's staff or consultants, is undertaken at City's sole risk and expense.

It is anticipated that the City Council and/or Planning Commission will be required to review and hold hearing(s) upon the Center's necessary entitlements and environmental documentation. The parties understand that City is reserving the right to exercise its discretion as to all matters which City is, by law, entitled or required to exercise, at their discretion; nothing in this Agreement shall be construed as having the effect of waiving or limiting City's police powers and exercise of discretion. To this end:

1. The parties understand that City has the complete and unfettered discretion to reject the Center and/or Conveyance Instrument, and other documents related to the lease or sale of the Site without explanation or cause. The risk of loss of all processing, design and developmental costs incurred by Developer prior to Conveyance Instrument approval and execution shall be absorbed entirely by Developer, unless expressly assumed by the terms of this Agreement by City.

2. The duty of City and Agency to execute the Conveyance Instrument shall be conditioned upon the successful review and approval of all necessary findings and conclusions which the City Council is required to make, including all necessary findings and determinations required under CEQA, state and local land use provisions. As to any matter which City or Agency may be required to exercise its unfettered discretion in advancing the Center to completion, nothing herein, nor to be contained in the Conveyance Instrument, shall obligate City to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law, shall not be deemed to constitute a breach of City's duties under this Agreement.

3. By its execution of this Agreement, City is not committing itself or agreeing to undertake any activity requiring the subsequent exercise of discretion by City, or any

department thereof including, but not limited to, the approval and execution of a Conveyance Instrument, the approval of any development proposal or land use regulation governing the Site, the provision of financial assistance for the development of any public or private interest in real property, or any other such act or approval.

4. This Agreement does not constitute a disposition of property and does not require a public hearing. City execution of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof, reserving final discretion and approval by City as to any proposed Conveyance Instrument and all proceedings and decisions in connection therewith.

## **SECTION 5. CITY'S RESPONSIBILITIES.**

**A. City Assistance.** City shall cooperate fully in providing Developer with appropriate information and assistance, but such assistance shall not include financial assistance unless specifically provided herein.

**B. Preparation of Agreement.** The Conveyance Instrument shall include, among other relevant terms, the agreements between City and Developer regarding removal of underground storage tanks, grading of the Site, demolition of improvements, the design of the Center, relocation of tenants, street vacation, and other business terms determined necessary or desirable for inclusion in the Conveyance Instrument. City shall provide Developer with an initial draft of the Conveyance Instrument.

If the negotiations culminate in a Conveyance Instrument signed by Developer, such Agreement shall become effective only after and if the Agreement has been considered and approved by the City Council.

**C. Environmental Quality Act.** City will assist Developer to the fullest extent possible in preparing any environmental documentation that may be necessary for the Center.

## **SECTION 6. CONVEYANCE INSTRUMENT DEPOSIT.**

If the negotiations contemplated by this Agreement result in the execution of a Conveyance Instrument, subject to the agreement of City and Developer, the Conveyance Instrument will require that Developer submit to City a deposit in the form of a cash deposit, cashier's check or other form of security reasonable acceptable to City to insure that Developer will proceed diligently and in good faith to perform all of Developer's obligations under the Conveyance instrument ("Deposit"). The amount and terms of the Deposit shall be outlined in the Conveyance Instrument.

## **SECTION 7. MISCELLANEOUS.**

**A. Brokerage Commissions.** City represents it has engaged no broker, agent, or finder in connection with this transaction, and Developer agrees to hold City harmless from any claim by any broker, agent, or finder retained by Developer. Subject to the accuracy of City's representation set forth in the preceding sentence, City shall not be liable to pay any real estate

commission or any broker's fees which may arise in relation to the Center or the transfer of title to the Site.

**B. Ownership of Documents.** If the negotiations contemplated by this Agreement do not result in the execution of a Conveyance Instrument, Developer shall provide City, at no cost or expense to City, with copies of any third party consultant, contractor, or subcontractor reports, studies, analysis, site plan layouts, engineering studies, memorandums, or similar documents, excluding legally privileged or confidential items or proprietary financial information, regarding the proposed development which were prepared during the period of negotiations, which documents shall become the property of City, on a nonexclusive basis with Developer. Developer shall have no claim for compensation as a result of the exercise by City of its rights of nonexclusive ownership of said documents and materials hereunder. City may not sell such plans or drawings to other parties, and may only use them conceptually for planning purposes. Developer may retain copies of such documents for its own use and shall have an unrestricted right to use such documents, including without limitation all concepts embodied therein.

Such delivery of copies of documents by Developer to City shall be made without any representation, warranty, or liability whatsoever by Developer as to the accuracy or sufficiency of the contents of such documents and shall be made subject to the rights of the preparers of such documents including, without limitation, the copyrights (if any) associated with such documents. City acknowledges that any use of such documents for other projects and/or use of uncompleted documents without specific written authorization by Developer will be at City's or the applicable third party's sole risk and without liability to Developer, and City shall indemnify Developer for all damages concerning, affecting, or relating to City resulting therefrom.

**C. No Personal Liabilities.** Nothing in this Agreement shall create any personal obligation or liability of the City Manager or any City member, staff member, employee, or agent of City for any obligation of City under this Agreement and, conversely, nothing in this Agreement shall create any personal obligation or liability of any partner, member, principal, shareholder, employee, or agent of Developer for any obligation of Developer under this Agreement. All obligations of Developer as set forth herein shall be the joint and several obligations of Developer and any affiliate of Developer involved, at Developer's election, in Developer's activities under this Agreement.

**D. No Conflicts.** Neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations hereunder, nor the fulfillment by the City of the terms and conditions hereof or thereof: (i) conflict with, violates or result in a breach of Applicable Law; or (ii) conflict with, violate or result in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitute a default thereunder.

**E. Amendment.** This Agreement may only be amended by a document in writing signed by the parties.

**F. Notices.** All notices, including without limitation all approvals and consents, required or permitted under this Agreement shall be delivered in person or by facsimile, by messenger, by overnight mail courier, or by registered or certified mail, postage prepaid, return receipt requested, to each party at its address shown below, or to any other notice address designated in writing by such party:

City: City of the City of Banning  
99 E. Ramsey St.  
Banning, CA 92220  
Attention: City Manager  
Telephone: (951) 922-3171  
Facsimile: (951) 922-3174

Developer: Banning Science & Technology Center, Inc.  
P.O. Box 381  
Banning, CA 92220  
Attn: Henri De Roule

**G. Default.** Either party may terminate this Agreement if the other party should fail to comply with and perform in a timely manner any material obligation to be performed by such other party under this Agreement, provided the party seeking to terminate this Agreement shall provide ten (10) days written notice to the other party of such failure or nonperformance and such other party shall have such 10-day period within which to cure such failure or nonperformance (or such longer period as may be reasonably necessary to cure such failure or nonperformance if such failure or nonperformance cannot reasonably be cured with such 10-day period). Termination shall be the sole remedy for default. In no event shall either party be liable for monetary damages, attorney fees and costs, or any other cost or expense for the default or termination of this Agreement, and any such right to recover damages is expressly waived. Notwithstanding the foregoing, in no event shall any cure period hereunder extend the term of this Agreement.

**H. General Provisions.** This Agreement and all terms and conditions hereof shall be governed by and construed and enforced in accordance with the laws of the State of California. Any term herein can be waived only by a written waiver signed by the party against whom such waiver is to be asserted. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original, and all of which, together, shall constitute one and the same instrument.

**I. Recitals.** The Recitals preceding the terms of this Agreement are incorporated into the terms hereof by this reference.

**J. 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) entering into this Agreement does not violate any provision of any other agreement to which said party is bound.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day first above written.

**"CITY"**  
**CITY OF BANNING**  
a public body, corporate, and politic

By: \_\_\_\_\_  
Don Robinson, Mayor

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

APPROVED AS TO FORM:  
**ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
David J. Aleshire, City Attorney

**"DEVELOPER"**  
**BANNING SCIENCE & TECHNOLOGY**  
**CENTER, INC.,** a California non-profit corporation

By: \_\_\_\_\_  
Henri De Roule, CEO

By: \_\_\_\_\_  
Mike Rose, Vice President

(ALL SIGNATURES MUST BE NOTARIZED)

STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF RIVERSIDE        )

On INSERT \_\_\_\_, 2012, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

---

STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF RIVERSIDE        )

On INSERT \_\_\_\_, 2012, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



Exhibit "A"  
SITE LEGAL DESCRIPTION

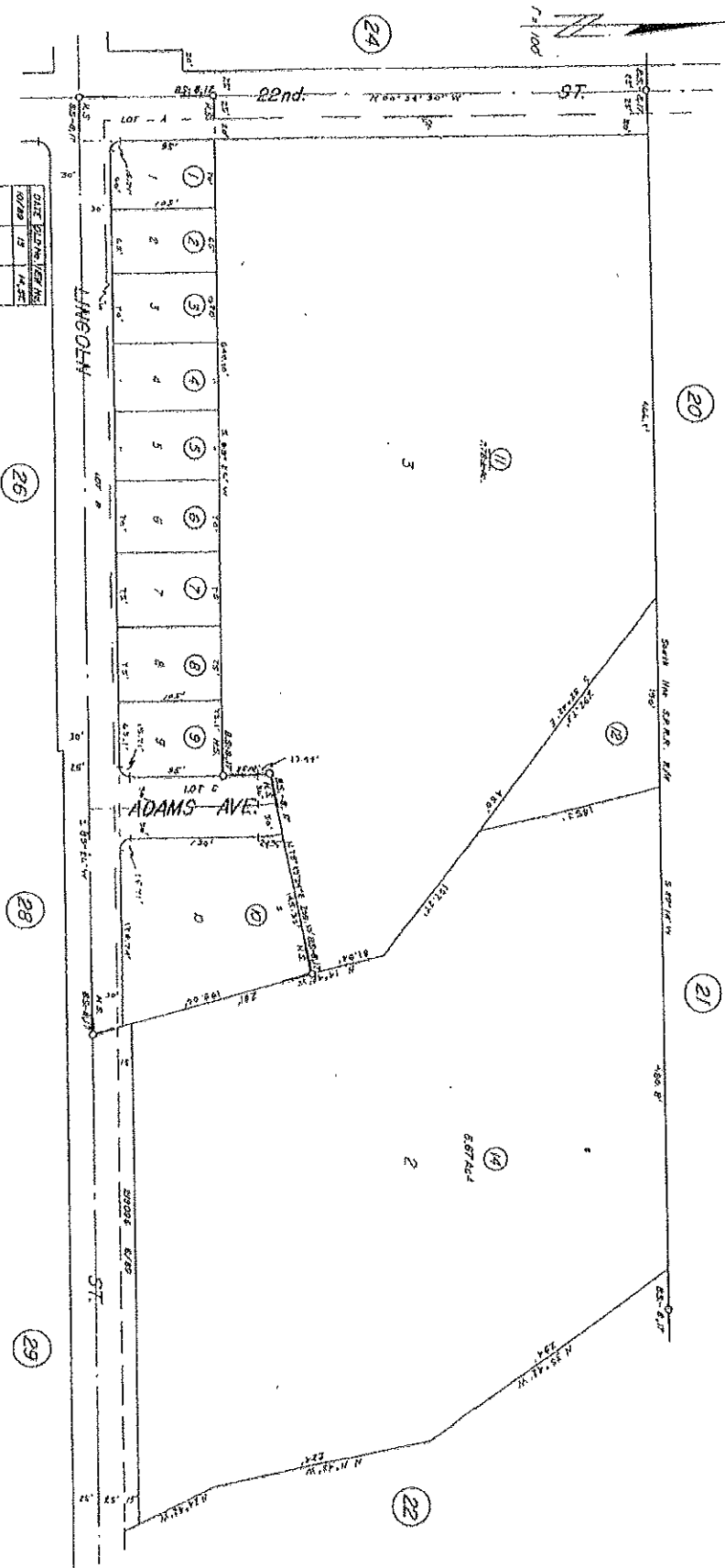
The site legal description is the property identified as Lot 11 on Assessor's map, Book 538, Pg 23, Riverside County, California. The physical address of said property is: 226 South Twenty-Second Street, Banning, CA 92220. A copy of the above referenced page is attached hereto for identification purposes.

24-207

T.C.A. 100

POR. SE 1/4 SEC. 8, T.3S, R.1E.

THIS MAP IS FOR  
ASSESSMENT PURPOSES ONLY



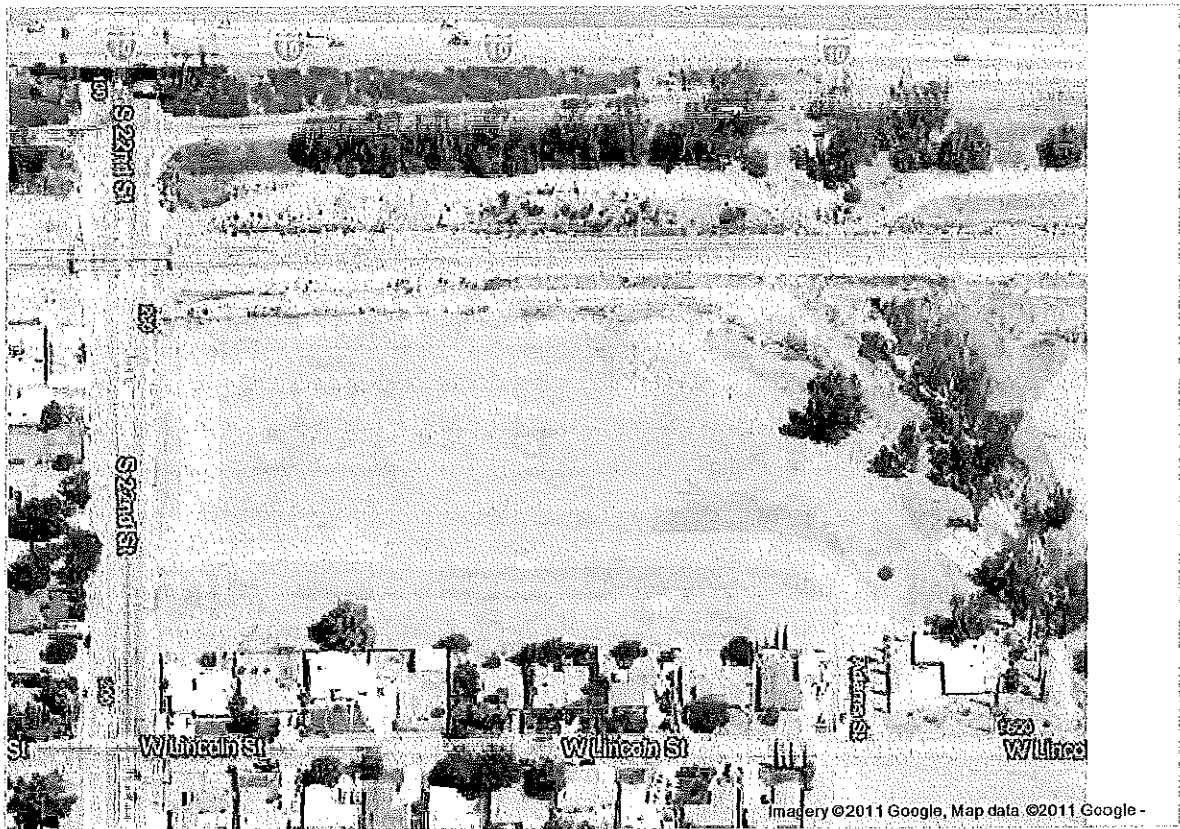
M.B. 7/21 C.O. Barker's Subdivision of For. SEC'S & B. IT, T.3S, R.1E  
M.B. 43/35 Higgin's Subdivision Unit No.1

[illegible]

SEPTEMBER 1969

ASSESSOR'S MAP BK. 558 PG. 23  
RIVERSIDE COUNTY, CALIF.

To see all the details that are visible on the screen, use the "Print" link next to the map.



226 South 22nd Street, Banning, CA

Exhibit "B"  
SCOPE OF DEVELOPMENT

[Site Plan and Description of Center]

Description of Center

An approximately 50,000 square foot building to be used as a science and technology center/museum, the function of which is To use hands-on, fun, exciting and educational experiences in Science, Technology, Engineering and Math (STEM) in order to educate people in what they should know to live and work in the twenty-first century.

Pictorial representations of the Proposed Site Plan, The Proposed Elevation of the building, and the Proposed building layout are attached hereto.

