

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

June 12, 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 Sitting in Its Capacity of a Successor Agency, a joint meeting of the City Council and the Financing Authority and the Utility Authority.

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

I. CALL TO ORDER

- Invocation—Pastor Elder Preston Norman Jr., Praise Tabernacle Community Church
- Pledge of Allegiance
- Roll Call – Council Members Botts, Franklin, Hanna, Machisic, Mayor Robinson

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

PRESENTATIONS:

1. Proclamation – Hal’s Horseradish Shop – 60 Years of Success 1

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.

APPOINTMENTS

1. Designation of Voting Delegates and Alternates for the League of California Cities Annual Conf. – Sept. 5-7, 2012 2

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 10
Items to be pulled _____, _____, _____ for discussion.**

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

1. Approval of Minutes – Special Meeting – 04/24/12 (Workshop). 6
2. Approval of Minutes – Special Meeting – 05/08/12 (Closed Session). 29
3. Approval of Minutes – Regular Meeting – 05/08/12 31
4. Approving Entering into a Contract Between the Banning Unified School District and the City of Banning for Assignment of a School Resource Officer (SRO) at Banning High School for the 2012-13 School Year 39
5. Resolution No. 2012-42, Calling a General Municipal Election on November 6, 2012 49
6. Resolution No. 2012-43, Adopting Regulations for Candidates for Elective Office, Pertaining to the Electorate and the Costs Thereof For the General Municipal Election to be Held in the City on Tuesday, November 6, 2012 52
7. Resolution No. 2012-44, Amending the Contract Services Agreement between the City of Banning and Willdan Engineering for Building and Safety Services 55
8. Resolution No. 2012-46, Approving an Advance to the San Geronio Child Care Consortium in the Amount of \$25,000. 96
9. Resolution No. 2012-51, Approving a Plan for Use of Proposition 1B Local Streets and Roads Program Funds 99
10. Approval of Sixth Amendment to Tow Franchise Agreement 103

- Open for Public Comments
- Make Motion

V. PUBLIC HEARINGS

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

1. Resolution No. 2012-39 – 2012 Edward Byrne Memorial Justice Assistance Grant.
Staff Report 111

Recommendation: **That the City Council conduct a Public Hearing and accept grant funds provided by the Office of Justice Programs in the amount of \$12,324 to purchase needed replacement Tasers for Police officers.**

2. Resolution No. 2012-45, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2012/2013.

Staff Report 115

Recommendation: **That the City Council: 1) Adopt Resolution No. 2012-45, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2012/2013, pursuant to the provisions of Part 2 of Division 15 Of the California Streets and Highways Code; and 2) Authorizing and Directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.**

3. Tow Fee Study

Staff Report 125

Recommendation: **That the City Council receive and accept the Recommendations of the attached "Review of Towing Franchise Fee and Other Associated Fees" completed by Willdan Financial Services.**

RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND BANNING PUBLIC FINANCING AUTHORITY AND THE BANNING UTILITY AUTHORITY

VI. CONSENT ITEMS

1. Reverse the Transfer of City Owned Properties, Identified in the March 8, 2011 Staff Report, to the Successor Agency Pursuant to the Recent Order Issued by the California State Controller 146
2. Adopt Resolution No. 2012-52, Repealing Resolution Nos. 2009-101 and 2009-102, Relating the Use and Allocation of Redevelopment Funds and Other Matters. 194
3. Adopt Resolution No. 2012-01 FA, Repealing Resolution No. 2009-01 FA, that Ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency. 222
4. Adopt Resolution No. 2012-08 UA, Repealing Resolution No. 2009-03 UA, that Ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency. 232
5. Adopt Resolution No. 2012-09 SA, Repealing Resolution Nos. CRA 2009-23 and CRA 2009-24, Relating to the Use and Allocation of Redevelopment Funds and Other Related Matters. 242

VII. ORDINANCES - INTRODUCTION

1. Authorization to Establish an Economic Development Assistance Program Staff Report 266

Recommendation: That the City Council: 1) Adopt Ordinance No. 1453, Establishing the Economic Development Assistance Program for the City of Banning; and 2) Authorize the City's Economic Development Director to market the program, screen prospective application packages with internal staff and outside consultants, and make recommendations to the City Council for their consideration.

Recommendation: That the City Council adopt Ordinance No. 1453.

Mayor asks the City Clerk to read the title of Ordinance No. 1453:

"An Ordinance of the City Council of the City of Banning, Adding Chapter 3.28 of the Banning Municipal Code Adopting a Comprehensive Set of Economic Development Incentives and Programs to Promote the Development of Banning in the Face of Regional and National Economic Malaise, To Create Jobs from New Businesses and Expanding and to Preserve the Sound Fiscal Basis of the City in light of the Elimination of Redevelopment in California."

Motion: I move to waive further reading of Ordinance No. 1453.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1453 pass its first reading.

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

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

IX. 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)

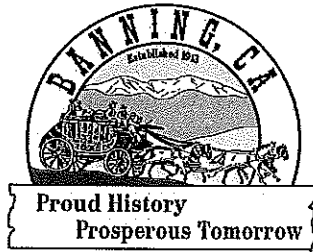
X. ADJOURNMENT

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, in 1939 Martins Market opened for business at 1865 W. Ramsey Street in Banning, CA; and

WHEREAS, on June 30, 1952, Harold Fred Embshoff and his bride Irene Embshoff purchased and took over Martins Market; and

WHEREAS, in 1954 the Embshoff's were approached by a retired chef from Palm Springs about the need for good horseradish to serve the Coachella Valley and restaurants in the region; and

WHEREAS, the Embshoff Family perfected their recipe taking the best quality horseradish roots from Illinois, carefully hand peeled and trimmed so that only the pure white meat of the root is grated, then jarred in vinegar or lemon juice solution; and

WHEREAS, in 1954 the Embshoff's renamed their market to Hal's Horseradish Shop and called their homemade horseradish "Hal-Rich Horseradish" named after their only son Hal Richard Embshoff; and

WHEREAS, Hal's Horseradish Shop has sold their homemade horseradish, German pickles, fresh raw honey, olives, sauerkraut, local fruits, and dates for 60 years in Banning; and

WHEREAS,, Hal's Horseradish has a client base that includes former United States General George Patton and his troops who would stop by the store for fresh squeezed orange juice during World War 2, Carl Karcher the Founder of Carl's Jr. and his wife would stop by for Hal-Rich Horseradish, and Huell Howser the host of the California Gold Television Show enjoys the products available at Hal's Horseradish Shop; and

WHEREAS, Harold Richard Embshoff ("Hal") took over the family business in January of 1982 from his parents and still runs the family shop to this day; and

WHEREAS, Hal prides himself on his quality products, reasonable prices and his ability to serve the local community for the last 60 years.

NOW THEREFORE, I, Don Robinson, Mayor of the City of Banning, along with the City Council, are pleased to recognize the "Embshoff Family" and the 60 years of success "HAL'S HORSERADISH SHOP" has had in our community.

IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this day of 12th day of June, 2012.

ATTEST:

Marie A. Calderon, City Clerk

Don Robinson, Mayor

Council Action Advised by August 3, 2012

May 3, 2012

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – September 5 - 7, San Diego**

The League's 2012 Annual Conference is scheduled for September 5 - 7 in San Diego. An important part of the Annual Conference is the Annual Business Meeting (*at the General Assembly*), scheduled for noon on Friday, September 7, at the San Diego Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Wednesday, August 15, 2012. This will allow us time to establish voting delegate/alternates' records prior to the conference.

Please note the following procedures that are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates must be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one person must be present at the Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up

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the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the San Diego Convention Center, will be open at the following times: Wednesday, September 5, 9:00 a.m. – 6:30 p.m.; Thursday, September 6, 7:00 a.m. – 4:00 p.m.; and September 7, 7:30–10:00 a.m. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but not during a roll call vote, should one be undertaken.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League office by Wednesday, August 15. If you have questions, please call Mary McCullough at (916) 658-8247.

Attachments:

- 2012 Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



1400 K Street, Suite 400 • Sacramento, California 95814
Phone: 916.658.8200 Fax: 916.658.8240
www.cacities.org

Annual Conference Voting Procedures 2012 Annual Conference

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.



CITY: _____

**2012 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Wednesday, August 15, 2012. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____ E-mail: _____

Mayor or City Clerk _____ Phone: _____
(circle one) (signature)

Date: _____

Please complete and return by Wednesday, August 15th, to:

League of California Cities
ATTN: Mary McCullough
1400 K Street
Sacramento, CA 95814

FAX: (916) 658-8240
E-mail: mmccullough@cacities.org
(916) 658-8247

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/24/12
SPECIAL MEETING

A special meeting workshop of the Banning City Council was called to order by Mayor Robinson on April 24, 2012 at 3:04 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager
Dave Aleshire, City Attorney
June Overholt, Administrative Services Director
Duane Burk, Public Works Director
Marie A. Calderon, City Clerk

ANNOUNCEMENTS/PUBLIC COMMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

There were none.

WORKSHOP ITEM

1. Water Resources Report
(Staff Report – Duane Burk, Public Works Director)

Director Burk said before the Council is a request that came from the Council as it relates to what are the water resources within the city of Banning. He said that there are a few documents where he got the information and they include: 1) A report from the San Geronio Pass Water Agency as it relates to supplemental water; 2) Year Maximum Perennial Yield for All the Basins; and 3) the City of Banning 2010 Urban Water Management Plan. He said that he would be consolidating all of this information into his power-point presentation (Exhibit "A"). He displayed the first slide showing an overall layout of our resources within these different shaded areas. The boundary that this shows in the north/south quadrant is Highland Springs what is called Malki Road. Everything in between these two boundary areas is the city of Banning. The blue dots are wells that are equipped and operating for the city of Banning today, the yellow dots are inactive wells from the Mountain Water Company bought in 1997 that still overly the basin that the City still owns. So there are inactive wells and non-producing wells and there are reasons for that but primarily they just didn't have the equipment in them at the time that would interface with our system and they were very low-producing wells and the

Mountain Water Company actually didn't even use them at times. The three green dots to the west are joint wells with the Beaumont Cherry Valley Water District (CVWD) (Wells 24, 25 and 26) that the City drilled and purchased with the Beaumont CVWD. We currently have inter-connect with the Beaumont CVWD at Highland Springs and Sun Lakes Boulevard or Beaumont's First Street. Each well can get you around 1,000 gallons a minute however, we are not taking that water because you pay for half the use of that water any time you need it and the good news is that you don't need it now. The tan area is the Beaumont Basin and to the far west is Yucaipa South Mesa Water in Calimesa, Beaumont Cherry Valley Water District and some overlies within the Beaumont Basin and the small peninsula from Highland Springs south easterly to Sun Lakes is the overlying area of the Beaumont Basin or the end of the Beaumont Basin. You can see that Banning is very limited as it relates to this little peninsula of the Beaumont Basin. You can also see by the number of blue wells that you have an extreme amount of capital invested in those basins. You have a lot of wells that produce high-quality water. As you move up to the green area that is what is called the Banning Bench Basin. In this basin you have three wells (Wells 1, 2, and 3). Two of those wells were hand-dug in the 1900's and the electric wells are 100 feet deep but are very good producing wells. Well No. 2 was drilled to 200 feet and it is not a very good producing well compared to Wells 1 and 3 because there is a fault line between the two. You can see that you are very limited in the resources that you have in the Banning Bench Basin and part of these studies will say to you that we need to research or explore how water should be looked at in this area. The Banning Water Canyon is the teal color and it goes from Bluff Road all the way up about five miles and these wells are numbered from 4 to 12 so you have 8 wells in this basin and there are three different fault lines in this basin. Well 4 is called the Lower Basin, Wells 7 and 8 is the Middle Canyon and the other wells in that area are what is referred to as called Camp Comfort. The deepest well in this basin is drilled to around 220 feet. Wells 4 and 5 were hand-dug back in the 1900's, Well 7 was hand-dug, Well 8 was drilled to 230 feet and then back in the 80's the City installed four domestic wells in Camp Comfort and the deepest well there is 98 feet deep and they hit bedrock so this is a very shallow basin. It recovers fast during high rains but on July 12, 2002 this canyon really suffered a big drought and that was the idea behind getting the connection with BCVWD at the time so that is kind of how that came about. The pink area is the Banning Basin itself and some people refer to it as Banning West but in this study now it is called The Banning Basin differentiated from the Banning Bench Basin. He pointed out four wells and stated that they were owned by the Banning Water Company and in 1997 the City of Banning bought the Banning Water Company. Since the 2002 problems all of these wells have been equipped and they studied these wells and they are pretty dry and they have also incorporated Well M-3 in the Beaumont Basin. He said that when he says "M" he is referring to Mountain wells and if he says "C", he is referring to City wells. The "M" wells basically are the ones we equipped down Westward Avenue or the extension of Sun Lakes Boulevard and Highland Home Road to Sunset. You can see that you have a limited amount of wells in this area and you know the south Banning Basin is kind of dry. The reason why it is dry is because of the California Aqueduct from Colorado in that area which he pointed out. Back when they drilled this horizontal conveyance system it dried up the wells in that area. That was one of the effects of the Mountain Water Company. At one time the Dysart's owned their ranch in this area and their wells went dry and they actually moved their ranch up and established the Mountain Water Company. Then from Malki Road, which he pointed out, the green line area that is the City of Banning's boundaries as it relates to the city itself. So you have a small peninsula of ability to get Cabazon Basin water. Cabazon Basin goes all the way out to

Highway 111 to Mission Springs, the 62. You can imagine all the overlies that are the Morongo Band of Mission Indians, Arrowhead, Cabazon Water District, Mission Springs, Coachella Valley Water they all overlie this basin as we do but similar to what we have experience in this peninsula on the Beaumont Basin you have it here in the Cabazon Basin. He pointed out the Banning Basin, the pink area, and stated that at one time prior to this study we said that the C-6 Well was in a perched water system in what is called the Banning East Basin but since this study we have come back and said that this is part of the Cabazon Basin. So when we refer to the extractions out of the Cabazon Basin we are referring to the Well C-6 which is at our Corp Yard on Lincoln Street and Highway 243. Director Burk said those are your basins as it relates to what your resources are with ground water. One hundred percent of the water you receive is ground water. We take it from the ground to the tap and we treat it and it is very high quality water.

Director Burk said the Banning Storage Unit operates 4 wells and the Safe Yield out of that basin is 1,130 acre feet. The Banning Bench Storage Unit Safe Yield is 1,960 acre feet and this is kind of at the bottom the Little San Geronio so that number is a little bit higher because you are getting a lot of watershed in shallow wells there. In regards to the Banning Canyon Storage Unit at one time the city of Banning received about 80% of its water from this canyon and today we can extract 4,070 acre feet safely without causing harm to the basin. He said that the Flume is not part of any of these documents. However, some of you know that we are working collectively with Banning Heights, Southern California Edison and the San Geronio Pass Water Agency to repair the Flume and continue water moving from the watersheds higher up and that will only increase your portfolio in the future for your resources once that is finished. For example, this number in the future may go up because you have additional supply. The Beaumont Unit, this is where it gets complicated, he mentioned earlier about having the joint wells with BCVWD in that little peninsula of area where we overlie that basin so the City operates the five wells within the storage unit and co-owns three wells with the Beaumont CVWD. In 2004 the basin was adjudicated by the courts so that would be the Beaumont CVWD, the City of Beaumont, the Yucaipa Valley Water District (sphere of influence is in Calimesa) and the South Mesa Water District which is a portion of Calimesa. The City has the right to produce 5,910 acre feet per year until 2014. Our average production out of that basin now is 2,514 acre feet. As part of the adjudication we own a storage account in the Beaumont Basin where we purchase water from the San Geronio Pass Water Agency and they are a State Water Contractor with the Department of Water Resources and we currently buy water from them and spread water at the Beaumont CVWD Spreading Facility where currently we have 24,000 acre feet of water and you have a storage account with the Water Master of 80,000 acre feet. So you could bank up to 80,000 acre feet of water in that basin for the dry periods of time. The reason why you have that bank is during the wet periods of time hopefully, the Department of Water Resources would be able to contract more water to the Beaumont Basin and we would be able to buy more and bank it for dry years. In regards to the Cabazon Storage Unit you can see that your overlying right is kind of restrictive to some extent. The City only operates 1 production well (C-6) and our average production is 710 acre feet a year. You have the overlying right to develop additional water and your Urban Water Management Plan says that you will in the future. The plans says that you will develop an additional 1,600 acre feet so you will get an additional 900 acre feet per year out of that basin is what this document says.

Director Burk said that there is a lot of talk about recycled water and the City developed a recycle water supply and it has never been adopted by the Council as a master plan and staff plans on bringing that forward in the future but the overlying area for recycled water is from Highland Home Road and Westward out to our treatment plant about 5.5 miles east where you would develop tertiary water and then pump it back to your demand and currently you have a high demand on the golf course in the south west portion of the community but you can see these tributary lines going down which are parks, schools, and Caltrans would use that water in the future. Currently this plan is designed and completed and he has been out on the information path of trying to come up with a different idea of a putting in what is called an MBR Satellite Plant somewhere in between that area where we can develop recycled water closer to the demand and not pump it five miles east and then five miles west. The plant that is designed and completed is a 1.5 MGD (million gallons per day) plant. The treated water would offset the potable water that you take out of those basins now by 1,680 acre feet per year which is kind of equivalent to 3,200 homes and is estimated that the future recycled water demand will be 3,261 acre feet. These are numbers based on development however, we know that development has fallen off and this number could change and fluctuate in the future. However, going back to that adjudicated water and State imported water, part of your conservation plan is to develop this water by 2020 because of the Schwarzenegger Bill (Assembly Bill 2020) where you will reduce your demand by 20% in the year 2020 so developing this recycled water is key to that or importing it. This is drought tolerant water meaning that you develop this water 365 days a year. State project water is relied on judges and courts and demand up 440 miles of an aqueduct so there is some struggles there. The State Water Project water is called Table A because in 1960 when they developed the table of all the people that needed water they called it Table A and there is no other real reason why they call it Table A. Our State Water contractor is the San Geronio Pass Water Agency (SGPWA) through the Department of Water Resources. Their entitlement is 17,300 acre feet per year. The SGPWA currently has the capacity to receive 8,650 acre feet which they have done the last two years or more. They are currently completing and installing what is called the East Brach Extension Phase II (EBX-II) for their full entitlement of 17,300 acre feet by 2014 approximately. If we assume that EBX-II is online by 2014, the City is planning to receive 2,595 acre feet per year or 25% of 60% of the 17,300 acre feet is around 11,000 acre feet. So we are saying in our planning document the City of Banning would allocate up to 25% of available. Now if there is only 5% available water, we would get 25% of the 5%. He went over the Summary of Water Resources which are the storage unit numbers as far as projecting out. You can see in the bold numbers that the City looks pretty good as it relates to development as we move forward in the future 2035. All that comes into effect when EBX-II comes on board and that number is 2595. And as Urban Water Management Plans have to be developed they have to be developed in five year increments so this is your 2010 document and in 2015 we will look at these numbers again and correct these number as it relates to what has happened in the past five years and then project out to 2040. The Supply and Demand Comparison slide shows that that there is a supply surplus as we go out and these are the numbers for that and it assumes that we are going to do a lot of the things that we have planned for. He said that the City of Banning has done a lot of planning: developed the R-1 Well which is at the Wastewater Treatment Plant, we have designed a treatment plant at the Central Plant at 2442 E. Charles, we have bought the Mountain Water Company, we have joint wells with Beaumont CVWD, buy State Project Water, designed a pipeline to go from one side the community to the other, and we have been out trying to do information session as it relates to a Satellite Plant. One thing we haven't done

is that we have not done a lot of implementing. We have a lot of plans done. In 1990 we drilled the R-1 Well and now it is 2012 and we have not built the pipeline and implement that water this way.

Director Burk said this is kind of where we are at as it relates to the resources on the water for the city and again, if you do nothing in the city, if you don't build another house and you don't develop any resources, you are going to struggle in the future with your resources. The reason he says that is because he didn't show you all the demands outside of the same area but everybody draws their water from the same sources. They all get their water from the groundwater, they all have to establish and develop recycled water, and they all want to get water from the State Project Water so those resources would diminish as more people go online with it so these documents are extremely important but implementing them is extremely important also.

Councilmember Hanna asked Mr. Burk to explain how the new and improved renovated flume could provide more supply of water.

Director Burk said currently the flume is a concrete lined trapezoidal channel that has been dilapidated for quite a few years. So Southern California Edison is in agreement along with FERC (Federal Energy Regulatory Commission) to repair that flume to a surface diversion of 13.26 cubic feet per second of water out of the watershed of Whitewater and divert it into the Banning Canyon. It predates the 1914 Williams Act and it is a diversion that you will never ever see again in the state of California. So having a four-party agreement to work collectively together and the City is the lead along with Banning Heights Mutual Water Company to bring a new conveyance system from that same watershed in the same footprint to divert that 13.26 cfs (cubic feet per second) to the Banning Canyon for the use of Banning Heights Mutual Water Company. Not all the details have been worked out but lets just say currently right now if you are getting 3,000 acre feet per year today in its dilapidated state if you increase the size of that and you put a steel pipe in you could double that water. The goal is to get the total 13.26 cfs however, there are a lot of environmental issues and concerns in front of that so for example a lot of water has been going in the ground and we have to take into consideration what is the ability to develop and detour that water and keep the environment in shape. It is priceless to the community to let that water go away. He said that we talk about importing water 444 miles down the Delta from Lake Orville. We are talking 7 miles away from here at a higher elevation at a higher pristine, no pumping, no energy, build a pipeline, build a conveyance and receive the water so what you don't allow to come this way you have to import the other way so there is a comparison of the two.

Mayor Pro Tem Franklin asked Mr. Burk to talk about how you show the different basins in different colors and how you know that the water is coming out of one basin versus another.

Director Burk said we take these well levels monthly and then compose them by production. So for example we have a static well level and we have a production well level so when the well is on whatever is not static versus what is producing is called the drawdown in between. When that well rests it recovers. In the Beaumont Basin for example, these wells have been dropping for a long time but it doesn't mean that they can't be recharged because currently we are recharging that water that goes in there. What we are saying is how much you extract out

of there annually or mine out of there and he would say that the Beaumont Basin probably serves the Banning Basin or leak over to the Banning Basin maybe not at a very fast recovery but what you don't want to do is over state how much you would extract out of these wells to cause more of a drawdown in these basins and he further explained pointing out some of the inactive wells on the map.

Mayor Pro Tem Franklin said so there is a way that you are able to differentiate between the Beaumont Basin versus the Banning Basin. Director Burk said yes and gave an example.

Mayor Pro Tem Franklin said so what you are telling us on the Supply and Demand Comparison is that based on current population or the anticipated population in the future. Director Burk said both.

Councilmember Botts said on your first map you were talking about all the basins and whether adjudicated or un-adjudicated where does the County fit in. You were talking about overlying water rights and we have various communities like Cherry Valley and Cabazon and they are country areas and do they have overlying water rights like we do.

Director Burk said in the Beaumont Basin this does go up into Cherry Valley a little bit and that is the unincorporated area of the county and there are overlies that are currently there that have part of the adjudication have an overlying right to use the water as they feel fit on their property. However, they cannot become an appropriator out of that basin now. For example a recent lawsuit was filed with the egg ranch on Cherry Valley Boulevard and the I-10 freeway and the property owner of the egg ranch claimed their overlying right for future development and that was challenged by an environmental group and the judge ruled that the overlier has the right to claim whatever amount of water there was on their property so if it was 1,000 acre feet that they were using annually, then their development can receive 1,000 acre foot credit. So they still receive their credit but it would go to, for example, maybe the Beaumont Cherry Valley Water District that is serving that area. The beautiful thing about the City of Banning is that it is an island of sorts when it comes to resources and there are no other overlies here; you are it so whatever you develop is for yourself. You have one other purveyor in the Banning Bench area which you are a partner with in the flume so whatever they don't take at the flume you receive the benefit. When you bought the Mountain Water Company that was one of the best resources you could establish. Now, if somebody came out here and said they wanted to drill a well in the Banning Basin in the county, they could. They have a legal right as an overlier. However, we have three wells in that area that say there is not much water there.

Councilmember Botts said in regards to adjudication on your slide Banning Storage Unit Safe Yield 1,130 acre feet, is that adjudicated.

Director Burk said no; it is not adjudicated. You are the only overlier in this basin now. The idea behind it at one time is that if and when the Pass Water Agency ever takes their pipeline to Cabazon this would be a storage unit you would want to look at because you are the sole purveyor over this and have no other competition.

Councilmember Botts said in regards to the Cabazon Storage Unit is that an un-adjudicated basin.

Director Burk said it is. Councilmember Botts said so how do you determine we could in fact get 1,670 acre feet.

Director Burk said that the Banning Storage Unit here is its overlying right and currently you take you second stage treated water at your wastewater plant and you recharge the Cabazon Basin. You put 2,022 acre feet of second stage treated water into this storage unit so you would not cause harm today if you took out 1,670 acre feet because you are recharging it by a plus 300. If you were to come out here and this number said 10,000 acre feet you would probably have all the other overlies in this area saying what do you think you are doing Banning. However, nothing prevents a non-adjudicated basin another Arrowhead Bottling Plant to pop up out here because it is not adjudicated. So on one hand we are trying to import water but at the same time we are exporting water and that is one reason why we are keeping this very conservative as to what we are doing.

Councilmember Machisic said if we improve the flume or rebuild the flume at some point in time, will that affect the water wells in the canyon.

Director Burk said that it would only enhance them because currently you are doing nothing to the flume and the water is not being taken by the incorporated area of the Bench. That water spills into the Banning Canyon. He further explained how this happens and the benefits and downside.

Councilmember Machisic said talking about the wells in the canyon you said that some of them were hand dug and only 80 or 100 feet. Would it be advantageous to explore to see what it would take to get the bedrock and would that be advantageous for water supply?

Director Burk said absolutely and explained as he referred to the slides showing the area.

Councilmember Machisic said in regards to that aqueduct that you talked about is that part of the aqueduct that goes up over Potero. The reason he is asking is because he took a tour up there and they showed a water canal or something that came in over the top of the mountain and flowed down into that flat land in Potero. Director Burk said yes.

Mayor Robinson said the storage area for our recycled water as you have on your slide presentation you talked about where we are going to store that water and when we went out and looked at that we talked about soundings for the area to find out what could be held in that area as far as the Banning Storage Area and have we done any of those soundings yet and do we know what we can hold and how are we going to hold that recycled water.

Director Burk said that the proposed idea and what we have talked about as it relates to recharging this Banning Basin is that we would recharge somewhere in the area below what is called the "Westward Road" or "M Wells". You have three known wells that have sounding ability in them now so you wouldn't have to really go drill anything but what you would probably want to do is drill somewhere in this area and possible in the Banning Basin as it relates to how fast the water would recharge in the ground and he pointed out the area on the map. He said what is the percolation rate would be the question so we have not done those. He

said that all of our have heard his presentation as it relates to developing recycled water and they have met with the communities of Sun Lakes and Serrano Del Vista and we have got all of their concerns written down and there are some people that just don't want it so the option would be to build your plant out here (he pointed out the area) and pump it back or do you want us to look with developers as it relates in the future to somewhere that is more south maybe in the county area or stay in the same idea on the Lennar property working with the developer to find a location on their property. So that is one of the things that he would like to get kind of get away from tonight is that your recycled water ideas are really good and keep moving with the developers on this. He pointed out the recharge area and stated that it is all designed and ready to go.

Councilmember Hanna said she just heard him ask the Council a question and is this something we can respond to tonight or do we need it to come back. She heard that you need direction from the Council.

Director Burk said he would have to defer to the City Attorney and it is not part of the agenda however, we are talking about resources as it relates to working with people and where we are going. You all know that he has been working with developers on getting a location and is this still something you like or something you have gotten negative feedback on. He is not really looking for a decision but possibly a consensus to keep moving forward. He will bring this back to the Council at a later date as it relates to getting property or whatever they have to move forward with.

City Attorney said that this has been advertised as just a general overview presentation so he thinks that specific things that Duane Burk wants to follow-up on could come back with a specific staff report with those recommendations.

Councilmember Hanna said as she recalls the last time you made a formal presentation to the Council the direction was to go forward to do the soundings and so forth and so now you are saying it is really because some people don't like the idea of it being in the general area that you proposed near the lift that we should consider moving it elsewhere. She thinks that the Council's direction was clear. Maybe it has changed so she can't speak for the Council certainly but she would like to go forward as we last suggested that you do. Nothing has changed and it is not a new decision. She said in regards to that same recycle water supply she heard him earlier say that we haven't approved this plan and is that correct.

Director Burk said yes, that is true. You have not formally adopted this as your master plan however this layout has all been done. The idea behind making that statement is that we are looking at adopting fees and things as it relates to building some of this and moving forward possibly with some grant applications and he would like to get that document in front of the Council as an adoption of a master plan. This was brought to you prior to him being in charge in 2009. He thinks the layout for it is fine and we have actually tweaked some of this a little bit but for the most part he is kind of considering it the Council's master plan.

Councilmember Hanna said at some point, especially if it is going to come back to the Council for approval, please remove the Black Bench Development since that has seemingly gone away.

Director Burk said as far as your General Plan goes we kind of keep it in there; however he does agree that it has gone away. As far as getting water up there if you throw enough money at anything you can do it. However, it would be very difficult at these elevations anyway. He would say that we need to keep it in there as far as the numbers go as part of the document because we want to make sure that this document is conservative as possible so if any when it ever gets challenged.

Councilmember Hanna said one of the things that impress her is the fragility of the system. We take things for granted. You talk about turning on the faucet and water will come out but in fact, it isn't quite there as we would like it. She asked Mr. Burk to talk about that in terms of the flume and other things; just the fragility of the water system in general.

Director Burk said we talk about numbers and it is interesting because a lot has to do with how we get water. Some of this system itself and he mentioned to the Council at one time the area of the Banning Canyon Storage was drilled as early as the 80's, the wells in Camp Comfort. 80% of your water at one time came out of this canyon and a pipeline that you are going to hopefully approve tonight is over 100 years old and he has shown pictures to the Council before. However, that pipeline is part of old aqueduct air system from when they drilled the aqueduct so that is not really even pipe so the fragility of that is sometimes kind of a fire drill of sorts because it is all hands on deck when you lose some of it. This is about 15,000 lineal feet of pipeline that was old air duct and when you get 80% of your water of there and you have to turn that line off, it is very fragile. The water at the tap is not so good anymore. In fact, 2002 is a great example of what happened. It was extremely fragile as it relates to the Mountain Water Company. At one time the City didn't even have the infrastructure on the east end so the Mountain Water Company was established to develop water on the east end so that is why you have peninsulas of overlies at one time. The good news is that you bought that in 1997 through a lawsuit the peninsula of Apex to Joshua Palmer up to the hospital. That was owned by the Beaumont Cherry Valley Water District and you got sued by the Beaumont Cherry Valley Water District for serving Beaver Medical. The fragile side of that is that these are very litigious times in how you serve so you had to go out and do bonds and put in all that infrastructure. So a lot of the system that is in place now, like he said, you have designed a lot of stuff we just need to implement and get rid of that fragile side of our system but the flume is huge.

Councilmember Hanna said there will still be fragility even after Edison renovates it because of gravity, and earthquakes and other things like that.

Mayor Pro Tem Franklin said you talked about we do put water now into the Cabazon Basin; do we have to worry about the salinity or any issues with that water because it is not third stage treated.

Director Burk said no actually you are under a water quality control board permit from the Colorado Region and anything we discharge into that basin before we discharge it, it is tested so we meet those samples daily, weekly, monthly and we provide that report. Salinity is a very interesting topic. The Colorado Region side is not nearly as stringent at this point in time as

Santa Ana and that is part of our salinity issues in the Beaumont Basin and that falls under Santa Ana Regional Water Quality Control Board and that salinity is a little different.

Mayor Pro Tem Franklin said in regards to the recycling plants you talked about doing a satellite plant, as well as, the current pump that we have and eventually are we going to need both of them to be current and updated.

Director Burk said that regulations are going to drive you to where you are going to go. He always tells everybody what he does for a living is 80% regulated and the other 20% is something else we have to do. He said in regards to the 20/20 Plan, AB1881 says you are going to develop another source of water so you are either going to import that water through the State Project Water and get that allocation or you are going to develop water and offset what your current demands are or you are going to find water in the Banning Basin. He said that Councilmember Machisic talked about drilling a little deeper and maybe going out into the Cabazon Basin so you have to offset those numbers over these five year periods on how you are going to develop those resources. So regulation someday is going to tell you what you do here. He is just saying that we should build a planning window of how we are going to fund it, how we are going to move forward with it and not bring a \$50 million dollar project to the Council overnight. To give you an example, the Town of Yucca Valley is experiencing a regional quality control board cease and desist order. They have actually come in and said you are going to sewer, you are going to do this, it is mandated and it is not a planning period; it is happening right now as we speak. So if nothing comes out of this for him, hopefully it is a planning window for everybody to understand that we have to develop these waters not for any reason than regulations are going to make you. And it goes back to what you just stated; it started with salinity but there is also nitrogen and all the constituents within that water add metal to it and anything else. If you start violating discharge requirements, regulations are going to just mandate you do it. It is all regulated driven.

Mayor Pro Tem Franklin said in regards to the Banning Storage Unit do you have plans now or are you planning to go ahead and determine what the capacity is for that basin. You talked about being able to store more water but it is her understanding that we don't have the information right now as to how much storage capacity is in there right now.

Director Burk said that is true. It is one of our desires to find out actually how much can we store in here without it going back to your original question before it starts leaking over. So if our Safe Yield is 1,130 and we have the ability to get State Project Water or even recycled water and that is a great idea by the way to put your recycled water in there and you develop it and you don't use it you could establish that as far as when the State Project Water goes through hopefully at a high elevation then maybe we can recharge in these blue line areas (which he showed on the slide) to get the water you are purchasing and back but how much you can put in here is a key component to that. So drilling that and exploring that is something we need to move forward with. He is actually trying to work on getting a grant to do that now.

Councilmember Machisic said he would agree with Councilmember Hanna that at some point in time you need to bring the plan or the plans back and one of the things that he would like to see when that plan comes back is the difference in costs between doing the recycling down at the old plant and building the smaller plant in the location you suggested because he knows that

it requires six miles of pipeline and energy to pump it. He would like to see that when it comes back. Also the greatest source of new water is conservation and at some point in time we need to jump into some kind of a program dealing with conservation.

Director Burk said that AB 1881 and your current ordinances will make you and mandate you to do that. The conservation portion of it and the adjudication of this basin specifically is driven by conservation and that every new home that comes in through your own landscape ordinances will dictate the type of landscape use you will have. For example, most houses moving forward in the future will have to meet criteria that for every five houses built one or two of them will have to be xeriscape. We have an ordinance in place currently today that says that and so conservation is exactly where you are going. The other side of the conservation is that when you have greenbelt areas that are lush and green they cost the customer or HOA (Homeowners Association) or whoever more money to maintain them and the price of water will always continue to go up so it is something that is driven in your tiered rates as far as conservation. It is one of those things that recycled water can offset but one of the ideas is that developing this water is not cheaper so conservation is key to maintaining these resources.

Councilmember Botts said isn't it fair to say that our water rate increases in adding a top tier for larger/higher users is a conservation measure. Director Burk said it is yes.

Councilmember Botts said he wanted to respond to Councilmember Hanna and what he thinks she said. He doesn't know that we need to give additional direction. We gave direction and Mr. Burk has not brought anything back to say you need to go a different direction. Most of us have been at Sun Lakes meetings and one state determined this was not a sludge plant. The chief anti-sludger has read in a glowing report about reclaimed water and the glowing report about Director Burk and you have had other meetings so certainly there are those that are concerned where it goes and what it is going to look like but he thinks that we gave that direction and we need to move forward with reclaimed water and doesn't think we need to revisit that.

Director Burk said he has met with the developer of this property, Lennar, and originally when he came out there was talk that it was going to be right outside someone's front door or another area and then sludge was part of it and he has actually addressed most of those concerns multiple different times. But our sewer master plan calls for a sewer line to go in that area for future development and he pointed out on the map the area that they are looking at and he plans on moving forward with that approach. He also pointed out some of the alternatives of where they looked as it relates to developing that plant.

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

Mayor Robinson said that we have some storage tanks and we spent quite a bit of money and in fact, this entire Council stood inside of one and he thinks that it held 8 million gallons before it was pumped full of water and he knows that they are all interconnected and we can transfer water from one to the other to keep them all full. If we didn't have any water source that day and for a continued period of time, how long would those storage tanks feed the city of Banning water.

Director Burk said we have in storage enough water, if everybody conserved and you were completely cut off, you have enough storage for at least 4 days depending on what zone we are talking about. But he wouldn't want to say that you would have fire protection or those other things because if you were completely cut off that way, we would want to be able to get water back in within that period of time.

Mayor Robinson asked how many gallons are we talking about because he doesn't think that people understand how much water we use in a given day and if we have 16 million gallons at one tank site and we are pumping in between other tanks, what are we talking about.

Director Burk said you have around 20 million gallons in storage tanks and if it is a 3 million gallon a day, day and everybody is using almost 3 million gallons of water, it will last you that. We have actually had demand days in higher periods of time up to 11 million gallons so it wouldn't be a good day so we would have to go out there and turn off the irrigation and obviously if you had that big of a catastrophe, he thinks everybody would know that.

Mayor Robinson said he just wanted to let everybody know the importance of this water and all the backup systems that we need to create the infrastructure.

Director Burk said the interesting thing about the City's storage facility is that you don't have all of your eggs in one basket. You have resources in the water canyon that serve into 3 or 4 tanks, you have resources on the west end of town that serve into 3 or 4 different tanks, you also have the storage with Beaumont Cherry Valley Water District, and another set of tanks that are up on Sunset so you actually have a very dynamic infrastructure. So really it would have to be a major catastrophe. You also have some really redundant ability to provide the electricity side if and when you lost power for a long period of time.

Mayor Pro Tem Franklin said that you showed us the three manuals and are those all on-line if somebody wanted to refer to them. Director Burk said yes.

ADJOURNMENT

By common consent the meeting adjourned at 4:13 p.m.

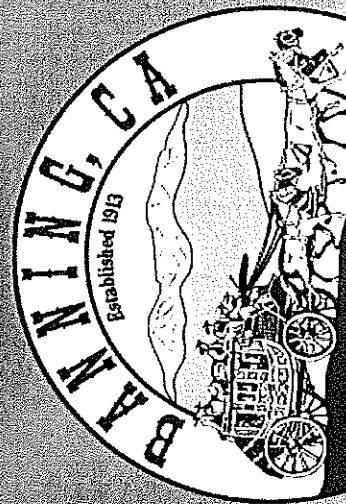
Marie A. Calderon, City Clerk

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.

WATER RESOURCES

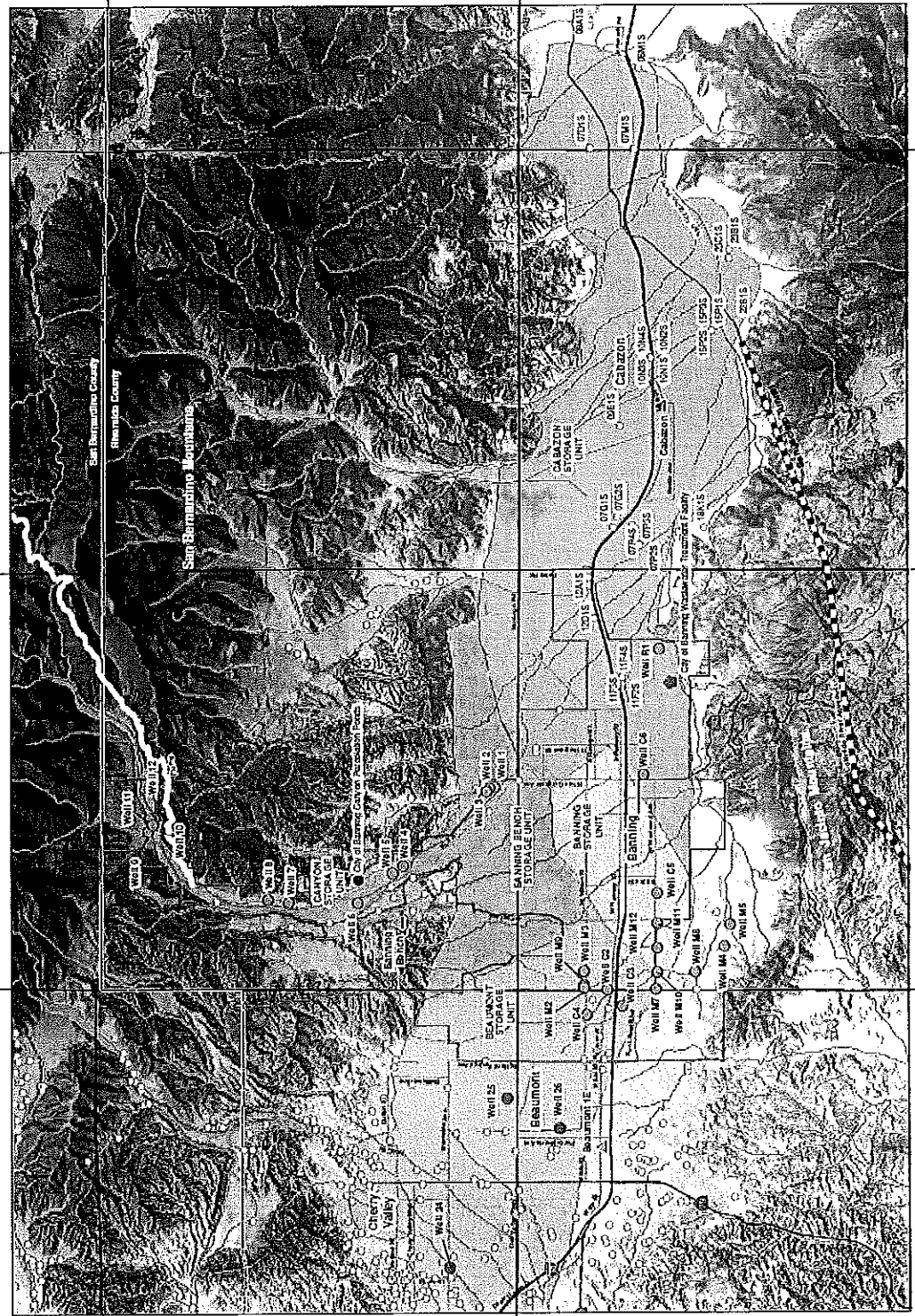
CITY OF BANNING

APRIL 24, 2012



Proud History
Prosperous Tomorrow

MAXIMUM PERENNIAL YIELD ESTIMATES FOR THE BANNING AND CABAZON STORAGE UNITS,
AND AVAILABLE WATER SUPPLY FROM THE BEAUMONT BASIN



WELL LOCATIONS

- EXPLANATION**
- Active City of Banning Well
 - Inactive City of Banning Well
 - Active Wells Co-Owned by the City of Banning and Beaumont Cherry Valley Water District
 - Other Wells
 - △ Riverside County Flood Control and Water Conservation District Weather Station
 - City of Banning Boundary
 - Colorado River Aqueduct
 - San Jacinto Tunnel
 - Ground Water Storage Unit Boundary (Source: USGS, 2006)
 - Banning Beach
 - Banning
 - Beaumont
 - Cabazon
 - Canyon
 - SCE Trans-Basin Diversion from the Upper White-water River Watershed

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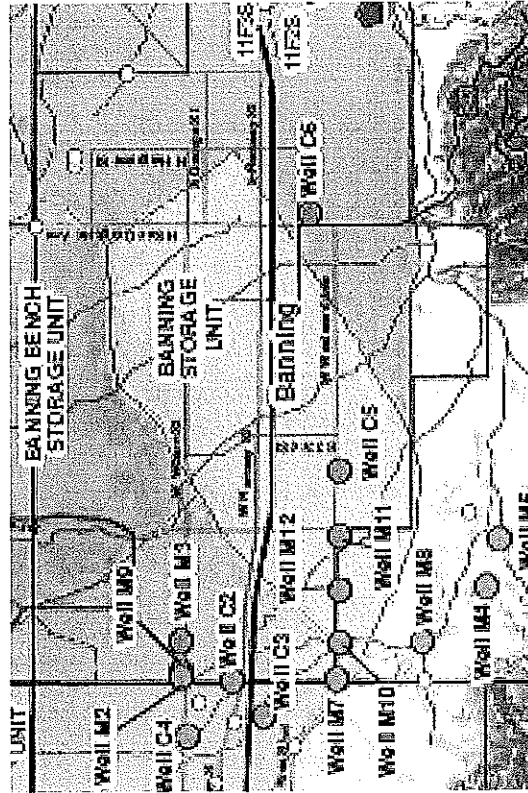
26-Mar-11
Prepared by: DWB
Map Projection: UTM 12Q Zone 13

Figure 6

19

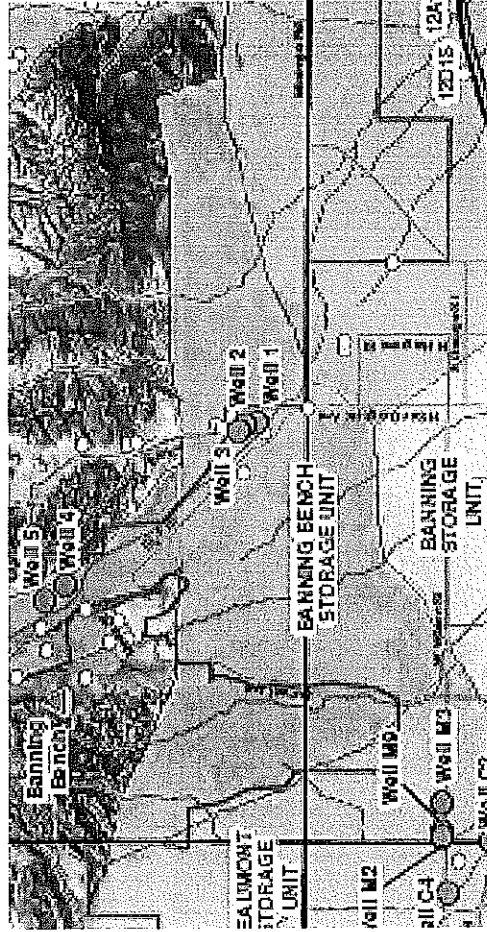
BANNING STORAGE UNIT

- The City operates 4 wells within this storage unit.
 - M₁₀, M₁₁, M₁₂ and C₅
- **Safe Yield = 1,130 acre-ft/yr**



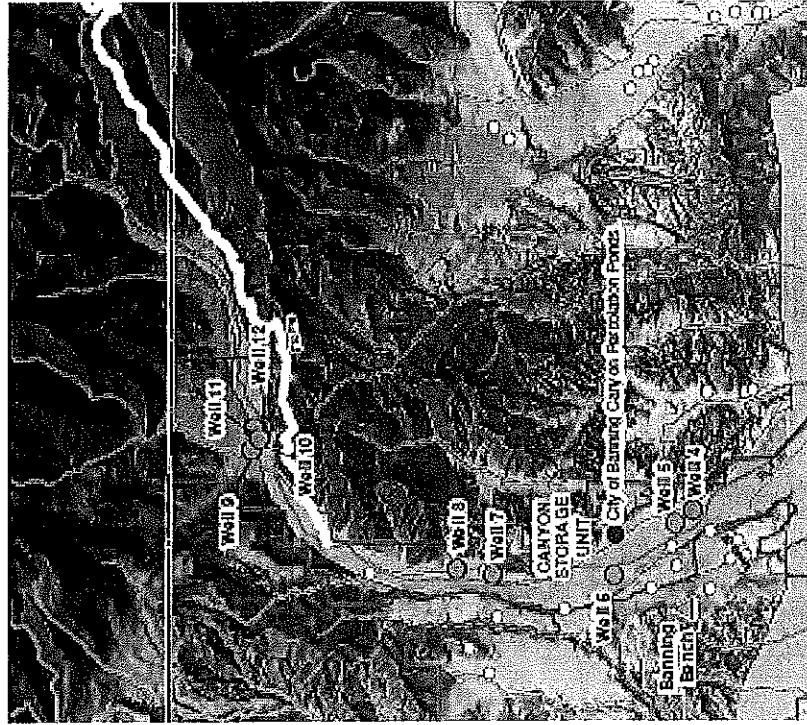
BANNING BENCH STORAGE UNIT

- The City operates 3 wells within this storage unit.
- Wells 1, 2 and 3
- **Safe Yield = 1,960 acre-ft/yr**



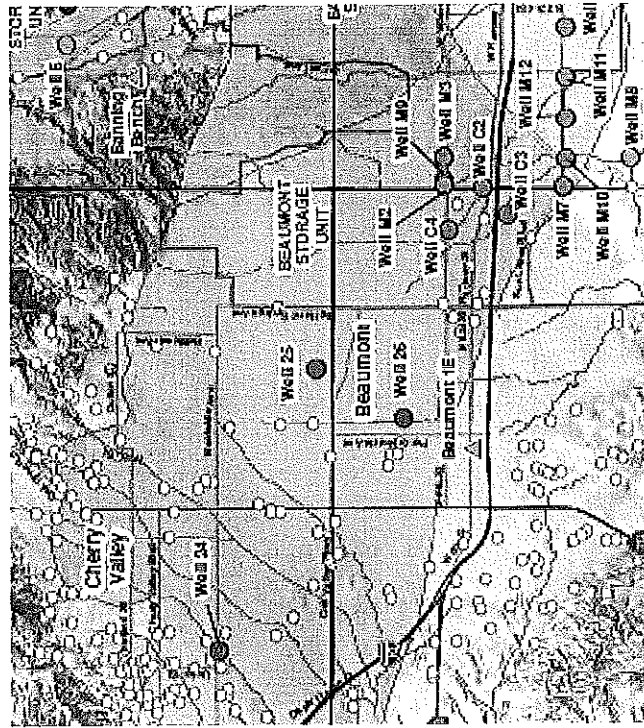
BANNING CANYON STORAGE UNIT

- Most of the City's groundwater is produced from the aquifer within this storage unit.
- 8 active production wells.
- **Safe Yield = 4,070 acre-ft/yr**
- Diversion of surface water via the Flume can provide additional recharge of storage unit.



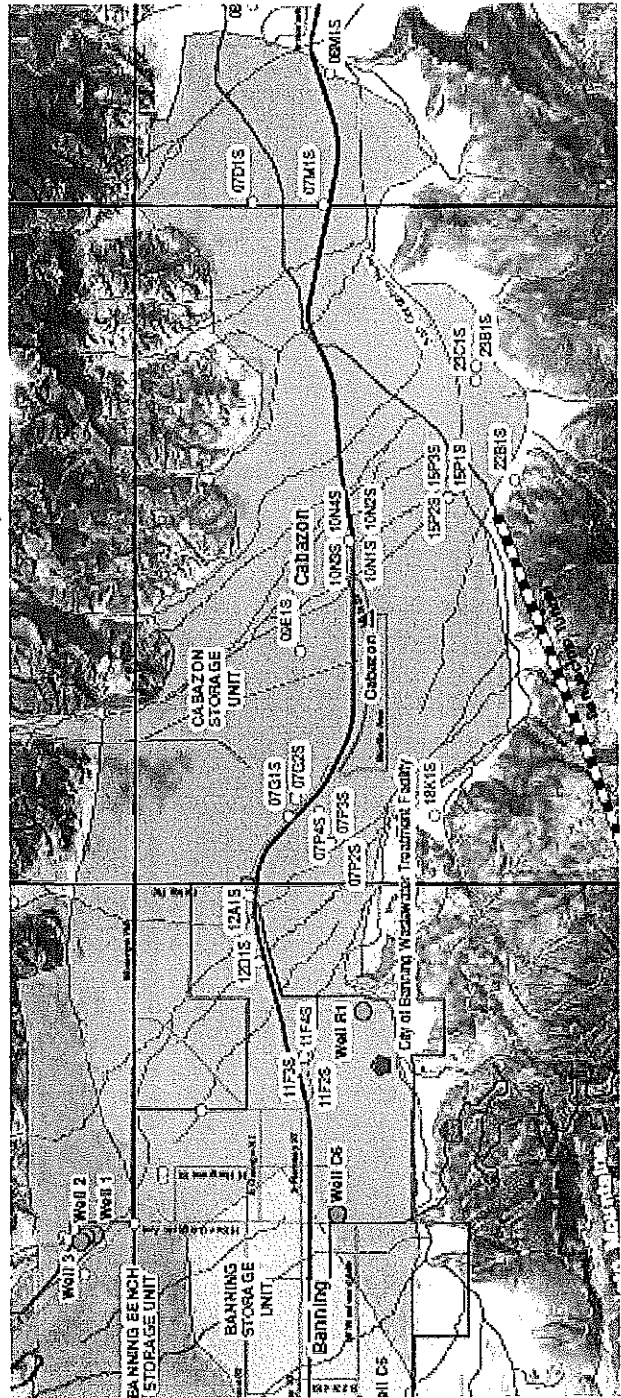
BEAUMONT STORAGE UNIT

- The City operates 5 wells within this storage unit and co-owns 3 production wells with BCVWD.
- Adjudicated in 2004.
- Overlying producers have priority rights of the water in this storage unit.
- The City has the right to produce 5,910 acre-ft/yr until 2014.
- **Average Production = 2,514 acre-ft/yr**
- Currently has approx. 24,000 acre-ft of water in storage (production right).



CABAZON STORAGE UNIT

- The City only operates 1 production well (C6) in this storage unit.
- Average Production= 710 acre-ft/yr
- Additional groundwater can be developed in this storage unit.
- It is estimated that approximately 1,670 acre-ft/yr will be available for City use in the future.

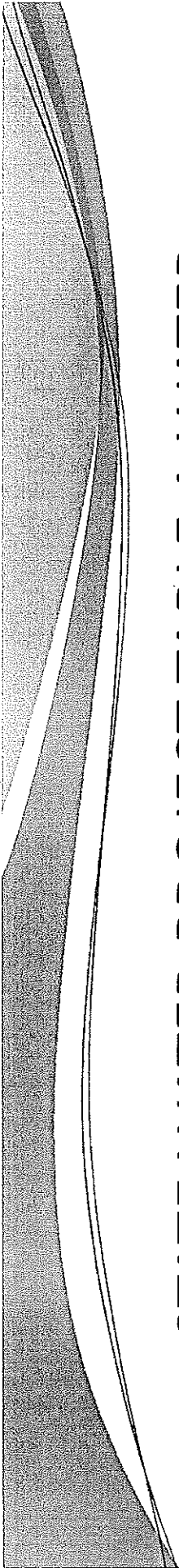


RECYCLED WATER SUPPLY

- The planned Water Recycling Center will be designed to treat 1.5 MGD.
- The treated water will offset potable water by an amount of 1,680 acre-ft/yr (approx. 3,200 homes).
- It is estimated that the future recycled water demand will be 3,261 acre-ft/yr by 2020.

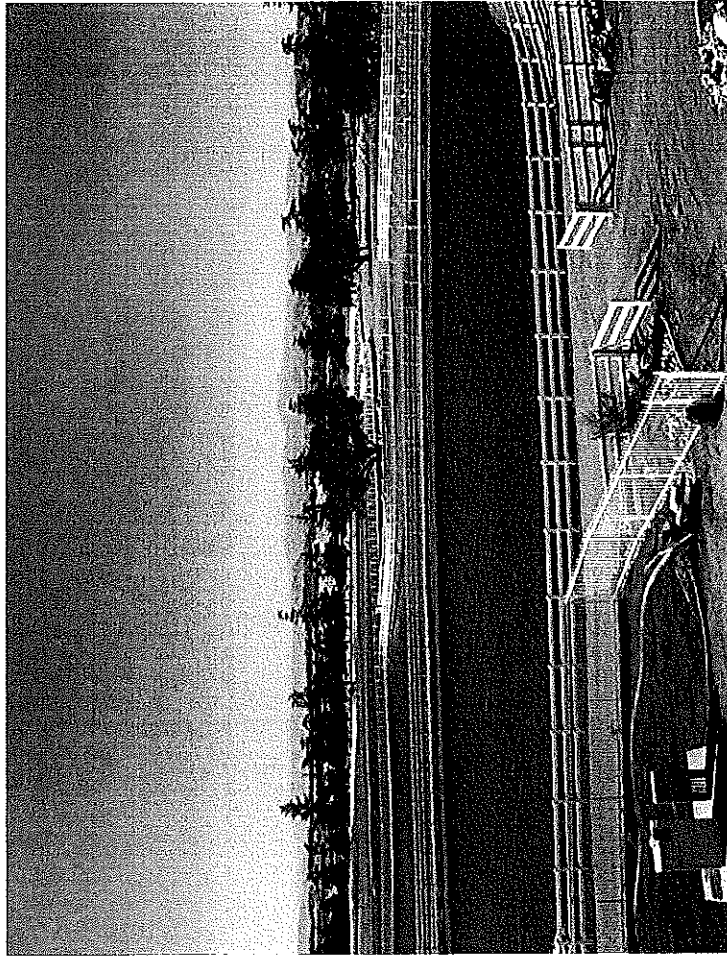


City of Banning
CALIFORNIA
Proposed Phase I Recycled Water System



STATE WATER PROJECT TABLE A WATER

- The San Geronio Pass Water Agency (SGPWA) has a contract with the Department of Water Resources (DWR) for 17,300 acre-ft/yr.
- SGPWA currently has the capacity to receive 8,650 acre-ft/yr.
- SGPWA can receive full entitlement of 17,300 acre-ft/yr with the completion of the East Branch Extension Phase II (EBX-II).
- Assuming that EBX-II is online by 2014, the City is planning to receive **2,595 acre-ft/yr** (25% of 60% of 17,300 acre-ft/yr)



SUMMARY OF WATER RESOURCES

Current and Projected Water Supplies
for the City of Banning [acre-ft]

Water Supply Source	2010*	2015	2020	2025	2030	2035
Banning Storage Unit ¹	1,218	1,130	1,130	1,130	1,130	1,130
Banning Bench Storage Unit ¹	1,472	1,960	1,960	1,960	1,960	1,960
Banning Canyon Storage Unit ¹	3,726	4,070	4,070	4,070	4,070	4,070
Beaumont Storage Unit ²	1,372	2,514	2,514	2,514	2,514	2,514
Cabazon Storage Unit ³	565	1,185	1,405	1,648	1,916	2,212
Recycled Water Supply ⁴	0	1,680	1,680	1,680	1,680	1,680
Return Flows from Recycled Water Irrigation ⁵		420	420	420	420	420
Return Flows from Potable Residential Irrigation ⁶	0	9	18	28	38	48
SWP Table A Entitlement ⁷	1,200	2,595	2,595	2,595	2,595	2,595
Total	9,552	15,563	15,792	16,045	16,323	16,628

SUPPLY DEMAND COMPARISON

Average, Single-Dry, and Multiple-Dry Water Years Supply and Demand Comparisons
Including 20x2020 Demand Reductions
(acre-ft/yr)

Average Water Years						
	2010 ¹	2015	2020	2025	2030	2035
Total Supply ²	9,552	15,563	15,792	16,045	16,323	16,628
Total Demand ³	7,586	10,376	10,183	11,243	12,413	13,705
Supply Surplus	1,966	5,187	5,609	4,802	3,909	2,923
Single-dry Water Years						
	2010 ¹	2015	2020	2025	2030	2035
Total Supply ⁴	N/A	12,043	12,314	12,608	12,928	13,235
Total Demand ⁵	N/A	9,821	9,638	10,642	11,749	12,972
Supply Surplus	N/A	2,222	2,675	1,967	1,179	263
Multiple-dry Water Years						
	2010 ¹	2015	2020	2025	2030	2035
Total Supply ⁶	N/A	12,784	13,038	13,316	13,619	13,926
Total Demand ⁵	N/A	8,184	8,032	8,868	9,791	10,810
Supply Surplus	N/A	4,600	5,006	4,448	3,828	3,116

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

05/08/2012
SPECIAL MEETING

A special meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Robinson on May 8, 2012 at 4:02 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 said there is an item with the Successor Agency Board pursuant to the provisions of Government Code Section 54956.8 concerning real property negotiations in regards to 42 W. Ramsey Street and a status report will be given. He said that the City Council will not discuss the real property negotiations matter concerning 4545 W. Ramsey Street. The City Council will meet pursuant to the provisions of Government Code Section 54956.9 concerning one case of potential litigation and a status report will be given.

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

City Attorney said that he does need to add one item to the Council agenda regarding a litigation matter, Highland Springs versus the City of Banning, and this arose subsequent to the posting of the agenda. He said that it had just be filed and wanted to give the Council a report on that item. **There was Council consensus to add this item to the City Council agenda.**

Meeting went into closed session at 4:04 p.m. Before the Council discussed the litigation matter that was added to the Council agenda Councilmember Hanna left the room because of a conflict of interest.

Meeting reconvened at 4:55 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:56 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

05/08/12
REGULAR MEETING

A regular meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Robinson on May 8, 2012 at 5:08 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew J. Takata, City Manager
June Overholt, Administrative Services Director
David J. Aleshire, City Attorney
Zai Abu Bakar, Community Development Director
Leonard Purvis, Police Chief
Bill Manis, Economic Development/Redevelopment Director
Fred Mason, Electric Utility Director
Phil Holder, Police Lieutenant
John McQuown, City Treasurer
Marie A. Calderon, City Clerk

The invocation was given Pastor Richard Szydlouski, Mountain Avenue Baptist Church. Council Member Botts invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that the Council and Successor Agency met in closed session to discuss real property negotiations for the property at 42 W. Ramsey where a status report was given and no action was taken. The item listed regarding real property negotiations concerning 4545 W. Ramsey Street was not discussed. A status report was given on a potential litigation matter and no reportable action was taken. Also, the Council voted to add to the closed session agenda, Highland Springs Resort v. City of Banning. This is a litigation matter which arose subsequent to posting of the agenda. A status report was given and no action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Charlene Sakurai, 4985 Bermuda Dunes said she viewed the lovely presentation on Channel 10 of the art from the high school and it was beautifully done and thanked the Council. Also, there will be an Emergency Preparedness Certification Class or CERT Class coming up the weekend of May 18, 19 and 20. It will be held at Serrano Del Vista which is off of Sunset, south of the freeway. There are still open spots so if there is anyone or any group interested in participating you need to call Riverside County OES at 955-4700 to register. They will not give the class if there are fewer than 20 participants.

CORRESPONDENCE: There was none.

PRESENTATIONS:

1. Mt. San Jacinto College Update – President Dr. Roger Schultz

Dr. Schultz addressed the Council thanking them for their continued support of the college. He stated that he would give a brief update of the college in general, some things that are going on here at the Pass campus and some future activities. He left on the dais for each of the Council Members a packet of materials and he highlighted that their View Book “Discover Mt. San Jacinto College” that they produced has been out for a few months now and they received an award this book which gives an overview of the campus. He said that College Board Member Kadow could not be here this evening but wanted to also thank the Council for their support. He started his power-point presentation stating that they cover a 1700 square mile district and serve roughly 20,000 students right now. They have a five-member board. Their latest campaign is called “The Faces of MSJC” and it starts to tell the story of their students and the student pictured in the middle, Samuel Fall, is one of the top students in all of California and he is a Banning resident who just recently received a state-wide award for Phi Theta Kappa. Another familiar face is Duane Burk who was honored at their recent gala. These are people that are giving to the community and it really speaks to the quality of individuals coming through their programs. Dr. Schultz continued his presenting going over the budget, achievements received, student successes, faculty and staff successes, and demographics of the San Geronio Pass Campus and Mt. San Jacinto College district totals. He said that they are coming up on their 50th Anniversary and what is important about this region is the fact that the campus started up here so be prepared to see a lot of events next year. He said that they held an Education Forum with their partners here in the Pass because of some community response and they were reacting to some things that they were hearing so they pulled a group together in February and the room was full and they could not have done it without the support of the hospital staff. What came of that is that they are putting together an Education Summit coming up on May 18th inviting the community in to look at how they access higher education in general, looking at financial aid, and programs available to the students. There will be two sessions with one in the morning and one in the evening. He concluded in presentation stating that this was really to give the Council a quick update on the impact of your help with establishing a campus in the Pass.

CONSENT ITEMS

Mayor Robinson pulled Consent Item No. 3 for separate action because he has a conflict of interest issue.

1. Approval of Minutes – Special Meeting – 04/24/12 (Closed Session)

Recommendation: That the minutes of the special meeting of April 24, 2012 be approved.

2. Approval of Minutes – Regular Meeting – 04/24/12

Recommendation: That the minutes of the regular meeting of April 24, 2012 be approved.

4. Ordinance No. 1449 – 2nd Reading: An Ordinance of the City of Banning, California, Re-Establishing and Declaring Prima Facie Speed Limits Within Specified Speed Zones Throughout the City of Banning to Include Speed Zones 28, 37, 38 & 46.

Recommendation: That Ordinance No. 1449 pass its second reading and be adopted.

5. Resolution No. 2012-32, Awarding the Bid for the Professional Tree Trimming Service Contract.

Recommendation: That the City Council adopt Resolution No. 2012-32, awarding the bid for the Professional Tree Trimming Service contract to Asplundh Tree Expert Co. (“Asplundh”), of San Diego, CA, in the amount not to exceed \$100,000.00 in either of the two fiscal years 2012-13 and 2013-14 for a total of \$200,000.00 including taxes.

6. Resolution No. 2012-35, Declaring the Intention to Levy and Collect Assessments, Approving the Engineer’s Report and Setting the Date for the Public Hearing for Landscape Maintenance District No. 1.

Recommendation: That the City Council adopt Resolution No. 2012-35, Declaring the Intention to Levy and Collect Assessments Within Landscape Maintenance District No. 1 (LMD No. 1) During the Fiscal Year 2012-13, Pursuant to the “Landscaping and Lighting Act of 1972”, approving the Engineer’s Report; and giving notice of the public hearing for renewal of said Maintenance District.

7. Resolution No. 2012-38, Authorizing the Purchase of Camera Surveillance System from Leverage Information Systems in the Amount of \$217,442.

Recommendation: That the City Council adopt Resolution No. 2012-38.

8. Resolution No. 2012-40, Awarding the Custodial Services Contract to Custom Service Systems for the City of Banning’s Civic Center and Municipal Facilities.

Recommendation: That the City Council adopt Resolution No. 2012-40, Awarding the Custodial Services Contract to Custom Service Systems for the City of Banning’s Civic Center

and Municipal Facilities in the amount of \$4,883.09 (with a Consumer Price Index (CPI) increase due on July 1, 2012) per month.

9. Notice of Completion for Project No. 2011-06, Rubberized Asphalt Concrete (RCA) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue.

Recommendation: That the City Council accept Project No. 2011-06, Rubberized Asphalt Concrete (RCA) Overlay and Street Improvements along Wilson Street, from Stargaze Way to Mountain Avenue as complete and direct the City Clerk to record the Notice of Completion.

10. Amend the Existing Contract with J.B. Paving & Engineering.

Recommendation: That the City Council approve to amend the existing contract with J.B. Paving and Engineering in the amount of \$10,000.00.

11. Report of Investments for February 2012.

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

12. Report of Investments for March.

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

13. Approval of Accounts Payable and Payroll Warrants for Month of January 2012.

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

14. Approval of Accounts Payable and Payroll Warrants for Month of February 2012.

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

15. Approval of Accounts Payable and Payroll Warrants for Month of March 2012.

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

16. Resolution No. 2012-41, Affirming That All Sale Proceeds to Be Received From the City Pursuant to That Purchase and Sale Agreement Approved by the City on January 10, 2012, Via Resolution No. 2012-03, Will Be Assigned to the Successor Agency for Benefit of the Applicable Taxing Entities Under AB1x26.

Recommendation: That the City Council adopt Resolution No. 2012-41.

Motion Franklin/Machisic to approve Consent Items 1, 2 and 4 through 16. Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

Mayor Robinson turned the meeting over to Mayor Pro Tem Franklin because he does have a conflict of interest issue with this Ordinance and left the room.

Mayor Pro Tem Franklin asked if there were any questions from the Council on this matter. Seeing none, she opened the item for public comments. There were none.

3. Ordinance No. 1448 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 12-97501 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to Facilitate Business Development.

Recommendation: That Ordinance No. 1448 pass its second reading and be adopted.

Motion Machisic/Botts to approve Consent Item No. 3. Motion carried, all in favor with Mayor Robinson not voting.

Mayor Robinson returned and continued with the meeting.

SUCCESSOR AGENCY

CONSENT ITEM

1. Resolution No. 2012-07 SA, Affirming That All Sale Proceeds to Be Received Pursuant to That Purchase and Sale Agreement Approved by the City on January 10, 2012, Via Resolution No. 2012-03, Will Be Held by the Successor Agency for the Ultimate Benefit of the Applicable Taxing Entities Under AB1x26.

Recommendation: That the City Council Sitting in Its Capacity of a Successor Agency adopt Resolution No. 2012-07 SA.

Motion Hanna/Machisic to adopt Consent Item No. 1. Mayor Robinson opened the item for public comments. There were none. **Motion carried, all in favor.**

REPORTS OF OFFICERS

1. Resolution No. 2012-37, Awarding the Bid for the Photovoltaic (PV) System at the Police Department Facilities.
(Staff Report –Fred Mason, Electric Utility Director)

Director Mason gave the staff report as contained in the agenda packet. He said that in the RFP (Request for Proposals) it specifically said that we were going to look at the bids based on the cost per installed lot and the cost per kilowatt hour based on the first year's production output of energy. Based on that the bid that was the lowest responsible bid had a per watt installed cost of \$3.32 and if you recall, he said the average price back in 2010 about \$7.00 so it is basically cut in half. The pay back on the system is actually 25 years and it does support the fact that the City Council has said that we have a "Clean and Green Report" and we want to do what is right as far as reducing emissions and going green so this project definitely will move the City forward in that regard.

There were questions from the Council and response from staff in regards to this qualifying as a LEAD project, funding, life expectancy, how this helps in meeting State standards in regards to renewable energy, time line of this project to be completed, and disparity of the bids.

Motion Machisic/Franklin that the City Council adopt Resolution No. 2012-37, Awarding the bid for the Photovoltaic System at the Police Department Facilities Contract to Metro R.F. Services, Inc. of Ontario, CA, in the Amount Not-to-Exceed \$163,835.00 including taxes. Mayor Robinson opened the item for public comments. There were none. Motion carried, all in favor.

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

City Council

Councilmember Hanna –

- Said that Councilmember Machisic has been reporting on WRCOG's (Western Riverside Council of Government) HERO Program and commented on her personal experience with this program and hopefully it might encourage others to consider applying. It is a terrific program and the website is www.wrcogpace.com or www.wrcog.herofinancing.com.
- This is the last Council meeting before the charity family bike ride and health expo called "Ride the Coach" to be held on Saturday, June 2nd from 9 a.m. to 2 p.m. If you are a bike rider the shortest ride is a 10 mile ride basically downtown and it is pretty flat and will start at 9 a.m. and cost \$20.00. The 25 mile ride goes up to the Bench and starts at 9 a.m., the 34 mile ride goes up to the Bench and the 63 mile is only for really avid bikers. It is more than just a bike ride and is more of a festival with live music, health expo, various vendors and also free bike rides for kids ages 10 and under starting at 9 a.m. at the Nicolet School track and every child who registers receives a string back pack.

Councilmember Franklin –

- She thanked everyone who participated in the Disaster Preparedness Expo and all the City departments who participated and the many volunteers who stepped up to help out to make sure that this was a good event. They had about 800 people in attendance and that included the vendors. They did a survey of the people that attended and a majority of the people had not attended before and people did say it was a good event.
- She attended a mediator conference over at Morongo and it was really good in the sense that half of the presenters were 8th grade students from various schools. They talked about how

important mediation is within the community, the family and through the court system. The reason she wanted to bring this up was because we do have the mediation process here not only in our schools but also in our court and there are openings for people to continue to participate and it is a volunteer program. All the mediators are trained and coached and the next mediator training is this coming Saturday and you can call 951-955-4900 and it is free for the training.

Councilmember Machisic –

- He thanked Councilmember Hanna for her testimony about the HERO Program because sometimes you talk about a program and you gain credibility when someone who you actually know goes through the program.
- He said sometimes you forget about things for instance, he remembers reading that UCR was going to have a medical school and after a while you just forget about it. Dr. Richard Olds, made a presentation and he is the new Dean of the School of Medicine and it is only one of two schools of medicine being established west of the Mississippi and he showed a map of how many medical schools are going to be established in the eastern part of the country and it is unbelievable how many there are and he has a copy of the whole presentation which he will have the City Clerk make a copy. He pointed out that the first class will start in August 2013 and will be a great addition to our community.
- WRCOG (Western Riverside Council of Governments) General Assembly will be held June 21st and the feature speaker will be Colin Powell, former Secretary of State.

Councilmember Botts –

- Wanted to remind all the businesses in Banning of the new Business to Business Connection Networking Meeting tomorrow morning at 7:30 a.m. at The Lakes. They have been averaging nearly 40 people and off to a real good start. They had the City of Banning come and talk about how to do business with Banning and tomorrow they will have a presentation on how to do business with the City of Beaumont.

Mayor Robinson –

- He attended the Prayer Breakfast for the National Day of Prayer last Thursday. It was put on by the local churches and they do an outstanding job.
- He thought the Art Hop went very well and really enjoyed it.
- Coming up this weekend is the Pass Area Relay for Life to be held on May 12th and 13th starting at 8 a.m. and if you would like to have information on this event you can call, 951-317-5678.

City Committee Reports – There were none.

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

Report by City Manager

- The Planning Commission had a chair change and the Chairman is now Harold Barsh and the Vice Chair is Kevin Siva.

- The Dollar General on May 31st at the Highland Springs Resort from 9 a.m. to 3 p.m. is having a hiring event for store managers, assistant store managers, front end leads and sales associates.
- As you may recall he did a newscast about the City's Economic Development issue and they do now have that information updated and up on the City's website.

ITEMS FOR FUTURE AGENDAS

New Items – There was none.

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Polices & Procedures (fingerprinting) for Applicant re. Projects and Applicants for Commissions & Committees (*Commissions & Committees*)

Successor Agency

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

ADJOURNMENT

The Banning City Council regular meeting scheduled for May 22, 2012 is cancelled. The next regular meeting of the City Council will be held on Tuesday, June 12, 2012.

By common consent the meeting adjourned at 5:50 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.

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 26, 2012

TO: City Council

FROM: Leonard Purvis, Chief of Police

SUBJECT: Approve contract between BUSD and the City of Banning for assignment of a School Resource Officer (SRO) at Banning High School for the 2012-13 school year.

RECOMMENDATION: "The City Council approves entering into a contract between the Banning Unified School District and the City of Banning, which will provide a School Resource Officer at Banning High School during the 2012-13 school year."


JUSTIFICATION & BACKGROUND: For over 11 years, the Banning Unified School District has been paying 70% of a police officer's salary for the services of an SRO at Banning High School. On May 17, 2012, the Banning Unified School District (BUSD) Board approved continuing this funding for the 2012-13 school year. In the agreement, the Banning Unified School District agrees to pay 70% (\$99,820) of the police officer's annual cost. The purpose of the SRO program is to continue the cooperative effort between the schools and the City of Banning Police Department to increase safety and promote a positive environment where education can occur.

Duties of the SRO include, but are not limited to, assisting in the development and implementation of school security programs, providing classroom presentations on safety topics, helping school staff with student counseling, assist with supervision during school activities, enforce criminal laws through investigations, and work with probation, the Youth Accountability Team (Y.A.T.), and social services in investigations where students are involved.

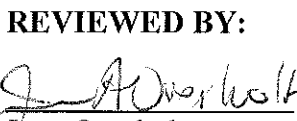
STRATEGIC PLAN INTEGRATION: The SRO program enhances the City's and Police Department's image while providing a safer environment for students, parents, and school staff to learn and work.

FISCAL DATA: The remaining 30% of the officer's salary is already accounted for in the City's budget. Subsequently, there is no cost to the City for providing the SRO at Banning High School. The City Manager is authorized to sign the contract between the BUSD and the City for the noted SRO position. Additionally, the Finance Department is authorized to make the necessary budget adjustments related to this contract.