SHEET  
A1

SITE PLAN  
Date: 1-1-97



PRELIMINARY

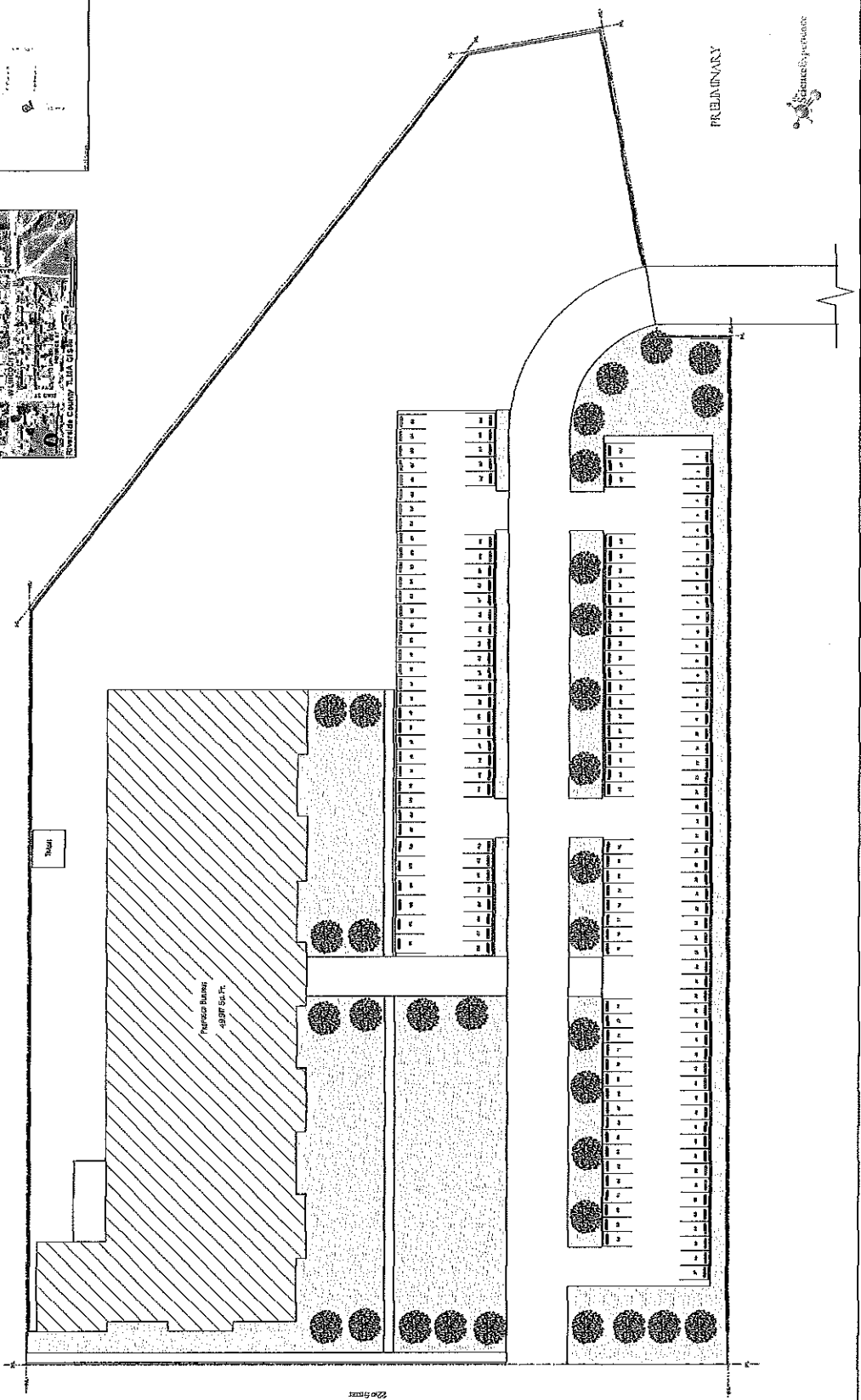
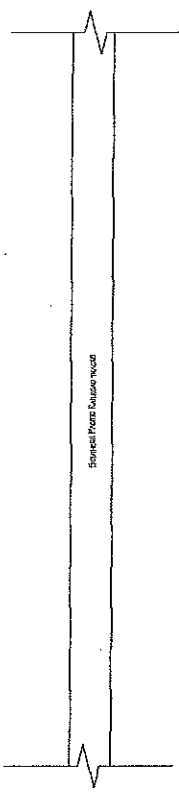
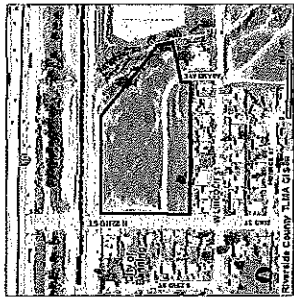
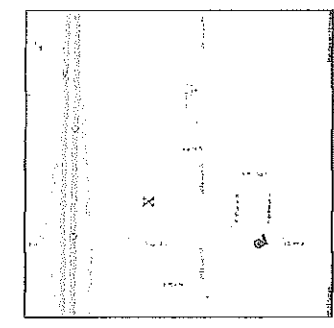
REVISIONS	DATE	BY	CHKD

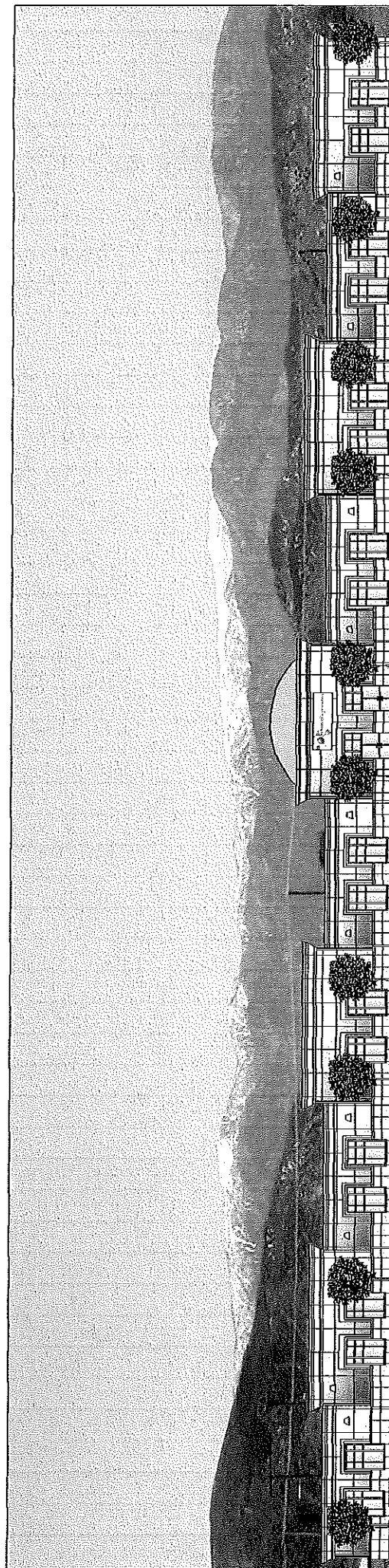
BANNING SCIENCE & TECHNOLOGY  
CENTER  
BANNING, CA

SITE PLAN  
DRAWN FOR PRESENT

PROJECT CONTACTS  
ARCHITECT: DESIGN & DRAFTING  
ENGINEERS  
10411 107th  
BELLFLOWER, CA 91706  
Tel: (714) 861-1111  
Fax: (714) 861-1112

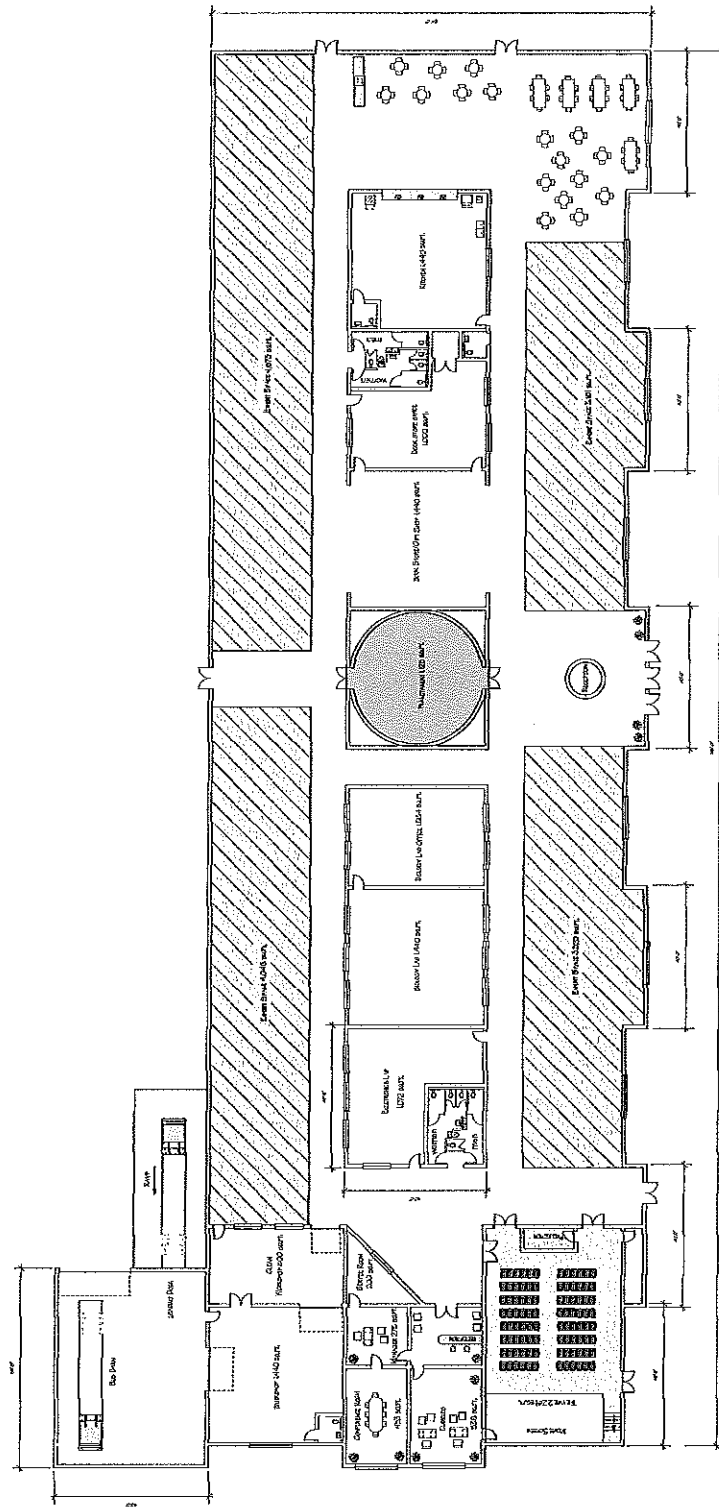
RIVERSIDE COUNTY  
APN# 538-230-011





BANNING SCIENCE & TECHNOLOGY CENTER

DESIGN BY: J. MONTAGNA

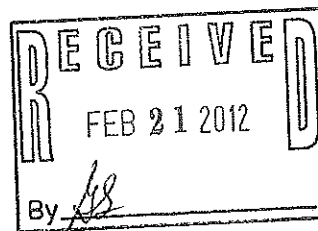


## **ATTACHMENT 2**

### **Letter of Endorsement**

**(Ford Leasing Development Company, LLC)**





Ford Motor Company

Ford Leasing Development Company LLC  
330 Town Center Dr., Suite 1100  
Dearborn, MI 48126

February 13, 2012

*Sent Via Email and First  
Class Mail*

City of Banning  
Attention: Bill Manis  
99 E. Ramsey Street  
Banning, CA 92220

Subject: Request for Property Use as the Banning Science & Technology Center in Accordance with the Corporation Grant Deed of Gift Between Ford Leasing Development Company LLC, formerly Ford Leasing Development Company ("Ford Leasing"), as Grantor, and the City of Banning, California ("City of Banning"), as Grantee, dated December 31, 1997 ("Grant Deed")

Dear Mr. Manis,

Ford Leasing has received your request to use the property described in the Grant Deed for use as the Banning Science & Technology Center. Ford Leasing has also reviewed the Business Plan for Fiscal Years 2011-2018 from the Banning Science & Technology Center, Inc. ("Science & Technology Center Use"). Ford Leasing is in concurrence that the Science & Technology Use proposed for the property is in accordance with the terms of Article 1 Use of the Premises of the Grant Deed.

If you have any questions, please contact Tom Loftus at (313) 323-7862.

Sincerely,

J.A. Lynch

Vice President

Ford Leasing Development Company LLC

**JOINT MEETING  
REPORT OF OFFICERS**

**DATE:** April 10, 2012

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

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

**SUBJECT:** FY 2011/12 Mid-Year Budget Review

**RECOMMENDATION:**

1. That the City Council approve City Resolution No. 2012-31, the Banning Utility Authority Resolution No. 2012-05UA and the Successor Agency Resolution No. 2012-06SA authorizing the Administrative Services Director to make necessary budget adjustments to implement the mid-year analysis, amend the position control and update the Budgetary and Fiscal Policies.
2. That the City Council approve City Resolution No. 2012-21 amending the classification and compensation plan.

**BACKGROUND:** The budgets for the City, Banning Utility Authority and Redevelopment Agency for FY 2011/12 were adopted on June 28<sup>th</sup>, 2011. Adjustments to the approved budgets typically occur during the fiscal year as a result of unforeseen changes in revenue or expenditure requirements (i.e. award of grants or emergencies). These changes require City Council or Agency Board action for approval.

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

The elimination of the Redevelopment Agency and establishment of the Successor Agency is discussed later in the report.

**General Fund**

The original General Fund budget was adopted with a projected year end operating deficit of \$467,565. The estimated deficit increased during the first six months to \$3,036,123. The

following table provides a summary of the net changes to the General Fund deficit. Adjustments made during the first six months of the year include continuing appropriations (typically grants awarded in the prior year that were not received or fully spent), encumbrances, new grants and the appropriation for the oil spill cleanup.

<b>General Fund Deficit Status</b>	
FY12 - Original deficit	(467,565.00)
<u>Adjustments during first 6 months:</u>	
Oil spill clean up	(1,814,291.00)
Encumbrances	(57,982.00)
Net continuing appropriations - grants	(634,134.00)
Net continuing appropriations - other	(66,518.00)
BUSD contract – increase in rev projection	4,367.00
adjusted budget deficit (before midyear)	(3,036,123.00)
<u>Midyear adjustments</u>	
Reductions in revenue	(225,228.00)
Reductions in expenditures	(74,166.00)
Revised Deficit with midyear adjustments	(3,187,185.00)
Adjust for change in Electric Admin Fee	258,605.00
Revised Deficit with Admin fee adjustment	(2,928,580.00)

REVENUES: Regarding the midyear revenue review, the net impact is a decrease in estimates by \$225,228. Once again, the area of significant decline was with property tax revenues (\$303,886). This reduction has been offset by net favorable adjustments in various accounts of \$78,658. Sales tax is continuing to show improvement. Included in the General Fund is an assumption that the CRA/Successor agency pass through revenue of \$112,245 will still be paid.

During a review of the Budgetary and Fiscal Policies, it was observed that the Electric administrative charge is limited to metered sales rather than operational revenues. The Electric operational revenues include sales of power to other agencies and entities. As part of the midyear resolutions, a change to the policy is being recommended so the administrative transfer calculation includes all operating revenues. This will increase the transfer by approximately \$308k.

EXPENDITURES: The expenditure budget has been reduced by \$74,166. This is primarily budget savings expected due to vacancies throughout the first six months. Additional savings may occur before year end. At this time, the expenditures have not increased to include any CRA/Successor agency costs.

RESERVES: The estimated deficit of \$2,928,580 will be funded through the use of General fund reserves. The consequences of the oil spill on private property July 2011 required that the City take action to mitigate the impacts to the storm drains and the risks of fines from various regulatory agencies. Unfortunately the impact to the Contingency reserves was significant. This deficit does not include any assumed impacts of the CRA elimination. This will be discussed later in the report.

At the end of Fiscal Year 2011, an analysis was done of the grants that were awarded, budgeted, received or expended to determine what needed to be carried forward. For example, the TASIN funds were received in June and reported last fiscal year. However, the expenditures will occur this fiscal year. Some grants have been expended but have not been reimbursed. The combination of these grant situations are reflected in the audit report fund balance as 'continuing appropriations'. Encumbrances are tied to Purchase Orders established in the prior year but carried forward to the new fiscal year. When the budget deficit increases are due to encumbrances and continuing appropriations, the funding has been set aside in the previous fiscal year to cover the impact. When the deficit increases due to operating deficits or emergencies such as the oil spill, the Contingency reserves or Unassigned fund balance are required to fund the deficit. The following table illustrates the relationship between the audit presentation of reserves and the current deficits.

<u>Fund balance - Reserves</u>	<u>Reserves</u>	<u>Deficit</u>	<u>Revised reserves</u>
Contingency	3,000,000.00	(1,814,291)	1,185,709.00
Encumbrances & continuing appropriations	758,634.00	(758,634)	-
Unassigned	760,326.00	(355,655)	404,671.00
Available Resources as of June 30, 2011	4,518,960.00	(2,928,580.00)	1,590,380.00
FY12 - Revised budget deficit (2,928,580.00)			
Projected Resources as of June 30, 2012	1,590,380.00		-

#### Banning Utility Authority

This section of the report has been modified to distinguish funds related to Reclaimed Water. The Wastewater Tertiary fund is new to the report. The tertiary funds collected in the past were previously reported in the Wastewater Capital Facility Fund. During a review of the original documents that established the fee, it was apparent that the intent was to establish a fund specific for tertiary fees. This will make it easier going forward to identify the financial resources and operations of reclaimed water activities.