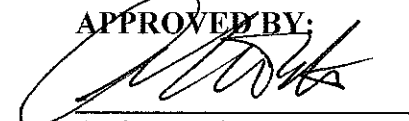
RECOMMENDED BY:


Leonard Purvis
Chief of Police

REVIEWED BY:


June Overholt
Administrative Services Director

APPROVED BY:


Andrew Takata
City Manager

BANNING UNIFIED SCHOOL DISTRICT
161 West Williams Street
Banning, CA 92220

SCHOOL RESOURCE OFFICER
Banning High School

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this 17th day of May, 2012 by and between the CITY OF BANNING, a municipal corporation (herein referred to as "CONTRACTOR "), and the BANNING UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, (herein referred to as "DISTRICT").

WHEREAS, DISTRICT desires to contract with the City of Banning for the services of 70% of a police officer for the purpose of providing a School Resource Officer as required by DISTRICT; and,

WHEREAS, Contractor has the expertise, special skills, knowledge and experience to perform the duties set out herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CONTRACTOR and the DISTRICT (jointly referred to hereinafter as the "Parties") agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR shall provide all services as outlined and specified in Exhibit A, consisting of one (1) page, attached hereto and by this reference incorporated herein.

2. PERIOD OF PERFORMANCE:

2.1 It is mutually agreed and understood that the obligation of the DISTRICT is limited by and contingent upon the availability of 2012-2013 fiscal year funds for the reimbursement of CONTRACTOR'S expenditures hereunder. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify CONTRACTOR in writing. This agreement shall be deemed terminated and have no further force and effect immediately on receipt of DISTRICT'S notification to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of his costs in accordance with Paragraph 3 herein.

2.2 This agreement shall be effective as of July 1, 2012 and shall continue in effect through June 30, 2013, unless earlier terminated as specified in Paragraph 6.

3. COMPENSATION:

- 3.1 The DISTRICT shall pay the CONTRACTOR for services performed and expenses incurred in accordance with the terms of Exhibit A attached hereto.
- 3.2 The DISTRICT shall pay, to CONTRACTOR, the base sum of ninety-nine thousand, eight hundred and twenty dollars for the provision of one School Resource Officer during regular school hours during the period that schools are routinely in session according to the School Calendar attached hereto as Exhibit B and by this reference made a part hereof. Compensation for a School Resource officer to provide services at special events, at after school and weekend athletic events, or at other non-routine times shall be charged to the DISTRICT at a cost of one and one-half times the hourly rate of pay of the officer(s) provided per each additional hour of service. Compensation for the School Resource officer's overtime, which is a direct result of incidents that occur during his regularly scheduled hours shall be charged to the DISTRICT at a cost of one and one-half times the hourly rate of pay of the officer(s) for each hour worked beyond his regularly scheduled work hours. This shall apply even if the amount exceeds the base sum of ninety-nine thousand eight hundred and twenty dollars).

School hours are 7:30 AM – 3:23 PM. Wednesday hours are 8:30 AM – 2:21 PM. Days of service are as set forth in the attached calendar, from August 13, 2012 to May 31, 2013. (August – date to be determined, 2012) to serve as prep time for SRO to write programs, set up security routes and schedules, and plan for other school related SRO business).

- 3.3 The total amount of compensation paid to the CONTRACTOR under this Agreement shall not exceed the sum of ninety-nine thousand, eight hundred twenty dollars (\$99,820) unless both parties prior to the performance of additional services execute a written amendment to this agreement.
- 3.4 Compensation for overtime payments shall be paid in accordance with an invoice submitted to DISTRICT by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and DISTRICT shall pay the invoice within thirty (30) working days from the date of receipt of the invoice.

4. HOLD HARMLESS-INDEPENDENT CONTRACTOR:

- 4.1 It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S employee provided hereunder shall not be entitled to any benefits payable to employees of DISTRICT including DISTRICT Workers' Compensation Benefits. DISTRICT is not required to make any deductions from the compensation payable to CONTRACTOR under the provisions of this Agreement. As an independent contractor, CONTRACTOR hereby holds DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by any third party that an employer-

employee relationship exists between CONTRACTOR'S employee and DISTRICT by reason of this agreement.

CONTRACTOR agrees to indemnify DISTRICT for any and all Federal/State withholding or State retirement payments, which DISTRICT may be, required to make by Federal or State government if for any reason CONTRACTOR is determined not to be an independent contractor to DISTRICT in carrying out the terms of this agreement. Such indemnification shall be paid in full to DISTRICT upon sixty (60) days written notice to CONTRACTOR of a Federal and/or state determination that such payment is required.

- 4.2 It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of his obligation hereunder is responsible to DISTRICT merely as to the result to be accomplished by the services to be performed and is not subject to the control of the DISTRICT as to the means and methods for accomplishing the results.

5. INSURANCE-INDEMNIFICATION:

- 5.1 CONTRACTOR agrees to defend, indemnify, protect and hold harmless, the DISTRICT, each member of its Board, agents, officers and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONTRACTOR'S employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of CONTRACTOR and its agents, officers or employees in performing the work or services hereunder; for all expenses of investigating and defending against same; provided however, that the CONTRACTOR'S duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or misconduct of the DISTRICT, its Board, agents, officers or employees; and provided that to the extent the DISTRICT is determined to have been negligent or at fault, the DISTRICT agrees to bear its own portion or percentage of liability and to indemnify and hold harmless CONTRACTOR from that share.
- 5.2 Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the performance of this Agreement, insurance policies or equivalent evidence of coverage common that is common to municipalities, evidencing coverage during the entire term of the Agreement as follows:
- a) General liability insurance, in the amount of not less than \$1,000,000 per occurrence and aggregate, when CONTRACTOR performs any professional services.
 - b) Workers' Compensation insurance in accordance with statutory requirements.
 - c) If motor vehicles are used pursuant to this Agreement, not less than \$300,000 combined single limit for damage to property and injury to persons.

Certificate(s) satisfactory to the DISTRICT'S Assistant Superintendent of Business evidencing the maintenance of such evidence of coverage shall be filed with the DISTRICT'S Superintendent, prior to providing any services pursuant to this Agreement. DISTRICT shall be given notice, in writing, at least thirty (30) days in advance of cancellation, modification or reduction in coverage. All insurance shall be with a company or companies or joint powers authority admitted by the Department of Insurance for the State of California, or authorized as otherwise required by law, to transact insurance business in California.

6. TERMINATION:

- 6.1 Either party may terminate this agreement without cause by giving thirty (30) days written notice of intention to terminate. Either party may terminate this Agreement for cause by giving five (5) days written notice of intention to terminate.
- 6.2 Notwithstanding any of the provisions of this Agreement, CONTRACTOR'S rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon CONTRACTOR'S bankruptcy, death or disability, or in the event of fraud, dishonesty, or a willful or material breach of this agreement by CONTRACTOR, or at DISTRICTS election, in the event of CONTRACTOR'S unwillingness or inability for any reason whatsoever to perform the duties hereunder. In such event, CONTRACTOR shall be entitled to no further compensation under this agreement, it being the intent that CONTRACTOR shall be paid as specified herein only during such period that CONTRACTOR shall, in fact, be performing the duties hereunder.

7. CONFLICT OF INTEREST:

CONTRACTOR promises, covenants, and warrants that the performance of its services and representations to DISTRICT under this Agreement do not result in a "conflict of interest" as that term is used in the Conflict of Interest Code of the Banning Unified School DISTRICT (the "Code") for any of its officers, agents or elected officials. CONTRACTOR represents that it has read and is familiar, with the Conflict of Interest Code of the Banning Unified School DISTRICT as well as California Government Code sections 1090 et. Seq, and 87000 et seq. CONTRACTOR understands that "Consultants" are included in the list of designated employees in the Code and shall disclose, pursuant to the broadest disclosure category in that Code, subject to the limitations set forth in the Code. CONTRACTOR promises, covenants, and warrants that the performance of its services under this agreement shall not result in or cause a violation of the Code or Government Code Section 1090 et seq. and 87000 et. Seq.

8. ADMINISTRATION:

The Superintendent (or designee) shall administer this Agreement on behalf of DISTRICT. The Chief of Police shall administer this Agreement on behalf of the CONTRACTOR.

9. ASSIGNMENT:

CONTRACTOR shall not assign this Agreement, either in whole or in part, without prior written consent of DISTRICT. Any assignment or purported assignment of this agreement by CONTRACTOR without the prior written consent of DISTRICT will be deemed void and of no force or effect.

10. NONDISCRIMINATION:

CONTRACTOR shall not discriminate in his/her recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this agreement, and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), and Federal Civil Rights Act of 1962 (P. L. 88-352).

11. ALTERATION:

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

12. ELIGIBILITY:

Services and benefits shall be provided by CONTRACTOR to individuals without reference to their religion, color, sex, national origin, age or physical or mental handicap.

13. LICENSE AND CERTIFICATION:

CONTRACTOR verifies upon execution of this agreement, possession of a current and valid license in compliance with any local State, and Federal laws and regulations relative to the scope of services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

14. CONFIDENTIALITY:

CONTRACTOR shall observe its own, and all Federal, State and DISTRICT regulations concerning confidentiality of records.

15. WORK PRODUCT:

All reports, preliminary findings, or data assembled or compiled by CONTRACTOR under this agreement are the property of the CONTRACTOR. Such reports may include material that constitutes a criminal investigation or materials that are subject

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to regulation under the Public Safety Officers Procedural Bill of Rights (Cal. Gov. Code §§3300 et seq.), or other rules for the protection of police officer work product and the maintenance of confidentiality and shall be subject to all laws for the dissemination of such information applicable thereto. The DISTRICT shall not authorize others to use or reproduce such materials except upon the prior written agreement of the CONTRACTOR. Therefore, such materials may not be circulated in whole or in part, nor released to the public, without the direct authorization of the Superintendent, or an authorized designee and the Chief of Police or an authorized designee.

16. JURISDICTION, VENUE - ATTORNEY'S FEES:

This Agreement is to be construed under the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside, State of California. Should action be brought to enforce or interpret the provisions of the agreement, the prevailing party shall be entitled to attorney's fees in addition to whatever other relief is granted.

17. WAIVER:

Any waiver by DISTRICT of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the DISTRICT to require exact, full and complete compliance with any terms of this agreement shall not be construed as in any manner changing the terms hereof, or stopping DISTRICT from enforcement hereof.

18. SEVERABILITY:

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein. Any modifications to the terms of this Agreement must be in writing and signed by the parties herein.

20. NOTICES:

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:

DISTRICT:

Banning Unified School District
Business Services
161 W. Williams Street
Banning, CA 92220



Christine Wallace, Ed.D.
Interim Assistant Superintendent
Business Services

BOARD APPROVED

5/17/12

Date

CONTRACTOR:

City of Banning
Banning Police Department
321 W. Ramsey Street
Banning, CA 92220



Andrew Takata
City Manager
City of Banning

5/30/12

Date

Tax I.D. # 95-6000674

IN WITNESS WHEREOF, the Parties hereto have caused their duly designated representatives to execute this agreement.

Exhibit A

Banning Police Department SCHOOL RESOURCE OFFICER PROGRAM

PURPOSE:

The purpose of the School Resource Officer Program is to formalize a cooperative effort between the schools and the City of Banning Police Department to increase safety and promote a positive environment where education can occur.

POLICY:

It is the policy of the Banning Police Department to assign a police officer to the high school for the purpose of providing the following:

1. Provide a positive image of law enforcement and law enforcement officer's for students.
2. Share educational resources for instructional programs dealing with law enforcement, health and safety, drug and alcohol education.
3. Assist counselors with troubled students, as requested.
4. Create an atmosphere of safety and security on campus.
5. Facilitate a more coordinated effort in dealing with problems involving school, parents, police, and other community agencies.

DUTIES OF THE SCHOOL RESOURCE OFFICER SHALL INCLUDE:

1. Assist in the development and implementation of a program for the establishment and maintenance of security and order on school campuses.
2. Provide classroom presentations on topics of mutual interest to the City and the School District.
3. Assist school counselors with informal counseling to students as requested by the counselor.
4. Assist with supervision of school activities as requested and as otherwise deemed appropriate by the officer in the exercise of his professional judgment.
5. Enforce criminal laws through investigation and arrest when necessary.

6. Investigate all complaints of criminal activity on campus.
7. Assist law enforcement, probation, and social services in investigations where high school students are involved.
8. Assist in the development and implementation of security procedures on High School campus.
9. Develop and present programs on:
 - a) Career Development - Law enforcement as a career
 - b) Health Classes - Alcohol and drug awareness
 - c) Sociology - Gang Awareness and Violence Prevention
10. Assist counselors with informal guidance and informational materials as they relate to the Penal/Education Code.
11. Campus Supervision
 - a. Foot and/or bike patrol before and after school, during student breaks, at lunchtime, and during special assemblies or rallies
 - b. Serve as a representative to the School Attendance Review Board (SARB), and other education committees as they relate to SRO duties (i.e. present SRO program to service clubs in the community).
 - c. Supervise security and establish duty stations, safety procedures and supervision schedules around the campus.
 - d. Make recommendations for improvement of school safety procedures and plans.

QUALIFICATIONS OF SCHOOL RESOURCE OFFICER:

Meet minimum POST qualifications for the rank held by the officer assigned.

RESOLUTION NO. 2012-42

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, CALLING A GENERAL
MUNICIPAL ELECTION ON NOVEMBER 6, 2012**

WHEREAS, a General Municipal Election will be held in the City of Banning on the 6th day of November, 2012, for the full terms of four years for the following officers:

Councilmember - Incumbent Barbara Hanna
Councilmember - Incumbent John Machisic
Councilmember - Incumbent Don Robinson
City Clerk - Incumbent Marie A. Calderon
City Treasurer - Incumbent John C. McQuown

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

1. The City Council hereby authorizes the Registrar of Voters to conduct the General Municipal Election on behalf of the City of Banning.
2. The polls will be open from 7:00 a.m. to 8:00 p.m. on November 6, 2012.
3. The General Municipal Election will be held and conducted in all manners as prescribed by Law.
4. The City Clerk of the City of Banning will give notice of such Election by publication in the local newspaper.
5. The Riverside County Registrar of Voters is requested to canvass said election for the City of Banning.
6. The City Clerk of the City of Banning is authorized and directed to file a certified copy of this Resolution with the Riverside County Registrar of Voters.

PASSED, APPROVED AND ADOPTED this 12th day of June, 2012.

Don Robinson, Mayor

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. 2012-42 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of June, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

RESOLUTION NO. 2012-43

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING, CALIFORNIA, ADOPTING REGULATIONS FOR
CANDIDATES FOR ELECTIVE OFFICE, PERTAINING TO THE
ELECTORATE AND THE COSTS THEREOF FOR THE GENERAL
MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY,
NOVEMBER 6, 2012.**

WHEREAS, Section 13307 of the California Elections Code provides that the governing body of any local agency may adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs thereof;

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

Section 1. **General Provisions.** Pursuant to Section 13307 of the California Elections Code, each candidate for elective office to be voted for at the General Municipal Election to be held in the City of Banning on Tuesday, November 6, 2012 may prepare a candidate's statement on an appropriate form provided by the City Clerk. Such statement may include the name, age, and occupation of the candidate, and a brief description of no more than 200 words of the candidate's education and qualifications as expressed by the candidate. Such statement will not include party affiliation of the candidate, nor membership or activity in partisan political organizations. Such statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. Except as provided in Section 13309 of the California Elections Code, such statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

Section 2. **Payment.** The Riverside County Elections Department shall give the City Clerk an estimate of the total cost of printing, handling, translating and mailing the candidate's statements filed pursuant to the Elections Code, and require each candidate filing a statement to pay in advance his or her pro rata share as a condition of having his or her statement included in the voter's pamphlet. As these costs are only estimated, the City Clerk shall bill each candidate for any cost in excess of the deposit and shall refund any unused portion of any deposit.

Section 3. The City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time the nominating petitions are issued.

PASSED, APPROVED AND ADOPTED this 12th day of June, 2012.

Don Robinson, Mayor

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. 2012-43 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of June, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CITY COUNCIL AGENDA

DATE: June 12, 2012

TO: City Council

FROM: Zai Abu Bakar , Community Development Director

SUBJECT: Resolution No. 2012-44, "Amending the Contract Services Agreement between the City of Banning and Willdan Engineering for Building and Safety Services"

RECOMMENDATION: That the City Council:

- I. Adopt Resolution No. 2012-44, amending the Contract Services Agreement with Willdan Engineering for Building and Safety staffing services for an additional three year period; and
- II. Authorize the City Manager to execute the contract documents with Willdan Engineering on form that is approved by the City Attorney; and
- III. Authorize the Administrative Services Director to make necessary budget adjustments for FY 2013, FY 2014 and FY 2015 to effectuate the contract.

JUSTIFICATION: The City of Banning has contracted services with Willdan Engineering for Building and Safety staffing services for the past year. In order to continue these services it is necessary to extend the agreement.

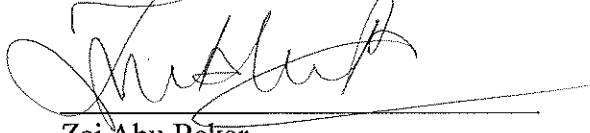
BACKGROUND/ANALYSIS: On August 23, 2011 City Council approved Resolution No. 2011-73, "Authorizing the City Manager to enter into a Contract Services Agreement with Willdan Engineering for Provision of Building Services".

For the period beginning June 1, 2011 through March 30, 2012, the total revenue collected from building permit fees was approximately \$111,932.74. Fees paid to Willdan Engineering for their services under the current contract amounted to approximately \$80,032.42, which is approximately 72% of the revenue received. Staff has determined that Willdan Engineering meets the City's needs and expectations in terms of services; therefore respectfully requests and recommends the extension of this agreement.

FISCAL DATA: This agreement will be funded by monthly building permit and plan check fees as follows:

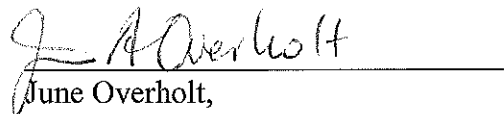
Building Permit Fee Collected Per Month	Percent of Fee	Comments
Up to \$15,000.00	70%	Fee includes front counter services, inspection services, Building Official services, and Friday inspection services.
\$15,001.00 to \$30,000.00	65%	
Over \$30,000.00	60%	
Plan Check	75%	Plan check fee will be equal to 75% of the plan check fees collected by the City

RECOMMENDED BY:



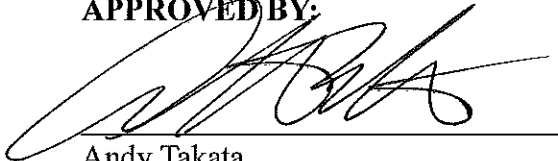
Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata,
City Manager

Attachments:

1. Exhibit "A" - City Council Resolution No. 2012-44
2. Exhibit "B" - Original Contract Services Agreement between the City of Banning and Willdan Engineering
3. Exhibit "C" - First Amendment to the Contract Services Agreement between the City of Banning and Willdan Engineering

EXHIBIT “A”

CITY COUNCIL RESOLUTION NO. 2012-44

RESOLUTION NO. 2012-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE CONTRACT SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND WILLDAN ENGINEERING FOR BUILDING AND SAFETY SERVICES

WHEREAS, part of the City of Banning's operation includes provision of Building and Safety services to ensure that building construction complies with the California Building Code for health, safety, and welfare of the community; and

WHEREAS, the City currently contracts with Willdan Engineering for providing Building and Safety services; and

WHEREAS, the City desires to continue the contract with Willdan Engineering for an additional three (3) year period under the approval of this resolution.

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

SECTION 1. The First Amendment to the Contract Services Agreement with Willdan Engineering for the provision of building and safety services is hereby approved.

SECTION 2. The Administrative Services Director is authorized to make the necessary budget adjustments and appropriations to implement the contract for FY 2013 through FY 2015.

SECTION 3. The City Manager is authorized to execute the contract documents with Willdan Engineering in a form approved by the City Attorney. This authorization will be rescinded if the parties do not execute the contract agreement within sixty (60) days of this resolution.

PASSED, APPROVED AND ADOPTED this 12th day of June 2012.

Don Robinson, Mayor
City of Banning

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

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

ATTEST:

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-44 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of June, 2012.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT “B”

ORIGINAL CONTRACT SERVICES AGREEMENT

CONTRACT SERVICES AGREEMENT

By and Between

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

and

Willdan Engineering

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
WILLDAN ENGINEERING**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 13th day of July, 2011 by and between the City of Banning, a municipal corporation ("City") and Willdan Engineering, ("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 the amount as attached in Exhibits "C" (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

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

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and

only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

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

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

2.5 Waiver.

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

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

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

3.2 Schedule of Performance.

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

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The

Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

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

3.5 Term.

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

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

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

Ronald L. Espalin
Name

Director of Building and Safety
(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 N/A (\$) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

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

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

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

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

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

8.2 Conflict of Interest.

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

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

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

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

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

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

9.2 Interpretation.

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

9.3 Counterparts.

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

9.4 Integration; Amendment.

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

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless

the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

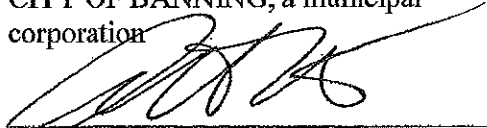
The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions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

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF BANNING, a municipal corporation



Andrew J. Takata, City Manager

ATTEST:


Marie Calderon, City Clerk

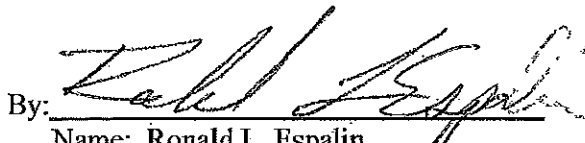
APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP


David Aleshire, City Attorney

CONTRACTOR:

Willdan Engineering

By: 
Name: Ronald L. Espalin
Title: Director of Building and Safety

Address: 650 Hospitality Lane, Suite 400
San Bernardino, CA 92408

Tel: (909) 386-0200

Fax: (909) 888-5107

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.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

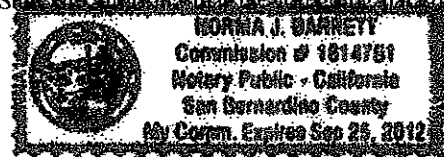
COUNTY OF

On Aug 4, 2011 before me, Dorinda Barret, personally appeared Ronald Espin, 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: Dorinda Barret



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

☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐
☐
☐
☐
☐

PARTNER(S) ☐ LIMITED
GENERAL

ATTORNEY-IN-FACT
TRUSTEE(S)
GUARDIAN/CONSERVATOR
OTHER

NUMBER OF PAGES

DATE OF DOCUMENT

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

☐

INDIVIDUAL

☐

CORPORATE OFFICER

TITLE(S)

TITLE OR TYPE OF DOCUMENT

☐

PARTNER(S)

☐

LIMITED

☐

GENERAL

NUMBER OF PAGES

☐

ATTORNEY-IN-FACT

☐

TRUSTEE(S)

☐

GUARDIAN/CONSERVATOR

☐

OTHER _____

DATE OF DOCUMENT

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:

A. Plan Review Services

1. Contractor will examine building plans for compliance with the adopted Building Code, California Mechanical Code, California Plumbing Code, California Electrical Code, and the Accessibility, Noise and Energy Conservation Requirements as mandated by State Title 24 and all applicable City ordinances.
2. All plan review will comply with the City's directives, codes, and policies. Plan check will include a review of any or all of the following design elements as determined by the City:
 - a. Architectural and life-safety
 - b. Mechanical
 - c. Structural
 - d. Electrical
 - e. Energy Conservation Regulations (Title 24)
 - f. Plumbing
 - g. Disabled Access Regulations (California Building Code Title 24)
3. Contractor is to provide an electronic plan check through its on-line plan room in either PDF or TIF format.

B. Building Inspection Services

1. Contractor is to provide certified inspectors to perform all building and safety inspections for residential and non-residential inspections for conformance with the approved plans and related documents.
2. The inspections will be performed in accordance with the City's adopted California Building Code, California Mechanical Code, California Plumbing Code, National Electrical Code, and the State and Federal Regulations for Accessibility, Noise and Energy Conservation.
3. Inspection staff is to be available on a same-day basis and must be available to meet with City staff, builders, developers, and citizens to provide assistance and resolve any inspection issues that may arise.

C. Building Official

1. Services may include, but not limited to the following:
 - a. Act as a technical advisor to the City.
 - b. Review proposed legislation affecting Building Code enforcement.

- c. Provide over the counter plan review whenever possible.
- d. Arbitrate disputes on code interpretations and resolve the more difficult and complex and engineering and code problems.
- e. Meet with City staff to identify areas of mutual concerns for improving the overall permit process.
- f. Attend City Council and Planning Commission meetings on an as needed basis to answer questions and provide testimony on issues pertaining to Building Code laws and regulations.
- g. Assist with all administrative duties associated with the Building and Safety Division.
- h. Prepare code, ordinances, and staff reports, as well as attend any meetings that may be required.
- i. Prepare ordinances related to the adoption of the new or revised editions of the California Building, Plumbing, Electrical, Mechanical, Administrative, and Fire Codes, as well as any other City and State regulations.

D. Permit/Counter Technician

- 1. Contractor is to provide a qualified technician to serve the public during the Building and Safety counter hours. Services may include, but are not limited to the following:
 - a. Respond to phone calls regarding building permits and inspection related matters.
 - b. Interact with citizens, developers, contractors, etc. and answer general questions regarding plan check and permitting process.
 - c. Review submittal package for completeness and route plans to appropriate City departments and/or outside agencies as appropriate.
 - d. Resolve resident inquiries and complaints.
 - e. Provide monthly reports of building and safety inspection activities, statistical reports, and annual reports.
 - f. Review and monitor plan review turnaround times and standards.
 - g. Calculate permit fees
 - h. Maintain Building and Safety Policies and Procedures Manual
 - i. Enter plans into the City's Building Permit System (HTE).
 - j. Other duties as needed to provide customer service for the Building and Safety.

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:

A. Plan Review Services

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1. The applicant will be provided with typewritten plan check comments in an approved format that will be prepared with the layperson in mind so that the comments are easily understood.
2. The plan check comments are to refer to appropriate sheets, details or calculations pages and the code sections of the concerns. Comments shall specify the apparent code deficiency.
3. For electronic plan check, the contractor is to review plans and transmit the electronic redlined plans back to the applicant and/or the City as directed in either electronic or hard copy format.

B. Building Inspection Services

1. Inspections are to be provided daily.
2. The building inspector shall review the permit package to verify that the on-site condition is consistent with the appropriate records of square footage, setbacks, heights, and other requirements that may be applicable to the particular request for inspections.
3. The building inspectors are to report/record the inspection results, use City inspection correction forms, make appropriate entries onto the permit documents, and follow City procedures prior to finalizing building permits.
4. Contractor and its inspectors are to maintain all inspection records, including daily records of what was inspected which will be recorded on the job card, permit copy and entered into the Building and Safety computer system.

C. Building Official

1. Provide verbal reports, written memos, staff reports, and correspondences as necessary consistent with the services to be provided as a building official for the City.

D. Permit/Counter Technician

1. Keep daily phone and counter logs related to customers served via telephone and at the building and safety counter.
2. Provide monthly reports of building and safety inspection activities, statistical reports, and annual reports.
3. Provide Permit Fees Sheet(s).

4. Maintain Building and Safety Policies and Procedures Manual

5. Enter plans into the City's Building Permit System (HTE).

III. 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 and quarterly report of inspections and fee receipts.

B. Quarterly report on legislation that affect building and safety.

C. Suggestions/recommendation on improving building and safety customer service – internal and external.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

V. Contractor will utilize the following personnel to accomplish the Services:

A. Ronald L. Espalin, PE Responsible Engineer/Building Official

B. Jim Barrett, Deputy Building Official, CBO/Inspection Services

C. Gary Speck, Counter/Permit Technician Services

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

Section 1.1 Scope of Services is hereby amended as follows:

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 applicable to Contractor's profession 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.

Section 5.2 is hereby amended as follows:

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 cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by first class mail postage prepaid to the City ten (10) days notice if cancellation is due to nonpayment of premium. 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.

EL

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, TEN (10) DAYS IF CANCELLATION IS DUE TO NONPAYMENT OF PREMIUM.

[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.

Section 5.3 is hereby amended as follows:

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 and to the extent of 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:

(d) 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;

(e) 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;

(f) 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 Contractor's indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of Contractor. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

Section 5.4 is deleted in its entirety.

EXHIBIT "C"
COMPENSATION

Building Permit Fee Collected Per Month	Percent of Fee	Comments
Up to \$15,000.00	70%	Fee includes front counter services, inspection services, Building Official services, and Friday inspection services.
\$15,001.00 to \$30,000.00	65%	
Over \$30,000.00	60%	
Plan Check	75%	Plan check fee will be equal to 75% of the plan check fees collected by the City

- I. 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.
- II. The total compensation for the Services shall not exceed the amount as provided in Section 2.1 of this Agreement.**
- III. The Contractor's billing rates for all personnel are attached as Exhibits C.**

EXHIBIT "D"
Schedule of Performance

Turn-Around Schedule

Plan Review

Typical turn-around time for the initial plan check is eight working days, 5 days for rechecks. This schedule is applicable for all types of construction and can be adjusted to serve the City in the most efficient manner. Willdan will provide expedited plan review if requested by the City at no additional cost to the City.

TYPE OF PROJECT	INITIAL PLAN CHECK	SUBSEQUENT PLAN CHECKS
All residential and non-residential	Eight working days	Five working days or less

Inspection Review

Inspections will be provided on a same-day basis, or within 24 hours notice if necessary.

- I. Contractor shall perform all services timely in accordance with the following schedule of performance in Exhibit D.
- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

EXHIBIT “C”
FIRST AMENDMENT

**FIRST AMENDMENT TO THE CONTRACT SERVICES BY AND BETWEEN THE
CITY OF BANNING, CALIFORNIA AND WILL DAN ENGINEERING.**

THIS FIRST AMENDMENT TO THE CONSULTANT SERVICES AGREEMENT ("First Amendment") by and between the CITY OF BANNING ("City") and Willdan Engineering ("Consultant") is effective as of the ____ day of June 2012.

RECITALS

A. City and Consultant entered into an Agreement for Contract Services ("Agreement") approved by the City Council on July 13, 2011, to provide certain building and safety related services as fully described in Exhibit "A" of the Agreement entitled Scope of Services.

B. The term of the Agreement was to not exceed one year, meaning that the Agreement would expire on July 12, 2012.

C. The City desires that Consultant continue to provide the services set forth in Exhibit "A" of the Agreement.

D. City and Consultant now desire to amend the Agreement to extend the term of the Agreement for three years upon the terms and conditions provided herein.

E. City and Consultant also desire to amend the Agreement such that Additional Services as provided for in section 1.10 of the Agreement will be billed at the rate of \$88 per hour for a maximum of 3 hours per month.

F. City and Consultant wish to amend the Agreement in accordance with the terms herein.

G. This amendment to the Agreement is made in accordance with Section 9.4 of the Agreement, which provides that "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".

NOW, THEREFORE, it is hereby agreed that the recitals contained above are incorporated herein by reference and the Agreement is hereby amended as follows:

Section 1. Amendment to Section 3.5 of the Agreement. Section 3.5 of the Agreement is hereby deleted in its entirety and replaced as set forth below:

"3.5 Term. Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect between July 1, 2012 and June 30, 2015, except as otherwise provided in the Schedule of Performance (Exhibit "D")."

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Section 2. Amendment to Exhibit "C". Exhibit "C" of the Agreement is hereby deleted in its entirety and amended as follows:

**"EXHIBIT 'C'
COMPENSATION**

Building Permit Fee Collected Per Month	Percent of Fee	Comments
Up to \$15,000.00	70%	Fee includes front counter services, inspections services, Building Official services, and Friday inspection services
\$15,001.00 to \$30,000.00	65%	
Over \$30,000.00	60%	
Plan Check	75%	Plan check fee will be equal to 75% of the plan check fees collected by the City

- I. 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.
- II. The total compensation for the Services shall not exceed the amount as provided in Section 2.1 of this Agreement.**
- III. The Contractor's billing rates for all personnel are attached as Exhibits C.**
- IV. Additional Services as provided for in Section 1.10 of the Agreement shall be billed at an hourly rate of \$88.00 per hour and remain subject to all other provisions of the Agreement, including Section 1.10. Additional Services shall not exceed 3 hours unless otherwise authorized in writing by the Contract Officer as required by Section 1.10."**

Section 3. Continuing Effect of Agreement. Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

Section 4. Affirmation of Agreement; Warranty Re: Absence of Defaults. City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each

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party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

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

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

Section 5. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

Section 6. Authority. The person(s) executing this Amendment 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 Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound

[SIGNATURES ON NEXT PAGE]

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IN WITNESS WHEREOF, City and Contractor have entered into this First Amendment as of the date set forth above.

CITY OF BANNING

By: _____
Don Robinson, Mayor

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

By:  _____
Lona N. Laymon, Asst. City Attorney

“CONSULTANT”
WILLDAN ENGINEERING

By: _____
Ron Espalin, Director of Building & Safety
Address: 650 Hospitality Lane, Suite 400
San Bernardino, CA 92408
Tel: (909) 386-0200
Fax: (909) 888-5107

CITY COUNCIL AGENDA

Date: June 12th, 2012

TO: Mayor and City Council Members

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

SUBJECT: Resolution No. 2012-46 Approving an Advance to the San Gorgonio Child Care Consortium in the Amount of \$25,000

RECOMMENDATION:

The City Council adopt Resolution No. 2012-46 approving a short-term loan to the San Gorgonio Child Care Consortium (Consortium) which would be funded on July 1, 2012 and expire September 30, 2012, in the amount of \$25,000.

BACKGROUND:

For the past seventeen years, the City has provided a short-term interest free loan to allow the Consortium to continue operations pending its first payment from the State. In the current fiscal year the loan was funded on July 15th, 2011 and repaid on August 31st, 2011. Staff will monitor and work with the Consortium if the State causes a delay in repayment.

State funding to the Consortium is granted once the Governor signs the State Budget. Actual receipt of the funding has often been delayed until August or later. The State Department of Education provides funding to local child care facilities. The Consortium provides full day childcare services to approximately ninety six (96) children. Thirty six (36) of these slots are funded from the State program.

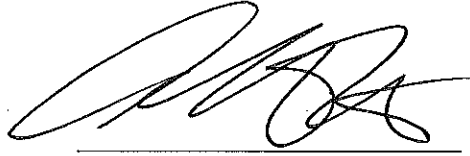
FISCAL DATA:

The proposed funding source is the General Fund. The loan would be interest free for three-months. The General Fund is projected to lose approximately \$22.94 of interest earnings assuming the funds were invested for three months at the LAIF's current yield of .367%. The short-term loan funds will be recorded in account #001-0000-118-12-00.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

9/6

RESOLUTION NO. 2012-46

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
AUTHORIZING A LOAN IN THE AMOUNT OF \$25,000 TO THE SAN
GORGONIO CHILD CARE CONSORTIUM**

WHEREAS, State funding to the San Gorgonio Child Care Consortium does not occur until the Governor signs the State Budget; and

WHEREAS, actual receipt of the funds has often been delayed until August or later from the State program which provides funding to the local child care facility; and

WHEREAS, the City Council desires uninterrupted services which might otherwise result from cash flow constraints; and

WHEREAS, there exists a cash flow shortage for the program,

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

City Council hereby authorizes and directs the Administrative Services Direct/Deputy City Manager to advance the sum of \$25,000 to the San Gorgonio Child Care Consortium as an interest free short-term loan, funded on July 1, 2012 and due no later than September 30, 2012.

PASSED, APPROVED, AND ADOPTED this 12th day of June, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2012-46, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of June, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: June 12, 2012

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-51, "Approving a Plan for Use of Proposition 1B Local Streets and Roads Program Funds"

RECOMMENDATION: Adopt Resolution No. 2012-51, "Approving a Plan for Use of Proposition 1B Local Streets and Roads Program Funds."

JUSTIFICATION: It is required that the City Council approve a plan for the use of Proposition 1B (Prop 1B) funds prior to the disbursement of the City of Banning's allocated amount from the State of California Department of Finance.

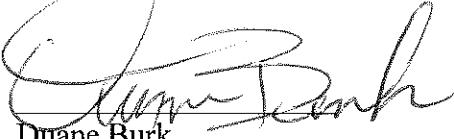
BACKGROUND: The Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, approved by the California voters as Prop 1B in November of 2006, included \$2 billion for cities and counties for the purpose of funding improvements to transportation facilities that will assist in reducing local traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety that may include, but not be limited to, street and highway pavement maintenance, rehabilitation, installation, construction and reconstruction of necessary associated facilities such as drainage and traffic control devices, or the maintenance, rehabilitation, installation, construction and reconstruction of facilities that expand rider ship on transit systems, safety projects to reduce fatalities, or as a local match to obtain state or federal transportation funds for similar purposes.

Prop 1B funds are allocated, upon appropriation by the Legislature, and apportionments to cities are based on total population of the city in relation to all cities in the State (minimum \$400,000 to each city). The 2007 Budget Act and Chapter 181, Statutes of 2007 (SB 88), appropriated a total of \$950 million of Prop 1B funds in 2007-08. The City of Banning received \$454,736.00 as part of the 2007-08 funds. The funding offset costs for Project No. 2007-07, "Rubberized Asphalt Concrete (RAC) Overlay and Street Improvements along Wilson Street, from 8th Street to 20th Street" approved by City Council on September 23, 2008. In FY 2008-09 there were no Prop 1B funds available to the City of Banning.


The 2009 Budget Act appropriated a total of \$700 million, including \$258,205,000.00 for cities and \$441,795,000.00 for counties, which represents the remaining balance of Prop 1B funding. The City of Banning's share of the available funding is \$420,301.22. Staff recommends approval of Resolution 2012-51 in order allocate the funding for the construction of improvements along Westward Avenue from Sunset Avenue to Highland Home Road. The project will consist of grading, construction of a new street asphalt concrete street section, signing and striping, raising manholes and water valves to grade, all in accordance with the City of Banning standards and specifications. The project will be out to bid in the Summer of 2012.

FISCAL DATA: The Prop 1B funding of \$420,301.22 will help fund the construction of the street improvements along Westward Avenue from Sunset Avenue to Highland Home Road.

RECOMMENDED BY:


Duane Burk
Director of Public Works

REVIEWED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

RESOLUTION NO. 2012-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, "APPROVING A PLAN FOR USE OF PROPOSITION 1B LOCAL STREETS AND ROADS PROGRAM FUNDS"

WHEREAS, the Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, approved by the California voters as Proposition 1B (Prop 1B) in November of 2006, included \$2 billion for cities and counties; and

WHEREAS, Prop 1B Funding is for the purpose of funding improvements to transportation facilities that will assist in reducing local traffic congestion and further deterioration, improving traffic flows, or increasing traffic safety that may include, but not be limited to, street and highway pavement maintenance, rehabilitation, installation, construction and reconstruction of necessary associated facilities such as drainage and traffic control devices, or the maintenance, rehabilitation, installation, construction and reconstruction of facilities that expand rider ship on transit systems, safety projects to reduce fatalities, or as a local match to obtain state or federal transportation funds for similar purposes; and

WHEREAS, the 2009 Budget Act appropriated a total of \$700 million, including \$258,205,000.00 for cities and \$441,795,000.00 for counties, which represents the remaining balance of Prop 1B funding of which the City of Banning's share is \$420,301.22, and

WHEREAS, it is required that City Council approve a plan for the use of Prop 1B funds prior to the disbursement of the City of Banning's allocated amount from the State of California Department of Finance; and

WHEREAS, Staff recommends the use of Prop 1B funding on the construction of street improvements along Westward Avenue from Sunset Avenue to Highland Home Road.

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

SECTION 1. City Council of the City of Banning, that Resolution No. 2012-51, "Approving a Plan for Use of Prop 1B Local Streets and Roads Program Funds," is hereby adopted and the City Manager is authorized to sign any and all required documentation required to accept these funds.

SECTION 2. The Administrative Services Director is authorized to make the necessary budget appropriations and adjustments related to these funds.

PASSED, APPROVED and ADOPTED this 12th day of June, 2012.

Don Robinson, Mayor

ATTEST:

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

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-51 was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of June, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: June 12, 2012
TO: City Council
FROM: Mike West, Lieutenant
SUBJECT: 6th Extension of the Tow Franchise Agreement

RECOMMENDATION: "The City Council receive and place on file this report documenting the status of the existing Tow Franchise Agreements and extensions."

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

The existing Tow Franchise Agreements and extensions require each tow company to pay \$25,000 annually in bi-annual payments for a total of \$75,000. The annual costs are evenly distributed to the companies, which is consistent with the rotational basis for which the tows are assigned to the tow companies.

The original Tow Franchise Agreements were signed by all three companies in April of 2004 and were set to expire three years later. The first amendments extending the expiration date were agreed upon in May 2007 and were set to expire in October of 2007. The second amendments extending the term of the original agreement were agreed upon in October of 2007 and expired in April of 2008. The third amendments extending the term of the original agreement were agreed upon in April of 2008 and expired in October of 2008.

Fees were collected on a regular basis from all three companies from April of 2004 through October of 2008. Stagecoach Towing stopped paying its portion of the franchise fee at the expiration of the third extension. A fourth extension was signed by all three tow operators in December of 2009, including Stagecoach Towing, which provided a catch up provision back to October of 2008. The fourth extension was set to expire on June 1st, 2010.

Stagecoach Towing did not pay any fees owed after signing the fourth extension. The City entered into negotiations with Stagecoach Towing in an attempt to resolve the concerns of the both parties and collect past due fees. Part of this negotiating process resulted in the completion of a Tow Fee Study by Wildan Financial Consultants to ensure the City was only recovering actual operational and administrative costs. This study was completed and has been submitted to Council for adoption.

A Fifth extension was offered to Statewide Towing and All American Towing. Both companies signed the fifth extension which began in July of 2010 and was set to expire in June of 2011. Because Stagecoach Towing had not paid the past due fees or their portion of the current tow franchise fee, they were not offered a fifth extension.

During the time the City was negotiating with Stagecoach Towing, no fees were paid on their behalf, but they were allowed to remain on the tow rotation list at the recommendation of the City Attorney. The two other companies continued to submit payments regularly and have remained current on their franchise fees.

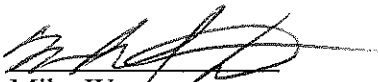
When the fifth extension expired, Wildan Financial was in the process of completing the fee study and it was decided to wait until the completion and adoption of the study, so new agreements could be drafted and agreed upon utilizing the new fees.

In April of 2012, the City extended the offer to have the three tow operators sign a sixth extension to the existing agreement. This sixth extension was to cover the time lapse from the end of the term of the fifth extension until June 30th, 2012 for Statewide Towing and All-American Towing. It was also a six month agreement for Stagecoach Towing with a payment obligation for half of the annual franchise fee. Stagecoach Towing opted not to participate in the extension. The two remaining tow companies have agreed to continue with the sixth extension that are set to expire on 06/30/12. They have requested a five year extension of the existing franchise agreement. The City Attorney is currently in the process of preparing multiple year contracts for the two remaining companies.

After the Franchise Agreements expire, we intend to have an RFP process to institute a multiple year towing agreement for tow operators in our City and the need for additional tow operators can be evaluated at that time.

FISCAL DATA: All-American Towing and Statewide Towing have paid the current fee of \$25,000 required by the 6th extension that expires on 06/30/12. If the new fee study is adopted, the new rates will apply and the fees recovered will be based on the actual number of impounds at \$138 per impound. Using Fiscal Year 2011/12 as an example, there have been approximately 600 impounds to date. At \$138 each, the City would recover approximately \$82,800 under the proposed fee structure.

RECOMMENDED BY:


Mike West
Operations Lieutenant

REVIEWED BY:

June Overholt
Administrative Services Director

APPROVED BY:


Andrew Takata
City Manager

SIXTH AMENDMENT TO AGREEMENT FOR TOWING FRANCHISE

THIS SIXTH AMENDMENT TO AGREEMENT FOR TOWING FRANCHISE ("Sixth Amendment") is entered into as of 04-21, 2012 ("Effective Date"), by and between the CITY OF BANNING, a municipal corporation ("City"), and ALL AMERICAN TOWING, INC., a California corporation ("Contractor").

RECITALS

A. On or about April 26, 2004, the City and Contractor entered into that certain Agreement for Towing Franchise ("Agreement") for the provision of towing services.

B. In or about April 2007, the City and Contractor entered into that certain First Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to October 26, 2007.

C. In or about October 2007, the City and Contractor entered into that certain Second Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to April 26, 2008.

D. On or about April 27, 2008, the City and Contractor entered into that certain Third Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to October 26, 2008.

E. On or about December 23, 2009, the City and Contractor entered into that certain Fourth Amendment to Agreement for Towing Franchise ("Fourth Amendment"), thereby amending the Agreement by extending its termination date to June 1, 2010.

F. In or about July 2010, the City and Contractor entered into that certain Fifth Amendment to Agreement for Towing Franchise ("Fifth Amendment"), thereby amending the Agreement by extending its termination date to June 30, 2011. The Fifth Amendment has, as of the date hereof, expired.

G. The Parties acknowledge that the Agreement, as amended, last expired on June 30, 2011. Notwithstanding this, the Parties have continued to transact, operate, and perform their contractual rights and duties as defined in the Agreement, as amended. To this end, the Parties agree to the extension of the Agreement's term (as set forth in Section 1 of this Sixth Amendment) as though there has been no expiration of the Agreement.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor agree to amend the Agreement as follows:

1. Section 3(A) of the Agreement. Section 3(A) is hereby amended and replaced in its entirety as follows:

"The extended term of the AGREEMENT shall commence on July 1, 2011, and terminate on June 30, 2012. The City shall have the right, in its sole and absolute discretion, to exercise an option to renew the Agreement for an additional two (2) year period, or portions thereof, by providing Contractor with a notice to renew."

2. Recitals. The recitals contained above are incorporated herein by reference.

3. Corporate Authority. The persons executing this Sixth Amendment on behalf of the City and Contractor hereby warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Sixth Amendment on behalf of said party; (iii) by so executing this Sixth Amendment, such party is formally bound to the provisions of this Sixth Amendment; and (iv) the entering into of this Sixth Amendment does not violate any provision of any other agreement to which said party is bound.

4. Full Force and Effect. Except as expressly modified herein, all provisions contained in the Agreement shall remain unchanged and in full force and effect.

5. Counterparts. This Sixth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, City and Contractor have entered into this Sixth Amendment as of the Effective Date.

ATTEST:

"CITY"

CITY OF BANNING, a municipal corporation

By: _____
City Clerk

By: Don Robinson
Mayor

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

David J. Aleshire
David J. Aleshire, City Attorney

"CONTRACTOR"

ALL AMERICAN TOWING, INC., a California
corporation

By: _____

Its: _____

By: _____

Its: _____

SIXTH AMENDMENT TO AGREEMENT FOR TOWING FRANCHISE

THIS SIXTH AMENDMENT TO AGREEMENT FOR TOWING FRANCHISE ("Sixth Amendment") is entered into as of _____, 2012 ("Effective Date"), by and between the CITY OF BANNING, a municipal corporation ("City"), and STATEWIDE TOWING & RECOVERY, INC., a California corporation ("Contractor").

RECITALS

A. On or about April 15, 2004, the City and Contractor entered into that certain Agreement for Towing Franchise ("Agreement") for the provision of towing services.

B. On or about April 27, 2007, the City and Contractor entered into that certain First Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to October 16, 2007.

C. On or about October 9, 2007, the City and Contractor entered into that certain Second Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to April 26, 2008.

D. On or about April 27, 2008, the City and Contractor entered into that certain Third Amendment to Agreement for Towing Franchise, thereby amending the Agreement by extending its termination date to October 26, 2008.

E. On or about December 23, 2009, the City and Contractor entered into that certain Fourth Amendment to Agreement for Towing Franchise ("Fourth Amendment"), thereby amending the Agreement by extending its termination date to June 1, 2010.

F. In or about July 2010, the City and Contractor entered into that certain Fifth Amendment to Agreement for Towing Franchise ("Fifth Amendment"), thereby amending the Agreement by extending its termination date to June 30, 2011. The Fifth Amendment has, as of the date hereof, expired.

G. The Parties acknowledge that the Agreement as amended last expired on June 30, 2011. Notwithstanding this, the Parties have continued to transact, operate, and perform their contractual rights and duties as defined in the Agreement, as amended. To this end, the Parties agree to the extension of the Agreement's term (as set forth in Section 1 of this Sixth Amendment) as though there has been no expiration of the Agreement.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Contractor agree to amend the Agreement as follows:

1. Section 3(A) of the Agreement. Section 3(A) is hereby amended and replaced in its entirety as follows:

"The extended term of the AGREEMENT shall commence on July 1, 2011, and terminate on June 30, 2012. The City shall have the right, in its sole and absolute discretion, to exercise an option to renew the Agreement for an additional two (2) year period, or portions thereof, by providing Contractor with a notice to renew."

2. Recitals. The recitals contained above are incorporated herein by reference.

3. Corporate Authority. The persons executing this Sixth Amendment on behalf of the City and Contractor hereby warrant that: (i) such party is duly organized and existing; (ii) they are duly authorized to execute and deliver this Sixth Amendment on behalf of said party; (iii) by so executing this Sixth Amendment, such party is formally bound to the provisions of this Sixth Amendment; and (iv) the entering into of this Sixth Amendment does not violate any provision of any other agreement to which said party is bound.

4. Full Force and Effect. Except as expressly modified herein, all provisions contained in the Agreement shall remain unchanged and in full force and effect.

5. Counterparts. This Sixth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, City and Contractor have entered into this Sixth Amendment as of the Effective Date.

"CITY"

ATTEST:

CITY OF BANNING, a municipal corporation

By: _____
City Clerk

By: Don Robinson
Mayor

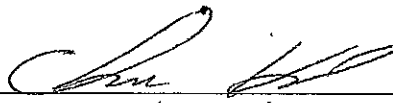
APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David J. Aleshire
David J. Aleshire, City Attorney

"CONTRACTOR"

STATEWIDE TOWING & RECOVERY, INC., a
California corporation

By: 
Its: STATEWIDE TOWING

By: _____
Its: _____

**CITY COUNCIL AGENDA
PUBLIC HEARING**

Date: June 12, 2012

TO: City Council

FROM: Phil Holder, Lieutenant

SUBJECT: Resolution 2012-39. 2012 Edward Byrne Memorial Justice Assistance Grant

RECOMMENDATION: “The City Council conduct a Public Hearing and accept grant funds provided by the Office of Justice Programs in the amount of \$12,324 to purchase needed replacement Tasers for police officers.”

JUSTIFICATION: In 2006, the Banning Police Department purchased and equipped police officers with Taser X26 electronic control devices (ECD), which included a Taser camera system. Per the manufacturer, Taser International, the general useful life expectancy for these devices is generally five (5) years. Subsequently, the X26 Tasers currently in use by members of the Banning Police Department are beyond their recommended useful life expectancy.

The grant funding will allow for the purchase of seven (7) new X2 Taser systems with upgraded HD cameras.

BACKGROUND: On April 2, 2012 the Banning Police Department received notification from the U.S. Bureau of Justice Assistance that it was eligible to apply for the 2012 Edward Byrne Memorial Justice Assistance Grant in the amount of \$12,324. Per U.S. Department of Justice regulations, a public hearing must be conducted to allow citizens to make comments on the intended use of the noted grant funds before funding can be approved.

Differing from past years, the U.S. Bureau of Justice Assistance is now requiring all the eligible agencies in Riverside County to file a joint application instead of individual ones. Representatives from each of the fifteen eligible agencies met in April and approved a proposal for the City of Riverside to be the grant coordinator for the joint application. It was also agreed upon that each of the fifteen agencies would pay the City of Riverside 10% (\$1,232) of their grant amount for administering the grant.


ACTION PLAN: Conduct a public hearing and receive Banning City Council approval to accept the 2012 Edward Byrne Memorial Justice Assistance Grant in the amount of \$12,324 to fund the purchase of seven (7) new X2 Tasers w/HD cameras.

STRATEGIC PLAN INTEGRATION: Approval of this recommendation will help facilitate the Police Department’s goal of improving its technology and equipment.

FISCAL DATA: Accepted Byrne Grant funds will be appropriated to the Police Department’s Equipment Account to purchase the identified X2 Tasers.


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RECOMMENDED BY:




Leonard Purvis
Chief of Police

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andrew Takata
City Manager

RESOLUTION NO. 2012-39

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF THE 2012 U.S. DEPARTMENT OF JUSTICE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF \$12,324.00 TO PURCHASE SEVEN (7) X2 TASERS WITH HD CAMERAS.

WHEREAS, having completed a public hearing on the proposed use of the 2012 U.S. Department of Justice Byrne Grant; and

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

WHEREAS, state-of-the-art technology is necessary for the daily operations of the Police Department; and

WHEREAS, there is a need to purchase upgraded Tasers; and

WHEREAS, the City's procedures requires the City Council to adopt a resolution authorizing the expenditure of funds procured through grants.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning approves the proposed use of the 2012 U.S. Department of Justice Edward Byrne Memorial Assistance Grant in the amount of \$12,324 and upon award of the grant appropriates those funds to the Banning Police Department Equipment Account (001-2200-421-8956). The Finance Department is authorized to make necessary budget adjustments related to these accepted funds. Furthermore, City Staff is authorized to enter into an Interlocal Agreement with the City of Riverside to manage the grant.

PASSED, APPROVED, AND ADOPTED this 12th day of June 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT**

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

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-39 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of June 2012, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CITY COUNCIL AGENDA

DATE: June 12, 2012

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Resolution No. 2012-45, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2012/2013"

RECOMMENDATION: The City Council adopt Resolution No. 2012-45:

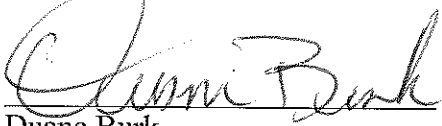
- I. "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2012/2013," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.
- II. Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.

JUSTIFICATION: The adoption of Resolution No. 2012-45 is essential to confirm the assessments for the Fiscal Year 2012/2013 update of Landscape Maintenance District No. 1 ("the District").

BACKGROUND: In accordance with the "Landscaping and Lighting Act of 1972" of the Streets and Highways Code, the City Council adopted a resolution ordering the formation of Landscape Maintenance District (LMD) No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached herewith as Exhibit "A". On January 24, 2012, the City Council adopted Resolution No. 2012-06, and initiated proceedings to update the District for the next fiscal year and ordered the preparation of the Engineer's Report. Subsequently, on May 8, 2012, the City Council adopted Resolution No. 2012-35, approving the Engineer's Report and setting the date for the public hearing to levy and collect the assessments. Resolution No. 2012-45, if approved, will confirm the assessments for the Fiscal Year 2012/2013. The schedule updating Landscape Maintenance District No. 1 is shown on the attached Exhibit "B", and the Notice of Public Hearing is shown on the attached Exhibit "C".

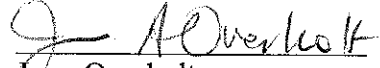
FISCAL DATA: The new assessments for a single-family dwelling now ranges from \$ 96.75 to \$196.07, as reflected in the Engineer's Report approved by the City Council on May 8, 2012. An increase of 1.77 %, based on the average Consumer Price Index (CPI) percentage increase over the previous fiscal year for the Los Angeles-Riverside-Orange County area as reported by the U.S. Department of Labor, is incorporated in the proposed assessments. Total revenues from the proposed 2012/2013 Fiscal Year assessments for the Landscape Maintenance District are about \$133,474.00.

RECOMMENDED BY:



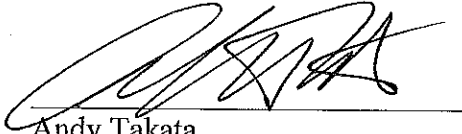
Duane Burk,
Director of Public Works

REVIEWED BY:



June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata,
City Manager

RESOLUTION NO. 2012-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, CONFIRMING A DIAGRAM AND THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2012/2013, PURSUANT TO THE PROVISIONS OF PART 2 OF DIVISION 15 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE

WHEREAS, the City Council of the City of Banning has by its Resolution No. 2012-06 initiated proceedings for the levy and collection of assessments for the 2012/2013 Fiscal Year for Landscape Maintenance District No. 1, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code; and

WHEREAS, the City Council has ordered the preparation of the Engineer's Report, and the City Engineer has prepared and filed with the City Clerk a report pursuant to law for the City Council's consideration, and subsequently thereto the City Council adopted its Resolution No. 2012-35, approving the report of the Engineer and declaring the intention of the City Council to order the levy and collection of assessments to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities in the City of Banning for the Fiscal Year commencing July 1, 2012 and ending June 30, 2013.

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

Section I. The above recitals are all true and correct.

Section II. Following notice duly given by publication, the City Council has held a full and fair public hearing regarding the levy of the proposed assessment within Landscape Maintenance District No. 1 for the Fiscal Year commencing July 1, 2012 and ending June 30, 2013, to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping and storm drain facilities (detention/retention basins, etc.) installed and constructed within public places in the City of Banning, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code. All interested persons were offered the opportunity to hear and be heard regarding protests and objections to the levy and collection of the proposed assessment against lots or parcels of real property within City of Banning, Landscape Maintenance District No. 1. All protests and objections to the levy and collection of the proposed assessments for the Fiscal Year commencing on July 1, 2012 and ending on June 30, 2013, are hereby overruled by the City Council.

Section III. The City Council hereby orders the maintenance and servicing of the existing and proposed public landscape facilities installed and constructed in public places in the City of Banning and hereby confirms the diagram and assessment set forth in the Engineer's Report.

Section IV. The assessment is in compliance with the provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code and with any applicable provisions of Proposition 218.

Section V. The assessment is levied without regard to property valuation.

Section VI. The assessment is levied for the purpose of paying the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities installed and constructed in public places in the City of Banning for the Fiscal Year commencing on July 1, 2012 and ending on June 30, 2013.

Section VII. The adoption of Resolution No. 2012-45 constitutes the levy of an assessment for the Fiscal Year commencing on July 1, 2012 and ending on June 30, 2013.

Section VIII. The maintenance and servicing of public landscaping facilities shall be performed pursuant to law and the County Recorder/Auditor of Riverside County shall enter on the County Assessment Roll opposite each lot or parcel of land the amount of the assessment and such assessments shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the assessments shall be paid to the City Treasurer.

Section IX. The City Treasurer shall deposit all monies representing assessments collected by the County to the credit of a special fund known as Improvement Fund, Landscape Maintenance District No. 1.

Section X. The City Clerk is hereby authorized and directed to file the diagram and assessment, or a certified copy of the diagram and assessment, with the Riverside County, Assessor's Office, together with a certified copy of Resolution 2012-45 upon its adoption.

Section XI A certified copy of the assessment and diagram shall be filed in the Office of the City Clerk, with a duplicate copy on file in the Office of the City Engineer and open for public review.

PASSED, APPROVED AND ADOPTED this 12th day of June, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

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

118

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

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

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2012-45 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 12th day of June, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"

**LANDSCAPE MAINTENANCE DISTRICT NO. 1
FOR
FISCAL YEAR 2012/2013**

2012/2013

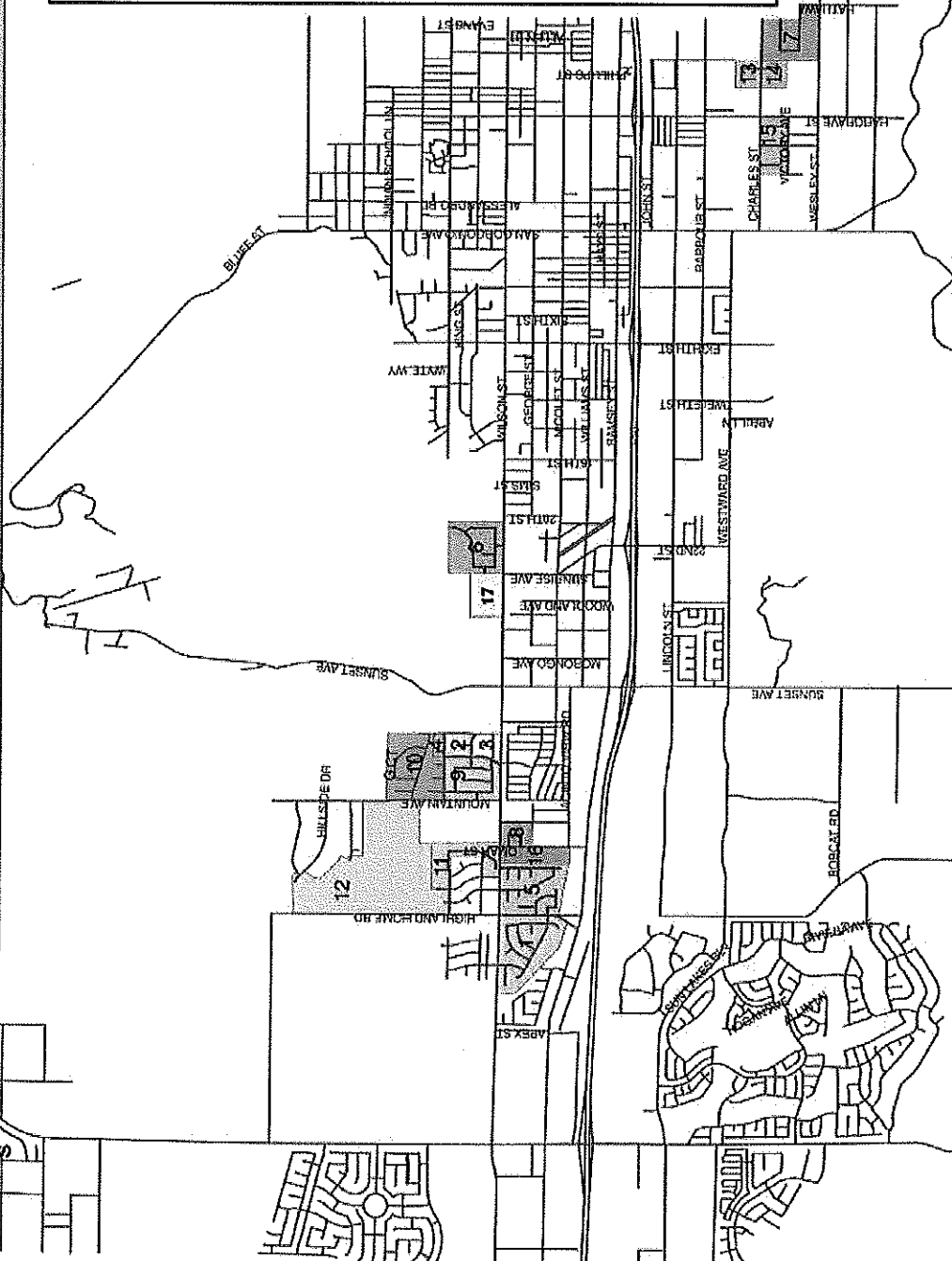
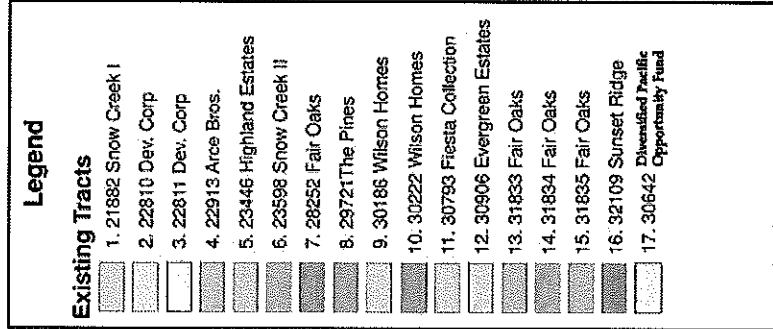


EXHIBIT "B"

TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1

<u>Item</u>	<u>Council Meeting</u>
Resolution Initiating Update	January 24, 2012
Resolution of Intention and Approving Engineer's Report	May 8, 2012 (revised)
Public Hearing and Resolution Confirming Assessment	June 12, 2012 (revised)

EXHIBIT "C"

**NOTICE OF PUBLIC HEARING
FOR
RESOLUTION NO. 2012-45, "CONFIRMING A DIAGRAM AND
THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN
THE CITY OF BANNING'S LANDSCAPE MAINTENANCE
DISTRICT NO. 1 FOR FISCAL YEAR 2012/2013"**

RECORD GAZETTE

JUNE 1, 2012

Public Notices

Public Notices

Public Notices

Public Notices

Public Notices

NOTICE OF
PUBLIC HEARING
PURSUANT TO LAW, NO-
TICE IS HEREBY GIVEN of
a Public Hearing before the
City Council of the City of
Banning, to be held at a
regular City Council Meet-
ing on Tuesday, June 12,
2012, at 5:00 p.m. at the
Banning Civic Center Coun-
cil Chambers, 99 E. Ram-
sey Street, Banning, Cali-
fornia regarding Resolution
No. 2012-46, "Confirming a
Diagram and the Levy and
Collection of Assessments
within the City of Banning's
Landscape Maintenance
District No. 1 for Fiscal
Year 2012/13." ALL INTER-
ESTED PARTIES are in-
vited to attend said hearing
and present oral or written
testimony on the matter or
send their written com-
ments to the City Clerk,
P.O. Box 998, Banning,
California 92220. Informa-
tion regarding the foregoing
can be obtained by contact-
ing the Engineering Division
of the Public Works Depart-
ment at the above address
or by telephone at
951-922-3130. Data rele-
vant to this matter will be
available for public viewing
at Banning City Hall, 99 E.
Ramsey Street, Banning,
California for the period of
10 days prior to the Public
Hearing. If you challenge
any decision regarding the
above proposal in court,
you may be limited to rais-
ing only those issues you or
someone else raised in
written correspondence de-
livered to the City Clerk at,
or prior to, the time the City
Council makes its decision
on the proposal; or, if a
public hearing is held on
the proposal, you or some-
one else must have raised
those issues at the public
hearing or in written corre-
spondence delivered to the
hearing body at, or prior to,
the hearing (California Gov-
ernment Code, Section
65009).

BY ORDER OF THE CITY
CLERK of the City of Ban-
ning, California.

/s/ Marie A. Calderon,
City Clerk
City of Banning, California
DATED: May 23, 2012
PUBLISH: June 1, 2012
Publish The Record
Gazette
No. 70793
06/01, 2012

NOTICE TO CREDITORS
OF BULK SALE AND OF
INTENTION TO
TRANSFER ALCOHOLIC
BEVERAGE LICENSE(S)

124

**CITY COUNCIL AGENDA
PUBLIC HEARING**

Date: June 12, 2012
TO: City Council
FROM: Mike West, Lieutenant
SUBJECT: Tow Fee Study

RECOMMENDATION: "The City Council receive and accept the recommendations of the attached 'Review of Towing Franchise Fee and Other Associated Fees' completed by Willdan Financial Services."

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

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

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

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

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

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

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

Based on the analysis of the annual cost for the towing operations for Fiscal Year 2012, the City's current annual towing franchise fees of \$75,000, \$25,000 to each of the three tow firms, is less than the estimated \$122,440 of annual service costs. It is recommended that the annual towing franchise fee be increased to recover 100% of the estimated costs at an average of \$138 per tow for the two remaining companies currently under contract with the City. This will allow the City to recover up to 100% of the estimated annual cost of the FY 2013 towing operations.

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

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

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

Initially, we intended to have the three tow operators sign extensions to the existing agreement. One of the companies opted not to participate in the extension. The City will not use tow operators who do not wish to participate in the franchise agreements. The two remaining tow companies have agreed to continue with the extensions that are set to expire on 06/30/12. They have requested a five year extension of the existing franchise agreement. With the current number of tows, two companies can sufficiently handle the workload required to meet the terms of the agreements. The City Attorney is currently in the process of preparing multiple year contracts for the two remaining companies.

After the contracts expire, we intend to have an RFP process to institute a multiple year towing agreement for tow operators in our City and the need for additional tow operators can be evaluated at that time.

FISCAL DATA: By instituting the new recommendations listed in the Willdan Financial Services report, the City stands to gain up to 100% of recoverable costs (\$138 per impound and \$78 per tow) associated with towing vehicles.

RECOMMENDED BY:



Mike West
Operations Lieutenant

REVIEWED BY:



June Overholt
Administrative Services Director

APPROVED BY:



Andrew Takata
City Manager

RESOLUTION NO. 2012-02

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

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

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

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

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

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

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

SECTION 1. The City Council hereby finds, based upon the Fee Study "Review of Towing Franchise Fee and other Associated Fees", that the fee amounts for the Towing Franchise Fee and Vehicle Release Fee specified in Exhibit "A": (i) do not exceed the reasonable cost to the City of providing the regulatory product or service during fiscal year 2011-2012; and (ii) fully recover the "costs reasonably borne," as defined in Chapter 3.36 of the Banning Municipal Code and in accordance with California Vehicle Code 12110(b).

SECTION 2. Pursuant to Chapter 3.36 of the Banning Municipal Code the fee amounts for the services specified in Exhibit "A" are hereby adopted and implemented.

- Towing Franchise Fee - \$138 per vehicle impound to be collected quarterly from the companies that enter into a Franchise Tow Service Agreement with the City
- Vehicle Release Fee - \$78 per tow to be collected from vehicles owners when a vehicle is released.

SECTION 3. Effective Date: These Service Fees do not qualify as fees upon a development project within the meaning of California Government Code Section 66017. Therefore, with regard to this Resolution, the adjustment in Service Fees shall take effect immediately upon adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this _____ day of _____, 2012.

Don Robinson, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

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

CERTIFICATION

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-02 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the ____ day of _____, 2012, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, June 12, 2012 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding: Resolution No. 2012-02, Amending the Towing Franchise Fee and Vehicle Storage Release Fee in Conformance with Chapter 3.36 "Fee and Service Charge Revenue/Cost Comparison" System.

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

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

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

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

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

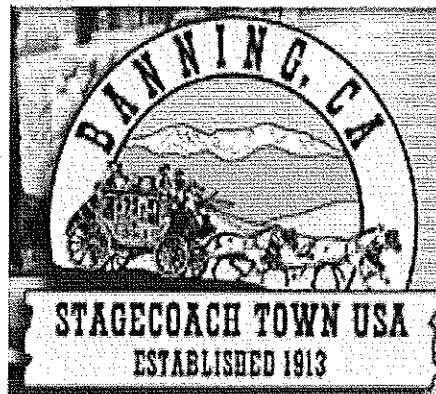
DATED: May 24, 2012

PUBLISH: June 1, 2012

CITY OF BANNING

REVIEW OF TOWING FRANCHISE FEE AND OTHER ASSOCIATED FEES

FINAL REPORT
SEPTEMBER 7, 2011



Temecula Office:

27368 Via Industria
Suite 110
Temecula, CA 92590
Tel: (951) 587-3500
Tel: (800) 755-6864
Fax: (951) 587-3510

Corporate Office:

Anaheim, CA

Office Locations:

Oakland, CA
Sacramento, CA
Orlando, FL
Phoenix, AZ

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Executive Summary

The City of Banning (City) police department pursuant to the City's Vehicle Towing Policy (Policy 510) is authorized to tow vehicles to the City's designated impound facility resulting from vehicle parking violations, license and registration violations and traffic instances where the vehicle cannot be removed by the driver, such as during an arrest. Section 510.3 of Policy 510 allows the City to "periodically select firms to act as the official towing service of the City and award contracts to those firms". Each contracted firm is selected on a rotating basis and pays the City, pursuant to Section 121100 (b) of the California Vehicle Code 12110(b), an annual towing franchise fee (hereinafter referred to as the "Towing Fee"). The contracted firms in turn direct charge the vehicle owner a fee for the towing of the vehicle to the impound facility. In addition to the Towing Fee, the City also collects a Vehicle Release Fee (VRF) from the vehicle owner upon release of the vehicle from the impound facility.

CA Vehicle Code Section 12110 (b) requires that the franchise fee may not exceed the amount necessary to reimburse the public agency for its actual and reasonable costs incurred in connection with the towing program. The purpose of this review is to determine the estimated FY 2012 cost to the City of providing towing and impound activity, to substantiate that the existing Towing Fee and VRF does not exceed the cost, and to provide a basis for the future establishment of these fees.

This review focuses on time and motion analysis of City staff for both the towing and impounds activity and determines the estimated cost of service based on estimated time allocations and fully burdened hour rate calculations. Fully burdened hours rates included staff salaries and benefits and allocations for police/dispatch department overhead, depreciation and City central service overhead. Also included was the estimated periodic cost of legal fees relating to the towing contract

Because staff time and personnel involved with each towing and impound occurrence may vary, estimates of the average time per occurrence and maximum fully burdened hourly rates by position were used to determine a cost per tow/impound release. A three year average of FY 2008-2010 tow data was used to estimate the total annual cost of towing and impound activity. The following is a summary of the estimated annual cost and related existing fees of the towing and impound activity for FY 2012.

Activity Type	Estimated Annual Cost	Existing Annual Fees
Towing Activity (1)	\$122,440	\$75,000
Impound Activity (2)	\$69,201	\$68,350

(1) See Table 1

(2) See Table 4

Towing Franchise Fee

Purpose of the Fee

The towing franchise fee is assessed on contracted towing companies (companies) for the purpose of recovering the City's estimated annual costs (annual costs) relating to the towing of vehicles within the City, pursuant to Vehicle Code Section 12110(b). The annual costs are evenly distributed to the companies, which is consistent with the rotational basis for which the tows are assigned to the towers pursuant to the City's Vehicle Towing Policy 510. The current annual franchise fee charged to each of the towing firms is \$25,000, a total of \$75,000 cost recovery by the City.

Cost Analysis

The City's annual costs relating to the towing of vehicles are a function of the amount of time both Police & Dispatch spend on each tow occurrence, the fully burdened hourly rates of the staff involved, and the estimated annual number of tows. For the purpose of determining the annual costs, the following data was obtained from the City.

1. Time allocations for Police/Dispatch positions involved in towing activity.
2. Salaries and benefits for Police/Dispatch positions involved in towing activity.
3. Police/Dispatch departmental budgets for FY 2012.
4. Police/Dispatch annual fixed asset depreciation.
5. City wide FY 2012 budget data.
6. Annual tow counts for 2008 through 2010.
7. Legal costs relating to tow contract negotiations.

Tables 1, 2 and 3 below show the calculation of the Towing Operations Estimated Annual Cost, Fully Burdened Hourly Rates and Police/Dispatch Overhead rates, respectively.

Table 1						
City of Banning						
Police/Dispatch Towing Related Operations						
Estimated Cost of Service						
Fiscal Year 2012						
Towing Activity						
Staff Position	Activity:	Time per Tow (minutes) (1)	Hours	Fully Burdened Hourly Rate (2)	Extended Cost	
Chief	Overall management of policies & procedures, tow contracts, staff	1	0.02	\$ 226.39	\$ 3.77	
Lieutenant	Review policies & procedures, tow contracts, staff, resolve issues	5	0.08	\$ 165.29	\$ 13.77	
Sergeant	Field supervision; review and approve all tow reports & forms	10	0.17	\$ 137.87	\$ 22.98	
Officer	Initiate tow; contact driver; conduct enforcement; etc.	35	0.58	\$ 107.80	\$ 62.88	
Dispatch	Radio communication, tow dispatch, tow log maintenance, etc.	15	0.25	\$ 72.71	\$ 18.18	
Records/Assistant	Process tow forms, notify owner, coordinate tows, collect fees	15	0.25	\$ 54.13	\$ 13.53	
Total Direct and Indirect Cost per tow occurrence					\$ 135.12	
Estimated Tows for FY 2012 (based on prior three year average) (3)						888
Estimated time and material cost for towing operations for FY 2012					\$119,939.79	
Estimated annual legal costs relating to contract negotiations (4)					\$ 2,500.00	
Total Estimated Cost for Towing Operations for FY 2012					\$122,439.79	
Total Estimated Cost per Tow					\$ 138	

(1) Source: Exhibit A- Staff Time Allocations

(2) Source: Table 2

(3) Source: Exhibit B- Tow Stats

(4) Source: City of Banning. Estimated \$10,000 per year every four years for contract negotiations.