### Water –

The Water operational fund included a structural budget surplus of \$114,308 at the time the budget was approved. The fund now shows an operating deficit of \$ 713,416 as a result of open purchase orders from FY11 that were carried forward primarily for water purchases. The impact of the deficit reduces available reserves to \$1,754,993, which is still within the 10% reserve policy for the Water Operations Fund. Year two of the water rates were implemented in September.

### Wastewater –

The Wastewater fund included a structural deficit of \$169,124 at the time the budget was approved. The fund now shows an operating deficit of \$285,497 which includes open purchase orders from FY11 that were carried forward related to repairs at the treatment plant. The impact of the deficit reduces available reserves to a projected \$1,169,374. This balance exceeds the fund balance 10% reserve policy for the Wastewater Operations Fund. Year two of the wastewater rates were implemented in September.

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

### Electric –

The Electric Fund began the year with an operational deficit. With midyear adjustments, the deficit has been eliminated and surplus created. As discussed in the General Fund section, during a review of the Budgetary and Fiscal Policies, it was observed that the administrative charge is limited to metered sales rather than operational revenues. The Electric operational revenues include sales of power to other agencies and entities. As part of the midyear resolutions, a change to the policy is being recommended base the administrative transfer calculation to include all operating revenues. This will increase the transfer by approximately \$258k. The projected ending fund balance exceeds the reserve goal of 10% of operating expenditures.

### **Other Funds**

Fund 115 – Energy Efficiency Conservation Block Grant (EECBG) – In 2009, City Council authorized submitting an application for an Energy grant under the Federal Stimulus program. The grant was awarded. In 2011, staff received authority for two projects, update the HVAC system at the Electric Department and retrofit the lighting in City Hall. Both projects were completed. Subsequent to council approval, staff worked hard to comply with the requirements of the grant but discovered that they were too onerous. As a result, staff submitted a letter rescinding acceptance of the grant. The midyear recommendation eliminates the budget for grant revenues and expenditures. The City has not received any of the grant revenues. The expenditures related to the two projects will be transferred to the Electric fund since the grant was related to energy efficiency.

The other funds have been reviewed and adjusted as needed to reflect actual trends or to resolve deficit fund balances. The Fund Summary Schedule has been updated to reflect the midyear recommendations. Column 4 of the Fund Summary Schedule (Attachment A) indicates the expected annual effect of FY 2011/2012 activity. Most of the deficits are in capital funds that utilize existing fund balance to complete budgeted projects.

### **Successor Agency (previously the CRA)**

Effective February 1, 2012, all California redevelopment agencies were dissolved and their assets and functions transferred to the Successor Agency. The City elected to be the Successor Agency for the CRA (Community Redevelopment Agency) and elected to have the Housing Authority as the successor to the CRA low/mod housing functions.

The action by the State through AB x1 26 has not only eliminated a local tool for economic development but it has also created an incredible administrative burden on an already limited and stretched staff. In addition, the accounting for the vague and sometimes contradictory guidelines in AB x1 26 has created an implementation challenge.

It appears from the flurry of legislative effort at the State level that the Court ruling to uphold AB x1 26 and strike down AB x1 27 was a surprise to the State legislature. As a result, many bills have been submitted to clean up significant problems in AB x1 26. Each bill has its own accounting consequences which makes it challenging to make significant changes to Banning's processes until it is known which bills will be implemented. As a result, staff is taking it slow making changes that may need to be reversed once the legislation and procedures are finalized.

Based on consultation with our auditors and with the experts providing the training for "implementing AB x1 26", the recommended course of action is to maintain the existing account structure but modify the fund names. The "Fund Summary Status FY12 Projections" reflects the new fund names and the addition of the required new funds.

The "Successor Agency Fund" is intended to retain all RDA assets and operations (excluding housing funds). These assets include properties, contracts, leases, equipment, existing fund balances and employees assumed by the successor agency. The previous "Administration Fund" has been renamed the Successor Agency Fund. The previous "Project Fund" has been transferred to the new Successor Agency Fund.

The Bond funds will remain as is pending the County audit and legislation. AB x1 26 did not contemplate the challenges of violating bond covenants. Several bills have been proposed that protect bond proceeds from a State takeover. It is possible that the City may be required to use any unspent proceeds to defease the bonds.

The "Redevelopment Obligation Retirement Fund" is new and is intended as the repository for the property taxes received from the county Auditor-Controller to pay enforceable obligations as set forth in the "EOPS".

The previous "low/mod housing" fund has been renamed the "Successor Housing Agency". This is separate and distinct from the "Housing Authority" or "Housing Successor". Budget and

activity related to the Housing Authority in its capacity as the "Housing Successor" have been reflected in this report. Funding for the Housing Authority has been transferred from the Low/Mod housing (Successor Housing Agency). Any unencumbered funds are in the "Successor Housing Agency". The outcome of those funds is pending the County audit and possible new legislative direction.

It is quite clear from the documentation and communication from the County Auditor-Controller and the State Department of Finance that there will be an audit of the EOPS, ROPS, and city records. The financial statements will be reviewed as far back as Fiscal Year 2009/2010 to analyze what transfers or changes have occurred from year to year.

### **Position Control**

The Classification and Compensation Plan is being amended by resolution to add an Associate Planner position and an Electric Services Worker. Both positions have previously been a part of the plan.

The Electric Department recently promoted two employees to vacant positions. The remaining vacated position is a Power line Technician. In a strategic review of the organization, the department proposes to under fill the Power line Technician position with an Electric Services Worker. No budget adjustment is needed to implement this change.

The Community Development Department has evaluated the technical assignments of its planning functions. As a result, the department proposes reclassifying one budgeted Assistant Planner to an Associate Planner. No budget adjustment is needed to implement this change.

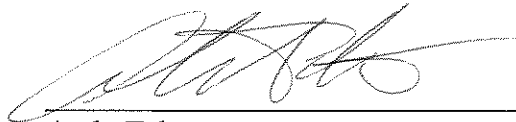
No increase to authorized positions is being recommended

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

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andy Takata  
City Manager

CITY OF BANNING  
*Fund Summary Status*  
 MidYear FY12 Projections  
 FY 2011-2012

#	FUND NAME	(1) Audited Balance @ July 1, 2011	(2) FY 2011-12 Adjusted Revenue	(3) FY 2011-12 Adjusted Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2012 (Col. 1+4)
<b><u>Governmental Funds</u></b>						
001	General	4,518,960	13,608,272	16,536,852	(2,928,580)	1,590,380
	<b>Sub-Total</b>	<b>4,518,960</b>	<b>13,608,272</b>	<b>16,536,852</b>	<b>(2,928,580)</b>	<b>1,590,380</b>
<b><u>Special Revenue Funds</u></b>						
002	Developer Deposit Fund	-	327,000	327,000	-	-
003	Riverside County MOU	312,944	451,000	536,822	(85,822)	227,122
100	Gas Tax	774,742	1,137,210	1,577,812	(440,602)	334,140
101	Measure A Street	1,093,415	1,044,565	1,856,565	(812,000)	281,415
103	SB300 Street Improvement	147,479	725	-	725	148,204
104	Article 3 - Sidewalk Construction	13,015	300	-	300	13,315
110	C.D.B.G.	(5,275)	292,815	287,540	5,275	-
111	Landscape Maintenance Assmt. Dist.#1	211,657	131,510	131,510	-	211,657
115	EECBG Fund	-	-	-	-	-
132	Air Quality	137,891	32,000	3,000	29,000	166,891
140	Asset Forfeiture	2,489	10	-	10	2,499
148	Supplemental Law Enforcement	187,199	101,000	288,199	(187,199)	-
149	Public Safety - Sales Tax	22,537	202,676	202,676	-	22,537
150	State Park Bond Act	929	-	-	-	929
190	Housing Authority Fund	399,260	395,545	407,969	(12,424)	386,836
200	Special Donations	24,107	9,350	5,210	4,140	28,247
201	Senior Center Activities	68,930	6,700	17,200	(10,500)	58,430
202	Animal Control Reserve	4,879	30	-	30	4,909
203	Police Volunteer	4,265	30	1,080	(1,050)	3,215
204	D.A.R.E. Donation	-	-	-	-	-
300	City Hall COP Debt Service	10,863	426,487	437,350	(10,863)	-
360	Sun Lakes CFD #86-1	34,833	250	250	-	34,833
365	Assessmnt Dist - #91-1 Wilson St. Debt	548,690	400	272,805	(272,405)	276,285
370	Area Police Computer	15,019	51,244	50,994	250	15,269
375	Fair Oaks 2004-1 Debt Service	373,646	208,798	208,798	-	373,646
376	Cameo Homes	5,537	225	-	225	5,762
	<b>Sub-Total</b>	<b>4,389,051</b>	<b>4,819,870</b>	<b>6,612,780</b>	<b>(1,792,910)</b>	<b>2,596,141</b>



CITY OF BANNING  
Fund Summary Status  
MidYear FY12 Projections  
FY 2011-2012

#	FUND NAME	(1) Audited Balance @ July 1, 2011	(2) FY 2011-12 Adjusted Revenue	(3) FY 2011-12 Adjusted Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2012 (Col. 1+4)
<b><i>Capital Improvement Funds</i></b>						
400	Police Facilities Development	24,897	1,650	-	1,650	26,547
410	Fire Facility Development	922,458	8,000	-	8,000	930,458
420	Traffic Control Facility	400,050	2,500	20,000	(17,500)	382,550
421	Ramsey & Highland Home Traffic Signal	80,260	400	-	400	80,660
430	General Facilities	469,840	4,500	-	4,500	474,340
441	Sunset Grade Separation Fund	41,995	3,169,647	3,209,636	(39,989)	2,006
444	Wilson Median	375,561	1,850	-	1,850	377,411
451	Park Development	153,868	1,900	132,046	(130,146)	23,722
470	Capital Improvement Fund	683,797	2,500	29,500	(27,000)	656,797
	<b>Sub-Total</b>	<b>3,152,726</b>	<b>3,192,947</b>	<b>3,391,182</b>	<b>(198,235)</b>	<b>2,954,491</b>
<b><i>Banning Utility Authority</i></b>						
660	Water Operations	2,468,409	8,226,450	8,939,866	(713,416)	1,754,993
661	Water Capital Facility Fee	4,618,722	214,000	245,316	(31,316)	4,587,406
663	BUA Water Capital Project Fund	2,497,582	3,000	1,235,000	(1,232,000)	1,265,582
669	BUA Water Debt Service Fund	92,624	2,289,425	2,293,925	(4,500)	88,124
	<b>Water Subtotal</b>	<b>9,677,337</b>	<b>10,732,875</b>	<b>12,714,107</b>	<b>(1,981,232)</b>	<b>7,696,105</b>
680	Wastewater Operations	1,454,871	2,704,000	2,989,497	(285,497)	1,169,374
681	Wastewater Capital Facility Fees	9,244,562	105,080	5,776	99,304	9,343,866
683	BUA WWtr Capital Project Fund	3,435,719	3,000	395,562	(392,562)	3,043,157
685	State Revolving Loan	766,833	304,000	304,295	(295)	766,538
689	BUA Wastewater Debt Service Fund	89,556	393,685	393,185	500	90,056
	<b>Wastewater Subtotal</b>	<b>14,991,541</b>	<b>3,509,765</b>	<b>4,088,315</b>	<b>(578,550)</b>	<b>14,412,991</b>
662	Irrigation Water	3,003,302	15,000	250,000	(235,000)	2,768,302
682	Wastewater Tertiary	3,047,411	397,964	-	397,964	3,445,375
	<b>Reclaimed Water Subtotal</b>	<b>6,050,713</b>	<b>412,964</b>	<b>250,000</b>	<b>162,964</b>	<b>6,213,677</b>
	<b>Sub-Total</b>	<b>30,719,591</b>	<b>14,655,604</b>	<b>17,052,422</b>	<b>(2,396,818)</b>	<b>28,322,773</b>

CITY OF BANNING  
Fund Summary Status  
MidYear FY12 Projections  
FY 2011-2012

#	FUND NAME	(1) Audited Balance @ July 1, 2011	(2) FY 2011-12 Adjusted Revenue	(3) FY 2011-12 Adjusted Expenditures	(4) Proj. YTD Gain/(Loss) (Col. 2-3)	(5) Proj. Balance @ June 30, 2012 (Col. 1+4)
<b><u>Enterprise Funds</u></b>						
600	Airport	125,795	599,882	512,024	87,858	213,653
610	Transit Operations	(786)	2,155,383	2,140,817	14,566	13,780
690	Refuse	361,416	3,188,250	3,220,109	(31,859)	329,557
	<b>Enterprise Subtotal</b>	<b>486,425</b>	<b>5,943,515</b>	<b>5,872,950</b>	<b>70,565</b>	<b>556,990</b>
670	Electric Operations	6,494,615	28,186,050	28,045,525	140,525	6,635,140
672	Rate Stability	4,920,509	2,240,000	1,200,000	1,040,000	5,960,509
673	Electric Improvement	10,864,906	1,539,430	2,880,546	(1,341,116)	9,523,790
674	2007 Elec Rev Bond Proceeds	15,407,311	8,000	993,521	(985,521)	14,421,790
675	Public Benefit Fund	206,166	696,400	703,562	(7,162)	199,004
678	2007 Elec Rev Bond Debt Service	521,906	2,640,046	2,669,546	(29,500)	492,406
	<b>Electric Subtotal</b>	<b>38,415,413</b>	<b>35,309,926</b>	<b>36,492,700</b>	<b>(1,182,774)</b>	<b>37,232,639</b>
	<b>Sub-Total</b>	<b>38,901,838</b>	<b>41,253,441</b>	<b>42,365,650</b>	<b>(1,112,209)</b>	<b>37,789,629</b>
<b><u>Internal Service Funds</u></b>						
700	Insurance	145,073	3,740,170	3,855,135	(114,965)	30,108
702	Fleet Maintenance	512,893	1,181,097	1,179,072	2,025	514,918
703	Information Systems Services	224,999	387,837	519,597	(131,760)	93,239
761	Utility Billing Services	170,121	1,472,966	1,518,050	(45,084)	125,037
	<b>Sub-Total</b>	<b>1,053,086</b>	<b>6,782,070</b>	<b>7,071,854</b>	<b>(289,784)</b>	<b>763,302</b>
<b><u>Successor Agency Funds</u></b>						
805	Redevelopment Obligation Retirement	-	1,777,612	1,777,612	-	-
810	Successor Housing Agency	1,743,961	395,545	587,925	(192,380)	1,551,581
830	Debt Service Fund	646,840	4,225,253	4,185,890	39,363	686,203
850	Successor Agency	3,359,918	229,364	606,632	(377,268)	2,982,650
855	Tax Alloc Parity Bonds-2007 Tabs	9,527,677	50,000	9,577,677	(9,527,677)	-
856	Tax Allocation Bonds-2003 Tabs	586,183	10,000	158,848	(148,848)	437,335
857	Low/Mod Tax Alloc Bonds-2003 Tabs	946,414	10,000	656,009	(646,009)	300,405
860	Project Fund	375,985	4,644	380,629	(375,985)	-
	<b>Sub-Total</b>	<b>17,186,978</b>	<b>6,702,418</b>	<b>17,931,222</b>	<b>(11,228,804)</b>	<b>5,958,174</b>
	<b>GRAND TOTAL ALL FUNDS</b>	<b>99,922,230</b>	<b>91,014,622</b>	<b>110,961,962</b>	<b>(19,947,340)</b>	<b>79,974,890</b>

## **RESOLUTION NO 2012-31**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING ITS 2011-12 FISCAL BUDGET PER THE MID-YEAR REVIEW RECOMMENDATIONS**

**WHEREAS**, the budget for fiscal year 2011-2012 of the City of Banning has been adopted by this Council in its original form, and said budget will need to be amended at times to fulfill the goals of the City; and

**WHEREAS**, the City departments may not exceed their appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and inter-fund transfers, without the consent of the City Manager; and

**WHEREAS**, the City may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Council; and

**WHEREAS**, the City Departments may not hire in excess of the approved number of positions in job classification as indicated by the budget detail without the consent of the City Council; and

**WHEREAS**, the budget is reviewed during a Mid-Year Review process that results in recommended budget adjustments to reflect unforeseen changes in revenue or expenditure requirements that require City Council approval;

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

Section 1: City Council approves the Mid-year Budget Adjustment for the City funds detailed by account number in Exhibit "A".

Section 2: City Council amends the position control to reflect the reduction of one (1) Assistant Planner and addition of one (1) Associate Planner. Funding for this adjustment has already been factored into the adopted budget.

Section 3: City Council amends the Budgetary and Fiscal Policies (Exhibit B), section "Electric Administrative Transfer Policy" to replace "metered sales" with "operational revenues".

**PASSED, APPROVED AND ADOPTED** this 10<sup>th</sup> day of April 2012.

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

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

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

ATTEST:

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

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-31 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

294

## **EXHIBIT “B”**

(BUDGETARY AND FISCAL POLICIES)

# CITY of BANNING

## *Budgetary and Fiscal Policies*

### I. PHILOSOPHY

To maintain a financially viable City that can provide an adequate level of municipal services and to ensure a stable and diverse financial condition of the City through budgeting and fiscal policies.