Table 2
City of Banning
Police/Dispatch Department
Fully Burdened Hourly Rate Calculation
Fiscal Year 2012

Position	Total Salaries & Benefits (1)	Overhead Allocation (2)	Total Fully Burdened Cost	Fully Burdened Hourly Rate (3)
		31.9%		
Chief	\$ 281,593	\$ 89,694	\$ 371,287	\$ 226.39
Lieutenant	\$ 205,595	\$ 65,487	\$ 271,081	\$ 165.29
Sergeants	\$ 171,490	\$ 54,624	\$ 226,113	\$ 137.87
Officer	\$ 134,083	\$ 42,709	\$ 176,792	\$ 107.80
Dispatch	\$ 90,433	\$ 28,805	\$ 119,238	\$ 72.71
Records/Police Assistant	\$ 67,324	\$ 21,444	\$ 88,768	\$ 54.13

(1) Source: City of Banning

(2) Table 3 - Overhead Rate Calculation

(3) Based on average of 1,640 service hours per year per position

Table 3
City of Banning
Police/Dispatch Department
Overhead Allocation Rate Calculation
Fiscal Year 2012

FY 2012 Departmental Budget (1)	\$ 6,584,353
Less: Salaries & Benefits (2)	(5,565,780)
Non-Payroll Department Expenses	\$ 1,018,573
Add: Fixed Asset Depreciation (3)	596,662
Total Departmental Overhead	\$ 1,615,235
Central Service OH allocation (4)	157,599
Total Overhead	\$ 1,772,834
Total Overhead as % of Salaries & Benefits	31.9%

(1) Source: City of Banning; FY 2012 Budget Departments 2200 and 2210

(2) Source: FY 2012 budget detail

(3) Source: Exhibit C - Police Fixed Asset Depreciation

(4) Source: Exhibit D - Central Service Cost Allocation Plan

Conclusion

Based on the analysis of the annual cost for the towing operations for Fiscal Year 2012, the City's current annual towing franchise fees of \$75,000, \$25,000 to each of the three tow firms, is less than the estimated \$122,440 of annual service costs.

Recommendation

It is recommended that the annual towing franchise fee be increased to \$40,813 per company for each of the three companies currently under contract with the City. This will allow the City to recover 100% of the estimated annual cost of the FY 2012 towing operations. If more or fewer companies are contracted for FY 2012, the estimated annual cost of \$122,440 should be divided evenly between the companies under contract. As an alternative to an annual fee per company, the City may elect to charge a per tow fee of \$138 per tow, which should recover the estimated annual costs based on the estimated number of tows for FY 2012. A per tow fee is similar to the method of collection for many southern California agencies including the City of Riverside (see Exhibit E).

Vehicle Release Fee

Purpose of the Fee

The Vehicle Release Fee is assessed on vehicle owners for the purpose of recovering the City's estimated administrative costs associated with the release of a vehicle from impound. The current Vehicle Release Fee charged by the City is \$77 per vehicle for an estimated annual cost recovery of \$68,376 based estimated annual releases of 888 per year.

Cost Analysis

The cost analysis for the VRF is similar to the Towing Fee. Estimates of staff time allocations to each function and maximum fully burdened hourly rates are the basis for the cost determination.

Tables 4 below show the calculation of the Impound Release Activity Annual Estimated Cost. Table 2 above contains the Fully Burdened Hourly Rates rate calculations.

Table 4					
City of Banning					
Police/Dispatch Impound Related Operations					
Estimated Cost of Service					
Fiscal Year 2012					
<u>Impound Release Activity</u>		Time per Tow (minutes) (1)	Hours	Fully Burdened Hourly Rate (2)	Extended Cost
<u>Staff Position</u>	<u>Activity:</u>				
Chief		0	-	\$ 226.39	\$ -
Lieutenant		0	-	\$ 165.29	\$ -
Sergeant	Conduct impound hearings; release vehicle; resolve complaints	30	0.50	\$ 137.87	\$ 68.94
Officer		0	-	\$ 107.80	\$ -
Dispatch		0	-	\$ 72.71	
Records/Assistant	Process and coordinate release of vehicle	10	0.17	\$ 54.13	\$ 9.02
Total Cost per impound release occurrence					\$ 77.96
Estimated Impounds for FY 2012 (based on prior three year average) (3)					888
Estimated Cost for Impound Operations for FY 2012					\$ 69,201
(1) Source: Exhibit A - Staff Time Allocations					
(2) Source: Table 2					
(3) Source: Exhibit B - Tow Stats					

Conclusion

The estimated cost per impound release occurrence is determined to be \$77.96 per release, only slightly more than the \$77 currently being charged by the City.

Recommendation

It is recommended that the City increase its VRF to \$78 to recover 100% of the estimated costs of providing the VRF service.

Exhibits

EXHIBIT A – STAFF TIME ALLOCATIONS

EXHIBIT B – TOWING STATS

EXHIBIT C – POLICE/DISPATCH DEPRECIATION

EXHIBIT D – CENTRAL SERVICE COST ALLOCATION PLAN

EXHIBIT E – FEE COMPARISON WITH NEIGHBORING AGENCIES

Exhibit A – Staff Time Allocations

From: Mike West [mwest@ci.banning.ca.us]
Sent: Monday, June 20, 2011 5:36 PM
To: Bob Quaid
Subject: RE: Banning Tow Study Data

Hey Bob,

Regarding the five year tow data, did you need more than the total numbers for each year?
The form I sent had the totals going back five years and the monthly breakdown for the past two years.

The average approximate amount of time spent on tows:
(I can give a breakdown of each positions' role & responsibilities, if needed)

Officers: **35 minutes per tow**

Dispatch: **15 minutes per tow**

Records/Police Assistant: **15 minutes per tow and 10 minutes per impound hearing**

Sergeants: **about 10 minutes per tow and 30 minutes per impound hearing**

Lieutenant: **about 80 hours per year on tow issues (see minute calc below)**

Chief : **about 15 hours per year on tow issues (see minute calc below)**

I'll work on the vehicle and computer/radio cost issues (#6)

WFS Calc

15 Chief time spent in hours (from above)

900 Chief time spent in minutes

888 Average annual tows (from Exhibit B)

1 Approximate minutes per tow

80 Lieutenant time spent in hours (from above)

4,800 Lieutenant time spent in minutes

888 Average annual tows (from Exhibit B)

5 Approximate minutes per tow

Exhibit C – Police/Dispatch Depreciation

City of Banning
 Police/Dispatch Department Fixed Asset Depreciation
 FY 2012

Asset No.	Description	Cost	Annual Depreciation	Banning Fixed Asset Report Ref
02VL0230	Police Bldg	\$ 498,100.00	\$ 24,905	Pg 1 of Valuation of Fixed Assets revised 12/31/2010 report
Various	Pursuit Vehicles & Devices	\$ 106,523.61	\$ 19,767	Pg 1 of 2006 Fixed Assets revised 12/31/2010
20070058	Mobile Command Post	\$ 288,444.50	\$ 48,074	Pg 1 of 2007 Fixed Assets revised 12/31/2010
20070050	Orion Mapstar Software	\$ 32,559.51	\$ 6,512	Pg 1 of 2007 Fixed Assets revised 12/31/2010
Various	Pursuit Vehicles & Devices	\$ 774,443.98	\$ 145,274	Pg 3 of 2007 Fixed Assets revised 12/31/2010
Various	Pursuit Vehicles & Devices	\$ 113,574.17	\$ 22,715	Pg 2 of 2008 Fixed Assets revised 12/31/2010
20080023	Digital Eyewitness Media	\$ 22,702.93	\$ 4,541	Pg 2 of 2008 Fixed Assets revised 12/31/2010
20090018	Pursuit Vehicles & Devices	\$ 26,642.70	\$ 5,329	Pg 1 of 2009 Fixed Assets revised 12/31/2010
Various	Police Dept Acquisitions	\$ 462,936.29	\$ 58,947	Pg 5 of 2010 Fixed Assets revised 12/31/2010
Various	Police Dept Acquisitions	\$ 30,352.22	\$ 2,562	Pg 5 of 2010 Fixed Assets revised 12/31/2010
20100032	New Police Facility	\$ 568,595.41	\$ 7,107	Pg 6 of 2010 Fixed Assets revised 12/31/2010
20100046	New Police Facility	\$ 14,340,313.84	\$ 250,930	Pg 6 of 2010 Fixed Assets revised 12/31/2010
Total			\$ 596,662	

Source: City of Banning Fixed Assets schedule, revised 12/31/2010

Exhibit D – Central Service Cost Allocation Plan

City of Banning Central Service Cost Allocation FY 2011-2012

Total Central Service Budget	\$920,792
Unallowable Amount	\$4,116
Allocable Central Service Budget	\$916,676

Distribution Basis/Bases	%	Allocable Budget
FY 2012 Budget	70%	\$ 641,673
FTEs	30%	\$ 275,003
	0%	\$ -
Total	100%	\$ 916,676

Bureau / Division	FY 2012 Budget	FTEs	Total Allocation	Second Step Allocation	Total Allocation
	Dist. Base	Dept. %	Allocation		
Summary	\$ 53,257,876	100%	\$ 641,673	\$ 916,676	\$ 36,792
General					
City Council - D - G	\$ 94,006	0.2%	\$ 1,133	\$ 10,073	\$ (10,073)
City Manager - D - G	\$ 206,819	0.4%	\$ 2,492	\$ 3,708	\$ (3,708)
Human Resources - D - G	\$ 149,779	0.3%	\$ 1,805	\$ 3,628	\$ (3,628)
City Clerk - D - G	\$ 85,753	0.2%	\$ 1,033	\$ 4,162	\$ (4,162)
Elections - D - G	\$ 200	0.0%	\$ 2	\$ 2	\$ (2)
City Attorney - D - G	\$ 163,000	0.3%	\$ 1,940	\$ 1,940	\$ (1,940)
Fiscal Services - D - G	\$ 200,896	0.4%	\$ 2,420	\$ 11,271	\$ (11,271)
Purchasing & A/P - D - G	\$ 18,223	0.0%	\$ 220	\$ 2,008	\$ (2,008)
General					
TV Government Access - R - G	\$ 7,747	0.0%	\$ 93	\$ 93	\$ 97
Police - R - G	\$ 5,330,625	10.0%	\$ 64,226	\$ 127,076	\$ 132,389
Dispatch - R - G	\$ 806,250	1.5%	\$ 9,714	\$ 24,197	\$ 25,209
Tassin - SB621 - R - G	\$ -	0.0%	\$ -	\$ -	\$ -
Animal Control - R - G	\$ 142,000	0.3%	\$ 1,711	\$ 1,711	\$ 1,782
Fire - R - G	\$ 2,505,987	4.7%	\$ 30,193	\$ 31,981	\$ 33,319
Building Safety - R - G	\$ 195,777	0.4%	\$ 2,359	\$ 3,110	\$ 3,240
Code Enforcement - R - G	\$ 172,091	0.3%	\$ 2,073	\$ 5,650	\$ 5,886
Planning - R - G	\$ 264,103	0.5%	\$ 3,182	\$ 6,544	\$ 6,817
Engineering - R - G	\$ 192,412	0.4%	\$ 2,318	\$ 3,695	\$ 3,850
Building Maintenance - R - G	\$ 189,978	0.4%	\$ 2,289	\$ 4,578	\$ 4,769
Parks - R - G	\$ 296,897	0.6%	\$ 3,577	\$ 11,230	\$ 11,700
Recreation - R - G	\$ 181,638	0.3%	\$ 2,188	\$ 6,891	\$ 7,179
Aquatics - R - G	\$ 99,683	0.2%	\$ 1,201	\$ 5,063	\$ 5,275
Senior Center - R - G	\$ 42,333	0.1%	\$ 510	\$ 1,637	\$ 1,705
Central Services - R - G	\$ 454,575	0.9%	\$ 5,477	\$ 5,477	\$ 5,706
Community Enhancement - R - G	\$ -	0.0%	\$ -	\$ -	\$ -
Other Funds					
Planning - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Riverside County MOU - R - O	\$ 536,822	1.0%	\$ 6,468	\$ 6,468	\$ 6,738
Gas Tax Street Fund - R - O	\$ 581,124	1.1%	\$ 7,002	\$ 7,002	\$ 7,294
Measure A Street Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Article 3 Sidewalk Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
CDBG Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Landscape Maintenance - R - O	\$ 47,352	0.1%	\$ 571	\$ 571	\$ 594
Air Quality Improvement Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Police - R - O	\$ 46,074	0.1%	\$ 555	\$ 555	\$ 578
Supplemental Law Enforcement - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Dispatch - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Public Safety Sales Tax Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Special Donation Fund - R - O	\$ 1,500	0.0%	\$ 18	\$ 18	\$ 19
Senior Center - R - O	\$ 4,500	0.0%	\$ 54	\$ 54	\$ 56
Sc. Center Advisory Board - R - O	\$ 12,200	0.0%	\$ 147	\$ 147	\$ 153
D.A.R.E. Donation Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
City Administration COP Debt Service - R - O	\$ 5,500	0.0%	\$ 66	\$ 66	\$ 69
Sun Lakes CFD #86-1 - R - O	\$ 250	0.0%	\$ 3	\$ 3	\$ 3
Wilson Street #91-1 Assessment Debt - R - O	\$ 9,475	0.0%	\$ 114	\$ 114	\$ 119
Fair Oaks #2004-01 Assessment Debt - R - O	\$ 9,075	0.0%	\$ 109	\$ 109	\$ 114
Traffic Control Facility Fund - R - O	\$ 10,000	0.0%	\$ 120	\$ 120	\$ 126
Sunset Grade Separation Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Parks - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Recreation - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Capital Improvement Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -
Airport Fund - R - O	\$ 135,353	0.3%	\$ 1,631	\$ 2,771	\$ 4,586
Transit Fund - R - O	\$ 896,395	1.7%	\$ 10,800	\$ 32,024	\$ 33,363
Water Fund - R - O	\$ 4,530,664	8.5%	\$ 54,587	\$ 81,533	\$ 84,943
Water Capital Facilities - R - O	\$ -	0.0%	\$ -	\$ -	\$ -

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City of Banning
Central Service Cost Allocation
FY 2011-2012

Total Central Service Budget	\$920,792
Unallowable Amount	\$4,116
Allocable Central Service Budget	\$916,676

Distribution Basis/Bases	%	Allocable Budget
FY 2012 Budget	70%	\$ 643,673
FTEs	30%	\$ 275,003
	0%	\$ -
		\$ -
Total	100%	\$ 916,676

Bureau / Division	FY 2012 Budget	%	FTEs	Total Allocation	Second Step Allocation	Total Allocation
Irrigation Water Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA Water Capital Project Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
BUA - Water Debt Service - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Electric Fund - R - O	\$ 22,061,767	41.4%	\$ 265,809	\$ 38,264	\$ 34,675	\$ 316,789
Rate Stability Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
Electric Improvement Fund - R - O	\$ -	0.0%	\$ -	\$ -	0.0%	\$ -
'07 Elec Revenue Bond Project Fund - R - O	\$ 22,500	0.0%	\$ 271	\$ -	\$ 11	\$ 282
Public Benefit Fund - R - O	\$ 680,356	1.3%	\$ 8,197	\$ -	\$ 343	\$ 8,540
'07 Elec Revenue Bond Debt Service Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
Wastewater Fund - R - O	\$ 1,713,663	3.2%	\$ 20,647	\$ 9,512	\$ 1,261	\$ 31,420
Wastewater Capital Facility Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
BUA Wastewater Capital Project Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
State Revolving Loan Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
BUA Wastewater Debt Service Fund - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
Refuse Fund - R - O	\$ 2,964,538	5.6%	\$ 35,718	\$ 1,234	\$ 1,545	\$ 38,497
Insurance Fund - R - O	\$ 1,956,391	3.7%	\$ 23,571	\$ 2,771	\$ 1,102	\$ 27,444
Fleet Maintenance - R - O	\$ 1,121,219	2.1%	\$ 13,509	\$ 6,258	\$ 827	\$ 20,594
Information Systems Services - R - O	\$ 360,844	0.7%	\$ 4,348	\$ 4,291	\$ 361	\$ 9,000
Utility Billing Administration - R - O	\$ 1,167,851	2.2%	\$ 14,071	\$ 22,977	\$ 1,549	\$ 38,596
CRA - R - O	\$ 1,533,005	2.9%	\$ 18,470	\$ -	\$ 772	\$ 19,243
CRA - Administration Fund - R - O	\$ 596,927	1.1%	\$ 7,192	\$ 5,185	\$ 518	\$ 12,895
2007 TABS Bond Proceeds - R - O	\$ -	0.0%	\$ -	\$ -	\$ -	\$ -
2003 TABS Bond Proceeds - R - O	\$ 7,500	0.0%	\$ 90	\$ -	\$ 4	\$ 94
2003 TABS Bond Proceeds Low/Mod - R - O	\$ 189,759	0.4%	\$ 2,286	\$ -	\$ 96	\$ 2,382
CRA - Project Fund - R - O	\$ 256,500	0.5%	\$ 3,090	\$ -	\$ 129	\$ 3,220

Source file: Banning Quick CAP Final Draft.xls

Exhibit E – Fee Comparison with Neighboring Agencies

City of Banning
Police/Dispatch Towing & Impound Operations
Fee Comparison with Neighboring Agencies

	Neighboring city agencies (1)				
	<u>Banning</u>	<u>Indio</u>	<u>San Jacinto</u>	<u>Riverside</u>	<u>Palm Springs</u>
Number of tow companies under contract	3	5	11	14	4
1. Annual franchise fee to tow companies	\$25,000	\$81,836	\$0	\$0	\$25,000
2. Per tow franchise fee	\$0	\$0	\$0	\$65	\$0
3. Vehicle release fee	\$77	\$200	\$100	\$60	N/A
4. Traffic Offender Fund	None	Funded by 1 and 2	None	None	None

(1) Responses received from cities as of June 30, 2011

N/A-Not provided by agency

**JOINT MEETING
CITY OF BANNING
AND BANNING SUCCESSOR AGENCY**

DATE: June 12, 2012

TO: Mayor and Members of the City Council

FROM: Bill R. Manis, Economic Development Director

SUBJECT: Reverse the Transfer of City Owned Properties, Identified in the March 8, 2011 Staff Report, to the Successor Agency Pursuant to the Recent Order Issued by the California State Controller

RECOMMENDATION:

That the City Council, and the City Council acting in its capacity as the Successor Agency to the Community Redevelopment Agency of the City of Banning, California, approve the following actions:

- (1) Authorize the City Manager of the City of Banning to transfer certain properties to the Banning Successor Agency, as necessary;
- (2) Authorize the Executive Director of the Banning Successor Agency to accept properties transferred, as necessary, by the City of Banning;
- (3) Authorize the Administrative Services Director/Deputy City Manager to make the necessary accounting adjustments, appropriations, and transfers relating to the parcel transfers;
- (4) Authorize the City Attorney to prepare an Asset Transfer Agreement between the City of Banning and the Banning Successor Agency;
- (5) Adopt Resolution No 2012-10 SA of the City Council, acting in its capacity as the Successor Agency to the Community Redevelopment Agency of the City of Banning, approving an Asset Transfer Agreement and accepting the transfer of certain properties owned by the City (Attachment 2); and
- (6) Adopt Resolution 2012-54 of the City Council of the City of Banning, California, approving an Asset Transfer Agreement for the transfer of certain properties owned by the City (Attachment 3); and
- (7) Recommend the Banning Oversight Board approve the recommended actions at their next regular Board Meeting.

BACKGROUND

On March 8, 2011, the former Community Redevelopment Agency of the City of Banning ("RDA") and the City of Banning ("City") approved a Transfer Agreement that transferred properties owned by the former RDA over to the City, Attachment 1. The transfer included several categories of former RDA parcels:

- Parcels necessary for public infrastructure; and
- Parcels suitable for disposition in the following categories:

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- Those parcels acquired with the goal of including them in the Downtown Economic Development Program; and
- Those parcels that were acquired as they became available and because they were located in a strategic location for the purpose of redevelopment to eliminate blight.

When the State Supreme Court upheld ABX126, the redevelopment dissolution bill, in December of 2011, redevelopment agencies within the State were eliminated effective February 1, 2012. Subsequently, in March of this year State Controller John Chiang notified all former agencies that pursuant to California Health and Safety Code section 34167.5, any former agency that transferred agency owned property to their city after January 1, 2011, are ordered to immediately reverse the transfer and return the applicable asset to their respective successor agency.

FINDINGS

As a result of the March 2012 order by State Controller John Chiang, and to comply with California Health and Safety Code section 34167.5, staff is recommending those parcels identified at the March 8, 2012 Joint Meeting of the former RDA and City, be transferred from the City to the Successor Agency. The suggested approach for the transfer is through an Asset Transfer Agreement, to be prepared by the City Attorney, that acknowledges that the subject parcels are an asset of the Successor Agency and the City will act as a agent of the Successor Agency to cause the parcels to ultimately be disposed of in compliance with all applicable requirements under ABX126 or any prevailing laws.

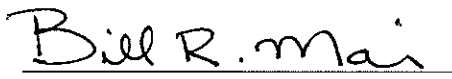
The recommended approach accomplishes several things:

1. Reduces the costs and time involved in changing the title for every parcel involved;
2. Ensures that a title policy can be easily obtained for the ultimate sale of the land to a third-party buyer. Title insurance on property previously held by successor agencies has been difficult to obtain; and
3. Facilitates disposition of the land and distribution of the proceeds.


FISCAL DATA:

Accounting entries will be made to reverse the transfer of assets authorized in FY 11. In addition, the Successor Agency may add any associated maintenance related costs, or costs associated with holding the parcels, to the applicable Recognized Obligation Payment Schedule.

RECOMMENDED BY:


 Bill R. Manis
 Economic Development Director

REVIEWED BY:


 June Overholt
 Administrative Services Director/
 Deputy City Manager

APPROVED BY:


 Andy Takata
 City Manager/
 Executive Director SA

Attachments:

1. March 8, 2011 Staff Report
2. Resolution 2012-10 SA
3. Resolution 2012-54

ATTACHMENT 1

MARCH 8, 2011 STAFF REPORT

**JOINT MEETING
COMMUNITY REDEVELOPMENT AGENCY
AND BANNING CITY COUNCIL
REPORT OF OFFICERS**

DATE: March 8, 2011

TO: Community Redevelopment Agency Board
City Council

FROM: Zai Abu Bakar, Community Development Director

**SUBJECT: TRANSFER OF REDEVELOPMENT AGENCY PROPERTIES TO CITY
OF BANNING AND APPOINTMENT OF CITY TO CARRY OUT
REDEVELOPMENT ACTIVITIES**

RECOMMENDATIONS:

1. Authorize the Executive Director of the City of Banning Community Redevelopment Agency ("Agency") to transfer certain properties to the City of Banning, as necessary.
2. Authorize the City Manager of the City of Banning to accept properties transferred, as necessary, by the City of Banning Community Redevelopment Agency.
3. Approve the Transfer Agreement to City.
4. Authorize the Executive Director to execute such other easements, deeds and documents as may be necessary to carry out the terms of the Transfer Agreement.
5. Approval of Resolutions Authorizing the City and the Community Redevelopment Agency to Enter into a Transfer Agreement Transferring Agency-Owned Properties to the City, as necessary and Requiring the City to Dispose of Certain of Said Properties in Accordance with the Redevelopment Law.

JUSTIFICATION:

Pursuant to California Health and Safety Code Sections 33126, 33127, and 33220, the Agency is authorized to obtain the services and the City is authorized to provide the necessary services to implement the Agency projects. The City of Banning implements Agency projects and the Agency desires to transfer the properties that it acquires for the purpose of implementing the Agency Redevelopment Plan and the Five-Year Implementation Plan consistent with the California Community Redevelopment Law (CCRL).

BACKGROUND/DISCUSSION:

The City of Banning Community Redevelopment Agency ("Agency") is organized and existing pursuant to the California Community Redevelopment Law and is responsible for the

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administration of redevelopment activities within the City of Banning, which resulted in the allocation of taxes from the Project Area to the Agency for purposes of redevelopment.

On June 12, 1978, the City Council adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions. On June 10, 1986, the City Council adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions. On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions.

The Agency has relied on the City for contract services since its inception in 1978 in order to carry out the purposes of the Redevelopment Plan. City officers and employees have dealt with the unique constraints to development in Banning for decades and are well aware of all land use issues through the Planning Department. Additionally, the CCRL contemplates the City is the successor to the Agency when its powers lapse.

The Agency's redevelopment project area consists of 3,280 acres of subdivisions and properties that were developed in the late 1800s and early 1920s. Many of the properties have uses that are non-conforming, substandard in their lot sizes, have insufficient parking or no parking spaces, and are in deteriorated/dilapidated, vacant, and a condition of disrepair which are major contributing factors to the blighted areas in the community. The Agency has during the course of its redevelopment activities acquired properties listed in Exhibits "A" and "B" to remediate and redevelop for future economic development projects and for the elimination of blight.

The Agency has acquired parcels or portions of parcels as listed in the above-mentioned exhibits, all of which are necessary for infrastructure purposes including street, road, sewer, and water infrastructure; for public parking purposes to serve the City Hall, the police station, and the greater Downtown area; and said parcels have been acquired over time but have not yet been transferred to the City, while some are still undergoing the acquisition process.

Additionally, when the City Hall and the police station were constructed and there were needs for parking for employees and the public. The Agency purchased the land, completed construction plans, and the construction of the parking facilities.

When Downtown Banning was thriving in the early fifties to late eighties, it lacked public area and spaces for people to park their vehicles. The Agency decided to acquire the substandard lots in the Downtown area to provide for public parking.

When the community of Banning suffered a significant down turn in the economy in the early 1990s and most recently in 2006, there were significant closures of businesses and, the Agency embarked on the Downtown Economic Development Program to assemble properties in the area to attract the new Mid-county Justice Center and the mixed-use commercial, retail, restaurant and office development. Now the Agency continues to experience a major need to redevelop the Downtown area. Additionally, the Agency also purchased strategic properties in the

redevelopment project area when they became available for the purposes of redevelopment to provide jobs and services for the residents of Banning.

As a landowner, the Agency has responsibilities to maintain properties until they are developed, including several commercial/industrial buildings slated for future economic development projects. The Agency also owns a significant number of vacant properties, which require active management and upkeep, including removal of debris and mandatory weed abatement. Resources will continue to be necessary in order to properly manage these properties.

Ultimate Development of Properties

In light of all of the above considerations, the Agency has considered its inventory of land which it has acquired or is in the process of acquiring. These parcels can be categorized based on the end users of the parcels. They fall into the following categories: (i) Public facilities where the end user is the City; and (ii) Private development by qualified developers experienced in development of substandard lots where the City could be an intermediary in carrying out development consistent with the redevelopment law. The Agency has analyzed its inventory and made determinations as to the suitability of its inventory, and proposes to transfer the property in accordance with those determinations, as explained below.

Transfer to City for Public Use (Exhibit A)

The properties in this category could include parcels or portions of parcels necessary for street and road purposes; for pipelines, easements and facilities for utilities and sewer and water works including reclaimed water and waste water purposes; for public parking purposes; and for public facilities. Examples include a number of parking lots that serves the City Hall, Police Department, and the greater Downtown area. Some of these parcels have been acquired over time and the Agency has never gotten around to transferring them, while some are still undergoing the acquisition process. This review of Agency inventory has led to dealing comprehensively with accomplishing this land conveyance. The action proposed hereunder includes the properties on the list below (which includes parcels in the acquisition process where the Agency does not yet have title and which are covered by the agreement and will be conveyed after the Agency obtains title). Additionally, the action includes giving the Executive Director authority to include easements and utility corridor conveyances which may be identified at a later time. The specific parcels include:

Properties that will remain in City Ownership (shown on Exhibit A):

1. 541-143-010 City Hall (existing)
2. 541-142-008 Fire Station No. 1
3. 541-143-011 Police Department (existing)
4. 541-145-006 Police Department Parking Lot (existing)
5. 541-145-008 Police Department Parking Lot (existing)
6. 541-145-010 Downtown Parking Lot (existing)
7. 540-204-005 Downtown Public Parking Lot (existing)
8. 540-204-006 Downtown Public Parking Lot (existing)
9. 540-204-007 Downtown Public Parking Lot (existing)
10. 540-204-008 Downtown Public Parking Lot (existing)
11. 541-143-002 52 N. San Gorgonio Avenue - City Hall Parking Lot (existing)

- | | |
|-----------------|---|
| 12. 541-143-003 | 70 N. San Gorgonio Avenue - City Hall Parking Lot (existing) |
| 13. 541-143-004 | 84 N. San Gorgonio Avenue - City Hall Parking Lot (existing) |
| 14. 541-141-002 | 128 N. San Gorgonio Avenue -- Fine Art Museum (lease to Banning Cultural Alliance) |
| 15. 541-141-003 | Downtown Parking Lot by the Fine Art Museum |
| 16. 541-141-004 | Downtown Parking Lot by the Fine Art Museum |
| 17. 541-181-002 | 44 E. Ramsey Street -- Existing Public Parking Lot by the Chamber of Commerce |
| 18. 541-181-005 | 40 S. San Gorgonio -- Existing Public Parking Lot by the Chamber of Commerce |
| 19. 541-181-029 | 12 S. San Gorgonio -- Coplin House - State Point of Historical Interest |
| 20. 532-130-011 | Property on Westward by the airport (<i>wastewater treatment facility/scalping plant</i>) |
| 21. 532-180-034 | Property on Westward by the airport (<i>wastewater treatment facility/scalping plant</i>) |

Parcels Transferred to City for Disposition to a Suitable Developer (Exhibit B)

The second category of parcels in the Agency's inventory which are suitable for disposition are parcels which fall into two categories: (1) those acquired with the goal of including them in the Downtown Economic Development Program, and (2) those properties that were acquired as they became available and because they were located in a strategic location for the purpose of redevelopment to eliminate blight.

The Governor has made legislative proposals which envision the elimination of redevelopment agencies as early as July 1, 2011. It is unknown what the final form of the legislation might be. The Agency should do everything possible to be sure that the redevelopment program is carried out to the extent possible under the Agency's Implementation Plan.

Accordingly, the Transfer Agreement will include parcels in this second category. The transfer of these parcels will be subject to the following conditions:

1. The City will have the right to exercise all the power that the Agency currently possesses under the CCRL, subject to all the obligations, duties and restrictions contained therein.
2. The City will have 90 days to have a project approved for the Downtown Economic Development Program or the Village at Paseo San Gorgonio.
3. The City will approve disposition of the parcels through a public process in accordance with CCRL, including sections 33433, with noticed public hearings in accordance therewith, and if it approves them, making appropriate findings. The City will determine how the project will alleviate blight and carry out the purposes of the Implementation Plan.
4. The City will accomplish the remediation of the property or require the developer to do so.
5. The City will negotiate appropriate terms and conditions to the transactions, including considering the restrictions in the redevelopment plan on the value, and any covenants and

restrictions imposed on the property. The valuation shall consider not only cash paid, but other forms of consideration, including the obligation to remediate the property, and the restrictions on use. The City will endeavor to record covenant agreements against the parcels upon disposition so that the City will continue to have the right to enforce such restrictions after the disposition of the parcels.

Properties that will be conveyed to Private Parties (shown on Exhibit B):

- | | |
|-----------------|---|
| 1. 538-162-016 | 2301 W. Ramsey Street |
| 2. 541-181-009 | Property on Livingston Street and San Gorgonio Avenue |
| 3. 541-181-010 | Livingston Street |
| 4. 541-181-011 | Livingston Street |
| 5. 541-181-012 | Livingston Street |
| 6. 541-181-014 | 58 E. Ramsey Street |
| 7. 541-181-021 | E. Ramsey Street |
| 8. 541-181-023 | E. Ramsey Street |
| 9. 541-181-024 | E. Ramsey Street |
| 10. 541-181-025 | Livingston Street |
| 11. 541-181-026 | Livingston Street |
| 12. 541-181-027 | E. Ramsey Street |
| 13. 541-181-028 | 150 E. Ramsey Street |
| 14. 541-183-004 | 280 E. Ramsey Street |
| 15. 541-150-025 | Property to the east of the new courthouse |
| 16. 541-150-026 | Property to the east of the new courthouse |
| 17. 541-150-027 | Property to the east of the new courthouse |
| 18. 541-150-028 | Property to the east of the new courthouse |
| 19. 541-150-029 | Property to the east of the new courthouse |
| 20. 540-191-008 | 646 W. Ramsey Street |

FISCAL DATA:

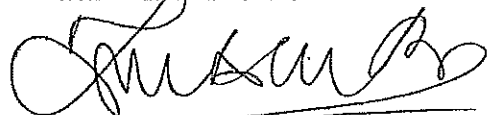
The transfer of the properties by the Agency to the City will reduce the demand on the on-going maintenance of the properties as the City normally implements and handles the execution, development, maintenance, and operations of the Agency's properties.

RECOMMENDED BY:



Andrew J. Takata
Executive Director/City Manager

PREPARED BY:



Zai Abu Bakar
Community Development Director

REVIEWED BY:



June Overholt
Deputy City Manager/Administrative Services Director

Attachments:

1. CRA Resolution No. 2011-09
2. City Council Resolution No. 2011-18
3. Transfer Agreement with Exhibits "A", "B", "C"

ATTACHMENT 1

CRA Resolution No. 2011-09

CRA RESOLUTION NO. 2011-09

RESOLUTION OF THE CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY ("AGENCY") APPROVING A TRANSFER AGREEMENT FOR THE TRANSFER OF CERTAIN PROPERTIES OWNED BY THE AGENCY TO THE CITY OF BANNING FOR USE FOR PUBLIC PURPOSES AND FOR CITY TO CARRY OUT REDEVELOPMENT ACTIVITIES, PURSUANT TO THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW

WHEREAS, the City of Banning Community Redevelopment Agency ("Agency") is organized and existing pursuant to the California Community Redevelopment Law and is responsible for the administration of redevelopment activities within the City of Banning, which resulted in the allocation of taxes from the Project Area to the Agency for purposes of redevelopment; and

WHEREAS, on June 12, 1978, the City Council adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions. On June 10, 1986, the City Council adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions. On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions.

WHEREAS, the intent of the Redevelopment Plan is, in part, to provide for the development and redevelopment of blighted areas in the community; to promote the general welfare of the people within the community by improving physical and economic conditions through employment of all appropriate means; to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; to provide for the construction and installation of necessary public infrastructure and facilities and facilitate the repair, restoration, and/or replacement of existing public facilities; to increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside the Project Area; and to take all other necessary actions to implement the Redevelopment Plan for the Project Area and to expend tax increment to accomplish the goals and objectives of the Redevelopment Plan; and

WHEREAS, the Agency has adopted its Five-Year Implementation Plan on November 9, 2010 for the Project Area (the "Implementation Plan") with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization, and to implement the programs and activities associated with these goals, the Agency has acquired real property within the Project Area to be redeveloped; and

WHEREAS, the redevelopment project area consists of 3,280 acres of subdivisions and properties that were developed in the late 1800s and early 1900s, many of the properties have

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uses that are non-conforming, substandard in their lot sizes, have insufficient parking or no parking spaces, and are in deteriorated/dilapidated, vacant, and a condition of disrepair which are major contributing factors to the blighted areas in the community. The Agency has during the course of its redevelopment activities acquired properties listed in Exhibits "A" and "B" to remediate and redevelop for future economic development projects and for the elimination of blight; and

WHEREAS, Agency has acquired parcels or portions of parcels as listed in the above-mentioned exhibits, all of which are necessary for street and road purposes; for public parking purposes to serve the City Hall, the police station, and the greater Downtown area; and said parcels have been acquired over time but have not yet been transferred to the City, while some are still undergoing the acquisition process; and

WHEREAS, because when the City Hall and the police station were constructed and there were needs for parking for employees and the public the Agency purchased the land, completed construction plans, and the construction of the parking facilities; and

WHEREAS, when the Downtown Banning was thriving in the early fifties to late eighties, Downtown lacked sufficient parking area for people to park their vehicles, the Agency decided to acquire the substandard lots in the Downtown area to provide for public parking; and

WHEREAS, when the community of Banning suffered a significant down turn in the economy in the early 1990s and most recently in 2006 there were significant closures of businesses and, the Agency embarked on the Downtown Economic Development Program to assemble properties to attract the new Mid-county Justice Center and the mixed-use commercial, retail, restaurant and office development. Now the Agency needs to redevelop the Downtown area; and

WHEREAS, pursuant to Section 33220 of the California Community Redevelopment Law, which is codified as Health and Safety Code Section 33000 *et seq.* (the "CCRL"), certain public bodies, including the City of Banning ("City"), may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

WHEREAS, the Agency desires to transfer to the City, the Properties, along with the responsibility of implementing the Redevelopment Plan and the Implementation Plan to bring about the redevelopment of those Properties, as the City is familiar with the Properties and the goals of the CCRL, the Redevelopment Plan, and the Implementation Plan; the City has been intimately involved with the development of the Downtown area; the City has land use authority within the City; the City administers many of the Agency projects; and the City desires to cooperate with the Agency and to carry out the redevelopment of the Properties, in accordance with the objectives and purposes of the CCRL, the Redevelopment Plan, and the Implementation Plan; and

WHEREAS, the Agency and the City have prepared a Transfer Agreement (the "Agreement") for the for the Agency to transfer to the City the Properties for the following purposes: (i) the City shall retain each of the Properties listed in Exhibit "A" for public use, in accordance with the City's authority as a duly organized municipal corporation; (ii) the City shall

convey each of the properties listed in Exhibit "B" within ninety (90) days through disposition and development agreements for private development by qualified developers experienced in development of environmentally constrained land; (iii) the City shall have all the authority that the Agency has under the CCRL to carry out the redevelopment of these Properties; and (iv) the activities of the City hereunder shall be undertaken, in accordance with the CCRL, as the CCRL is written as of the execution date of the Agreement; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING hereby finds and determines that the foregoing recitals are true and correct.

Section 2. The Agency has received and heard all oral and written objections to the proposed transfer of Properties from the Agency to the City as proposed in the Agreement, and to other matters pertaining to this transaction, and all such oral and written objections are hereby overruled.

Section 3. The Agency hereby approves the Transfer Agreement transferring the Properties listed in Exhibits "A" and "B" of the Transfer Agreement, and approves the transfer of such Properties pursuant to the terms thereof. The transfer is subject to the following terms (see staff request).

Section 4. The Agency Executive Director may include the transfer of additional parcels or portions of parcels thereof for street, utility, or other public purposes related to the foregoing.

Section 5. The Agency Executive Director, or designee, is hereby authorized to execute the Agreement on behalf of the Agency, together with such non-substantive changes and amendments as may be approved by the Agency Executive Director and Agency Counsel.

Section 6. The Agency Executive Director, or designee, is hereby authorized, on behalf of the Agency, to sign all documents necessary and appropriate to carry out and implement the Agreement, and to administer the Agency's obligations, responsibilities and duties to be performed under the Agreement.

Section 7. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED, this 8th day of March, 2011 by the following vote:

Don Robinson, Agency Chairman

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APPROVED AS TO FORM AND
LEGAL CONTENT:

David Aleshire, Agency Counsel
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon
Agency Secretary

CERTIFICATION:

I, Marie Calderon, Agency Secretary of the City of Banning Community Redevelopment Agency, California, do hereby certify that the foregoing CRA Resolution No. 2011-09 was duly adopted at a special meeting of the Banning Community Redevelopment Agency, California, on the 8th day of March 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
Agency Secretary

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ATTEST:

Marie A. Calderon
Agency Secretary

CERTIFICATION:

I, Marie Calderon, Agency Secretary of the City of Banning Community Redevelopment Agency, California, do hereby certify that the foregoing CRA Resolution No. 2011-09 was duly adopted at a special meeting of the Banning Community Redevelopment Agency, California, on the 8th day of March 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
Agency Secretary

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ATTACHMENT 2

City Council Resolution No. 2011-18

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RESOLUTION NO. 2011-18

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A TRANSFER AGREEMENT AND ACCEPTING THE TRANSFER OF CERTAIN PROPERTIES OWNED BY THE CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY TO THE CITY FOR USE FOR PUBLIC PURPOSES AND FOR THE CITY TO CARRY OUT REDEVELOPMENT ACTIVITIES, PURSUANT TO THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW

WHEREAS, pursuant to Section 33220 of the California Community Redevelopment Law, which is codified as Health and Safety Code Section 33000 *et seq.* (the "CCRL"), certain public bodies, including the City of Banning ("City"), may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

WHEREAS, the City of Banning Community Redevelopment Agency desires to transfer to the City certain properties, along with the responsibility of implementing the Redevelopment Plan and the Implementation Plan to bring about the redevelopment of those Properties, as the City is familiar with planning issues associated with the properties and the goals of the CCRL, the Redevelopment Plan, and the Implementation Plan; the City has been intimately involved with the development of the Downtown Economic Development Program; the City has land use authority within the City; and the City desires to cooperate with the Agency and to carry out the redevelopment of the properties, in accordance with the objectives and purposes of the CCRL, the Redevelopment Plan, and the Implementation Plan; and

WHEREAS, the Agency and the City have prepared a Transfer Agreement (the "Agreement") for the Agency to transfer to the City the Properties for the following purposes: (i) the City shall retain each of the Properties listed in Exhibit "A" for public use, in accordance with the City's authority as a duly organized municipal corporation; (ii) the City shall convey each of the properties listed in Exhibit "B" within ninety (90) days through disposition and development agreements for private development by qualified developers experienced in development of environmentally constrained land; (iii) the City shall have all the authority that the Agency has under the CCRL to carry out the redevelopment of these Properties; and (iv) the activities of the City hereunder shall be undertaken, in accordance with the CCRL, as the CCRL is written as of the execution date of the Agreement; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY RESOLVE, AS FOLLOWS:

Section 1. The City hereby finds and determines that the foregoing recitals are true and correct.

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Section 2. The City has received and heard all oral and written objections to the proposed transfer of Properties from the Agency to the City as proposed in the Agreement, and to other matters pertaining to this transaction, and all such oral and written objections are hereby overruled.

Section 3. The City hereby accepts the transfer of the properties as defined in the Agreement and approves the Agreement, subject to the terms and conditions contained in the CRA Resolution No. 2011-09 of the City of Banning Community Redevelopment Agency approving the same.

Section 4. The Agreement in substantially the form presented to the City is hereby approved, a copy of which is on file with the City Clerk.

Section 5. The City Manager, or designee, is hereby authorized to execute the Agreement on behalf of the City, together with such non-substantive changes and amendments as may be approved by the City Manager and City Attorney.

Section 6. The City Manager, or designee, is hereby authorized, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Agreement, and to administer the City's obligations, responsibilities and duties to be performed under the Agreement.

Section 7. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED and ADOPTED, this 8th day of March, 2011 by the following vote:

Barbara Hanna, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

David Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon
City Clerk, City of Banning

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CERTIFICATION:

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-18 was duly adopted at a special meeting of the City Council of the City of Banning, California, on the 8th day of March 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk, City of Banning

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ATTACHMENT 3

**Transfer Agreement with
Exhibits "A", "B", "C"**

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**TRANSFER AGREEMENT FOR THE TRANSFER OF CERTAIN
PROPERTIES OWNED BY THE CITY OF BANNING COMMUNITY
REDEVELOPMENT AGENCY TO THE CITY OF BANNING TO ACT AS
THE AGENT OF THE AGENCY IN THE DISPOSITION AND
REDEVELOPMENT OF SAID PROPERTIES PURSUANT TO THE
CALIFORNIA COMMUNITY REDEVELOPMENT LAW**

THIS AGREEMENT FOR THE TRANSFER OF CERTAIN PROPERTIES OWNED BY THE CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY ("AGENCY") TO THE CITY OF BANNING TO ACT AS THE AGENT OF THE AGENCY IN THE DISPOSITION AND REDEVELOPMENT OF SAID PROPERTIES PURSUANT TO THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW ("Agreement") is made this 8th day of March, 2011 by and between the City of Banning Community Redevelopment Agency, a public body, municipal and politic ("Agency"), and City of Banning, a municipal corporation ("City").

RECITALS:

A. The City of Banning Community Redevelopment Agency ("Agency") is organized and existing pursuant to the California Community Redevelopment Law and is responsible for the administration of redevelopment activities within the City of Banning, which resulted in the allocation of taxes from the Project Area to the Agency for purposes of redevelopment; and

B. On June 12, 1978, the City Council adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions. On June 10, 1986, the City Council adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions. On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

C. The intent of the Redevelopment Plan is, in part, to provide for the development and redevelopment of blighted areas in the community; to promote the general welfare of the people within the community by improving physical and economic conditions through employment of all appropriate means; to perform specific actions necessary to promote the redevelopment and the economic revitalization of the Project Area; to provide for the construction and installation of necessary public infrastructure and facilities and facilitate the repair, restoration, and/or replacement of existing public facilities; to increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside the Project Area; and to take all other necessary actions to implement the Redevelopment Plan for the Project Area and to expend tax increment to accomplish the goals and objectives of the Redevelopment Plan; and.

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D. The Agency has adopted its Five-Year Implementation Plan on November 9, 2010 for the Project Area (the "Implementation Plan") with established goals to support affordable housing, economic development, community revitalization, commercial revitalization, and institutional revitalization, and to implement the programs and activities associated with these goals, the Agency has acquired real property within the Project Area to be redeveloped; and

E. The redevelopment project area consists of 3,280 acres of subdivisions and properties that were developed in the late 1800s and early 1900s. Many of the properties have uses that are non-conforming, substandard in their lot sizes, insufficient parking or no parking spaces, and are in deteriorated/dilapidated, vacant, and a condition of disrepair which are major contributing factors to the blighted areas in the community. The Agency has during the course of its redevelopment activities acquired properties listed in Exhibits "A" and "B" to remediate and redevelop for future economic development projects and for the elimination of blight; and

E. Pursuant to Section 33220 of the California Community Redevelopment Law, which is codified as Health and Safety Code Section 33000 *et seq.* (the "CCRL"), certain public bodies, including the City, may aid and cooperate with redevelopment agencies in the planning, undertaking, construction, or operation of redevelopment projects.

F. The Agency desires to transfer to the City, as the Agency's agent, certain parcels of real property, along with the responsibility of implementing the Redevelopment Plan and the Implementation Plan to bring about the redevelopment of those parcels, because the City is familiar with the planning issues associated with the parcels and the goals of the CCRL, the Redevelopment Plan, and the Implementation Plan. In so doing, the City desires to carry out the disposition and redevelopment of the properties listed in Exhibits "A" and "B" hereto (each property individually, "Property," and collectively, "Properties") in accordance with the objectives and purposes of the CCRL, the Redevelopment Plan, and the Implementation Plan, as the City's assistance and cooperation is necessary to implement and complete the redevelopment of these Properties.

G. The Agency and City desire to enter into this Agreement to acknowledge the foregoing recitals and to provide for an appropriate method of reimbursement of such advances by the Agency to the city.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

TERMS AND CONDITIONS

1. INCORPORATION OF RECITALS.

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement and are hereby incorporated herein.

2. TRANSFER OF PROPERTIES.

Subject to and on the terms and conditions herein set forth, City hereby agrees to accept from Agency, and Agency agrees to convey and assign to City, the Properties described in

Exhibits "A" and "B" together with (a) all privileges, rights, easements, buildings and appurtenances belonging to the real property, (b) all development rights, air rights, water rights and water stock relating to the real property, and (c) all right, title and interest of Agency in and to any streets, alleys, passages, other easements, and rights-of-way or appurtenances included in, adjacent to or used in connection with the Properties.

The properties listed in Exhibit "A" are those necessary for street and road purposes; pipelines; for easements and facilities for utilities and sewer and water works, including reclaimed water and other infrastructure such as wastewater, sewer, and water purposes; for public parking purposes; and for other public facilities.

The properties listed in Exhibit "B" are: (i) those acquired with the goal of redevelopment of the Downtown area, and (ii) those with the lay of the land layout constraints which prevent them from being developed other than by a developer experienced with such development.

3. CITY AS AGENT OF AGENCY IN REDEVELOPMENT OF PROPERTIES.

Subject to and on the terms and conditions herein set forth, Agency authorizes City to act as Agency's agent in redeveloping the Properties and conveying some of Properties to implement the Redevelopment Plan and the Implementation Plan and to carry out the objectives and purposes of the CCRL. Transfer of the Properties shall be subject to the conditions listed in this Section.

3.1 Properties Listed in Exhibit "A".

As the agent of the Agency, City shall retain each of the properties listed in Exhibit "A" for public use, in accordance with the City's authority as a duly organized municipal corporation. The properties shall be developed for streets, easements, open space, and public facilities such as police stations.

3.2 Properties Listed in Exhibit "B".

As the agent of the Agency, the City shall endeavor to convey each of the properties listed in Exhibit "B" within ninety (90) days through disposition and development agreements for private development by qualified developers experienced in development of environmentally constrained land where the City could be an intermediary in carrying out development consistent with the redevelopment law, in accordance with the CCRL, as the CCRL is written as of the execution date of the Agreement.

Some of the properties listed in Exhibit "B" were acquired for purposes of economic development and redevelopment. To that end, City shall endeavor to find qualified developers and end users that will develop such parcels to accomplish the goals.

(a) The City will have the right to exercise all the power that the Agency currently possesses under the CCRL, subject to all the obligations, duties and restrictions contained therein.

(b) The City will have 90 days to locate and appropriate developer who can develop the properties to redevelop the Downtown as part of the Downtown Economic Development Program, or who is experienced in similar development.

(c) The City will approve disposition of the parcels through a public process in accordance with Section 33430 *et seq.* of the CCRL, including sections 33433, with noticed public hearings in accordance therewith, and if it approves them, making appropriate findings. The City will determine how the project will alleviate blight and carry out the purposes of the Redevelopment Plan and Implementation Plan.

(d) The City will accomplish the remediation of the property or require the developer to do so.

(e) The City will negotiate appropriate terms and conditions to the transactions, including considering the restrictions in the redevelopment plan on the value, and any covenants and restrictions imposed on the property. The valuation shall consider not only cash paid, but other forms of consideration, including the obligation to remediate the property, and the restrictions on use. The City will endeavor to record covenant agreements against the parcels upon disposition so that the City will continue to have the right to enforce such restrictions after the disposition of the parcels.

4. CONSIDERATION.

In consideration of the transfer of the Properties from Agency to City, City is hereby obligated to carry out the redevelopment and disposition of the Properties in accordance with this Agreement, and particularly in disposition of the Properties listed in Exhibit "B" in accordance with and subject to all obligations, duties and restrictions contained in CCRL.

5. ADDITIONAL DOCUMENTS REQUIRED FROM AGENCY.

Immediately upon execution of this Agreement, each Property shall be transferred by the Agency to the City by the execution of a grant deed, which shall be substantially in the form attached hereto and incorporated herein as Exhibit "B". Possession of each Property shall be delivered to the City concurrently with the conveyance of title. City will cause the Grant Deed to be recorded.

6. DUE DILIGENCE.

6.1 Disclaimer of Warranties.

City shall acquire the Properties in their "AS IS" and "WITH ALL FAULTS" condition and shall be responsible for any and all defects in the Properties, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Properties, and the existence of any contamination, hazardous materials, vaults, debris, pipelines, wells, or other structures located on, under or about the Properties. Agency makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Properties. City acknowledges that, once City obtains title to the Properties, any liability of Agency for the environmental condition of the Properties shall be extinguished, that

Agency shall have no liability for remediating any environmental condition of the Properties and that City shall indemnify Agency against any claim or liability relating to the condition of the Properties.

6.2 Review of Documents.

Agency shall make available to City true, correct and complete copies of all contracts which relate to the Properties (together with any amendments or modifications thereto), and all reports or other documents in Agency's possession respecting the physical condition of or prior uses of the Properties, if any, and any other information in Agency's possession or control reasonably requested by Agency regarding the Properties.

6.3 Entry for Investigation.

(a) Subject to the conditions hereafter stated, Agency grants to City, its agents and employees a limited license to enter upon the Properties for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Properties, which studies, surveys, investigations and tests shall be done at City's sole cost and expense.

(b) As a condition to City's entry, inspection or testing, City shall keep the Properties free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this Agreement.

7. CONDITIONS PRECEDENT TO CONVEYANCE OF THE PROPERTY.

7.1 Conditions to City's Obligations.

The obligations of City under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by City of each of the following conditions precedent:

(a) Agency has provided the executed and recordable Grant Deeds to City.

7.2 Conditions to Agency's Obligations.

The obligations of Agency under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Agency of the following conditions precedent:

(a) Timely performance by City of all of the obligations required by the terms of this Agreement to be performed by City.

8. REPRESENTATIONS AND WARRANTIES.

8.1 Representations and Warranties.

Agency hereby makes the following representations and warranties to City, each of which is true in all respects as of the date hereof and shall be true in all respects on the date of Closing on the Property:

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(a) Agency has received no notice and/or has no knowledge that any governmental authority or any employee or agent thereof considers the present or proposed operation, use or ownership of the Properties to violate or have violated any ordinance, rule, law, regulation or order of any government or agency, body or subdivision thereof, or that any investigation has been commenced or is contemplated respecting such possible violations.

(b) There are no pending or threatened allegations, lawsuits or claims which would affect the Properties.

(c) There are no natural or environmental hazards located on the Properties that would limit its marketability, merchantability, or suitability for development or impede its use in any way.

(d) To the best of Agency's knowledge, Agency shall disclose to City any documents, writings, or knowledge of any environmental conditions of the Properties. City will take interest in the Properties as provided herein, in an "As-Is, Where Is" condition. Notwithstanding any contrary provisions of this Agreement, upon the execution of this Agreement by City, and provided Agency makes true and correct disclosures pursuant to this Section, and Agency's representations are true and correct, City shall hereby hold Agency harmless from any liability, cost or expense for any liability under all Environmental Laws City may incur as a result of City's acceptance of the Properties. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance or damages to property or persons.

Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by City, City shall and does hereby release Agency from any liability, cost or expense City may incur as a result of City's acceptance of the Properties or the presence of any Hazardous Materials (hereinafter defined) which are or may be located in, on or about the Properties commencing on the execution of this Agreement or at any time thereafter.

For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above

or below ground level (whether accidental or intentional) of such substances or materials. Without limiting the generality of the foregoing, this shall be deemed to include shall include, but shall not be limited to, substances defined as "hazardous substances, hazardous materials or toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 USC Section 6901, et seq.; those substances defined as "hazardous wastes" in Section 25117 of the California Health & Safety Code or as "hazardous substances" in Section 25316 of the California Health & Safety Code; and those chemicals known to cause cancer or reproductive toxicity, as published pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Section 25249.5, et seq., of the California Health & Safety Code; and in the regulations adopted and publications promulgated pursuant to each of the aforesaid laws.

(e) There are no contracts, leases, claims or rights affecting the development or use of Properties and no agreements entered into by or under Agency that shall survive the Closing that would adversely affect City's rights with respect to the Property except as heretofore disclosed in writing by Agency to City.

(f) There are no easements or encroachments that may affect the development or use of the Property.

(g) Agency has received no written notice from any third parties, prior owners of the Properties, or any federal, state or local governmental agency, indicating that any hazardous waste remedial or clean-up work will be required on the Property.

(h) Agency is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

(i) Agency hereby represents, warrants and covenants to City that Agency shall deliver exclusive possession of the Property to City.

9. ADDITIONAL INSTRUCTIONS.

9.1 No Escrow Instructions.

Because this Agreement is being entered into by two related entities, an escrow is not being entered into and shall not be required.

9.2 General Provisions.

City shall instruct the Riverside County Recorder to mail the Grant Deed to City at the address set forth in Section 11.4 after recordation. This Agreement and any modifications, amendments, or supplements thereto may be executed in counterparts and shall be valid and binding as if all of the parties' signatures were on one document.

10. BROKERAGE COMMISSIONS.

City and Agency each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. City and Agency each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

11. MISCELLANEOUS.

11.1 No Conflict of Interest.

No officer or employee of the City or 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. Agency and City each warrant 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.

11.2 Assignment.

City shall have the right to assign this Agreement or any interest or right hereunder without the prior written consent of the Agency. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of City and Agency and their respective heirs, personal representatives, successors and assigns. City will provide written notice to Agency of any assignment and/or vesting designation as may be required.

11.3 Attorneys' Fees.

In any action between the parties hereto seeking enforcement of any of the terms and provisions of this Agreement, or in connection with the Property, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

11.4 Notices.

Any notice which either party may desire to give to the other party must be in writing and may be given by personal delivery, facsimile or by mailing the same by U.S. mail to the party to whom the notice is directed at the address of such party hereinafter set forth, or such other address and to such other persons as the parties may hereafter designate:

To Agency: City of Banning
Attn: City Manager
99 E. Ramsey Street
Banning, CA 92220
Fax: 951-922-3128

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Copy To: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612
Attn: Dave Aleshire, Esq.
Fax: (949) 223-1180

To City: City of Banning Community Redevelopment Agency
Attn: Executive Director
99 E. Ramsey Street
Banning, CA 92220
Fax: 951-922-3128

Copy To: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 400
Irvine, California 92612
Attn: Dave Aleshire, Esq.
Fax: (949) 223-1180

11.5 Interpretation; Governing Law.

This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

11.6 No Waiver.

No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

11.7 Modifications.

Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

11.8 Severability.

If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or

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unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.9 Merger of Prior Agreements and Understandings.

This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

11.10 Execution in Counterparts.

This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

"CITY"

CITY OF BANNING

By: _____
Barbara Hanna, Mayor

ATTEST:

Marie Calderon, City Clerk

"AGENCY"

CITY OF BANNING COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Don Robinson, Chairman

ATTEST:

Marie Calderon, Agency Secretary

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

Dave Aleshire, Agency Counsel and
City Attorney

EXHIBIT A
Properties to Remain in City Ownership

Property for City Purposes

1. 541-143-010 City Hall
2. 541-142-008 Fire Station No.1
3. 541-143-011 Police Department
4. 541-145-006 Police Department Parking Lot
5. 541-145-008 Police Department Parking Lot
6. 541-145-010 Police Department Parking Lot
7. 540-191-008 Downtown Parking Lot
8. 540-204-005 Downtown Public Parking Lot
9. 540-204-006 Downtown Public Parking Lot
10. 540-204-007 Downtown Public Parking Lot
11. 540-204-008 Downtown Public Parking Lot
12. 541-143-002 52 N. San Geronio Avenue - City Hall Parking Lot
13. 541-143-003 70 N. San Geronio Avenue - City Hall Parking Lot
14. 541-143-004 84 N. San Geronio Avenue - City Hall Parking Lot
15. 541-141-002 128 N. San Geronio Avenue - Fine Art Museum
16. 541-141-003 Downtown Parking Lot by the Fine Art Museum
17. 541-141-004 Downtown Parking Lot by the Fine Art Museum
18. 541-181-002 44 E. Ramsey Street - Downtown Public Parking Lot by the Chamber of Commerce
19. 541-181-005 40 S. San Geronio - Downtown Public Parking Lot by the Chamber of Commerce
20. 541-181-029 12 S. San Geronio - Coplin House - National Register of Historic Places
21. 532-130-011 Property on Westward by the airport
22. 532-180-034 Property on Westward by the airport

EXHIBIT B

Properties to be Transferred to the City for Disposition to a Suitable Developer

Property for the development of the Village at San Gorgonio Project (Private Developer)

1. 538-162-016 2301 W. Ramsey Street (Former Dodge Dealership)
2. 541-181-009 Property on Livingston Street and San Gorgonio Avenue (Village at San Gorgonio Project)
3. 541-181-010 Livingston Street (Village at San Gorgonio Project)
4. 541-181-011 Livingston Street (Village at San Gorgonio Project)
5. 541-181-012 Livingston Street (Village at San Gorgonio Project)
6. 541-181-014 58 E. Ramsey Street (Village at San Gorgonio Project)
7. 541-181-021 E. Ramsey Street (Village at San Gorgonio Project)
8. 541-181-023 E. Ramsey Street (Village at San Gorgonio Project)
9. 541-181-024 E. Ramsey Street (Village at San Gorgonio Project)
10. 541-181-025 Livingston Street (Village at San Gorgonio Project)
11. 541-181-026 Livingston Street (Village at San Gorgonio Project)
12. 541-181-027 E. Ramsey Street (Village at San Gorgonio Project)
13. 541-181-028 150 E. Ramsey Street (Village at San Gorgonio Project)
14. 541-183-004 280 E. Ramsey Street (Village at San Gorgonio Project)
15. 541-150-025 Property to the east of the new courthouse
16. 541-150-026 Property to the east of the new courthouse
17. 541-150-027 Property to the east of the new courthouse
18. 541-150-028 Property to the east of the new courthouse
19. 541-150-029 Property to the east of the new courthouse

EXHIBIT "C"

GRANT DEED

FREE RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:
CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

(Space Above Line for Recorder's Use Only)
Exempt from filing Fees per Govt. Code § 27383

GRANT DEED

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the CITY OF BANNING COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic, acting under the Community Redevelopment Law of the State of California, herein called "Grantor," hereby grants to the CITY OF BANNING, herein called "Grantee," the real property referred to as Assessor's Parcel No. _____, hereinafter referred to as the "Site," in the City of Banning, County of Riverside, State of California, more particularly described in Attachment No. 1 attached hereto and incorporated herein by this reference.

As conditions of this conveyance, the Grantee covenants by and for itself and any successors-in-interest for the benefit of Grantor as follows:

1. Non-Discrimination.

Grantee covenants that there shall be no discrimination against, or segregation of, any persons, or group of persons, on account of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin in the rental, sale, lease, sublease, transfer, use, occupancy, or enjoyment of the Site, or any portion thereof, nor shall Grantee, or any person claiming under or through Grantee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of purchasers, tenants, lessees, subtenants, sublessees, or vendees of the Site or any portion thereof. The nondiscrimination and nonsegregation covenants contained herein shall remain in effect in perpetuity.

2. Form of Nondiscrimination Clauses in Agreements.

Grantee shall refrain from restricting the rental, sale, or lease of any portion of the Site on the basis of race, color, creed, religion, sex, marital status, age, physical or mental disability, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

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(a) **Deeds:** In deeds the following language shall appear: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and 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, age, physical or mental disability, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed."

(b) **Leases:** In leases the following language shall appear: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions: "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, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, renting, transferring, use, occupancy, tenure, or enjoyment of the land herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the land herein leased."

(c) **Contracts:** In contracts the following language shall appear: "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, age, physical or mental disability, ancestry, or national origin in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the land, nor shall the transferee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land."

3. **Covenants to Run With the Land.**

The covenants contained in this Deed shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title, and shall be binding upon Grantee, its heirs, successors and assigns to the Site, whether their interest shall be fee, easement, leasehold, beneficial or otherwise. The foregoing covenants shall remain in effect in perpetuity.

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IN WITNESS WHEREOF, Grantor has caused this instrument to be executed on its behalf by its officers or agents hereunto as of the date first above written.

"GRANTOR"

**CITY OF BANNING COMMUNITY
REDEVELOPMENT AGENCY**
a public body, corporate and politic

By: _____
DON ROBINSON, Chairman

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
DAVE ALESHIRE
Agency Counsel

APPROVED AS TO CONTENT:

By: _____
ANDREW J. TAKATA
Executive Director

COUNTERSIGNED

By: _____
Its: _____

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the grant deed dated on or about _____, 2011, from the City of Banning Community Redevelopment Agency to the City of Banning is hereby accepted by the undersigned officer on behalf of the City of Banning pursuant to authority conferred by the City Council of the City of Banning pursuant to the Cooperation Agreement for the Transfer of Certain Properties Owned by the City of Banning Community Redevelopment to the City of Banning to Act and the Agent of the Agency in the Disposition and Redevelopment of Said Properties Pursuant to the California Community Redevelopment Law approved on March 8, 2011, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2011

GRANTEE:

CITY OF BANNING

By: _____
Barbara Hanna, Mayor

ATTEST:

Marie Calderon, City Clerk

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STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On _____, 20____, 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 _____, 20____, 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)

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ATTACHMENT NO. 1
LEGAL DESCRIPTION OF THE SITE

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ATTACHMENT 2
RESOLUTION 2012-10 SA

RESOLUTION NO. 2012-10 SA

A RESOLUTION 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 APPROVING AN ASSET TRANSFER AGREEMENT AND ACCEPTING THE TRANSFER OF CERTAIN PROPERTIES OWNED BY THE CITY FOR USE OF PUBLIC PURPOSES AND FOR THE SUCCESSOR AGENCY TO CAUSE TO ULTIMATELY BE SOLD PURSUANT TO CALIFORNIA HEALTH & SAFETY CODE 34167.5 OR ANY PREVAILING LAW

The City of Banning, Acting as Successor Agency to the Former Redevelopment Agency of the City of Banning DOES RESOLVE as follows:

WHEREAS, the Community Redevelopment Agency of the City of Banning ("Redevelopment Agency") is a public body, corporate and politic, organized and existing under the California Community Redevelopment Law (Health & Safety Code §§ 33000 *et seq.*); and

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of Assembly Bill X126 ("ABX126") and invalidated Assembly Bill X127; and

WHEREAS, the Court's decision results in the implementation of ABX126 which dissolves all the redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, the City is, by operation of law, the Successor Agency to the Redevelopment Agency for purposes of winding-down the Redevelopment Agency under ABX126; and

WHEREAS, on March 8, 2011, the former Community Redevelopment Agency of the City of Banning entered into a Transfer Agreement with the City and subsequently transferred agency-owned properties to the City of Banning and adopted City Resolution 2011-18 and Agency Resolution CRA 2011-09; and

WHEREAS, on March 15, 2012, California State Controller John Chiang issued an order to all former redevelopment agencies stating pursuant to California Health and Safety Code section 34167.5 any former agency that transferred agency owned assets to their respective cities after January 1, 2011, reverse the transfer and return the asset to the Successor Agency; and

WHEREAS, the Successor Agency will enter into an Asset Transfer Agreement with the City that acknowledges that the subject parcels are an asset of the Successor Agency and the City will act as an agent of the Successor Agency to cause the parcels to ultimately be disposed of in compliance with all applicable requirements under ABX126 or prevailing laws; and

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WHEREAS, the Administrative Services Director/Deputy City Manager will make the necessary accounting adjustments, appropriations, and transfers relating to the parcel transfers; and

WHEREAS, the adoption of Resolution 2012-10 SA supersedes the two Resolutions adopted on March 11, 2102 and referenced in this Resolution; and

WHEREAS, the Successor Agency staff will complete and return the required Asset Transfer Assessment form provided by State Controller's Office; and

WHEREAS, the Successor Agency reserves the right, regardless of any actions taken pursuant to this Resolution, to challenge the legality of ABX126, or prevailing laws, and seek reimbursement for compliance costs of this state-mandated program.

NOW, THEREFORE, the City Council of the City of Banning, in its capacity as Successor Agency, resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The Successor Agency hereby authorizes the City Manager/Executive Director to comply with the order by the California State Controller to reverse the transfer and return the applicable assets to the Successor Agency pursuant to ABX126 pursuant to Health & Safety Code Section 34167.5 or prevailing laws.

SECTION 3. The Successor Agency authorizes the City Attorney to prepare the Asset Transfer Agreement between the Successor Agency and the City of Banning.

SECTION 4. The Successor Agency authorizes the Administrative Services Director/Deputy City Manager to make necessary accounting adjustments, appropriations, and transfers relating to the parcel transfers.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution.

SECTION 6. The Resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED at a joint meeting of the City Council of the City of Banning, acting at its capacity as the Successor Agency, this 12th day of June 2012.

Don R. Robinson, Mayor
City of Banning – Successor Agency

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

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

ATTEST:

Marie Calderon, City Clerk

CERTIFICATION:

I, MARIE CALDERON, City Clerk of the City of Banning, seating as the Successor Agency, California, do hereby certify that Resolution No. 2012-10 SA was adopted by the City of Banning, seating as the Successor Agency, of the City of Banning at a regular meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning

ATTACHMENT 3
RESOLUTION 2012-54

RESOLUTION NO. 2012-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING AN ASSET TRANSFER AGREEMENT FOR THE TRANSFER OF CERTAIN PROPERTIES OWNED BY THE CITY OF BANNING FOR THE USE OF PUBLIC PURPOSES AND FOR THE CITY TO CARRY OUT ACTIVITIES OF THE FORMER COMMUNITY REDEVELOPMENT AGENCY, PURSUANT TO THE CALIFORNIA STATE CONTROLLERS ORDER TO IMMEDIATELY REVERSE AND TRANSFER THE APPLICABLE ASSETS

The City of Banning DOES RESOLVE as follows:

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, on December 29, 2011, the California Supreme Court issued its opinion in the case *California Redevelopment Association, et al. v. Ana Matosantos, etc., et al.*, Case No. S196861, and upheld the validity of Assembly Bill X126 ("ABX126") and invalidated Assembly Bill X127; and

WHEREAS, the Court's decision results in the implementation of ABX126 which dissolves all the redevelopment agencies in the State of California as of February 1, 2012; and

WHEREAS, on March 8, 2011, the former Community Redevelopment Agency of the City of Banning entered into a Transfer Agreement with the City and subsequently transferred agency-owned properties to the City of Banning and adopted City Resolution 2011-18 and Agency Resolution CRA 2011-09; and

WHEREAS, on March 15, 2012, California State Controller John Chiang issued an order to all former redevelopment agencies stating pursuant to California Health and Safety Code section 34167.5 any former agency that transferred agency owned assets to their respective cities after January 1, 2011, reverse the transfer and return the asset to the Successor Agency; and

WHEREAS, the City will enter into an Asset Transfer Agreement with the Successor Agency that acknowledges that the subject parcels are an asset of the Successor Agency and the City will act as an agent of the Successor Agency to cause the parcels to ultimately be disposed of in compliance with all applicable requirements under ABX126 or prevailing laws; and

WHEREAS, the Administrative Services Director/Deputy City Manager will make necessary accounting adjustments, appropriations, and transfers relating to the parcel transfers; and

WHEREAS, the adoption of Resolution 2012-54 supersedes the two Resolutions adopted on March 11, 2012 and referenced in this Resolution; and

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WHEREAS, the City staff, serving in their capacity as the Successor Agency staff will complete and return the required Asset Transfer Assessment form provided by State Controller's Office; and

WHEREAS, the City reserves the right, regardless of any actions taken pursuant to this Resolution, to challenge the legality of ABX126, or prevailing laws, and seek reimbursement for compliance costs of this state-mandated program.

NOW, THEREFORE, the City Council of the City of Banning resolves as follows:

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The City hereby authorizes the City Manager to comply with the order by the California State Controller to reverse the transfer and return the applicable assets to the Successor Agency pursuant to ABX126 pursuant to Health & Safety Code Section 34167.5 or prevailing laws.

SECTION 3. The City authorizes the City Attorney to prepare the Asset Transfer Agreement between the Successor Agency and the City of Banning.

SECTION 4. The City authorizes the Administrative Services Director/Deputy City Manager to make necessary accounting adjustments, appropriations, and transfers relating to the parcel transfers.

SECTION 5. The City Clerk shall certify to the adoption of this Resolution.

SECTION 6. The Resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED at a joint meeting of the City Council of the City of Banning, this 12th day of June 2012.

Don R. Robinson, Mayor
City of Banning

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

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

ATTEST:

Marie Calderon, City Clerk

CERTIFICATION:

I, MARIE CALDERON, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2012-54 was adopted by the City of Banning, at a regular meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning

CITY COUNCIL AGENDA

DATE: June 12, 2012

TO: Mayor and Members of the City Council

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

SUBJECT: Adopt Resolution No. 2012-52 repealing Resolution Nos. 2009-101 and 2009-102 relating the use and allocation of redevelopment funds and other matters.

RECOMMENDATION:

That the City Council adopt Resolution No. 2012-52 repealing Resolution Nos. 2009-101 and 2009-102 relating the use and allocation of redevelopment funds and other matters.

DISCUSSION:

Please note that the subject matter of this agenda report affects the City of Banning, Banning Public Financing Authority, Banning Utility Authority and Successor Agency. Separate agenda reports have been submitted to each entity for consideration on the same date.

Pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012. Consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency").


On December 8, 2009, the City Council adopted Resolution Nos. 2009-101 and 2009-102 (the "Resolutions"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements. In exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes. The Resolutions also authorized the modification of certain City and Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolutions. Copies of the Resolutions are attached for reference.

A current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes. As a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible. Further, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolutions. Therefore, staff, financial advisors, bond counsel and auditors recommend that the Resolutions be repealed, which is the purpose of the attached resolution.

FISCAL DATA:

Adoption of Resolution No. 2012-52 will cause accounting entries that impact the balance sheets of the 2007 Tax Allocation Bonds (Fund 855), Electric Utility fund (F674), Water fund (F661) and Wastewater fund (F683). During the fiscal year that the Resolutions were approved, only \$7 million of the \$13.3 million allocation was recorded. No entries were recorded that affected tax increment, operating revenues or expenditures of the Former Agency or utilities. Therefore, the adoption of the attached resolution repealing the Resolutions will cause the records for the affected accounting funds to be adjusted as though the Resolutions had never been approved.

RECOMMENDED BY: APPROVED BY:


June Overholt
Administrative Services Director/
Deputy City Manager


Andy Takata
City Manager

Attachments:

1. Resolution No. 2012-52
2. Resolution No. 2009-101
3. Resolution No. 2009-102
4. Exhibit A – Summary of redevelopment projects list
5. Exhibit B – Promissory Note

RESOLUTION NO 2012-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING REPEALING RESOLUTION NOS. 2009-101 AND 2009-102 RELATING THE USE AND ALLOCATION OF REDEVELOPMENT FUNDS AND OTHER MATTERS

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency"); and

WHEREAS, on December 8, 2009, the City Council adopted Resolution Nos. 2009-101 and 2009-102 (the "Resolutions"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements; and

WHEREAS, in exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes; and

WHEREAS, the Resolutions also authorized the modification of certain City and Former Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolutions; and

WHEREAS, a current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes; and

WHEREAS, as a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible; and

WHEREAS, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolutions; and

WHEREAS, staff, financial advisors, bond counsel and auditors recommend that the Resolutions be repealed, which is the purpose of this Resolution; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

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

Section 1: The foregoing recitals are true and correct and are incorporated herein.

Section 2: Resolution Nos. 2009-101 and 2009-102 are herewith repealed.

Section 3: The City Manager, or designee, is authorized and directed to implement the necessary accounting entries confirming that Resolution Nos. 2009-101 and 2009-102 have been repealed and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution.

Section 4. The City Clerk shall certify to the adoption of this Resolution.

Section 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning, this 12th day of June 2012.

Don R. 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 Resolution No. 2012-52 was adopted by the City of Banning, California at a regular meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

RESOLUTION NO. 2009-101

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
MAKING CERTAIN FINDINGS WITH RESPECT TO THE USE OF
REDEVELOPMENT FUNDS TO FINANCE THE COST OF CERTAIN
PUBLIC FACILITIES WITHIN THE MERGED REDEVELOPMENT
PROJECT AREA**

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning (the "City"); and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, The capital improvement projects delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution, will implement the goals and objectives of Banning's General Plan within the Merged Project Area and will lessen or eliminate blight and improve the affected neighborhoods; and

WHEREAS, CCRL § 33445 permits redevelopment agencies, with the consent of the legislative body (i.e., the City Council), to pay all or part of the value of the land for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned located either within or outside a project area if the legislative body determines all of the following:

- a. That the buildings, facilities, structures, or other improvements are of benefit to the project area or the immediate neighborhood in which the project is located, regardless of whether the improvement is within another project area, or in the case of a project area in which substantially all of the land is publicly owned that the improvement is of benefit to an adjacent project area of the agency;

b. That no other reasonable means of financing the buildings, facilities, structures or other improvements are available to the community; and

c. That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other structures will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons, and is consistent with the implementation plan adopted pursuant to CRL § 33490; and

WHEREAS, With respect to the qualifying prerequisites, as described in the immediately preceding recital, CCRL § 33445 provides that the determinations by the Agency and the City Council shall be final and conclusive; and

WHEREAS, With respect to redevelopment plans and amendments to those plans which add territory to a project, adopted after October 1, 1976, CRL § 33445(b) requires that the acquisition of property and installation or construction of each facility shall be provided for in the redevelopment plan; and

WHEREAS, The redevelopment plan and five-year implementation plan for the Merged Project Area include detailed lists of projects and programs, goals and objectives for the accomplishment of public facilities and improvements, economic development and community enhancement projects and programs that are sufficient in scope and detail to be inclusive of the projects specified on the Projects List; and

WHEREAS, The purpose of this Resolution is to confirm the Agency's compliance with CCRL § 33445 with respect to its use of redevelopment funds; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

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

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The use of the taxes allocated from the Merged Project Area for the purpose of funding the projects described on the Projects List, attached hereto as Exhibit "A" to this Resolution, will be of benefit to the Merged Project Area, or the immediate neighborhood in which the Project is located, based upon the findings and facts set forth below:

The area wide water supply (inclusive of quantity and fire flow), wastewater treatment capacity and electric utility system capacity deficiencies present in the Merged Project Area are of a scope that it is unlikely that the private sector acting alone would be able to fund their replacement and/or installation costs. Beginning in

2008, the US has been faced with the most significant economic downturn since the Great Depression in the 1930s. The effects have been most acute in real estate development, particularly in Riverside County. Major development projects were approved and in various stages of development within and outside of the Project Area, amounting to thousands of housing units and/or square feet of commercial and industrial development, have been delayed (e.g., the Pardee project, Loma Linda, Black Bench, Stallion Estates, Tefft, Five-Bridges, [over 10,000 units cumulative] and 52-acres of commercial), cancelled or become bankrupt. Major infrastructure in Banning is either aged or failing, under capacity for projected development, or non-existent. It is anticipated that when markets recover and development becomes feasible, that development will be attracted to areas with adequate infrastructure where new development will not face disproportionate costs. In view of these considerations, it behooves the Agency to proceed aggressively with a program of infrastructure development. Accordingly, rectifying these deficiencies may hamper the ability of property owners to eliminate conditions of blight on their properties and thus frustrate and/or delay the process of blight elimination. The conditions of development related to a proposed development plan can be so overwhelmingly expensive as to cause the proposed development plan to become economically infeasible. Adequate public infrastructure is a prerequisite to any urban development. Therefore, it is reasonable to conclude that the Agency's efforts to develop those projects listed on the Projects List will significantly contribute to the elimination of blight within the Merged Project Area.