### II. METHODS

#### Operational Policies

##### *Operational Policies*

1. The City will maintain a budgetary control system to ensure compliance with the budget. The City will prepare monthly status reports comparing actual revenues and expenditures to budgeted amounts. Where practical, the City will develop performance measures to be included in the operating budget.
2. The City will provide for adequate maintenance of capital plant and equipment and for the orderly replacement thereof.
3. The City will project its equipment replacement and maintenance needs for the next several years and will update this projection each year. For this projection, a maintenance and replacement schedule will be developed and followed.
4. During the budget process, the City will reassess services and service levels. Staff may seek citizen input by surveys, citizen's forums and similar methods to accomplish this evaluation.
5. The City will strive to maintain all of its assets at an adequate level in order to protect the City's capital investment and to minimize future maintenance and replacement costs.

#### Capital Improvement Policies

##### *Capital Improvement Policies*

1. Capital improvements are to be funded primarily by user fees, service charges, assessments, special taxes or developer agreements when benefits can be attributed to users of the facility.
2. The City will require that project costs and related funding be submitted with requested capital projects. "Full life" costs including operating, maintenance and demolition, if any, should be identified.
3. Although the City will strive to finance projects on a pay-as-you-go basis, the City Council may conclude, based on a study of the economy and other matters, that the most equitable way of financing a project that benefits the entire community would be debt financing (pay-as-you-use) in order to provide the services in a timely manner. The City will use the following criteria to evaluate the use of long-term financing and pay-as-you-go funding for capital projects:

##### Factors favoring pay-as-you-go

- current revenues and excess reserves are available or project phasing can be accomplished.
- debt levels adversely affect credit rating.
- market conditions are unstable or marketing difficulties exist.

##### Factors favoring long-term financing

- revenues available for debt service are determined to be sufficient and reliable to provide funding for long-term financing which can be marketed with investment grade credit ratings.
- the facility securing the financing is of the type that will support an investment grade credit rating.
- market conditions present favorable interest rates and demand for City financing.
- a project is mandated by state and/or federal requirements and current revenues or fund surplus balances are insufficient.
- the facility is immediately required to meet or relieve capacity needs.
- the life of the asset financed is ten years or longer.

## **Revenue Policies**

### *Revenue Policies*

1. The City will strive to maintain a diversified revenue system to protect it from short-run fluctuations in any one revenue source.
2. State and Federal funds may be utilized, but only when the City can be assured that the total costs and requirements of accepting funds are known and judged not to adversely impact the City's General Fund.
3. The City, where allowed by law, will review all fees for licenses, permits, fines, utility user fees and other miscellaneous charges on a periodic basis. They will be adjusted as necessary after considering inflation, processing time, expenses to the City and any other factors pertinent to the specific item. A regular review and implementation of index escalators will be applied wherever authorized by resolution or ordinance.
4. An administrative fee will be charged where allowed by law for administrative services, provided the fee is based on the reasonable estimated costs incurred.
5. All proposed projects will have a detailed capital budget specifying total costs and total revenues, and shall identify the source of proposed revenues.

## **Debt Management Policies**

### *Debt Management Policies*

1. The City will not use long-term debt to finance current operations. Long-term borrowing will be confined to capital improvements or similar projects with an extended life which cannot be financed from current revenues.
2. Debt payments shall not extend beyond the estimated useful life of the project being financed. The City will try to keep the average maturity of bonded debt at or below 20 years.
3. The City will maintain good communications with bond rating agencies concerning its financial condition.
4. The City may utilize lease purchasing with specific approval of the City Manager. The useful life of the item must be equal to or greater than the length of the lease. A lease purchase will require City Council approval beyond a five-year lease term or principal amount over the City Manager's authorized contract level.
5. The City will not obligate the General Fund to secure financing unless the marketability of the issue will be significantly enhanced.
6. A feasibility analysis shall be prepared for each request for long-term financing which analyzes the impact on current and future fiscal year budgets for debt service and operations. The analysis shall also address the reliability of revenues supporting annual debt service.
7. The City shall conduct financing on a competitive basis unless, for reasons of market volatility, the use of an unusual financing structure or a complex security structure indicates the negotiated financing is preferred.
8. The City will monitor all forms of debt on an annual basis and report concerns or suggested restructuring, if any, to the City Council as part of the budget hearing process.
9. Enterprise and Property owner based financing will only be issued under the assumption that the issue is self-supporting from user fees and charges, assessments and special taxes without impacting the General Fund.
10. The City's minimum acceptable rating objective on any direct debt is "Baa/BBB". Appropriate credit enhancements, such as insurance or letters of credit shall be considered for marketing purposes, availability and cost effectiveness.
11. The City shall diligently monitor its compliance with bond covenants and ensure its compliance with federal arbitrage regulations.
12. The City may issue interfund loans rather than outside debt instruments. Interfund loans will be permitted only if an analysis of the lending fund indicates excess funds are available, and the use of these funds will not impact the fund's current operations. The average annual interest rate, as established by the Local Agency Investment Fund (LAIF), will be paid to the lending fund.

## **General Fund Balance Reserve Policy**

### *General Fund Balance Reserve Policy*

This Fund Balance Policy establishes the procedures for reporting unrestricted fund balance in the General Fund financial statements. Certain commitments and assignments of fund balance will help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Finance Director to prepare financial reports which accurately categorize fund balance as per Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

## PROCEDURES

Fund balance is essentially the difference between the assets and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purpose for which amounts can be spent.

- Nonspendable fund balance (*inherently nonspendable*)
- Restricted fund balance (*externally enforceable limitations on use*)
- Committed fund balance (*self-imposed limitations on use*)
- Assigned fund balance (*limitation resulting from intended use*)
- Unassigned fund balance (*residual net resources*)

The first two components listed above are not addressed in this policy due to the nature of their restrictions. An example of nonspendable fund balance is inventory. Restricted fund balance is either imposed by law or constrained by grantors, contributors, or laws or regulations of other governments. This policy is focused on financial reporting of unrestricted fund balance, or the last three components listed above. These three components are further defined below.

### Committed Fund Balance

The City Council, as the City's highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specified use through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period; however the amount can be determined subsequently.

- General Fund Emergency Contingency

The City's General Fund balance committed for emergency contingencies is established at \$1,350,000. The Emergency Contingency is reserved for economic uncertainties, local disasters, recession or other financial hardships; to subsidize unforeseen operating or capital needs; and for Cash flow requirements. The City Council may, by the affirming vote of three members, change the amount of this commitment and/or the specific uses of these monies.

### Assigned Fund Balance

Amounts that are constrained by the City's intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. This policy hereby delegates the authority to assign amounts to be used for specific purposes to the Administrative Services Director for the purpose of reporting these amounts in the annual financial statements. A few examples of assigned fund balance follow.

- Continuing Appropriations

Fund balance levels must be sufficient to meet funding requirements for projects approved in prior years and which must be carried forward into the new fiscal year.

- Debt Service

Established to provide for future debt service obligations.

### Unassigned Fund Balance

These are residual positive net resources of the general fund in excess of what can properly be classified in one of the other four categories.

### Fund Balance Classification

The accounting policies of the City consider restricted fund balance to have been spent first when an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available. Similarly, when an expenditure is incurred for purposes for which amounts in any of the unrestricted classifications of fund balance could be used, the City considers committed amounts to be reduced first, followed by assigned amounts and then unassigned amounts.



This policy is in place to provide a measure of protection for the City against unforeseen circumstances and to comply with GASB Statement No. 54. No other policy or procedure supersedes the authority and provisions of this policy.

#### Available Fund Balance Reserve Policies

##### *Available Fund Balance Reserve Policies*

1. Each fund shall maintain, if necessary, an appropriate Available Fund Balance reserve to fund prior year's incomplete capital projects, continuing appropriations, cash flow needs and any other financial need not included in the current fiscal year budget.
2. The Water and Wastewater enterprise operational funds shall maintain a minimum Available Fund Balance reserve of 10% of the upcoming fiscal year's total operating appropriations and debt service payments.
3. The Electric enterprise operational fund shall maintain a minimum Available Fund Balance reserve of 10% of the upcoming fiscal year's total operating appropriations and debt service payments. The Available Fund Balance for the Electric Rate Stability Fund shall be maintained at a minimum of 20% of the upcoming fiscal year's total operating appropriations and debt service payments.
4. The Self-Insurance Fund shall maintain a \$500,000 minimum Available Fund Balance reserve which is in excess of the estimated loss reserve as reported at the end of the fiscal year by the City's claims administrator.

#### Electric Administrative Transfer Policy

##### *Electric Administrative Transfer Policy*

1. The Electric Operation's fund administrative transfer to the General Fund for FY 2010-11 and FY 2011-12 is authorized at 10% of operational revenues. The rate will be reviewed by the City Council during the budget process.

#### Budget and Budgetary Accounting Policies

##### *Budget and Budgetary Accounting Policies*

The City uses the following procedures in establishing the budget:

1. Before the beginning of the budget cycle, the City Manager submits to the City Council a proposed budget commencing July 1.
2. A budget workshop(s) is conducted every two years or as needed to obtain citizen comments.
3. The budget is subsequently adopted through passage of a resolution.

For a given fiscal year, all appropriations are as originally adopted or as amended by the City Council. At year end, all unencumbered budgeted amounts lapse at year-end subject to requests for continuing appropriations. Outstanding encumbrances will be carried forward into the new fiscal year with City Manager approval.

4. Continuing Appropriations requests and Authorized Capital Projects are approved by the City Manager after the adoption of the original budget. The original budget is then adjusted accordingly.
5. The legal level of budgetary control is at the fund level. A Department Head may transfer budget appropriations within a major category in a department or fund under his authority. The City Manager's approval must be obtained when a budget appropriation transfer request moves from one major appropriation category to another within a department.
6. The City Council may, at any time, amend the budget or delete appropriations, transfer between appropriations within a fund or change appropriation transfers between funds.

#### Accounting, Auditing & Financial Reporting Policies

##### *Accounting, Auditing & Financial Reporting Policies*

1. The City's accounting and financial reporting system will be maintained in conformance with generally accepted accounting principles and standards of the Government Accounting Standards Board.
2. Accounts payables warrant registers and payroll totals will be submitted to the City Council monthly for review and ratification.
3. Quarterly financial reports will be submitted to the City Council for review.
4. An annual audit will be performed by an independent public accounting firm with the subsequent issue of general-purpose financial statements.
5. The Administrative Services Director will annually submit an investment policy to the City Council for review and approval.

**RESOLUTION NO 2012-05 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING AMENDING ITS 2011-12 FISCAL BUDGET PER THE MID-YEAR REVIEW RECOMMENDATIONS**

**WHEREAS**, the Banning Utility Authority (Authority) budget for fiscal year 2011-2012 has been adopted by this Authority in its original form, and said budget will need to be amended at times to fulfill the goals of the Authority; and

**WHEREAS**, the Authority departments may not exceed appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and inter-fund transfers, without the consent of the City Manager; and

**WHEREAS**, the Authority may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Authority; and

**WHEREAS**, the Authority departments may not hire in excess of the approved number of positions in job classification as indicated by the budget detail without the consent of the Authority Board; and

**WHEREAS**, the budget is reviewed during a Mid-Year Review process that results in recommended budget adjustments to reflect unforeseen changes in revenue or expenditure requirements that require Authority Board approval;

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

Section 1: Authority Board approves the Mid-year Budget Adjustment for the Authority funds detailed by account number in Exhibit "A".

**PASSED, APPROVED AND ADOPTED** this 10<sup>th</sup> day of April 2012.

---

Don Robinson, Chairman  
Banning Utility Authority

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

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

ATTEST:

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Utility Authority

**CERTIFICATION**

I, Marie A. Calderon, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2012-05 UA was duly adopted by the Authority Board at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Utility Authority  
City of Banning, California

**RESOLUTION NO 2012-06 SA**

**A RESOLUTION OF THE SUCCESSOR AGENCY OF THE CITY OF BANNING  
AMENDING ITS 2011-12 FISCAL BUDGET PER THE MID-YEAR REVIEW  
RECOMMENDATIONS**

**WHEREAS**, the Successor Agency (Agency) budget for fiscal year 2011-2012 has been adopted by this Agency in its original form, and said budget will need to be amended at times to fulfill the goals of the Agency; and

**WHEREAS**, the Agency departments may not exceed appropriations by character of expense, with character of expense being defined as personnel services, services and supplies, capital outlay, debt service and inter-fund transfers, without the consent of the City Manager; and

**WHEREAS**, the Agency may transfer appropriations, between departments and within their respective funds, as long as those appropriations do not exceed their fund total unless approved by Agency Board; and

**WHEREAS**, the Agency departments may not hire in excess of the approved number of positions in job classification as indicated by the budget detail without the consent of the Agency Board; and

**WHEREAS**, the budget is reviewed during a Mid-Year Review process that results in recommended budget adjustments to reflect unforeseen changes in revenue or expenditure requirements that require Agency Board approval;

**NOW, THEREFORE, BE IT RESOLVED** by the Agency Board of the City of Banning as follows:

Section 1: Agency Board approves the Mid-year Budget Adjustment for the Agency funds detailed by account number in Exhibit "A".

**PASSED, APPROVED AND ADOPTED** this 10<sup>th</sup> day of April 2012.

---

Don Robinson, Chairman  
Successor Agency

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

---

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

ATTEST:

---

Marie A. Calderon, Secretary  
Successor Agency

**CERTIFICATION**

I, Marie A. Calderon, Secretary of the Successor Agency do hereby certify that the foregoing Resolution No. 2012-06 SA was duly adopted by the Agency Board at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, Secretary  
Successor Agency  
City of Banning, California

**EXHIBIT “A”**  
TO THE FOLLOWING RESOLUTIONS

- City Council Resolution No. 2012-31
- Banning Utility Authority Resolution No. 2012-05 UA
- Successor Agency Resolution No. 2012-06 SA

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>General Fund</b>			
	<b>Revenue</b>		
001-0001-301.10-01	PROPERTY TAXES-CURRENT	(211,160)	
001-0001-301.10-03	PROP TX-SUPPLEMENTAL ROLL	(15,850)	
001-0001-301.10-10	PROPERTY TAX BACKFILL	(76,876)	
001-0001-302.11-01	SALES & USE TAXES	21,545	
001-0001-302.11-06	CABAZON OUTLET	80,000	
001-0001-302.11-08	SALES TAX BACKFILL	(27,545)	
001-0001-306.12-03	BED TAX - TOT TAX	10,000	
001-0001-306.12-05	DIRECT FRANCHISE REVENUE	2,000	
001-0001-306.12-07	BUSINESS LICENSE TAX	10,000	
001-0001-306.12-08	PROPERTY TRANSFER TAX	1,685	
001-0001-306.12-11	FRANCHISE FEE - VERIZON	27,000	
001-0001-321.18-01	CVC FINES	(50,000)	
001-0001-321.18-03	BUSINESS LIC-PENALTIES	2,000	
001-0001-331.20-08	MISC. INTEREST	275	
001-0001-331.20-15	INTEREST - W.F. SWEEP ACC	(1,300)	
001-0001-341.31-01	ST MOTOR VEH LICENSE-REG	30,000	
001-0001-361.41-61	MISC. RECEIPTS/REVENUE	(10,000)	
001-0001-371.50-02	ADMIN SERVICE - ELECTRIC	258,605	
001-2060-306.12-06	FRANCHISE TAX-CTV SERVICE	(5,000)	
001-2200-344.33-17	REIMB ADA RECOVERY/ARCNET	13,000	
001-2200-361.41-24	SALE OF SURPLUS PROPERTY	1,000	
001-2200-361.41-61	MISC. RECEIPTS/REVENUE	1,000	
001-2279-331.20-01	INVESTMENT INTEREST	1,000	
001-2300-351.35-09	MISC ANIMAL CONTROL FEES	11,000	
001-2479-331.20-01	INVESTMENT INTEREST	1,000	
001-2700-351.35-22	TITLE 24 ENERGY CALCS	60	
001-2740-351.35-89	VEHICLE ABATEMENT FEE	(30,000)	
001-2800-311.16-11	CONDITIONAL USE PERMIT	(28,675)	
001-2800-351.35-28	VARIANCE FEES	(4,292)	
001-2800-351.35-40	ENVIRONMENTAL ASST REVIEW	6,000	
001-2800-351.35-42	BLDG PLAN CK FEE-PLANNING	150	
001-2800-351.35-56	LNDSCP/IRRIG PLAN CHECK	4,000	
001-3000-351.35-47	RECORD OF SURVEY	620	
001-4000-331.25-02	FACILITY RENTAL	8,450	
001-4000-331.25-16	FACILITY RENTAL-STAFFING	200	
001-4000-351.35-69	SPORTS LEAGUE FEES	1,875	
001-4010-331.25-02	FACILITY RENTAL	610	
001-4010-351.35-67	SWIMMING POOL ADMISSIONS	1,000	
	<b>Allocations</b>		
001-2200-421.10-10	PAYROLL-REGULAR		(60,000)
001-2200-421.10-80	WORKERS COMP-REIMBURSEMNT		(1,094)
001-2200-421.15-15	PERS		(20,000)
001-2200-421.15-80	BENEFIT ALLOWANCE		(20,000)
001-2200-421.56-31	TRNSFR-AREA POLICE COMPUT		(905)
001-2700-442.51-73	INTERFUND SVC-FLEET MAINT		(4,416)
001-2800-441.42-49	REFUNDS		4,258
001-3000-442.51-73	INTERFUND SVC-FLEET MAINT		1,089
001-4000-461.10-10	PAYROLL-REGULAR		11,040
001-4500-412.32-08	CITY HALL LEASE		15,862
001-4500-412.33-11	PROFESSIONAL SERVICES		(1,814,291)
001-4500-412.56-71	REIMBSMT-INS FUND		1,814,291
<b>Fund #001 Total:</b>		<b>33,377</b>	<b>(74,166)</b>

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Developer Deposit Fund</b>			
<b>Revenue</b>			
002-2800-351.36-01	ENVIRONMENTAL REVIEW	30,903	
<b>Allocations</b>			
002-2800-441.33-05	ENVIRONMENTAL REVIEW		32,112
<b>Fund #002 Total:</b>		<b>30,903</b>	<b>32,112</b>
<b>Gas Tax Street Fund</b>			
<b>Revenue</b>			
100-4900-341.31-05	GAS TAX-SEC 2106	3,000	
100-4900-341.31-06	GAS TAX-SEC 2107	3,000	
100-4900-341.31-09	ST. GASOLINE TAX-2105	3,000	
100-4900-341.31-62	GAS TAX-SEC 2103	20,000	
100-4900-361.41-53	RESTITUTION/SUBROGATION	800	
100-4901-331.20-01	INVESTMENT INTEREST	(450)	
<b>Allocations</b>			
100-4900-431.41-04	LICENSES/PERMITS/FEEES		4,000
<b>Fund #100 Total:</b>		<b>29,350</b>	<b>4,000</b>
<b>EECBG Fund</b>			
<b>Revenue</b>			
115-5211-341.31-63	EECBG PROGRAM	(165,461)	
115-5211-381.56-59	TRANSFER-ELECTRIC FUND	(3,500)	
115-5211-381.56-74	TRNSF - PUB BENEFIT FUND	(23,100)	
<b>Allocations</b>			
115-5211-473.90-15	BUILDING IMPROVEMENTS		(60,600)
115-5211-473.95-08	WELLS/PUMPING EQUIPMENT		(131,461)
<b>Fund #115 Total:</b>		<b>(192,061)</b>	<b>(192,061)</b>
<b>Air Quality Improvement Fund</b>			
<b>Allocations</b>			
132-4900-446.41-13	JOINT AGENCY ASSESSMENTS		3,000
<b>Fund #132 Total:</b>		<b>-</b>	<b>3,000</b>
<b>Supplemental Law Enforcement</b>			
<b>Revenue</b>			
148-2211-331.20-01	INVESTMENT INTEREST	500	
148-2212-331.20-01	INVESTMENT INTEREST	500	
<b>Allocations</b>			
148-2209-421.90-56	MACHINERY/EQUIPMENT		166
148-2210-421.90-56	MACHINERY/EQUIPMENT		206
148-2211-421.90-56	MACHINERY/EQUIPMENT		1,143
148-2212-421.90-56	MACHINERY/EQUIPMENT		500
<b>Fund #148 Total:</b>		<b>1,000</b>	<b>2,015</b>
<b>Housing Authority Fund</b>			
<b>Allocations</b>			
190-3900-443.41-65	LOW/MOD HOUSING PROGRAM		(386,836)
<b>Fund #190 Total:</b>		<b>-</b>	<b>(386,836)</b>



## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Special Donations</b>			
<b>Revenue</b>			
200-9100-361.41-73	DONATIONS-SENIOR CENTER	2,500	
200-9100-361.42-17	DONATION-HOLIDAY LUNCHEON	2,600	
200-9100-361.42-18	DONAT'N RECREATION FEES	2,750	
<b>Allocations</b>			
200-9100-446.36-68	HOLIDAY LUNCHEON		2,760
200-9100-446.42-19	RECREATION FEES		950
<b>Fund #200 Total:</b>		<b>7,850</b>	<b>3,710</b>
<b>Senior Center Activities</b>			
<b>Allocations</b>			
201-4050-446.42-08	CHRISTMAS DINNER FUND		500
<b>Fund #201 Total:</b>		<b>-</b>	<b>500</b>
<b>City Administration COP Debt Service</b>			
<b>Revenue</b>			
300-6800-331.20-01	INVESTMENT INTEREST	(300)	
300-6800-331.20-03	INT. EARNED-FISCAL AGENT	(32,675)	
300-6800-331.25-03	CITY HALL LEASE REVENUE	15,862	
<b>Allocations</b>			
300-6800-467.33-11	PROFESSIONAL SERVICES		(3,150)
300-6800-467.33-15	ARB REBATE CALCS		(2,000)
300-6800-467.65-08	BOND PAYING AGENT FEES		(1,100)
<b>Fund #300 Total:</b>		<b>(17,113)</b>	<b>(6,250)</b>
<b>Fair Oaks 2004-1 Debt Service</b>			
<b>Revenue</b>			
365-4900-306.15-01	SPECIAL BENEFIT ASSMT	(272,055)	
365-4900-306.15-05	TAX ASSMT SERVICE CHARGE	100	
365-4900-331.20-01	INVESTMENT INTEREST	(450)	
<b>Fund #365 Total:</b>		<b>(272,405)</b>	<b>-</b>
<b>Fire Facility Development</b>			
<b>Revenue</b>			
410-2400-331.20-01	INVESTMENT INTEREST	(1,500)	
<b>Fund #410 Total:</b>		<b>(1,500)</b>	<b>-</b>
<b>Sunset Grade Separation</b>			
<b>Revenue</b>			
441-6500-331.20-01	INVESTMENT INTEREST	1,000	
<b>Allocations</b>			
441-6500-431.93-02	SUNSET GRADE SEPARATION		(451)
<b>Fund #441 Total:</b>		<b>1,000</b>	<b>(451)</b>
<b>Capital Improvement Fund</b>			
<b>Revenue</b>			
470-6900-331.20-03	INT. EARNED-FISCAL AGENT	(7,500)	
<b>Fund #470 Total:</b>		<b>(7,500)</b>	<b>-</b>

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Airport</b>			
<b>Revenue</b>			
600-5100-331.20-01	INVESTMENT INTEREST	(500)	
600-5100-347.34-06	FAA IMPROV PROGRAM GRANT	(26,228)	
<b>Allocations</b>			
600-5100-435.26-05	TELEPHONE SVC		325
600-5100-435.30-01	REPAIR/MAINT-GRNDS/FIELDS		750
600-5100-435.30-02	REPAIR/MAINT-BUILDINGS		8,000
600-5100-435.33-11	PROFESSIONAL SERVICES		8,000
600-5100-435.41-07	CREDIT CARD FEES		4,000
600-5100-435.93-73	AIRPORT IMPROVEMENTS		11,000
<b>Fund #600 Total:</b>		<b>(26,728)</b>	<b>32,075</b>
<b>Water Operations</b>			
<b>Revenue</b>			
660-6300-331.20-01	INVESTMENT INTEREST	(27,500)	
660-6300-356.38-08	DELINQ. RECONNECT FEE	(22,000)	
660-6300-356.38-09	BACKFLOW CHARGES	(8,000)	
660-6300-361.41-53	RESTITUTION/SUBROGATION	4,000	
660-6300-361.41-61	MISC. RECEIPTS/REVENUE	7,600	
<b>Allocations</b>			
660-6300-471.26-01	UTILITIES - BANNING		250,000
<b>Fund #660 Total:</b>		<b>(45,900)</b>	<b>250,000</b>
<b>Water Capacity Fee</b>			
<b>Revenue</b>			
661-6300-381.56-50	TRANS-BUA WTR CAP PROJ FD	135,000	
<b>Fund #661 Total:</b>		<b>135,000</b>	<b>-</b>
<b>BUA Water Capital Project Fund</b>			
<b>Revenue</b>			
663-6300-331.20-01	INVESTMENT INTEREST	1,000	
663-6300-331.20-03	INT. EARNED-FISCAL AGENT	(23,000)	
<b>Allocations</b>			
663-6300-471.56-54	TRNSFR-WATER CAP FAC FUND		135,000
<b>Fund #663 Total:</b>		<b>(22,000)</b>	<b>135,000</b>
<b>BUA Water Debt Service Fund</b>			
<b>Revenue</b>			
669-6300-331.20-03	INT. EARNED-FISCAL AGENT	(5,000)	
<b>Fund #669 Total:</b>		<b>(5,000)</b>	<b>-</b>

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Electric Operations</b>			
<b>Revenue</b>			
670-7000-331.20-01	INVESTMENT INTEREST	(55,000)	
670-7000-356.38-01	METERED SALES	(700,000)	
670-7000-356.38-10	BULK ENERGY SALES	(800,000)	
670-7000-356.38-12	MISCELLANEOUS REVENUES	4,000	
670-7000-356.38-20	TRANSMISSION SALES-CAISO	600,000	
670-7000-361.41-24	SALE OF SURPLUS PROPERTY	1,500	
670-7000-361.41-53	RESTITUTION/SUBROGATION	32,000	
670-7000-361.41-54	PROCEEDS FROM INS. LOSSES	22,900	
670-7000-366.44-07	IN AID OF CONSTRUCTION	175,000	
<b>Allocations</b>			
670-7000-473.50-01	INTERFUND SVC-ADMINISTRTRN		298,605
670-7000-473.56-08	TRANSFER - EECBG FUND		(8,200)
670-7000-473.90-15	BUILDING IMPROVEMENTS		3,500
670-7010-473.27-50	CAPACITY		(1,000,000)
670-7010-473.27-60	ENERGY - LOCAL		(700,000)
<b>Fund #670 Total:</b>		<b>(719,600)</b>	<b>(1,406,095)</b>
<b>Electric Improvement Fund</b>			
<b>Revenue</b>			
673-7000-331.20-01	INVESTMENT INTEREST	(8,000)	
673-7000-381.56-86	TRSF-07 ELEC BOND PROJ FD	671,623	
<b>Fund #673 Total:</b>		<b>663,623</b>	<b>-</b>
<b>07 Electric Revenue Bond Debt Service Fund</b>			
<b>Revenue</b>			
674-7000-331.20-03	INT. EARNED-FISCAL AGENT	(22,000)	
<b>Allocations</b>			
674-7000-473.56-57	TRNSFR - ELEC IMPROV FUND		671,623
<b>Fund #674 Total:</b>		<b>(22,000)</b>	<b>671,623</b>
<b>Public Benefit Fund</b>			
<b>Revenue</b>			
675-7020-331.20-01	INVESTMENT INTEREST	(9,000)	
<b>Allocations</b>			
675-7020-473.42-58	PUB BEN - COMM ENERGY CON		23,100
675-7020-473.56-08	TRANSFER - EECBG FUND		(18,400)
<b>Fund #675 Total:</b>		<b>(9,000)</b>	<b>4,700</b>
<b>2007 Elec Rev Bond Debt Service</b>			
<b>Revenue</b>			
678-7000-331.20-03	INT. EARNED-FISCAL AGENT	(30,000)	
<b>Allocations</b>			
<b>Fund #678 Total:</b>		<b>(30,000)</b>	<b>-</b>
<b>Wastewater Operations</b>			
<b>Revenue</b>			
680-8000-331.20-01	INVESTMENT INTEREST	(11,000)	
<b>Fund #680 Total:</b>		<b>(11,000)</b>	<b>-</b>

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Wastewater Capital Facility Fees</b>			
<b>Revenue</b>			
681-8000-366.44-20	CAPITAL FRONTAGE FEE	(15,000)	
681-8050-356.38-16	SURCHARGE-TERTIARY RESERV	(393,964)	
<b>Allocations</b>			
681-8000-454.95-12	TREATMENT PLANT IMPROV		296
<b>Fund #681 Total:</b>		<b>(408,964)</b>	<b>296</b>
<b>Irrigation Water Fund</b>			
<b>Revenue</b>			
682-8050-331.20-01	INVESTMENT INTEREST	4,000	
682-8050-356.38-16	SURCHARGE-TERTIARY RESERV	393,964	
<b>Fund #682 Total:</b>		<b>397,964</b>	<b>-</b>
<b>State Revolving Loan Fund</b>			
<b>Revenue</b>			
685-8000-331.20-01	INVESTMENT INTEREST	(2,000)	
<b>Fund #685 Total:</b>		<b>(2,000)</b>	<b>-</b>
<b>Refuse</b>			
<b>Revenue</b>			
690-9600-331.25-04	RENTS/LEASES	24,000	
<b>Fund #690 Total:</b>		<b>24,000</b>	<b>#REF!</b>
<b>Insurance</b>			
<b>Revenue</b>			
700-5020-361.41-61	MISC. RECEIPTS/REVENUE	2,000	
700-5020-361.42-39	EXCESS W.C. PREMIUMS RFND	(130,000)	
700-5020-374.51-01	WORKERS COMP-GENERAL FUND	(7,120)	
700-5020-374.51-02	WORKERS COMP-OTHER FUNDS	(15,779)	
700-5030-374.51-21	UNEMPLOYMENT-GENERAL FUND	(97)	
700-5030-374.51-22	UNEMPLOYMENT-OTHER FUNDS	(750)	
700-5040-361.41-02	MISC REIMBURSEMENTS	8,200	
700-5040-361.42-01	INSURANCE DIVIDEND	23,000	
700-5040-381.55-01	TRANSFER-GENERAL FUND	1,814,291	
<b>Allocations</b>			
700-5040-480.33-11	PROFESSIONAL SERVICES		1,814,291
<b>Fund #700 Total:</b>		<b>1,693,745</b>	<b>1,814,291</b>
<b>Utility Billing Services</b>			
<b>Revenue</b>			
761-3100-331.20-01	INVESTMENT INTEREST	(2,000)	
<b>Allocations</b>			
761-3100-480.30-06	REPAIR/MAINT-EQUIPMENT		2,800
761-3100-480.32-06	LEASE/PURCHASE PAYMENTS		950
<b>Fund #761 Total:</b>		<b>(2,000)</b>	<b>3,750</b>

## FY 2011-12 MIDYEAR ADJUSTMENTS

Fund Account #	Account Description	Revenue Adjustments	Allocation Adjustments
<b>Debt Service Fund</b>			
<b>Revenue</b>			
830-9200-381.56-86	TRSF-07 ELEC BOND PROJ FD	(30,378)	
830-9200-381.56-93	TRNSF - 07 TAP BOND FUND	30,378	
<b>Allocations</b>			
<b>Fund #830 Total:</b>		-	-
<b>Successor Agency Fund</b>			
<b>Allocations</b>			
850-9200-490.10-10	PAYROLL-REGULAR		(37,400)
850-9200-490.10-41	MANAGEMENT INCENTIVE		(1,500)
850-9200-490.10-51	INCENTIVE PAY		(1,200)
850-9200-490.10-72	SICK LEAVE PAYOFF		(8,500)
850-9200-490.15-15	PERS		(12,000)
850-9200-490.15-20	WORKERS COMP		(1,400)
850-9200-490.15-80	BENEFIT ALLOWANCE		(8,000)
850-9200-490.23-01	ADVERTISING/PUBLISHING		(6,500)
850-9200-490.23-02	PRINTING/BINDING		(2,250)
850-9200-490.23-03	DUES/SUBSCRIPTIONS		(500)
850-9200-490.23-04	POSTAGE/MAILING COSTS		(1,450)
850-9200-490.23-05	TRAVEL/CONFERENCES		(11,000)
850-9200-490.23-06	STAFF TRAINING		(2,500)
850-9200-490.23-27	CONTRACT EMPLOYMENT SVCS		(5,000)
850-9200-490.30-15	REPAIR/MAINT-OTHER		(580)
850-9200-490.33-04	LEGAL SERVICES		(10,000)
850-9200-490.33-11	PROFESSIONAL SERVICES		(216,710)
850-9200-490.33-12	AUDIT SERVICES		170
850-9200-490.41-46	COMMUNITY PROMOTIONS		(13,000)
850-9200-490.41-87	ECONOMIC BASE MARKETING		(34,450)
850-9200-490.82-90	RESERVE FOR LOAN PMT		(381,204)
<b>Fund #850 Total:</b>		-	(754,974)
<b>2003 TABS Bond Proceeds Low/Mod</b>			
<b>Allocations</b>			
857-9700-490.41-65	LOW/MOD HOUSING PROGRAM		(299,191)
<b>Fund #857 Total:</b>		-	(299,191)
<b>CRA Project Fund</b>			
<b>Allocations</b>			
860-9200-490.23-99	SETTLEMENTS		98,500
<b>Fund #860 Total:</b>		-	98,500

**RESOLUTION 2012-21**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY  
OF BANNING

**WHEREAS**, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

SECTION 1: That the City Council adopt the following classifications and salary ranges as set forth on the attached classification and compensation plan – Schedule "A" (Exhibit "C")

Associate Planner - Salary Range 64  
Electric Services Worker – Salary Range 50

SECTION 2: That the City Council approve the job descriptions for Associate Planner (Job Code 3020) and Electric Services Worker (Job Code 5150).as Exhibit "D"..