Section 3. There are no other reasonable means available to the community to finance the cost of the projects specified on the Projects List, based on the findings and facts set forth below:

The overall financing strategy would allow the Agency to allocate funding to the City that may be used for public capital improvements. In exchange, the Agency will acquire funding from the City that may be used for economic development purposes. Since the funding acquired by the Agency will be repaid to the City over time, the City's capacity to develop future public capital improvements to serve the community will increase. Therefore, the effect of this financing strategy is to expand the Agency's efforts to carryout economic development and to expand the capacity of the City to finance additional area wide water supply, wastewater treatment capacity and electric utility system improvements in the future. Given these purposes, there are no other means reasonably available to the City to accomplish the recommended financing strategy.

Section 4. That the payment of funds for the projects specified on the Projects List will assist in the elimination of one or more blighting conditions inside the Merged Project Area and are consistent with the Merged Project Area's redevelopment plan and five-year implementation plan pursuant to CRL § 33490; based on the findings and facts set forth below:

That the payment of funds for the acquisition of land or the cost of buildings,

facilities, structures, or other structures will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons as stated in subsection a above and will implement the goals and objectives of Banning's General Plan within the Merged Project Area and will lessen or eliminate blight and improve the affected neighborhoods.

Section 5. That based on the foregoing determinations, the City Council consents to the Agency undertaking all projects on the Projects List, and using Agency funds within or outside of the Project Area to pay for such costs.

Section 6. The determinations by the City Council hereunder are final and conclusive.


Section 7. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this 8th day of December 2009.




Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:


Aleshire & Wynder, LLP
City Attorney

ATTEST:


Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-101 was duly adopted by the City Council of the City of Banning, California, at a joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSENT: None

ABSTAIN: None



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

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000	\$6,300,000	\$13,300,000 ⁶

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
4. Water Well #25 is an approximately \$2.6 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing Water Well #25 will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. The City's and Agency's financial records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
7. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by these references.

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

Date: December 2, 2009

To: Steve Dukett, Managing Principal
Urban Futures, Inc.

From: Duane Burk, Public Works Director
City of Banning

Subject: BACKGROUND INFORMATION RELATIVE TO CERTAIN PUBLIC
INFRASTRUCTURE PROJECTS WITHIN THE MERGED
REDEVELOPMENT PROJECT AREA

It is my understanding that on December 8, 2009, the City Council will consider making the necessary findings consistent with the California Community Redevelopment Law ("CCRL") to authorize the use of Redevelopment funds to finance several public infrastructure projects benefiting the Merged Redevelopment Project Area. Therefore and as a follow-up to your request, this is to provide background information relative to merits of allocating Redevelopment Funds to finance these public infrastructure projects. Some basic facts relative to the Redevelopment Area are as follows:

Redevelopment Area Description

Redevelopment agency activated in 1973

- Downtown Project adopted in 1978 and amended several times
- Midway Project adopted in 1986 and amended several times
- Projects merged in 2002 and Added Territory included

Plan limitations

- Total indebtedness limit: \$211,000,000.00
 - Final plan expiration: February 2032*
 - Final revenue collection expiration: February 2047*
- *Some sub-areas terminate earlier*

Plan area statistics

- Total size: 3,283 acres (22% of entire City Limits)

Exhibit A-1

206

- Total Parcels: 3,318
 - Residential: 2,165
 - Commercial/Industrial: 314
 - Other: 839

30" & 24" Water Transmission Pipeline

The City of Banning owns and operates its own water system throughout the City and is the Urban Water Supplier for the water service area of the City of Banning. Presently, the largest portion of the water supply comes from the water wells in the northeastern section of the City located within the Banning Water Canyon. The subject project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Project No. 2001-02, "Construction of the 30" x 24" Water Transmission Pipeline" is a project consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey Street along with the necessary tie-ins to the existing distribution systems. Upon construction of the proposed large diameter sized water transmission pipelines; they will, also, provide the operations flexibility as identified in the Water System Hydraulic Model Report, May 2002.

Council approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply from the east to the west and south areas of the City to the present and future customers of the Water/Wastewater Utilities Department.

The City Council has approved Project No. 2001-02, "Construction of the 30" & 24" Transmission Pipeline" consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey along with necessary tie-ins to the existing distribution system.

The project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Brinton Reservoir

The City is the Urban Water Supplier for the water service area of the City of Banning. The water system Hydraulic Model Report prepared by MWH, the City's consultant, in May of 2002 had identified a water system storage deficiency. The new 8 million gallon (MG) Brinton Reservoir will enhance water supply reliability to the utility customers as well as provide additional storage for fire suppression purposes.

Project No. 2008-01W, "Brinton Reservoir" is a project consisting of an 8 MG buried 2 cell rectangular trapezoidal reinforced concrete reservoir and two 30" steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue. This will make it possible to transfer water supply east and west for a more balanced water demand.

Wastewater Treatment Plant Expansion & Recycled Water Line

The City of Banning owns and operates its Wastewater Treatment Plant Operations since the 1950's. The existing Wastewater Treatment Plant facility has a rated treatment capacity of 3.6 million gallons with current sewerage flows of approximately 2.9 million gallons per day. The existing plant has a two stage treatment and treated effluent is discharged into the percolation ponds. Expansion and renovation of the existing Wastewater Treatment Plant is essential to accommodate future growth as well as to produce recycled water suitable for irrigation purposes.

Elimination of Blighting Conditions

It is my understanding that the CCRL provides that a blighted area may be characterized by the existence of inadequate public improvements or inadequate water or sewer utilities. The area wide water supply (inclusive of quantity and fire flow), wastewater treatment capacity and electric utility system capacity deficiencies currently present in the Merged Project Area are of a scope that it is unlikely that the private sector acting alone would be able to fund their replacement and/or installation costs. Further, the lack of rectifying these deficiencies may hamper the ability of property owners to eliminate conditions of blight on their properties and thus frustrate and/or delay the process of blight elimination. An example would be that the conditions of development related to a proposed development plan could be so overwhelmingly expensive as to cause the proposed development plan to become economically infeasible. Moreover, adequate public infrastructure is a prerequisite to any urban development. Therefore, it is reasonable to conclude that the Agency's efforts to develop those projects listed on the Projects List will significantly contribute to the elimination of blight within the Merged Project Area.

I trust the above noted information will be of use to you. If you have any questions, please let me know.

DB:ndb

cc: Sam Racadio, Interim City Manager
Zai Abu Bakar, Community Development Director
Kirby Warner, Interim Finance Director
John Jansons, Redevelopment Manager

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RESOLUTION NO. 2009-102

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING A SUMMARY OF REDEVELOPMENT PROJECTS LIST, A
PROMISSORY NOTE BETWEEN THE CITY OF BANNING AND THE
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING
AND AUTHORIZING ACCOUNTING AND/OR FUNDING ALLOCATION
ADJUSTMENTS NECESSARY TO IMPLEMENT THE PROMISSORY
NOTE**

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning (the "City"); and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, Pursuant to CCRL § 33445(c), when the value of the land or the cost of the installation and construction of a building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the Agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement, or both, by periodic payments over a period of years; and

WHEREAS, The purpose of this Resolution is to confirm the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution; and

WHEREAS, The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed, some of which are attributable to the Banning Utility Authority (the "BUA") and the City of Banning Financing Authority (the "BFA"); and

WHEREAS, Pursuant to CCRL § 33445(d), the obligation of the Agency under the Promissory Note, attached hereto as Exhibit "B" to this Resolution, shall constitute an indebtedness of the Agency for the purpose of carrying out the Plan for the Merged Project Area which indebtedness may be made payable out of taxes levied in the Merged Project Area and allocated to the Agency under CCRL § 33670(b) or out of any other available funds; and

WHEREAS, Consistent with the responsibilities delegated to it by the BUA and the BFA, the City shall ensure that the Agency's future repayment of the indebtedness evidenced by the Promissory Note that is attributable to the BUA's and BFA's resources shall accrue to the BUA or BFA, as appropriate; and

WHEREAS, Pursuant to their Resolutions adopted on December 8, 2009, the BUA and the BFA have ratified the Promissory Note; and

WHEREAS, Certain accounting and/or funding adjustments are necessary to implement the Promissory Note; and

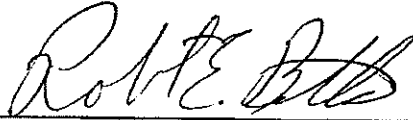
WHEREAS, This Resolution and the Promissory Note will only have the effect of modifying funding sources and will not modify any City or Agency appropriation; and

WHEREAS, All of the prerequisites with respect to the approval of this Resolution have been met.

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

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Summary of Redevelopment Projects List, attached hereto as Exhibit "A" to this Resolution, is approved.
- Section 3.** The Promissory Note, attached hereto as Exhibit "B" to this Resolution, is approved.
- Section 4.** The City Manager, or his designee, is authorized to take such action as may be necessary to implement the Promissory Note.
- Section 5.** This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this 8th day of December 2009.



Robert E. Botts, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST



Aleshire & Wynder, LLP
City Attorney



Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

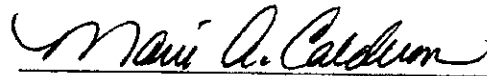
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2009-102 was duly adopted by the City Council of the City of Banning, California, at a joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES: Councilmembers Franklin, Hanna, Machisic, Robinson, Mayor Botts

NOES: None

ABSENT: None

ABSTAIN: None



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

Exhibit "A"
(Resolution)

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000 ⁶	\$6,300,000 ⁷	\$13,300,000 ⁸

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
4. Water Well #25 is an approximately \$2.6 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing Water Well #25 will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. Pursuant to the Promissory Note, the amount indicated shall be transferred to the Agency.
7. The City's and Agency's records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
8. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by this reference.

PROMISSORY NOTE

Principal Amount
\$13,300,000.00

Banning, California
December 8, 2009

Promise to Pay. The Community Redevelopment Agency of the City of Banning (the "Agency"), a public body, corporate and politic, duly organized and existing under the laws of the State of California, for value received, hereby promises to pay to the order of the City of Banning, a California municipal corporation, duly organized and existing under the laws of the State of California (the "City"), the principal due pursuant to the terms of this Note.

Purpose. The Agency functions as a redevelopment agency pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning. Since redevelopment was instituted in the City of Banning, the City Council has adopted, amended and merged redevelopment plans for the Downtown Redevelopment Project Area and the Midway Redevelopment Project Area (the "Merged Redevelopment Project Area"). This Promissory Note (the "Note") is being executed to evidence the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Redevelopment Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Note. The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed. It is the intent of the Parties to this Promissory Note that any accounting and/or funding allocation adjustments necessary to implement the Promissory Note shall be made by each Party consistent with Exhibit "A" to this Note.

Indebtedness. Pursuant to CCRL § 33445(d), the obligation of the Agency under this Note shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment project for the Merged Redevelopment Project Area, which indebtedness may be made payable out of taxes levied in the Merged Redevelopment Project Area and allocated to the Agency under CCRL § 33670 (b) or out of any other available funds.

Interest Rate. This Note shall bear simple interest at a rate equivalent to the Local Agency Investment Fund ("LAIF") apportionment rate as determined by the office of the California Treasurer. For each year during the term of this Note, the interest rate for the applicable fiscal year shall be the LAIF apportionment rate published by the California Treasurer for June of each year.

Term. Unless earlier repaid, any balance on this Note shall be due in full on the later of February 26, 2047 or the latest date for the repayment of indebtedness for any component area of the Merged Redevelopment Project Area.

Priority of Revenue. The Agency will repay the Note from net tax increment funds as these funds are available for such repayment. Net tax increment funds shall mean the net tax increment

revenues, excluding any amount used to:

- a. pay principal of, any premium on and interest on any existing or future bonds or notes that are secured by a pledge of tax increment revenues generated from the Merged Redevelopment Project Area;
- b. make payments to any taxing entity pursuant to a tax sharing agreement or statutory tax sharing formula pursuant to §§ 33607.5 and 33607.7;
- c. pay the Riverside County property tax collection administrative fee;
- d. contribute revenues to the Low- and Moderate-Income Housing Fund in the amounts required by the CCRL; and
- e. fund the administrative expenses of the Agency, not to exceed the amount listed in the Agency's annually adopted budget.

Repayment Schedule. Subject to the priority of revenue noted hereinabove, the Agency shall initiate repayment of the indebtedness evidenced by this Note on the later of February 26, 2032 or the latest date for the expiration of redevelopment plan effectiveness for any component area of the Merged Redevelopment Project Area.

Payments and Pre-Payments. All payments under this Note shall be made in lawful money of the United States at the principal office of the City of Banning, 99 East Ramsey Street, Banning, California 92220, or at such other place as may from time to time be designated by the City. All payments made under this Note shall be applied first to the interest due on the Note and the remaining balance shall be applied to principal. The Agency may prepay, at any time, all or any part of the principal amount of this Note without any payment of penalties or premiums.

IN WITNESS WHEREOF, the parties hereto have executed this Note as of the date first set forth above.

ATTEST:

CITY OF BANNING

By:

Maria Q. Caldeira
City Clerk

By:

Robert E. Babb
Mayor

ATTEST:

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF BANNING

By:

Maria Q. Caldeira
Agency Secretary

By:

Don P. Pheasant
Chairman

Exhibit "A"
(Promissory Note)

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000 ⁶	\$6,300,000 ⁷	\$13,300,000 ⁸

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
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6. Pursuant to the Promissory Note, the amount indicated shall be transferred to the Agency.
7. The City's and Agency's records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
8. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by this reference.

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

Date: December 2, 2009

To: Steve Dukett, Managing Principal
Urban Futures, Inc.

From: Duane Burk, Public Works Director
City of Banning

Subject: BACKGROUND INFORMATION RELATIVE TO CERTAIN PUBLIC
INFRASTRUCTURE PROJECTS WITHIN THE MERGED
REDEVELOPMENT PROJECT AREA

It is my understanding that on December 8, 2009, the City Council will consider making the necessary findings consistent with the California Community Redevelopment Law ("CCRL") to authorize the use of Redevelopment funds to finance several public infrastructure projects benefiting the Merged Redevelopment Project Area. Therefore and as a follow-up to your request, this is to provide background information relative to merits of allocating Redevelopment Funds to finance these public infrastructure projects. Some basic facts relative to the Redevelopment Area are as follows:

Redevelopment Area Description

Redevelopment agency activated in 1973

- Downtown Project adopted in 1978 and amended several times
- Midway Project adopted in 1986 and amended several times
- Projects merged in 2002 and Added Territory included

Plan limitations

- Total indebtedness limit: \$211,000,000.00
 - Final plan expiration: February 2032*
 - Final revenue collection expiration: February 2047*
- *Some sub-areas terminate earlier*

Plan area statistics

- Total size: 3,283 acres (22% of entire City Limits)

Exhibit A-1

- Total Parcels: 3,318
 - Residential: 2,165
 - Commercial/Industrial: 314
 - Other: 839

30" & 24" Water Transmission Pipeline

The City of Banning owns and operates its own water system throughout the City and is the Urban Water Supplier for the water service area of the City of Banning. Presently, the largest portion of the water supply comes from the water wells in the northeastern section of the City located within the Banning Water Canyon. The subject project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Project No. 2001-02, "Construction of the 30" x 24" Water Transmission Pipeline" is a project consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey Street along with the necessary tie-ins to the existing distribution systems. Upon construction of the proposed large diameter sized water transmission pipelines; they will, also, provide the operations flexibility as identified in the Water System Hydraulic Model Report, May 2002.

Council approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply from the east to the west and south areas of the City to the present and future customers of the Water/Wastewater Utilities Department.

The City Council has approved Project No. 2001-02, "Construction of the 30" & 24" Transmission Pipeline" consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey along with necessary tie-ins to the existing distribution system.

The project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Brinton Reservoir

The City is the Urban Water Supplier for the water service area of the City of Banning. The water system Hydraulic Model Report prepared by MWH, the City's consultant, in May of 2002 had identified a water system storage deficiency. The new 8 million gallon (MG) Brinton Reservoir will enhance water supply reliability to the utility customers as well as provide additional storage for fire suppression purposes.

Project No. 2008-01W, "Brinton Reservoir" is a project consisting of an 8 MG buried 2 cell rectangular trapezoidal reinforced concrete reservoir and two 30" steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue. This will make it possible to transfer water supply east and west for a more balanced water demand.

Wastewater Treatment Plant Expansion & Recycled Water Line

The City of Banning owns and operates its Wastewater Treatment Plant Operations since the 1950's. The existing Wastewater Treatment Plant facility has a rated treatment capacity of 3.6 million gallons with current sewerage flows of approximately 2.9 million gallons per day. The existing plant has a two stage treatment and treated effluent is discharged into the percolation ponds. Expansion and renovation of the existing Wastewater Treatment Plant is essential to accommodate future growth as well as to produce recycled water suitable for irrigation purposes.

Elimination of Blighting Conditions

It is my understanding that the CCRL provides that a blighted area may be characterized by the existence of inadequate public improvements or inadequate water or sewer utilities. The area wide water supply (inclusive of quantity and fire flow), wastewater treatment capacity and electric utility system capacity deficiencies currently present in the Merged Project Area are of a scope that it is unlikely that the private sector acting alone would be able to fund their replacement and/or installation costs. Further, the lack of rectifying these deficiencies may hamper the ability of property owners to eliminate conditions of blight on their properties and thus frustrate and/or delay the process of blight elimination. An example would be that the conditions of development related to a proposed development plan could be so overwhelmingly expensive as to cause the proposed development plan to become economically infeasible. Moreover, adequate public infrastructure is a prerequisite to any urban development. Therefore, it is reasonable to conclude that the Agency's efforts to develop those projects listed on the Projects List will significantly contribute to the elimination of blight within the Merged Project Area.

I trust the above noted information will be of use to you. If you have any questions, please let me know.

DB:ndb

cc: Sam Racadio, Interim City Manager
Zai Abu Bakar, Community Development Director
Kirby Warner, Interim Finance Director
John Jansons, Redevelopment Manager

BANNING PUBLIC FINANCING AUTHORITY AGENDA

DATE: June 12, 2012

TO: Banning Public Financing Authority Board

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

SUBJECT: Adopt Resolution No. 2012-01-FA repealing Resolution No. 2009-01-FA that ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency.

RECOMMENDATION:

That the Banning Public Financing Authority adopt Resolution No. 2012-01-FA repealing Resolution No. 2009-01-FA that ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency

DISCUSSION:

Please note that the subject matter of this agenda report affects the City of Banning, Banning Public Financing Authority, Banning Utility Authority and Successor Agency. Separate agenda reports have been submitted to each entity for consideration on the same date.

On December 8, 2009, the Banning Public Financing Authority adopted Resolution Nos. 2009-01-FA (the "Resolution") that ratified a Promissory Note. Because the Financing Authority issued Electric Revenue Bonds in 2007 and certain projects included in the Promissory Note authorized were financed through the bonds, it was necessary for the Financing Authority to ratify the Promissory Note. A copy of Resolution 2009-01 FA is attached for reference.

Various Resolutions assisted in implementing an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements. In exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes. The Resolution also authorized the modification of certain City and Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolution. A copy of the Resolution is attached for reference.


A current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes. As a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible. Further, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolutions. Therefore, staff, financial advisors, bond counsel

and auditors recommend that the Resolutions be repealed, which is the purpose of the attached resolution.

FISCAL DATA:

Adoption of Resolution No. 2012-01-FA repeals the ratification of the Promissory note. This action does not result in accounting entries. Once the Promissory note is repealed, it will cause accounting entries that impact the balance sheets of the 2007 Tax Allocation Bonds (Fund 855), Electric Utility fund (F674), Water fund (F661) and Wastewater fund (F683). During the fiscal year that the Resolution was approved, only \$7 million of the \$13.3 million allocation was recorded. No entries were recorded that affected tax increment, operating revenues or expenditures of the Former Agency or utilities. Therefore, the adoption of the attached resolution repealing the Resolution will cause the records for the affected accounting funds to be adjusted as though the Resolutions had never been approved.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

Attachments:

1. Resolution 2012-01-FA
2. Resolution 2009-01-FA
3. Exhibit A – Summary of redevelopment projects list

RESOLUTION NO 2012-01-FA

A RESOLUTION OF THE BANNING PUBLIC FINANCING AUTHORITY REPEALING RESOLUTION NO. 2009-01-FA THAT RATIFIED A PROMISSORY NOTE BETWEEN THE CITY OF BANNING AND THE COMMUNITY REDEVELOPMENT AGENCY

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency"); and

WHEREAS, on December 8, 2009, the Banning Public Financing Authority adopted Resolution No. 2009-01-FA (the "Resolution"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements; and

WHEREAS, in exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes; and

WHEREAS, the Resolution also authorized the modification of certain City and Former Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolution; and

WHEREAS, a current review of the record has revealed that some of the elements described in the Resolution were not implemented and that some of the funding that would have been transferred pursuant to the Resolution was used for other purposes; and

WHEREAS, as a result of the foregoing, the financial transfers originally contemplated in the Resolution are now no longer financially possible; and

WHEREAS, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolution; and

WHEREAS, staff, financial advisors, bond counsel and auditors recommend that the Resolution be repealed, which is the purpose of this Resolution; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, acting in its capacity as the Banning Public Financing Authority, as follows:

Section 1: The foregoing recitals are true and correct and are incorporated herein.

Section 2: Resolution No. 2009-01-FA is herewith repealed.

Section 3: The City Manager, or designee, is authorized and directed to implement the necessary accounting entries confirming that Resolution No. 2009-01-FA has been repealed and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution.

Section 4. The City Clerk shall certify to the adoption of this Resolution.

Section 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning, acting in its capacity as the Banning Public Financing Authority, this 12th day of June 2012.

Don R. 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 Resolution No. 2012-01-FA was adopted by the City Council of the City of Banning, acting in its capacity as the Banning Public Financing Authority, at a special meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

RESOLUTION NO. 2009-01 FA

**RESOLUTION OF THE CITY OF BANNING FINANCING AUTHORITY
RATIFYING A PROMISSORY NOTE BETWEEN THE CITY OF
BANNING AND THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF BANNING**

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning; and

WHEREAS, On November 12, 2003, the City of Banning Financing Authority was established pursuant to a Joint Exercise of Powers Agreement, by and between the City of Banning (the "City") and the Agency in accordance with the §§ 6500 through 6599.3 of the California Government Code; and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, Effective June 1, 2007, as part of its program to issue its Revenue Bonds (Electric System Project) Series 2007 (the "2007 Authority Bonds"), the Authority and City authorized and approved the necessary agreements, inclusive of that certain Installment Sale Agreement that, among other things, delegated sufficient authority to the City to manage the Authority's fiscal obligations with respect to the 2007 Authority Bonds; and

WHEREAS, Pursuant to CCRL § 33445(c), when the value of the land or the cost of the installation and construction of a building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the Agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement, or both, by periodic payments over a period of years; and

WHEREAS, The City and Agency have proposed to enter into a Promissory Note (the

"Promissory Note") that would memorialize the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution; and

WHEREAS, The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed, some of which are financed with the proceeds of the 2007 Authority Bonds; and

WHEREAS, Consistent with the responsibilities delegated to it by the Authority, the City shall ensure that the Agency's future repayment of the indebtedness evidenced by the Promissory Note that is attributable to the Authority's resources shall accrue to the Authority; and

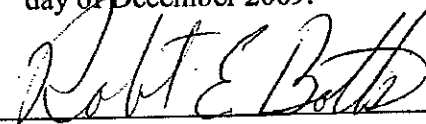
WHEREAS, The purpose of this Resolution is to ratify the Promissory Note; and

WHEREAS, All of the prerequisites with respect to the approval of this Resolution have been met.

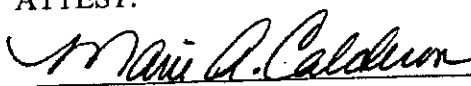
NOW, THEREFORE, BE IT RESOLVED by the City of Banning Financing Authority, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Promissory Note, by and between the City and the Agency is herewith ratified.
- Section 3.** This Resolution shall take effect upon the date of its adoption.

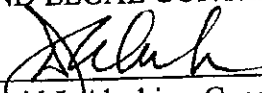
PASSED, APPROVED AND ADOPTED this 8th day of December 2009.


Robert E. Botts, Chairman
City of Banning Financing Authority

ATTEST:


Marie A. Calderon, Secretary
Banning Financing Authority

APPROVED AS TO FORM
AND LEGAL CONTENT:




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

CERTIFICATION:

I, Marie A. Calderon, Secretary of the City of Banning Financing Authority do hereby certify that the foregoing Resolution No. 2009-01 FA was duly adopted by the City of Banning Financing Authority at a special joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES: Boardmembers Franklin, Hanna, Machisic, Robinson, Chairman Botts
NOES: None
ABSENT: None
ABSTAIN: None



Marie A. Calderon, Secretary
City of Banning Financing Authority

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
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Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
Water Capital Facilities ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000	\$6,300,000	\$13,300,000 ⁶

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
4. Water Well #25 is an approximately \$2.6 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing Water Well #25 will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. The City's financial records shall be modified to reflect the use of Agency funds in the amounts and for the purposes indicated herein.

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BANNING UTILITY AUTHORITY AGENDA

DATE: June 12, 2012

TO: Banning Utility Authority Board

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

SUBJECT: Adopt Resolution No. 2012-08-UA repealing Resolution No. 2009-03-UA that ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency.

RECOMMENDATION:

That the Banning Utility Authority Board adopt Resolution No. 2012-08-UA repealing Resolution No. 2009-03-UA that ratified a Promissory Note between the City of Banning and the Community Redevelopment Agency

DISCUSSION:

Please note that the subject matter of this agenda report affects the City of Banning, Banning Public Financing Authority, Banning Utility Authority and Successor Agency. Separate agenda reports have been submitted to each entity for consideration on the same date.

On December 8, 2009, the Banning Utility Authority adopted Resolution Nos. 2009-03-UA (the "Resolution") that ratified a Promissory Note. Because the Banning Utility Authority (Authority) issued Water Enterprise Revenue Bonds in Series 2005 and Wastewater Enterprise Revenue Bonds, Series 2005 and certain projects included in the Promissory Note authorized by the City Council Resolution 2009-102 were financed through the bonds, it was necessary for the Authority to ratify the Promissory Note. A copy of Resolution 2009-03 UA is attached for reference.

Various Resolutions assisted in implementing overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements. In exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes. The Resolution also authorized the modification of certain City and Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolution. A copy of the Resolution is attached for reference.

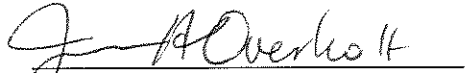
A current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes. As a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible. Further, given that the Former Agency has been dissolved, it is not possible to

implement the provisions of the Resolutions. Therefore, staff, financial advisors, bond counsel and auditors recommend that the Resolutions be repealed, which is the purpose of the attached resolution.

FISCAL DATA:

Adoption of Resolution No. 2012-08-UA repeals the ratification of the Promissory note. This action does not result in accounting entries. Once the Promissory note is repealed, it will cause accounting entries that impact the balance sheets of the 2007 Tax Allocation Bonds (Fund 855), Electric Utility fund (F674), Water fund (F661) and Wastewater fund (F683). During the fiscal year that the Resolution was approved, only \$7 million of the \$13.3 million allocation was recorded. No entries were recorded that affected tax increment, operating revenues or expenditures of the Former Agency or utilities. Therefore, the adoption of the attached resolution repealing the Resolution will cause the records for the affected accounting funds to be adjusted as though the Resolutions had never been approved.

RECOMMENDED BY:


June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:


Andy Takata
City Manager

Attachments:

1. Resolution 2012-08-UA
2. Resolution 2009-03-UA
3. Exhibit A – Summary of redevelopment projects list

RESOLUTION NO 2012-08-UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY REPEALING RESOLUTION NO. 2009-03-UA THAT RATIFIED A PROMISSORY NOTE BETWEEN THE CITY OF BANNING AND THE COMMUNITY REDEVELOPMENT AGENCY

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency"); and

WHEREAS, on December 8, 2009, the Banning Utility Authority adopted Resolution No. 2009-03-UA (the "Resolution"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements; and

WHEREAS, in exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes; and

WHEREAS, the Resolution also authorized the modification of certain City and Former Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolution; and

WHEREAS, a current review of the record has revealed that some of the elements described in the Resolution were not implemented and that some of the funding that would have been transferred pursuant to the Resolution was used for other purposes; and

WHEREAS, as a result of the foregoing, the financial transfers originally contemplated in the Resolution are now no longer financially possible; and

WHEREAS, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolution; and

WHEREAS, staff, financial advisors, bond counsel and auditors recommend that the Resolution be repealed, which is the purpose of this Resolution; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, acting in its capacity as the Banning Utility Authority, as follows:

Section 1: The foregoing recitals are true and correct and are incorporated herein.

Section 2: Resolution No. 2009-03-UA is herewith repealed.

Section 3: The City Manager, or designee, is authorized and directed to implement the necessary accounting entries confirming that Resolution No. 2009-03-UA has been repealed and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution.

Section 4. The City Clerk shall certify to the adoption of this Resolution.

Section 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning, acting in its capacity as the Banning Utility Authority, this 12th day of June 2012.

Don R. 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 Resolution No. 2012-08-UA was adopted by the City Council of the City of Banning, acting in its capacity as the Banning Utility Authority, at a special meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

RESOLUTION NO. 2009-03 UA

**RESOLUTION OF THE BANNING UTILITY AUTHORITY RATIFYING
A PROMISSORY NOTE BETWEEN THE CITY OF BANNING AND THE
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF
BANNING**

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning; and

WHEREAS, On July 12, 2005, the Banning Utility Authority (the "Authority") was established pursuant to a Joint Exercise of Powers Agreement, by and between the City of Banning (the "City") and the Agency in accordance with the §§ 6500 through 6599.3 of the California Government Code; and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, Effective December 1, 2005, as part of its program to issue its Water Enterprise Revenue Bonds, Refunding and Improvement Projects, Series 2005 and Wastewater Enterprise Revenue Bonds, Refunding and Improvement Projects, Series 2005 (collectively, the "2005 Authority Bonds"), the Authority and City authorized and approved the necessary agreements, inclusive of the Water Enterprise Management Agreement and Wastewater Enterprise Management Agreement that, among other things, delegated sufficient authority to the City to manage the Authority's fiscal obligations with respect to the 2005 Authority Bonds; and

WHEREAS, Pursuant to CCRL § 33445(c), when the value of the land or the cost of the installation and construction of a building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the Agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement, or both, by periodic payments over a period of years; and

WHEREAS, The City and Agency have proposed to enter into a Promissory Note (the "Promissory Note") that would memorialize the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution; and

WHEREAS, The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed, some of which are financed with the proceeds of the 2005 Authority Bonds; and

WHEREAS, Consistent with the responsibilities delegated to it by the Authority, the City shall ensure that the Agency's future repayment of the indebtedness evidenced by the Promissory Note that is attributable to the Authority's resources shall accrue to the Authority; and

WHEREAS, The purpose of this Resolution is to ratify the Promissory Note; and

WHEREAS, All of the prerequisites with respect to the approval of this Resolution have been met.

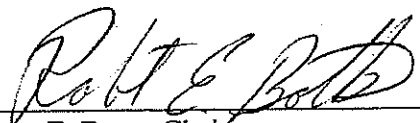
NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The Promissory Note, by and between the City and the Agency is herewith ratified.

Section 3. This Resolution shall take effect upon the date of its adoption.


PASSED, APPROVED AND ADOPTED this 8th day of December 2009.


Robert E. Botts, Chairman
Banning Utility Authority

ATTEST:


Marie A. Calderon, Secretary

APPROVED AS TO FORM
AND LEGAL CONTENT:



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

CERTIFICATION:

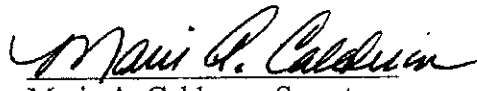
I, Marie A. Calderon, Secretary of the Banning Utility Authority do hereby certify that the foregoing Resolution No. 2009-03 UA was duly adopted by the Banning Utility Authority at a special joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES: Boardmembers Franklin, Hanna, Machisic, Robinson, Chairman Botts

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, Secretary
Banning Utility Authority

Exhibit "A"
(Resolution)

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
Water Capital Facilities ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000	\$6,300,000	\$13,300,000 ⁶

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

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3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
4. Water Well #25 is an approximately \$2.6 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing Water Well #25 will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. The City's financial records shall be modified to reflect the use of Agency funds in the amounts and for the purposes indicated herein.

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SUCCESSOR AGENCY AGENDA

DATE: June 12, 2012

TO: Successor Agency Board

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

SUBJECT: Adopt Resolution No. 2012-09-SA Repealing Resolution Nos. CRA 2009-23 and CRA 2009-24 Relating to the Use and Allocation of Redevelopment Funds and Other Related Matters.

RECOMMENDATION:

That the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning adopt Resolution No. 2012-09-SA repealing Resolution Nos. CRA 2009-23 and CRA 2009-24 relating the use and allocation of redevelopment funds and other matters.

DISCUSSION:

Please note that the subject matter of this agenda report affects the City of Banning, Banning Public Financing Authority, Banning Utility Authority and Successor Agency. Separate agenda reports have been submitted to each entity for consideration on the same date.

Pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012. Consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency").

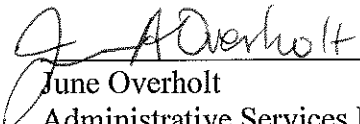
On December 8, 2009, the Former Agency adopted Resolution Nos. 2009-101 and 2009-102 (the "Resolutions"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements. In exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes. The Resolutions also authorized the modification of certain City and Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolutions. Copies of the Resolutions are attached for reference.

A current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes. As a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible. Further, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolutions. Therefore, staff, financial advisors, bond counsel and auditors recommend that the Resolutions be repealed, which is the purpose of the attached resolution.

FISCAL DATA:

Adoption of Resolution No. 2012-09-SA will cause accounting entries that impact the balance sheets of the 2007 Tax Allocation Bonds (Fund 855), Electric Utility fund (F674), Water fund (F661) and Wastewater fund (F683). During the fiscal year that the Resolutions were approved, only \$7 million of the \$13.3 million allocation was recorded. No entries were recorded that affected tax increment, operating revenues or expenditures of the Former Agency or utilities. Therefore, the adoption of the attached resolution repealing the Resolutions will cause the records for the affected accounting funds to be adjusted as though the Resolutions had never been approved.

RECOMMENDED BY: APPROVED BY:


June Overholt
Administrative Services Director/
Deputy City Manager


Andy Takata
City Manager

Attachments:

1. Resolution No. 2012-09-SA
2. Resolution No. CRA 2009-23
3. Resolution No. CRA 2009-24
4. Exhibit A – Summary of redevelopment projects list
5. Exhibit B – Promissory Note

RESOLUTION NO 2012-09-SA

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE DISSOLVED
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING,
REPEALING RESOLUTION NOS. CRA 2009-23 AND CRA 2009-24 RELATING THE
USE AND ALLOCATION OF REDEVELOPMENT FUNDS AND OTHER MATTERS**

WHEREAS, the City of Banning is a municipal corporation and a general law city organized and existing under the Constitution of the State of California ("City"); and

WHEREAS, pursuant to Health and Safety Code § 34172 (a)(1), the Community Redevelopment Agency of the City of Banning (the "Former Agency") was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the Health and Safety Code, the City Council elected to serve in the capacity of the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, (the "Successor Agency"); and

WHEREAS, on December 8, 2009, the Former Agency adopted Resolution Nos. CRA 2009-23 and CRA 2009-24 (the "Resolutions"), which authorized an overall financing strategy permitting the Former Agency to allocate \$13.3 million of bond proceeds to the City for certain public capital improvements; and

WHEREAS, in exchange, the Former Agency was to acquire an equal amount of non-bond proceeds from the City for certain economic development purposes; and

WHEREAS, the Resolutions also authorized the modification of certain City and Former Agency financial records to reflect the use of the exchanged funds in the amounts and for the purposes indicated in the Resolutions; and

WHEREAS, a current review of the record has revealed that some of the elements described in the Resolutions were not implemented and that some of the funding that would have been transferred pursuant to the Resolutions was used for other purposes; and

WHEREAS, as a result of the foregoing, the financial transfers originally contemplated in the Resolutions are now no longer financially possible; and

WHEREAS, given that the Former Agency has been dissolved, it is not possible to implement the provisions of the Resolutions; and

WHEREAS, staff, financial advisors, bond counsel and auditors recommend that the Resolutions be repealed, which is the purpose of this Resolution; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, as follows:

Section 1: The foregoing recitals are true and correct and are incorporated herein.