**PASSED, APPROVED, AND ADOPTED** this 10th day of April, 2012.

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

**ATTEST:**

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

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. 2012-21 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the day of April 10, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# Exhibit “C”



CITY OF BANNING  
CLASSIFICATION & COMPENSATION PLAN  
REVISED MARCH 13, 2012  
RESOLUTION NO. 2012-21 (AMENDING RESOLUTION NO. 2011-84)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
<b>1000 – CITY ADMINISTRATION SERIES</b>				
City Administration Group	1010	City Manager	109	Council Contract
	1020	City Clerk/Executive Assistant	55	Elected
Financial Services Group	1105	Administrative Services Director/Deputy City Manager	97	Contract
	1130	Financial Services Specialist	45	IBEW-G
	1115	Deputy Finance Director	82	Mgmt/Conf
	1140	Accountant	52	IBEW-G
	1135	Payroll Coordinator	51	IBEW-G
Human Resources Group	1215	Deputy Human Resources Director	78	Mgmt/Conf
	1230	Human Resources Technician	52	Conf/Gen
Utility Billing Group	1340	Senior Utility Billing Rep	46	IBEW-G
	1350	Utility Billing Representative	41	IBEW-G
Information/Cable Systems Group	1410	Information Technology Coordinator	57	IBEW-G
	1416	Police Information Technology Technician	57	IBEW-G
	1415	Information Technology/Media Technician	55	IBEW-G
	1510	Cable Services Specialist	42	IBEW-G
Office Support Group	1610	Executive Secretary	51	IBEW-G
	1620	Office Specialist	42	IBEW-G
	1630	Receptionist	29	IBEW-G

## Schedule "A"

## 2000 – POLICE SERIES

Police Group	2010	Police Chief	96	Contract
	2025	Police Lieutenant	82	Police Mgmt
	2030A	Police Staff/Master Sergeant	75	POA
	2040	Police Corporal	68	POA
	2050	Police Officer	64	POA
	2060	Police Recruit/Trainee	N/A	At-Will
Police Support Group	2143	Lead Public Safety Dispatcher	54	IBEW-G
	2110	Public Safety Dispatcher	50	IBEW-G
	2151	Police Assistant II	46	IBEW-G
	2152	Police Assistant I	42	IBEW-G

## 3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	3010	Community Development Director	88	Contract
	3026	Development Project Coordinator	56	IBEW-G
	3020	Associate Planner	64	CBAM
	3015	Assistant Planner	59	CBAM
Economic/Redevelopment Group	3110	Economic Development/Redevelopment Director	88	Contract
Development Services Group	3210	Development Services Manager (Building Official)	80	CBAM
	3215	Senior Building Inspector	65	IBEW-G
	3230	Code Compliance Officer	56	IBEW-G
	3240	Building Permit Specialist	53	IBEW-G

## 3300-COMMUNITY SERVICES GROUP

Community Services Group	3310	Community Services Director	82	Contract
	3325	Recreation Coordinator	49	IBEW-G
	3350	Lead Bus Driver/Trainer	53	IBEW-G
	3340	Bus Driver	45	IBEW-G

## 4000-PUBLIC WORKS SERIES

Public Works Management Group	4010	Public Works Director	96	Contract
Streets/Parks Group	4210	Public Works Superintendent	77	CBAM
	4230	Work Release Crew Leader	45	IBEW-G
	4240	Senior Maintenance Worker	48	IBEW-G
	4250	Maintenance Worker	43	IBEW-G
	4260	Motor Sweeper Operator	48	IBEW-G

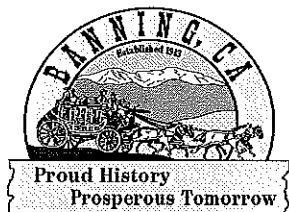
## Schedule "A"

Engineering Group	4300	City Engineer	81	CBAM
	4350	Senior Civil Engineer	78	CBAM
	4320	Associate Civil Engineer	72	CBAM
	4325	Assistant Civil Engineer	64	CBAM
	4330	Public Works Inspector	60	IBEW-G
	4340	Engineering Services Assistant	46	IBEW-G
General Maintenance and Support Group	4420	Fleet Maintenance Mechanic	51	IBEW-G
	4430	Building Maintenance Specialist	47	IBEW-G
	4450	Warehouse Services Specialist	50	IBEW-G
Water/Wastewater Group	4115	Water/Wastewater Superintendent	77	CBAM
	4130	Water Crew Supervisor	58	IBEW-U
	4140	Water Services Worker	50	IBEW-U
	4155	Wastewater Collection System Supervisor	58	IBEW-U
	4145	Wastewater Collection System Technician	50	IBEW-U
	4132	Water Valve Flushing Crew Lead	54	IBEW-U
	4133	Water Construction Crew Lead	54	IBEW-U
	4131	Water Meter Crew Lead	54	IBEW-U

## 5000 ELECTRIC UTILITIES SERIES

Electric Services & Operations Group	5001	Electric Utility Director	96	Contract
	5021	Power Contracts & Revenue Administrator	81	CBAM
	5025	Associate Electrical Engineer	72	CBAM
	5028	Utility Financial Analyst	72	CBAM
	5030	Electric Service Planner	75	IBEW-U
	5050	Public Benefits Coordinator	53	IBEW-U
	5055	Utility Services Assistant	46	IBEW-U
	5110	Electric Operations & Maintenance Manager	81	CBAM
	5120	Powerline Crew Supervisor	77	IBEW-U
	5130	Powerline Technician	73	IBEW-U
	5140	Powerline Apprentice	65 / 71	IBEW-U
	1340	Lead Field Service Representative	53	IBEW-U
	1325	Field Service Representative	49	IBEW-U
	5150	Electric Services Worker	50	IBEW-U
	5160	Electric Meter Test Technician	73	IBEW-U
	5170	Apprentice Electric Meter Test Technician	65 / 71	IBEW-U

# Exhibit “D”



## CITY OF BANNING, CALIFORNIA

### Associate Planner

Job Code: 3020

FLSA      ☒ Exempt      ☐ Non-Exempt

**JOB DEFINITION:** Under general supervision, performs a variety of duties associated with performing professional, current and/or advanced planning for the City of Banning.

**ESSENTIAL FUNCTIONS:** *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

**REPRESENTATIVE DUTIES:** Conducts professional, current and/or advanced planning studies for the City of Banning. Collects and presents data and prepares reports regarding land use, zoning, urban design, population trends, transportation, housing, redevelopment and community service needs for City Council, Planning Commission and Community Development Director. Serves as a project leader for professional and technical personnel. Assists with work instruction or project direction of new staff members. Receives and processes site plan and rezoning permits, plan amendments, use permits, environmental clearance and business licenses. Reviews, investigates and processes plans and applications for subdivisions, housing and commercial developments. Determines conformity with laws, policies, regulations and procedures.

Identifies problems and alternative solutions for planning activities. Administers, interprets and enforces provisions of zoning codes and standards to potential applicants and public. Monitors status of development applications for acceptance to issuance of final permit and conducts periodic reviews of conditional permits. Provides information and assistance to developers, property owners and public. Assists with the review, development or revision of plans, environmental impact reports and ordinances. Compiles, analyzes and interprets data relating to environmental, social, economic, housing, community and demographic trends. Conducts field surveys and investigations.

Performs other duties as assigned or required.

### KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of municipal planning trends and concepts.
- Knowledge of statistical analysis and mathematical concepts related to planning.
- Knowledge of terminology, symbols, methods and techniques used in planning and map drafting.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

(continued on reverse side)

# CITY OF BANNING, CALIFORNIA

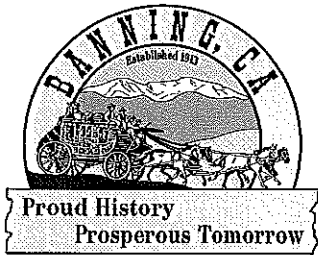
## Associate Planner

**Job Code: 3020**

---

**MINIMUM QUALIFICATIONS:** A Bachelor's degree in Planning, Business Administration, Public Administration or related field **AND** five (5) years of planning or zoning experience.

**ADDITIONAL REQUIREMENTS:** Must have at the time of application and must maintain a California driver license.



## CITY OF BANNING, CALIFORNIA

### Electric Services Worker

Job Code: 5150

FLSA      ☐ Exempt      ☒ Non-Exempt

---

**JOB DEFINITION:** Under close supervision, performs a variety of duties associated with performing non-aerial tasks in support of electric crew field activities.

**ESSENTIAL FUNCTIONS:** *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

**REPRESENTATIVE DUTIES:** Performs non-aerial tasks in support of electric crew field activities. Assists in the construction of new distribution lines, maintains new and existing lines and pulls, sags and energizes wire. Assists in the installation of new underground systems. Operates heavy equipment and a variety of hand tools for the maintenance of electric utility infrastructure. Cleans and maintains supplies, equipment and materials used for electric services. Provides customer service and answers trouble calls.

Aids in the maintenance of substations. Receives work orders and completes duties while implementing safety procedures. Assists in maintaining and installing City street lights. Performs tree trimming and weed abatement, as required.

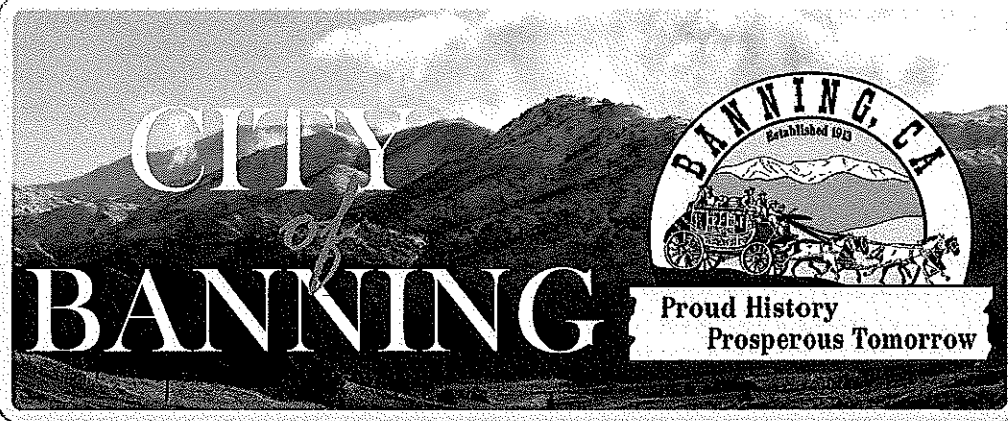
Performs other duties as assigned or required.

### KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of customer service techniques and principles.
- Knowledge of occupational hazards and standard safety precautions.
- Knowledge of operational procedures for hand tools and heavy equipment used in electric maintenance and repair.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in working within deadlines to complete projects and assignments.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

**MINIMUM QUALIFICATIONS:** A high school diploma or GED. No previous work experience required.

**ADDITIONAL REQUIREMENTS:** Must obtain within six (6) months of employment and must maintain a class A California commercial driver license.



# Fiscal Year 2011/12 Interim Financial Report

*6 months ended, December 2011  
(50% of the year complete)*





# Interim Financial Report

- 6 Months Ended December 31, 2011

## General Fund Overview

**G**eneral Fund – The General Fund Overview table provides a snapshot of budgeted revenues compared to the budgeted expenditures. The General Fund budget for Fiscal Year 2011-2012 (FY12) was approved with a structural

General Fund Overview

General Fund Categories	Adjusted Budget	Actual Activity	%
Revenues	13,574,895	4,057,948	29.9%
Expenditures	16,611,018	8,147,309	49.0%
Excess Revenues (Exenditures)	(3,036,123)	(4,089,361)	134.7%

deficit of \$467,565. This report shows an operating deficit of \$3,036,123. This includes the approved structural deficit \$467,565, new net appropriations of \$1,867,906 (includes \$1,814,291 for the oil spill and \$57,982 in encumbrance rollovers) and net continuing appropriations of \$700,652 (including \$634,134 for grants).

The General Fund Overview table also provides a snapshot of actual activity compared to the budget. The actual activity covers the 6 month activity through the end of December. Revenues are at approximately 30% of the estimates. Revenues tend to be lower the first half of the year due to the accrual process. (See the 'Good to Know' section below). Expenditures are at approximately 49% of the budget. (More details are available in the Revenue and Expenditure sections of the report.)

### *Good to know: Government Accounting and Budgeting*

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

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

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

# Interim Financial Report

- 6 Months Ended December 31, 2011

## General Fund Revenue Details

Monthly Variance Table: General Fund Top 6 Revenues

Top Revenue Sources	Fiscal Year 2011-12						Fiscal Year 2010-11		
	Annual Budget Adopted	Adjusted	YTD Budget Dec. 2011	YTD Actual Dec. 2011	Difference	% Realized	YTD Actual Dec. 2010	Change from Prior YR	% Change
Property Taxes	3,974,980	3,974,980	1,987,488	709,962	(1,277,526)	35.7%	781,131	(71,169)	-9.1%
Electric - Admin	2,400,000	2,440,000	1,219,998	1,219,998	-	100.0%	1,200,000	19,998	1.7%
Sales & Use Taxes	2,131,000	2,131,000	1,065,492	592,357	(473,135)	55.6%	616,684	(24,327)	-3.9%
Franchise Taxes	802,450	802,450	401,214	265,014	(136,200)	66.1%	261,380	3,634	1.4%
BUA Lease Payments	651,000	651,000	325,500	325,500	-	100.0%	325,500	-	0.0%
TOT Tax	502,000	502,000	250,998	125,224	(125,774)	49.9%	106,377	18,847	17.7%
<b>Total</b>	<b>10,461,430</b>	<b>10,501,430</b>	<b>5,250,690</b>	<b>3,238,055</b>	<b>(2,012,635)</b>	<b>61.7%</b>	<b>3,291,072</b>	<b>(53,017)</b>	<b>-1.6%</b>

The six revenues identified in the table above account for approximately 80% of the actual revenues in the General Fund. These revenues are a good indication of the status of the General Fund.

- A comparison of the adopted vs. adjusted budget for these six (6) revenues shows a net increase of \$40K.
- A comparison of adjusted budget vs. YTD actuals show that the top revenue source (Property Taxes) has not met estimated budget. Overall, these 6 revenues fell short of budget by \$2,012,635.
- Comparing the YTD Actual December 2010 information to the YTD Actual December 2011 information provides a better indication of whether or not City revenues are improving. Revenues show a decrease from the previous year.

Property Taxes – The City receives approximately 17 cents on the dollar through property taxes. Typically, the major receipts of property taxes are in January, April and May. In addition, due to various State actions (i.e. VLF Swap), the City receives the “in Lieu” property taxes twice a year (January and June).

The current year property tax revenues continue to drop compared to prior years. There was a loss of approximately 9% from FY11 to FY12. This trend may continue for a couple more years. Property tax revenues have a lag time in reflecting economic circumstances, whether good or bad. A midyear adjustment has been requested.

Electric Admin – The General Fund charges the Electric utility a 10% administrative charge on metered sales. Throughout the year the amount transferred to the General Fund is based on the budget estimate. At year end, a calculation is done to adjust the charge based on actual metered sales revenues.

Sales & Use Taxes – This source of revenue is typically responsive to economic circumstances. Compared to the prior year, sales tax revenue decreased by approximately 4% for this period. A midyear reduction for the backfill portion of

# Interim Financial Report

- 6 Months Ended December 31, 2011

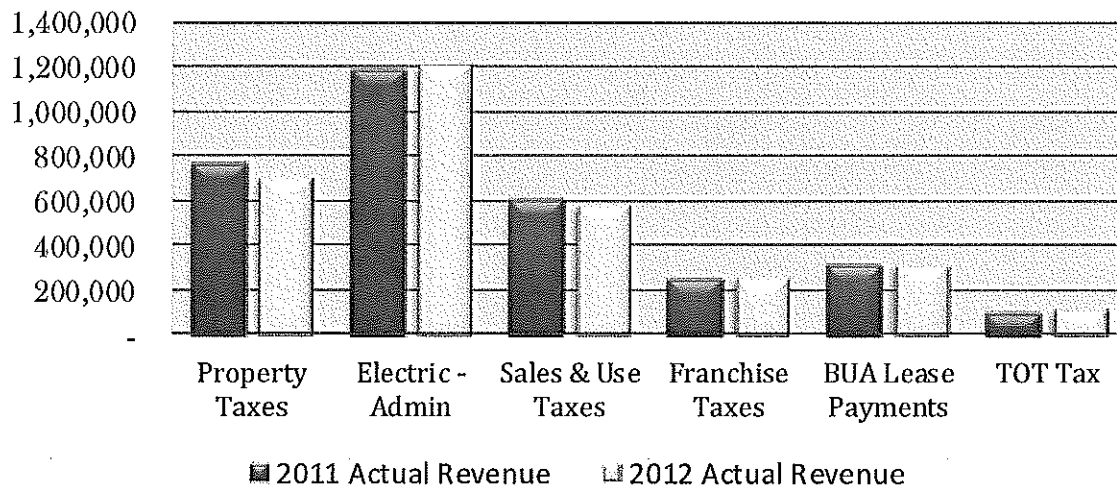
the sales tax is being recommended. However, this is being offset by increases in sales tax at the Cabazon outlets, per the City agreement with the County of Riverside.

Franchise Taxes – The City receives franchise payments from sources like Verizon, Time Warner, the Gas Company, and Waste Management. The refuse payments are received monthly, others are received quarterly and some just once a year. The Gas Company franchise payment is received in April. Budget should be met. This revenue source shows an increase of approximately 1% compared to the prior year.

BUA lease payments – The General Fund receives monthly lease payments from the Banning Utility Authority (BUA) which is comprised of the Water (\$39,167/Month) and Wastewater (\$15,083/Month) utilities.

Transient Occupancy Tax (TOT) – This revenue source has doubled since fiscal year 2008-09. On November 3<sup>rd</sup>, 2009 voters approved a bed tax increase of up to 12%. In January 2010, the TOT was increased from 6% to 10%. Effective October 1, 2010 the rate was increased to the maximum of 12%. The combination of the rate increase, improvements in the economy, and the construction of new hotels are reflected in the improved revenues. Compared to last year, this revenue has improved by approximately 18%. Budget should be met.

## Top 6 Revenues



# Interim Financial Report

- 6 Months Ended December 31, 2011

## General Fund Expenditures

At 50% of the year, actual expenditures are at approximately 49%. The General Fund Expenditures table provides a snap-shot of the expenditures by category.

Employee Services account for salaries and benefits of the employees funded through the General Fund. The

services include general government (i.e. city manager's office, city council, city clerk, city attorney, and personnel/human resources), financial services, public safety, planning and building, public works, and recreation. Approximately 46% of the budget has been expended in this category.

Approximately 28% of the Services and Supplies category has been expended. Within this category are city contracts for several major services such as Fire and animal control. The variance is primarily related to unexpended grants (i.e. TASIN, and other police grants), and other contract service savings. Also included in this category is the budget for the cleanup of the oil spill.

The majority of the Capital budget is as a result of grants received by the Police Department. Grants are restricted in how the funds can be used (i.e. grant funds will be used for vehicles, computers, and communication equipment). There is often a timing difference between when funds are received and when they are expended. For example, the new TASIN grant funds were received in FY11 but will be expended in FY12. Budgets related to grants are carried forward from year to year until the grant is finalized.

The City Hall Lease payments are on the refinanced debt. Payments are made twice a year.

The Interfund Support category accounts for compliance with the MOE for streets projects, and General Fund allocation of general liability/worker's compensation costs and information technology services.

The Following table 'General Fund Program Expenditure Summary' provides another perspective of the General Fund expenditures.

General Fund Expenditures

Category	Adjusted Budget	Actual YTD	Encum.	% Spent
Employee Services	8,257,406	3,814,584	-	46.2%
Services and Supplies	6,419,713	1,817,079	287,603	28.3%
Capital	552,936	9,158	5,540	1.7%
City Hall Lease	243,575	129,115	-	53.0%
Interfund Support	1,137,388	2,377,372	-	209.0%
<b>Total</b>	<b>16,611,018</b>	<b>8,147,309</b>	<b>293,143</b>	<b>49.0%</b>

# Interim Financial Report

- 6 Months Ended December 31, 2011

## General Fund Program Expenditure Summary

PROGRAM TITLE	(1) Adopted Budget	(2) Adjusted Budget	(3) Current Month Expenditures	(4) Y.T.D. Expenditures	Remaining Budget (Col. 2-4)	% Expended (Col. 4/2)
<b><u>GENERAL GOVERNMENT:</u></b>						
City Council	94,006	94,006	21,492	41,680	52,326	44%
City Manager	210,935	210,935	22,875	93,379	117,556	44%
Personnel	149,779	189,779	15,820	93,774	96,005	49%
City Clerk	85,753	85,753	10,649	37,308	48,445	44%
Elections	200	200	-	-	200	0%
City Attorney	161,000	161,000	35,574	96,305	64,695	60%
TV Government Access	47,747	47,747	135	2,118	45,630	4%
Community Enhancement	-	6,725	6,721	6,721	4	100%
Subtotal	749,420	796,145	113,265	371,285	424,860	47%
<b><u>FINANCIAL SERVICES</u></b>						
Fiscal Services	200,896	221,829	31,510	90,070	131,759	41%
Purchasing and A/P	18,223	18,223	5,302	14,251	3,972	78%
Subtotal	219,119	240,052	36,812	104,321	135,731	43%
<b><u>CENTRAL SERVICES</u></b>						
Central Services	1,439,024	3,216,590	1,894,175	2,417,643	798,947	75%
Subtotal	1,439,024	3,216,590	1,894,175	2,417,643	798,947	75%
<b><u>PUBLIC SAFETY:</u></b>						
Police	5,636,103	6,071,916	606,397	2,755,105	3,316,811	45%
Dispatch	806,250	834,630	85,469	366,828	467,802	44%
Tasin (Police)	-	567,287	21,610	66,191	501,096	12%
Animal Control	142,000	142,000	7,362	42,625	99,375	30%
Fire	2,506,503	2,506,521	223,790	1,216,657	1,289,864	49%
Tasin (Fire)	-	500,000	-	-	500,000	0%
Subtotal	9,090,856	10,622,354	944,629	4,447,405	6,174,949	42%
<b><u>PLANNING</u></b>						
Building Safety	212,847	212,847	15,798	108,185	104,662	51%
Code Enforcement	172,091	172,091	19,872	80,948	91,143	47%
Planning	264,103	273,103	27,774	121,266	151,837	44%
Subtotal	649,041	658,041	63,445	310,399	347,642	47%
<b><u>COMMUNITY SERVICES</u></b>						
Recreation	182,244	182,244	21,109	97,307	84,937	53%
Aquatics	99,683	102,002	2,195	58,589	43,413	57%
Senior Center	42,333	42,333	4,630	20,619	21,714	49%
Subtotal	324,260	326,579	27,934	176,515	150,064	54%
<b><u>PUBLIC WORKS:</u></b>						
Building Maintenance	195,206	195,206	22,532	92,790	102,416	48%
Parks	300,841	300,841	31,393	140,898	159,943	47%
Engineering	208,393	255,210	15,067	86,053	169,157	34%
Subtotal	704,440	751,257	68,991	319,741	431,516	43%
<b>GENERAL FUND TOTAL</b>	<b>13,176,160</b>	<b>16,611,018</b>	<b>3,149,251</b>	<b>8,147,309</b>	<b>8,463,709</b>	<b>49%</b>

# Interim Financial Report

- 6 Months Ended December 31, 2011

## Citywide Comments And Notes

The Fund Summary Status report provides the bottom line status of each fund in the City.

Special Revenue Funds are restricted in nature. This means the funds are restricted by legislation or other external sources. Any deficit variance in the budget typically indicates that there are available resources in the fund balance for projects. The revenues were received in prior years but the expenditures are budgeted in the current year.

Banning Utility Authority Funds – These funds operate similar to Enterprise funds in that the operations are funded through fees. The accrual method of accounting is applied throughout the year rather than using the modified government accounting method.

The Utility includes Water, Wastewater and Reclaimed water operations. The format of the report has been updated to include a separate fund for the Wastewater Tertiary fee that is collected. These funds had been tracked separately in the Wastewater Capital Facility Fees fund. However, upon review of the original documents establishing the fee, it was apparent that the intent was to establish a separate unique fund. This has been done and is reported in the Reclaimed Water group of funds. In addition, the Irrigation Water fund has been included in the Reclaimed Water Funds group.

Enterprise Funds This category typically includes funds that are funded through fees. The airport utilized fund balance for capital project funded through an FAA grant. The Electric Operations fund had an operational deficit but expenditure savings were achieved that minimized the impact of the deficit. All other Enterprise Funds came in below budget.

Internal Service Funds These funds provide services to other City funds. Revenues come from charging all of the other funds through an allocation process.

Community Redevelopment Agency Funds (CRA) – In January 2011, the Governor proposed a State budget that eliminated the CRA. Council approved several actions during FY11 to mitigate the impacts of this legislation. The League of California Cities and the California Redevelopment Association along with several cities sued the State hoping to overturn the Governor and State legislators' actions. December 2011, the Supreme Court struck down AB x1 27 which allowed cities to "pay to play" but upheld AB x1 26 which eliminates the CRA. Effective January 31st, the CRA ceased to exist. Effective February 1st, the Successor Agency was established to carry on the CRA functions.

This report reflects CRA information through December 2011. Future reports will be similar in format but will reflect the 'Successor Agency' structure.

CITY OF BANNING  
Fund Summary Status  
6 Months Ending December 31, 2011  
FY 2011-12 50% Complete

Fund #	FUND NAME	Revenues				Expenditures					
		Adopted Budget	Budget Adjustments	Adjusted Budget	Actual YTD	%	Adopted Budget	Budget Adjustments	Adjusted Budget	Actual YTD	%
<b>Governmental Funds</b>											
001	General	12,708,595	866,300	13,574,895	4,057,948	29.9%	13,176,160	3,434,858	16,611,018	8,147,309	49.0%
	Sub-Total	12,708,595	866,300	13,574,895	4,057,948	29.9%	13,176,160	3,434,858	16,611,018	8,147,309	49.0%
<b>Special Revenue Funds</b>											
002	Developer Deposit Fund	-	296,097	296,097	63,784	21.5%	-	294,888	294,888	62,574	21.2%
003	Riverside County MOU	451,000	-	451,000	292	0.1%	536,822	-	536,822	259,267	48.3%
100	Gas Tax	1,107,860	-	1,107,860	483,665	43.7%	901,607	672,205	1,573,812	439,672	27.9%
101	Measure A Street	387,000	657,565	1,044,565	129,471	12.4%	379,000	1,477,565	1,856,565	344	0.0%
103	SB300 Street Improvement	725	-	725	189	26.1%	-	-	-	-	-
104	Article 3 - Sidewalk Construction	300	-	300	-	-	-	-	-	-	-
110	C.D.B.G.	-	292,815	292,815	-	-	-	287,540	287,540	-	-
111	Landscape Maintenance Assmt. Dist.#1	131,510	-	131,510	1,518	1.2%	131,510	-	131,510	66,757	50.8%
115	EECBG Fund	-	192,061	192,061	-	-	-	192,061	192,061	-	-
132	Air Quality	32,000	-	32,000	10,875	34.0%	-	-	-	3,000	-
140	Asset Forfeiture	10	-	10	3	32.0%	-	-	-	-	-
148	Supplemental Law Enforcement	-	100,000	100,000	224	0.2%	-	286,184	286,184	2,971	1.0%
149	Public Safety - Sales Tax	202,676	-	202,676	84,400	41.6%	202,676	-	202,676	101,340	50.0%
150	State Park Bond Act	-	-	-	1	-	-	-	-	-	-
190	Housing Authority Fund	-	395,545	395,545	-	-	-	794,805	794,805	124,076	15.6%
200	Special Donations	1,500	-	1,500	7,850	523.3%	1,500	-	1,500	3,690	246.0%
201	Senior Center Activities	6,700	-	6,700	4,029	60.1%	16,700	-	16,700	5,178	31.0%
202	Animal Control Reserve	30	-	30	6	20.9%	-	-	-	-	-
203	Police Volunteer	30	-	30	6	18.6%	1,080	-	1,080	367	34.0%
204	D.A.R.E. Donation	-	-	-	-	-	-	-	-	-	-
300	City Hall COP Debt Service	443,600	-	443,600	217,653	49.1%	443,600	-	443,600	217,990	49.1%
360	Sun Lakes CFD #86-1	250	-	250	45	17.9%	250	-	250	-	-
365	Assessmnt Dist - #91-1 Wilson St. Debt	272,805	-	272,805	174	0.1%	272,805	-	272,805	235,881	86.5%
370	Area Police Computer	51,244	-	51,244	8,255	16.1%	50,994	-	50,994	11,703	23.0%
375	Fair Oaks 2004-1 Debt Service	208,798	-	208,798	3,324	1.6%	208,798	-	208,798	134,043	64.2%
376	Cameo Homes	225	-	225	58	26.0%	-	-	-	-	-
	Sub-Total	3,298,263	1,934,083	5,232,346	1,015,823	19.4%	3,147,342	4,005,248	7,152,590	1,668,855	23.3%

329

CITY OF BANNING  
Fund Summary Status  
6 Months Ending December 31, 2011  
FY 2011-12 50% Complete

Fund #	FUND NAME	Revenues					Expenditures				
		Adopted Budget	Budget Adjustments	Adjusted Budget	Actual YTD	%	Adopted Budget	Budget Adjustments	Adjusted Budget	Actual YTD	%
Capital Improvement Funds											
400	Police Facilities Development	1,650	-	1,650	504	30.6%	-	-	-	-	-
410	Fire Facility Development	9,500	-	9,500	1,763	18.6%	-	-	-	-	-
420	Traffic Control Facility	2,500	-	2,500	1,690	67.6%	20,000	-	20,000	-	-
421	Ramsey & Highland Home Traffic Signal	400	-	400	103	25.8%	-	-	-	-	-
430	General Facilities	4,500	-	4,500	811	18.0%	-	-	-	-	-
441	Sunset Grade Separation Fund	1,100,000	2,068,647	3,168,647	285	0.0%	1,100,000	2,110,087	3,210,087	562,597	17.5%
444	Wilson Median	1,850	-	1,850	482	26.1%	-	-	-	-	-
451	Park Development	1,900	-	1,900	203	10.7%	-	132,046	132,046	-	-
470	Capital Improvement Fund	10,000	-	10,000	528	5.3%	-	29,500	29,500	23,808	80.7%
	Sub-Total	1,132,300	2,068,647	3,200,947	6,371	0.2%	1,120,000	2,271,633	3,391,633	586,405	17.3%
Banning Utility Authority											
660	Water Operations	8,272,350	-	8,272,350	5,007,394	60.5%	8,158,042	531,824	8,689,866	4,106,860	47.3%
661	Water Capital Facility Fee	79,000	-	79,000	28,009	35.5%	-	245,316	245,316	18,804	7.7%
663	BUA Water Capital Project Fund	25,000	-	25,000	1,047	4.2%	-	1,100,000	1,100,000	-	-
669	BUA Water Debt Service Fund	2,294,425	-	2,294,425	1,513,047	65.9%	2,293,925	-	2,293,925	1,512,369	65.9%
	Water Subtotal	10,670,775	-	10,670,775	6,549,498	61.4%	10,451,967	1,877,140	12,329,107	5,638,032	45.7%
680	Wastewater Operations	2,715,000	-	2,715,000	1,316,985	48.5%	2,884,124	105,373	2,989,497	1,538,960	51.5%
681	Wastewater Capital Facility Fees	514,044	-	514,044	40,094	7.8%	-	5,480	5,480	5,776	105.4%
683	BUA WWTr Capital Project Fund	3,000	-	3,000	924	30.8%	-	395,562	395,562	87,449	22.1%
685	State Revolving Loan	306,000	-	306,000	151,092	49.4%	304,295	-	304,295	304,289	100.0%
689	BUA Wastewater Debt Service Fund	393,685	-	393,685	264,210	67.1%	393,185	-	393,185	264,108	67.2%
	Wastewater Subtotal	3,931,729	-	3,931,729	1,773,304	45.1%	3,581,604	506,415	4,088,019	2,200,582	53.8%
662	Irrigation Water	15,000	-	15,000	3,855	25.7%	-	250,000	250,000	-	-
682	Wastewater Tertiary	-	-	-	175,589	-	-	-	-	-	-
	Reclaimed Water Subtotal	15,000	-	15,000	179,444	####	-	250,000	250,000	-	-
	Sub-Total	14,617,504	-	14,617,504	8,502,246	58.2%	14,033,571	2,633,555	16,667,126	7,838,614	47.0%

330



CITY OF BANNING  
Fund Summary Status  
6 Months Ending December 31, 2011  
FY 2011-12 50% Complete

Fund #	FUND NAME	Revenues				Actual YTD	%	Expenditures				Actual YTD	%
		Adopted Budget	Budget Adjustments	Adjusted Budget	Budget			Adopted Budget	Budget Adjustments	Adjusted Budget	Budget		
Enterprise Funds													
600	Airport	174,900	451,710	626,610	270,891	43.2%	174,885	305,064	479,949	168,423	35.1%		
610	Transit Operations	1,261,037	894,346	2,155,383	673,579	31.3%	1,261,037	879,780	2,140,817	585,577	27.4%		
690	Refuse	3,164,250	-	3,164,250	1,505,867	47.6%	3,200,118	19,991	3,220,109	1,542,242	47.9%		
	Enterprise Subtotal	4,600,187	1,346,056	5,946,243	2,450,337	41.2%	4,636,040	1,204,835	5,840,875	2,296,242	39.3%		
670	Electric Operations	28,905,650	-	28,905,650	15,839,550	54.8%	29,147,834	303,786	29,451,620	12,338,030	41.9%		
672	Rate Stability	2,240,000	-	2,240,000	1,106,475	49.4%	1,200,000	-	1,200,000	600,000	50.0%		
673	Electric Improvement	143,045	732,762	875,807	781,138	89.2%	2,200,000	680,546	2,880,546	1,643,025	57.0%		
674	2007 Elec Rev Bond Proceeds	30,000	-	30,000	3,896	13.0%	22,500	299,398	321,898	297,640	92.5%		
675	Public Benefit Fund	705,400	-	705,400	368,107	52.2%	680,462	18,400	698,862	350,730	50.2%		
678	2007 Elec Rev Bond Debt Service	2,670,046	-	2,670,046	1,022,303	38.3%	2,669,546	-	2,669,546	930,144	34.8%		
	Electric Subtotal	34,694,141	732,762	35,426,903	19,121,469	54.0%	35,920,342	1,302,130	37,222,472	16,159,569	43.4%		
	Sub-Total	39,294,328	2,078,818	41,373,146	21,571,806	52.1%	40,556,382	2,506,965	43,063,347	18,455,811	42.9%		
Internal Service Funds													
700	Insurance	2,046,425	-	2,046,425	2,857,281	139.6%	2,040,844	-	2,040,844	3,038,602	148.9%		
702	Fleet Maintenance	1,181,097	-	1,181,097	592,286	50.1%	1,179,072	-	1,179,072	566,343	48.0%		
703	Information Systems Services	387,837	-	387,837	193,399	49.9%	386,354	133,243	519,597	314,120	60.5%		
761	Utility Billing Services	1,474,966	-	1,474,966	738,177	50.0%	1,474,222	40,078	1,514,300	693,881	45.8%		
	Sub-Total	5,090,325	-	5,090,325	4,381,143	86.1%	5,080,492	173,321	5,253,813	4,612,946	87.8%		
Community Redevelopment Agency Funds													
810	Low\Mod Housing	895,452	(499,907)	395,545	2,863	0.7%	914,271	(326,346)	587,925	-	-		
830	Debt Service Fund	4,649,007	-	4,649,007	18,015	0.4%	4,609,644	-	4,609,644	1,898,827	41.2%		
850	Administration Fund	789,500	-	789,500	213,360	27.0%	722,940	66,179	789,119	214,249	27.2%		
855	Tax Alloc Parity Bonds-2007 Tabs	50,000	-	50,000	3,152	6.3%	40,021	9,537,656	9,577,677	588,844	6.1%		
856	Tax Allocation Bonds-2003 Tabs	10,000	-	10,000	925	9.2%	7,500	151,348	158,848	898	0.6%		
857	Low\Mod Tax Alloc Bonds-2003 Tabs	10,000	-	10,000	1,227	12.3%	189,759	765,441	955,200	-	-		
860	Project Fund	15,000	-	15,000	4,644	31.0%	1,417,704	7,404	1,425,108	275,389	19.3%		
	Sub-Total	6,418,959	(499,907)	5,919,052	244,185	4.1%	7,901,839	10,201,682	18,103,521	2,978,208	16.5%		
GRAND TOTAL ALL FUNDS		82,560,274	6,447,941	89,008,215	39,779,522	44.7%	85,015,786	25,227,262	110,243,048	44,288,148	40.2%		

331

## CITY COUNCIL AGENDA

**DATE:** April 10, 2012

**TO:** Honorable Mayor and City Council

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

**SUBJECT:** City Council Resolution No. 2012-30, Approving the Downtown Decorative Lighting Plan

**RECOMMENDATION:** Adopt City Council Resolution No. 2012-30, approving the downtown decorative lighting plan, as designated by City Council.

**JUSTIFICATION:** Installing decorative street lighting is essential to the overall plan to beautify and revitalize the Downtown Corridor.

**BACKGROUND:** At the March 5, 2008 Community Redevelopment Agency (CRA) meeting, the Banning City Council, acting as the CRA Board, was given a presentation on the Draft Downtown Visualization Plan. This presentation provided an illustrative development plan and design guidelines for the area often referred to as the "Downtown Corridor". The boundaries for the Corridor are Fourth Street to the west, Alola to the east, Williams to the north and Livingston to the south. The Plan included a visual tool (attached as Exhibit "A") which illustrated the various components contemplated to revitalize the Downtown Corridor, including new decorative lights.

With the Electric department ready to commence the Downtown Undergrounding Project, it was determined that it would be most cost effective to complete the decorative streetlight installations in conjunction with the Undergrounding project.

Staff evaluated a number of different scenarios for replacing existing streetlights with decorative lights, and determined that replacing the lights on Ramsey Street (between Eighth & Hargrave) and San Gorgonio Avenue (between Livingston & Wilson) is the most suitable option. However, after reviewing the Draft Downtown Visualization Plan presented to Council in 2008, Staff is unclear if it was Council's intent to have decorative lighting inside the entire Downtown Corridor boundaries as shown on Exhibit "A". Therefore Staff prepared cost estimates for both lighting scenarios (attached as Exhibit "B") and is requesting further Council direction on this matter.

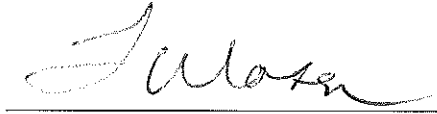
**Option One:** This scenario provides decorative lighting throughout the entire Downtown Corridor and has an estimated cost of \$1,123,240.

**Option Two:** This scenario provides decorative lighting on Ramsey Street (from 8<sup>th</sup> to Hargrave) and San Gorgonio Avenue (from Livingston to Wilson) and has an estimated cost of \$558,000.

**Option Three:** The Council may recommend a different scenario that would provide for decorative lighting in a specified area per Council's direction. The estimated cost for this scenario would most likely be somewhere between \$558,000 and \$1,123,240.

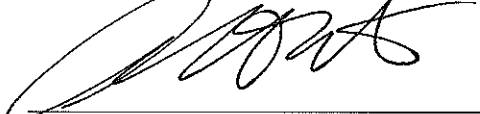
**FISCAL DATA:** The total project costs are estimated to be between \$558,000 and \$1,123,240, depending on Council direction. Funding for the project will come from the Electric Improvement Fund (F673). An appropriation for the full amount is needed to account no. 673-7000-473.96-29.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

**RESOLUTION NO 2012-30**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE DOWNTOWN DECORATIVE LIGHTING PLAN**

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

**WHEREAS**, the City has implemented policy to beautify and revitalize the area commonly referred to as the Downtown Corridor (shown in Exhibit "A") and wishes to install decorative streetlights in said area; and

**WHEREAS**, the City's Electric Utility is commencing its Downtown Undergrounding Project; and

**WHEREAS**, the City wishes to maximize efficiency and minimize cost by performing the decorative streetlight installation in conjunction with the Downtown Undergrounding Project; and

**WHEREAS**, the Electric department staff have developed cost estimates for two options (shown in Exhibit "B"); and

**WHEREAS**, an appropriation of funds from the Electric Improvement Fund balance is needed to account no. 673-7000-473.96-29; and

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

SECTION 1: Adopt Resolution 2012-30 approving the downtown decorative lighting plan as selected by the City Council, and authorize the City Manager or his designee to implement said plan.

SECTION 2: The Administrative Services Director is authorized to make the necessary budget adjustments related to these funds.

**PASSED, APPROVED, AND ADOPTED** this 10<sup>th</sup> day of April 2012.

---

Don Robinson, Mayor  
City of Banning

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

---

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

**ATTEST:**

---

Marie A. Calderon, City Clerk

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-30 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10<sup>th</sup> day of April, 2012, by the following vote, to wit:

AYES:

NOES:

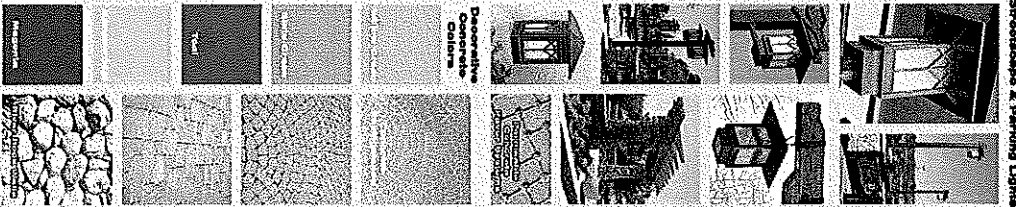
ABSTAIN:

ABSENT:

---

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

Streetscape & Parking Lights



Streetscape Trees for Downtown

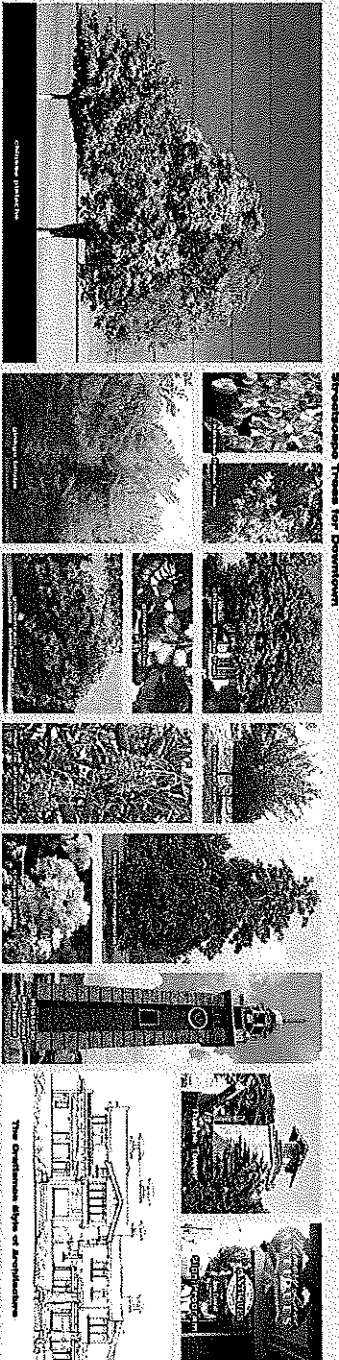
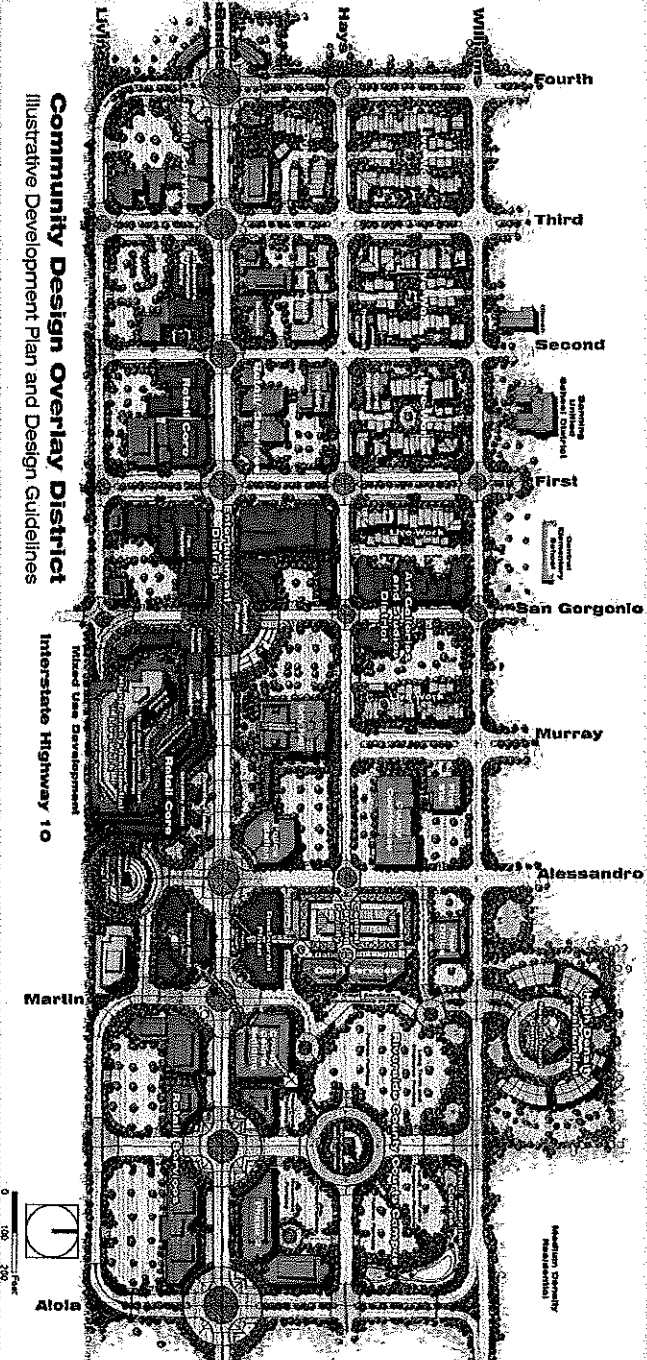


Exhibit "A"

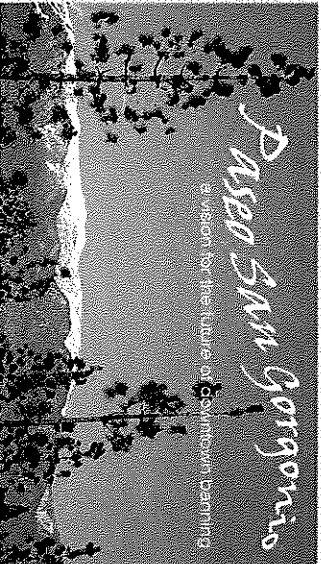
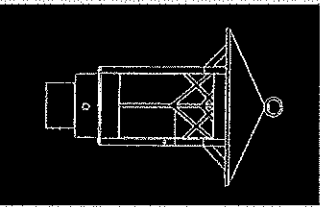
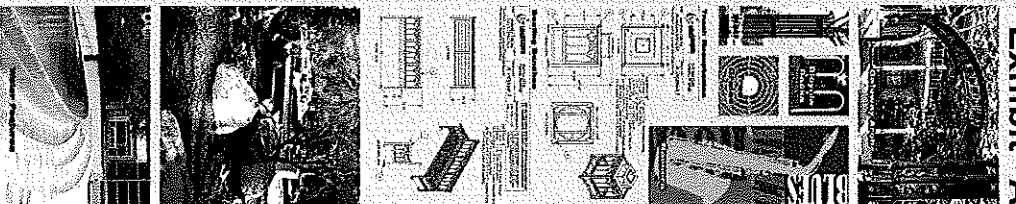


Community Design Overlay District  
Illustrative Development Plan and Design Guidelines

Induced Use Development  
Interstate Highway 10

Martin

Aloia



Scenario One: Decorative Lights - Entire Downtown Corridor

Street Segment	Total Distance (ft)	Average Street Width (ft)	Assigned Streetlight	Height (ft)	Finish	Bulb	Type	Cost (streetlight, concrete base, & installation)	Staggered Spacing Distance (ft)	Quantity	Total Cost
Hays St (4th to Alessandro)	2,100	35	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	75	28	\$ 75,600
Ramsey St (8th to Hargrave)	5,300	50	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	50	106	\$ 286,200
Livingston St (4th to Aloia)	3,200	30	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	75	43	\$ 115,290
4th St (Livingston to Williams)	1,050	65	Decorative equivalent	25	Green Patina	250W	HPS	\$ 3,500	75	14	\$ 49,000
3rd St (Livingston to Williams)	1,050	65	Decorative equivalent	25	Green Patina	250W	HPS	\$ 3,500	75	14	\$ 49,000
2nd St (Livingston to Williams)	1,050	40	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	50	21	\$ 56,700
1st St (Livingston to Williams)	1,050	65	Decorative equivalent	25	Green Patina	250W	HPS	\$ 3,500	75	14	\$ 49,000
San Gorgonio (Livingston to Wilson)	3,200	40	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	50	64	\$ 172,800
Alessandro Rd (Ramsey to Williams)	550	35	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	50	11	\$ 29,700
Martin St (Livingston to Williams)	1,050	45	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	50	21	\$ 56,700
Murray St (Hays to Williams)	350	65	Decorative equivalent	25	Green Patina	250W	HPS	\$ 3,500	75	5	\$ 16,450
Aloia St (Livingston to Ramsey)	300	35	Decorative equivalent	18	Green Patina	150W	HPS	\$ 2,700	75	4	\$ 10,800

Total Distance of Additional Trench = 10,400

Estimated Infrastructure Costs = \$15/LF

18' totals = 298

25' totals = 47

Streetlights: \$ 967,240

Infrastructure: \$ 156,000

Grand Total: \$ 1,123,240

Scenario Two: Decorative Lights - Ramsey Street & San Gorgonio Avenue

Street Segment	Total Distance (ft)	Average Street Width (ft)	Assigned Streetlight	Height (ft)	Finish	Bulb	Type	Cost (streetlight, concrete base, & installation)	Staggered Spacing Distance (ft)	Quantity	Total Cost
Ramsey St (8th to Hargrave)	5,300	50	Decorative equivalent	18	Green Patina	150W	HPS	\$ 3,000	50	106	\$ 318,000
San Gorgonio (Livingston to Wilson)	3,200	40	Decorative equivalent	18	Green Patina	150W	HPS	\$ 3,000	50	64	\$ 192,000

Total Distance of Additional Trench = 3,200

Estimated Infrastructure Costs = \$15/LF

18' totals = 170

Streetlights: \$ 510,000

Infrastructure: \$ 48,000

Grand Total: \$ 558,000