Section 2: Resolution Nos. CRA 2009-23 and CRA 2009-24 are herewith repealed.

Section 3: The City Manager, or designee, is authorized and directed to implement the necessary accounting entries confirming that Resolution Nos. 2009-101 and 2009-102 have been repealed and to take such other actions and execute such other documents as are necessary to effectuate the intent of this Resolution.

Section 4. The City Clerk shall certify to the adoption of this Resolution.

Section 5. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning, acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, this 12th day of June 2012.

Don R. 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 Resolution No. 2012-09-SA was adopted by the City Council of the City of Banning, acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, at a special meeting held on the 12th day of June, 2012, and that the same was adopted by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

CRA RESOLUTION NO. 2009-23

**RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF
THE CITY OF BANNING MAKING CERTAIN FINDINGS WITH RESPECT
TO THE USE AND ALLOCATION OF REDEVELOPMENT FUNDS TO
FINANCE THE COST OF CERTAIN PUBLIC FACILITIES WITHIN THE
MERGED REDEVELOPMENT PROJECT AREA**

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning (the "City"); and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, The capital improvement projects delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution, will implement the goals and objectives of Banning's General Plan within the Merged Project Area and will lessen or eliminate blight and improve the affected neighborhoods; and

WHEREAS, CRL § 33445 permits redevelopment agencies, with the consent of the legislative body (i.e., the City Council), to pay all or part of the value of the land for and the cost of installation and construction of any building, facility, structure or other improvement which is publicly owned located either within or outside a project area if the legislative body determines all of the following:

- a. That the buildings, facilities, structures, or other improvements are of benefit to the project area or the immediate neighborhood in which the project is located, regardless of whether the improvement is within another project area, or in the case of a project area in which substantially all of the land is publicly owned that the improvement is of benefit to an adjacent project area of the agency;

b. That no other reasonable means of financing the buildings, facilities, structures or other improvements are available to the community; and

c. That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other structures will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons, and is consistent with the implementation plan adopted pursuant to CRL § 33490; and

WHEREAS, With respect to the qualifying prerequisites, as described in the immediately preceding recital, CCRL § 33445 provides that the determinations by the Agency and the City Council shall be final and conclusive; and

WHEREAS, With respect to redevelopment plans and amendments to those plans which add territory to a project, adopted after October 1, 1976, CRL § 33445(b) requires that the acquisition of property and installation or construction of each facility shall be provided for in the redevelopment plan; and

WHEREAS, The redevelopment plan and five-year implementation plan for the Merged Project Area include detailed lists of projects and programs, goals and objectives for the accomplishment of public facilities and improvements, economic development and community enhancement projects and programs that are sufficient in scope and detail to be inclusive of the projects specified on the Projects List; and

WHEREAS, The purpose of this Resolution is to confirm the Agency's compliance with CCRL § 33445 with respect to its use of redevelopment funds and to allocate said funds to the City for development of the projects specified on the Projects List; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Community Redevelopment Agency Board of the City of Banning, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The use of the taxes allocated from the Merged Project Area for the purpose of funding the projects described on the Projects List, attached hereto as Exhibit "A" to this Resolution, will be of benefit to the Merged Project Area, or the immediate neighborhood in which the Project is located, based upon the findings and facts set forth below:

The area wide water supply (inclusive of quantity and fire flow), wastewater treatment capacity and electric utility system capacity deficiencies present in the Merged Project Area are of a scope that it is unlikely that the private sector acting alone would be able to fund their replacement and/or installation costs. Beginning in 2008, the US has been faced with the most significant economic downturn since the Great Depression in the 1930s. The effects have been most acute in real estate development, particularly in Riverside County. Major development projects were approved and in various stages of development within and outside of the Merged Project Area, amounting to thousands of housing units and/or square feet of commercial and industrial development, have been delayed (e.g., the Pardee project, Loma Linda, Black Bench, Stallion Estates, Tefft, Five-Bridges, [over 10,000 units cumulative] and 52-acres of commercial), cancelled or become bankrupt. Major infrastructure in Banning is either aged or failing, under capacity for projected development, or non-existent. It is anticipated that when markets recover and development becomes feasible, that development will be attracted to areas with adequate infrastructure where new development will not face disproportionate costs. In view of these considerations, it behooves the Agency to proceed aggressively with a program of infrastructure development. Accordingly, rectifying these deficiencies may hamper the ability of property owners to eliminate conditions of blight on their properties and thus frustrate and/or delay the process of blight elimination. The conditions of development related to a proposed development plan can be so overwhelmingly expensive as to cause the proposed development plan to become economically infeasible. Adequate public infrastructure is a prerequisite to any urban development. Therefore, it is reasonable to conclude that the Agency's efforts to develop those projects listed on the Projects List will significantly contribute to the elimination of blight within the Merged Project Area.

Section 3. There are no other reasonable means available to the community to finance the cost of the projects specified on the Projects List, based on the findings and facts set forth below:

The overall financing strategy would allow the Agency to allocate funding that may be used for public capital improvements. In exchange, the City will acquire funding from the Agency that may be used for economic development purposes. Since the funding acquired by the City will be repaid to the Agency over time, the Agency's capacity to develop future public capital improvements to serve the community will increase. Therefore, the effect of this financing strategy is to expand the Agency's efforts to carryout economic development and to expand the capacity of the Agency to finance additional area wide water supply, wastewater treatment capacity and electric utility system improvements in the future. Given these purposes, there are no other means reasonably available to the Agency to accomplish the recommended financing strategy.

Section 4. That the payment of funds for the projects specified on the Projects List will assist in the elimination of one or more blighting conditions inside the Merged Project Area and are consistent with the Merged Project Area's redevelopment plan and five-year implementation plan pursuant to CRL § 33490; based on the findings and facts set forth below:

That the payment of funds for the acquisition of land or the cost of buildings, facilities, structures, or other structures will assist in the elimination of one or more blighting conditions inside the project area or provide housing for low- or moderate-income persons as stated in subsection a above and will implement the goals and objectives of Banning's General Plan within the Merged Project Area and will lessen or eliminate blight and improve the affected neighborhoods.

Section 5. That based on the foregoing determinations, the Agency Board approves undertaking all projects on the Projects List, and using Agency funds within or outside of the Merged Project Area to pay for such costs. The purposes of this Resolution is for financing purposes solely and nothing herein shall be construed to permit any such projects to proceed without full and complete environmental review, as required by law.

Section 6. The determinations by the Agency Board hereunder are final and conclusive.

Section 7. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this 8th day of December 2009.



Don Robinson, Chairman
Community Redevelopment Agency of the
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:



Aleshire & Wynder, LLP
Agency Counsel

ATTEST:



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

CERTIFICATION:

I, Marie A. Calderon, Agency Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2009-23 was duly adopted by the Community Redevelopment Agency of the City of Banning, California, at a special joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES: Boardmembers Botts, Franklin, Hanna, Machisic, Chairman Robinson

NOES: None

ABSENT: None

ABSTAIN: None



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

Exhibit "A"
(Resolution)

Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000	\$6,300,000	\$13,300,000 ⁶

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

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3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
4. Water Well #25 is an approximately \$2.6 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing Water Well #25 will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. The City's and Agency's records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
7. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by this reference.

CRA RESOLUTION NO. 2009-24

RESOLUTION OF THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING APPROVING A SUMMARY OF REDEVELOPMENT PROJECTS LIST, A PROMISSORY NOTE BETWEEN THE CITY OF BANNING AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING AND AUTHORIZING ACCOUNTING AND/OR FUNDING ALLOCATION ADJUSTMENTS NECESSARY TO IMPLEMENT THE PROMISSORY NOTE

WHEREAS, The Community Redevelopment Agency of the City of Banning (the "Agency") is organized and existing pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning (the "City"); and

WHEREAS, On June 12, 1978, the City Council (the "City Council") of the City adopted Ordinance No. 709, which approved the Redevelopment Plan (the "Plan") for the Downtown Redevelopment Project (the "Downtown Project Area") and has amended the Plan for the Downtown Project Area on several occasions; and

WHEREAS, On June 10, 1986, the City adopted Ordinance No. 906, which approved the Plan for the Midway Redevelopment Project (the "Midway Project Area") and has amended the Plan for the Midway Project Area on several occasions; and

WHEREAS, On February 26, 2002, the City Council adopted Ordinance No. 1280, which merged the Downtown Project Area and the Midway Project Area (the "Merged Project Area") and has amended the Plan for the Merged Project Area on several occasions; and

WHEREAS, Pursuant to CCRL § 33445(c), when the value of the land or the cost of the installation and construction of a building, facility, structure, or other improvement, or both, has been, or will be, paid or provided for initially by the community or other public corporation, the Agency may enter into a contract with the community or other public corporation under which it agrees to reimburse the community or other public corporation for all or part of the value of the land or all or part of the cost of the building, facility, structure, or other improvement, or both, by periodic payments over a period of years; and

WHEREAS, The purpose of this Resolution is to confirm the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Resolution; and

WHEREAS, The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed, some of which are attributable to the Banning Utility Authority (the "BUA") and the City of Banning Financing Authority (the "BFA"); and

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WHEREAS, Pursuant to CCRL § 33445(d), the obligation of the Agency under the Promissory Note, attached hereto as Exhibit "B" to this Resolution, shall constitute an indebtedness of the Agency for the purpose of carrying out the Plan for the Merged Project Area which indebtedness may be made payable out of taxes levied in the Merged Project Area and allocated to the Agency under CCRL § 33670(b) or out of any other available funds; and

WHEREAS, Consistent with the responsibilities delegated to it by the BUA and the BFA, the City shall ensure that the Agency's future repayment of the indebtedness evidenced by the Promissory Note that is attributable to the BUA's and BFA's resources shall accrue to the BUA or BFA, as appropriate; and

WHEREAS, Pursuant to their Resolutions adopted on December 8, 2009, the BUA and the BFA have ratified the Promissory Note; and

WHEREAS, Certain accounting and/or funding adjustments are necessary to implement the Promissory Note; and

WHEREAS, This Resolution and the Promissory Note will only have the effect of modifying funding sources and will not modify any City or Agency appropriation; and

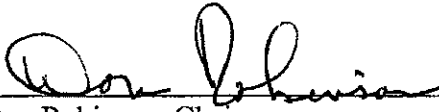
WHEREAS, All of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the Community Redevelopment Agency of the City of Banning, as follows:

- Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.
- Section 2.** The Summary of Redevelopment Projects List, attached hereto as Exhibit "A" to this Resolution, is approved.
- Section 3.** The Promissory Note, attached hereto as Exhibit "B" to this Resolution, is approved.
- Section 4.** The Executive Director, or his designee, is authorized to take such actions as may be necessary to implement the Promissory Note.
- Section 5.** This Resolution shall take effect upon the date of its adoption.

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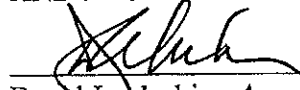
PASSED, APPROVED AND ADOPTED this 8th day of December 2009.


Don Robinson, Chairman
Community Redevelopment Agency

ATTEST:


Marie A. Calderon, Agency Secretary


APPROVED AS TO FORM
AND LEGAL CONTENT:


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

CERTIFICATION:

I, Marie A. Calderon, Agency Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2009-24 was duly adopted by the Community Redevelopment Agency of the City of Banning, California, at a special joint meeting thereof held on the 8th day of December 2009, by the following vote:

AYES:	Boardmembers Botts, Franklin, Hanna, Machisic, Chairman Robinson
NOES:	None
ABSENT:	None
ABSTAIN:	None


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

**Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10**

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
Improvements to the Electric System ¹	\$4,579,000	\$0	\$4,579,000
Brinton Reservoir ²	1,121,000	0	1,121,000
Recycled Water/Wastewater Plant ³	0	2,300,000	2,300,000
Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000 ⁶	\$6,300,000 ⁷	\$13,300,000 ⁸

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
2. The Brinton Reservoir is an approximately \$11.5 million project that predominately serves the western half of the Merged Project Area and enables the water system to provide the water quantity and pressure flows needed by existing and future users in furtherance of the objectives of the redevelopment plan. Development of the Brinton Reservoir will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.

3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
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5. The State Water Line Project is an approximately \$8 million project that predominately serves the Merged Project Area and will aid the water system in providing the water quantity needed by existing and future users in furtherance of the objectives of the redevelopment plan. Developing the State Water Line Project will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from the Water Capital Facilities Fund (DIF).
6. Pursuant to the Promissory Note, the amount indicated shall be transferred to the Agency.
7. The City's and Agency's records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
8. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by this reference.

PROMISSORY NOTE

Principal Amount
\$13,300,000.00

Banning, California
December 8, 2009

Promise to Pay. The Community Redevelopment Agency of the City of Banning (the "Agency"), a public body, corporate and politic, duly organized and existing under the laws of the State of California, for value received, hereby promises to pay to the order of the City of Banning, a California municipal corporation, duly organized and existing under the laws of the State of California (the "City"), the principal due pursuant to the terms of this Note.

Purpose. The Agency functions as a redevelopment agency pursuant to the California Community Redevelopment Law (Health and Safety Code § 33000, *et seq.*; hereinafter, the "CCRL") and is responsible for the administration of redevelopment activities within the City of Banning. Since redevelopment was instituted in the City of Banning, the City Council has adopted, amended and merged redevelopment plans for the Downtown Redevelopment Project Area and the Midway Redevelopment Project Area (the "Merged Redevelopment Project Area"). This Promissory Note (the "Note") is being executed to evidence the Agency's monetary obligations to the City arising from the City's financing and development of various capital improvement projects on behalf of the Agency within the Merged Redevelopment Project Area as delineated on the Summary of Redevelopment Projects List (the "Projects List"), attached hereto as Exhibit "A" to this Note. The Projects List includes capital improvement projects that have been, are currently being or are yet to be developed. It is the intent of the Parties to this Promissory Note that any accounting and/or funding allocation adjustments necessary to implement the Promissory Note shall be made by each Party consistent with Exhibit "A" to this Note.

Indebtedness. Pursuant to CCRL § 33445(d), the obligation of the Agency under this Note shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment project for the Merged Redevelopment Project Area, which indebtedness may be made payable out of taxes levied in the Merged Redevelopment Project Area and allocated to the Agency under CCRL § 33670 (b) or out of any other available funds.

Interest Rate. This Note shall bear simple interest at a rate equivalent to the Local Agency Investment Fund ("LAIF") apportionment rate as determined by the office of the California Treasurer. For each year during the term of this Note, the interest rate for the applicable fiscal year shall be the LAIF apportionment rate published by the California Treasurer for June of each year.

Term. Unless earlier repaid, any balance on this Note shall be due in full on the later of February 26, 2047 or the latest date for the repayment of indebtedness for any component area of the Merged Redevelopment Project Area.

Priority of Revenue. The Agency will repay the Note from net tax increment funds as these funds

are available for such repayment. Net tax increment funds shall mean the net tax increment revenues, excluding any amount used to:

- a. pay principal of, any premium on and interest on any existing or future bonds or notes that are secured by a pledge of tax increment revenues generated from the Merged Redevelopment Project Area;
- b. make payments to any taxing entity pursuant to a tax sharing agreement or statutory tax sharing formula pursuant to §§ 33607.5 and 33607.7;
- c. pay the Riverside County property tax collection administrative fee;
- d. contribute revenues to the Low- and Moderate-Income Housing Fund in the amounts required by the CCRL; and
- e. fund the administrative expenses of the Agency, not to exceed the amount listed in the Agency's annually adopted budget.

Repayment Schedule. Subject to the priority of revenue noted hereinabove, the Agency shall initiate repayment of the indebtedness evidenced by this Note on the later of February 26, 2032 or the latest date for the expiration of redevelopment plan effectiveness for any component area of the Merged Redevelopment Project Area.

Payments and Pre-Payments. All payments under this Note shall be made in lawful money of the United States at the principal office of the City of Banning, 99 East Ramsey Street, Banning, California 92220, or at such other place as may from time to time be designated by the City. All payments made under this Note shall be applied first to the interest due on the Note and the remaining balance shall be applied to principal. The Agency may prepay, at any time, all or any part of the principal amount of this Note without any payment of penalties or premiums.

IN WITNESS WHEREOF, the parties hereto have executed this Note as of the date first set forth above.

ATTEST:

By: Maria A. Calahan
City Clerk

CITY OF BANNING

By: Robert B. Banning
Mayor

ATTEST:

By: Maria A. Calahan
Agency Secretary

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF BANNING

By: Don R. Rhenius
Chairman

Exhibit "A"
(Promissory Note)

**Summary of Redevelopment Projects List
Banning Merged Redevelopment Project Area
FYs 2007-08 through 2009-10**

<u>CAPITAL PROJECTS</u>	<u>EXPENDED</u>	<u>REMAINING</u>	<u>TOTAL</u>
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Water Well #25 ⁴	1,300,000	0	1,300,000
State Water Line Project ⁵	<u>0</u>	<u>4,000,000</u>	<u>4,000,000</u>
Totals:	\$7,000,000 ⁶	\$6,300,000 ⁷	\$13,300,000 ⁸

Note: The amounts indicated are current as of October 1, 2009.

Footnotes:

1. The improvements to the electric system is an approximately \$45.8 million project that predominately serves the Merged Project Area and enables the electric system to serve both existing and future users in furtherance of the objectives of the redevelopment plan. Upgrading the electric system will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BFA Revenue Bonds (Electric System Project) Series 2007.
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3. The Recycled Water and Wastewater Treatment Plant Projects are estimated at \$20 million. The projects will benefit the entire Merge Project Area, as well as the City as a whole, by: i) increasing the City's overall supply of potable water by increasing the use of recycled water (instead of potable water) for landscape irrigation; and ii) increasing the capacity of the wastewater system to receive the quantities needed by existing and future users. Both projects will further the objectives of the redevelopment plan. Development of the Recycled Water and Wastewater Treatment Plant Projects will assist in facilitating and accelerating the Agency's capabilities to implement programs that eliminate blight, promote economic and housing development projects emphasizing those that produce jobs, build infrastructure, expand the City's tax base and/or provide housing that is affordable to persons of low- and moderate-income. The source of the funding indicated above is from proceeds of the BUA Revenue Bonds (Water/Wastewater) Series 2005.
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6. The City's and Agency's records shall reflect the use of Agency funds in the amounts and for the purposes indicated herein.
7. Pursuant to the Promissory Note, the amount indicated shall be transferred to the Agency.
8. The benefit of the above projects to the Merged Project Area is further described in the memorandum of the Public Works Director attached as Exhibit A-1 and incorporated herein by this reference.

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

Date: December 2, 2009

To: Steve Dukett, Managing Principal
Urban Futures, Inc.

From: Duane Burk, Public Works Director
City of Banning

Subject: BACKGROUND INFORMATION RELATIVE TO CERTAIN PUBLIC
INFRASTRUCTURE PROJECTS WITHIN THE MERGED
REDEVELOPMENT PROJECT AREA

It is my understanding that on December 8, 2009, the City Council will consider making the necessary findings consistent with the California Community Redevelopment Law ("CCRL") to authorize the use of Redevelopment funds to finance several public infrastructure projects benefiting the Merged Redevelopment Project Area. Therefore and as a follow-up to your request, this is to provide background information relative to merits of allocating Redevelopment Funds to finance these public infrastructure projects. Some basic facts relative to the Redevelopment Area are as follows:

Redevelopment Area Description

Redevelopment agency activated in 1973

- Downtown Project adopted in 1978 and amended several times
- Midway Project adopted in 1986 and amended several times
- Projects merged in 2002 and Added Territory included

Plan limitations

- Total indebtedness limit: \$211,000,000.00
 - Final plan expiration: February 2032*
 - Final revenue collection expiration: February 2047*
- *Some sub-areas terminate earlier*

Plan area statistics

- Total size: 3,283 acres (22% of entire City Limits)

Exhibit A-1

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- Total Parcels: 3,318.
 - Residential: 2,165
 - Commercial/Industrial: 314
 - Other: 839

30" & 24" Water Transmission Pipeline

The City of Banning owns and operates its own water system throughout the City and is the Urban Water Supplier for the water service area of the City of Banning. Presently, the largest portion of the water supply comes from the water wells in the northeastern section of the City located within the Banning Water Canyon. The subject project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Project No. 2001-02, "Construction of the 30" x 24" Water Transmission Pipeline" is a project consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey Street along with the necessary tie-ins to the existing distribution systems. Upon construction of the proposed large diameter sized water transmission pipelines; they will, also, provide the operations flexibility as identified in the Water System Hydraulic Model Report, May 2002.

Council approval of this recommendation will meet the City's goal of providing a more reliable delivery of the water supply from the east to the west and south areas of the City to the present and future customers of the Water/Wastewater Utilities Department.

The City Council has approved Project No. 2001-02, "Construction of the 30" & 24" Transmission Pipeline" consisting of a 30" water transmission pipeline to be installed on Wilson Street from Sixteenth Street to Sunset Avenue and a 24" water transmission pipeline to be installed on Sunset Avenue from Wilson Street to just south of Ramsey along with necessary tie-ins to the existing distribution system.

The project will provide the necessary transmission pipelines to deliver the water supply to the southwest areas of the water system.

Brinton Reservoir

The City is the Urban Water Supplier for the water service area of the City of Banning. The water system Hydraulic Model Report prepared by MWH, the City's consultant, in May of 2002 had identified a water system storage deficiency. The new 8 million gallon (MG) Brinton Reservoir will enhance water supply reliability to the utility customers as well as provide additional storage for fire suppression purposes.

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Project No. 2008-01W, "Brinton Reservoir" is a project consisting of an 8 MG buried 2 cell rectangular trapezoidal reinforced concrete reservoir and two 30" steel transmission pipelines; connecting the reservoir to the distribution system at Wilson Street and Mountain Avenue. This will make it possible to transfer water supply east and west for a more balanced water demand.

Wastewater Treatment Plant Expansion & Recycled Water Line

The City of Banning owns and operates its Wastewater Treatment Plant Operations since the 1950's. The existing Wastewater Treatment Plant facility has a rated treatment capacity of 3.6 million gallons with current sewerage flows of approximately 2.9 million gallons per day. The existing plant has a two stage treatment and treated effluent is discharged into the percolation ponds. Expansion and renovation of the existing Wastewater Treatment Plant is essential to accommodate future growth as well as to produce recycled water suitable for irrigation purposes.

Elimination of Blighting Conditions

It is my understanding that the CCRL provides that a blighted area may be characterized by the existence of inadequate public improvements or inadequate water or sewer utilities. The area wide water supply (inclusive of quantity and fire flow), wastewater treatment capacity and electric utility system capacity deficiencies currently present in the Merged Project Area are of a scope that it is unlikely that the private sector acting alone would be able to fund their replacement and/or installation costs. Further, the lack of rectifying these deficiencies may hamper the ability of property owners to eliminate conditions of blight on their properties and thus frustrate and/or delay the process of blight elimination. An example would be that the conditions of development related to a proposed development plan could be so overwhelmingly expensive as to cause the proposed development plan to become economically infeasible. Moreover, adequate public infrastructure is a prerequisite to any urban development. Therefore, it is reasonable to conclude that the Agency's efforts to develop those projects listed on the Projects List will significantly contribute to the elimination of blight within the Merged Project Area.

I trust the above noted information will be of use to you. If you have any questions, please let me know.

DB:ndb

cc: Sam Racadio, Interim City Manager
Zai Abu Bakar, Community Development Director
Kirby Warner, Interim Finance Director
John Jansons, Redevelopment Manager

**CITY OF BANNING
REPORT OF OFFICERS**

DATE: June 12, 2012

TO: Mayor and Members of the City Council

FROM: Bill R. Manis, Economic Development Director

SUBJECT: Authorization to Establish an Economic Development Assistance Program

RECOMMENDATION:

That the City Council:

- (1) Adopt Ordinance No. 1453 establishing the Economic Development Assistance Program for the City of Banning; and
- (2) Authorize the City's Economic Development Director to market the program, screen prospective application packages with internal staff and outside consultants, and make recommendations to the City Council for their consideration.

BACKGROUND

Despite the City's efforts within the community to encourage the expansion of our retail base, Banning has struggled over the years to capture sales tax generating uses and large employers. Our local residents travel to surrounding communities to purchase a substantial portion of their goods and retail purchases. This sales tax leakage equates to millions of dollars annually that the City of Banning should be retaining in our community.

Over time a variety of business friendly programs and services have been implemented to help encourage businesses to establish themselves in Banning in an effort to close the sales tax leakage gap in Banning. These efforts have included:

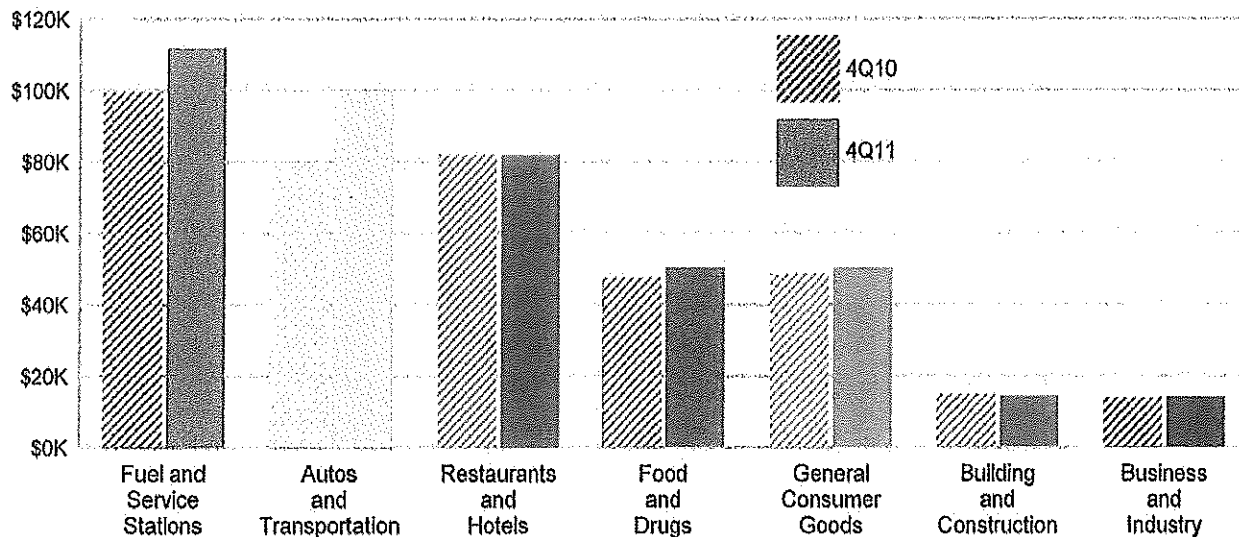
- Establishment of a Project Review Committee and expedition of review services for development projects;
- Fast tracking of projects;
- Electrical rate incentives;
- New construction incentives;
- Reduction or deferral of certain impact fees;
- Assistance with workforce development needs;
- Infrastructure related improvements throughout the City;
- Façade improvement loans for the Downtown Corridor; and
- Access to business assistance services through our regional service partners.

Many of these programs and services continue to be ongoing tools to help attract businesses to our City; however, some of these programs have been impacted and/or eliminated due to the dissolution of redevelopment that took place on February 1, 2012. In light of the dissolution of redevelopment the continued need for community revitalization, the elimination of blighted properties, the creation of jobs, and securing revenues for municipal services in Banning has never been more important.

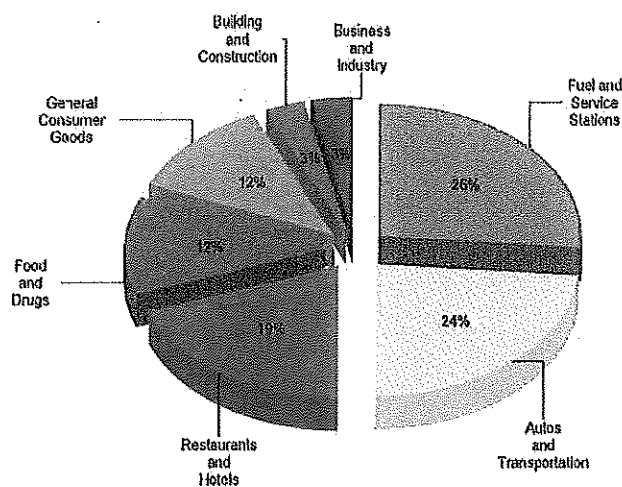
ECONOMIC CONDITIONS

According to the HdL Companies Fourth Quarter 2011 Sales Tax Report the City of Banning, like many other cities in the region, is showing signs of a slow recovery. Receipts for Banning's October through December sales were 9.6% higher than the same quarter one year ago. The increase in sales tax activity was spread through the seven major industry groups that make up our local business community, please see the charts below:

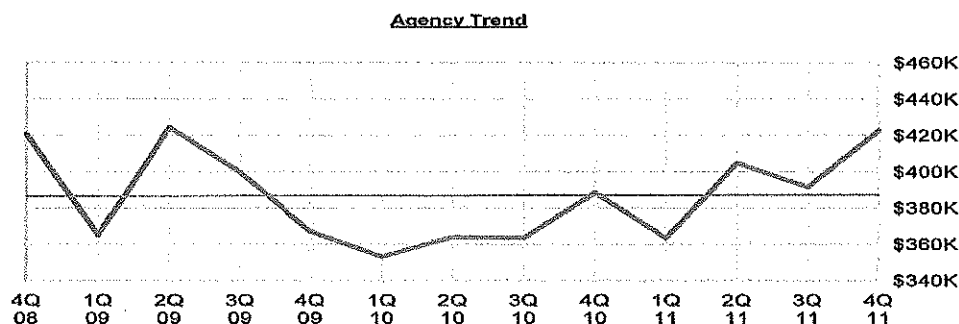
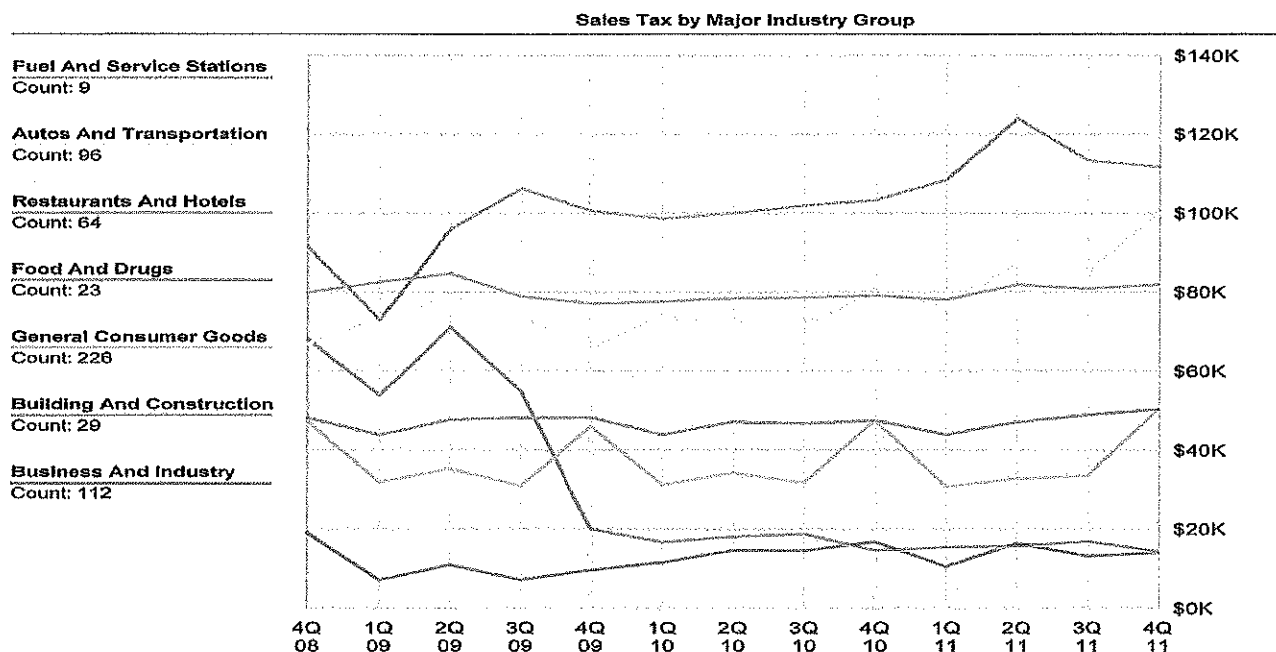
4Q10 Compared To 4Q11



4Q11 Percent of Total



The year-to-date upward trend is encouraging as it has taken Banning ten quarters, or 30 months, to return to second quarter 2009 sales tax levels. The chart below shows our thirteen quarter sales tax performance history by major industry groups:



In summary, auto sales were the primary leader in the autos and transportation group, while new business also lifted the percentages. Higher receipts from drug stores were a major factor in the increase from the food and drugs sector. Higher prices at the gas pump helped boost the service station receipts. Receipts from the restaurants and hotels group were flat, mostly due to eateries that do not sell beer and wine. Taxable sales for all of Riverside County increased by 10.1% over the comparable time period while the Southern California region as a whole was up 7.6%.

Despite the recent increase in sales activity other sectors in Banning remain below County, State, and National levels. The unemployment rate in Banning is currently at 14.6%, compared to 12.8% in Riverside County, 11.0% in the State, and 8.1% in the Nation. The Per Capita Income in Banning is \$20,451 compared to \$29,999 in California and \$26,505 at the National level. While the Median Household Income in Banning is \$40,416 compared to \$64,052 in California and \$54,595 in the Nation.

For communities like Banning that have challenging demographics, the creation of incentive programs should be an emphasis in order to help address the needs of the residents and local workforce.

ECONOMIC DEVELOPMENT ASSISTANCE PROGRAM

Ordinance No. 1453 outlines the specific requirements of the proposed Economic Development Assistance Program, Attachment 1. The assistance program would benefit Banning by providing a tool for the City to make funds available to major retailers, point of sale businesses, large employers, or businesses that would have a substantial financial impact on the local economy. With the dissolution of redevelopment, funds to attract and/or maintain these types of businesses are generally not available. Some cities are now creating other funding mechanisms to help address the gap left by redevelopment. Traditionally one of the biggest obstacles in attracting large businesses and tenants is the competition mounted by other cities utilizing similar approaches to those being proposed. As a result, cities need to be creative in development incentives for businesses in order to remain competitive in the marketplace.

The goals of the proposed Economic Development Assistance Program are to encourage and assist businesses that:

- Promote Private/Public Partnerships
- Encourage Businesses to Grow and Expand
- Retain and Create Jobs
- Promote Economic Growth within the City
- Enhance Community Image
- Invest in Infrastructure Improvements

The proposed Economic Development Assistance Program may only be approved for projects which, due to the nature of the project or scale of the project, provide significant long-term benefits to the public generally. Accordingly, any person seeking approval of the Economic Development Assistance Program must meet one or more of the following conditions that are fully outlined in Ordinance No. 1453:

A. Alleviation of Blighting Conditions –

- a. The development of the project will alleviate a persistent condition of blight which has previously discouraged development of the property.

B. Need for Area-Wide Infrastructure –

- a. The development of the project will require the construction of major infrastructure requiring capacity which significantly exceed the needs of the Project making the project economically unfeasible.

C. Production of Jobs –

- a. The development of the project will result in the establishment of a business or businesses on the property producing in excess of 100 long-term jobs or preserving and existing business which will also bring 100 new long-term jobs (excluding multipliers).

D. Fiscal Impact of City –

- a. The development of the project will create new on-going revenues to the City, considering all revenue sources, of at least \$100,000 annually, or preserve existing revenues of at least \$100,000 annually due to the threat of relocation outside of the City.

E. Special Amenities –

- a. The development of the project will produce unique community amenities either due to construction of needed public facilities, or due to the fact the project itself provides special private facilities available to the public which do not otherwise exist in the community and which would be significant to the community character and quality of life of those who live and work in the community.

In addition to the conditions outlined above, the development of the project must not have a substantial adverse impact on traffic, or on surrounding properties, or on the community in general. The project must meet one or more of the above conditions and the City Council must find that the project taken as a whole is uniquely beneficial to the community.

Applicant will be required to provide the City initial studies, reports, and analysis that will be necessary to permit the City, and the City's consultants, to determine the feasibility of the development. As fully outlined in Ordinance No. 1453 the application process requires the applicant to submit:

A. Principals –

- a. Full disclosure of the applicant's principals, partners, joint ventures, negotiators, consultants, professional employees, or other associates of the applicant participating in the development.

B. Financial Capability –

- a. Statement of financial condition in sufficient detail to demonstrate the applicants financial capabilities, those of its principals, partners, joint ventures, and those of its prospective developers to satisfy the commitments necessitated by the development.

C. Title and Property Information –

- a. All title information concerning the property, all environmental information (CEQA Compliance), including Phase I investigations, a description of existing structures and site conditions, anticipated demolition, grading and remediation costs.

D. Project Design and Costs –

- a. All preliminary information related to the design of the development to meet the City's reasonable requirements. The information shall be sufficient to allow the City to evaluate grading, site configuration, development constraints, traffic patterns, site circulation and parking, landscaping, architectural design and similar issues. All projects costs for design and construction of the project shall be included.

E. Proforma -

- a. The project proforma shall be included identifying the estimated amount of public money to fund the development and how it will be used and the anticipated economic return of the development. The applicant must provide a detailed analysis of how the development of the project shall satisfy the requirements of this Chapter and why any public subsidy is warranted and how it provides a public benefit. Any potential methods of financing will be identified with reasons why the City's assistance is necessary.

F. Tenants –

- a. All information necessary to show tenant availability and interest the nature of the proposed tenant(s), and the financial strength and resources of the tenant(s).

The applicant will be required to reimburse the City for all cost associated with the review process of their respective application package. This includes any legal and/or financial review performed by outside consultants and the costs associated with the public hearing notification. The applicant must conform to existing codes, requirements, and regulations that are applicable to the project. This also includes meeting the City's business license and insurance requirements.

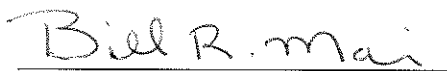
Should the City Council authorize the establishment of the Economic Development Assistance Program, it is recommended that the City's Economic Development Director be charged with marketing the program, screening prospective application packages with internal staff and outside consultants, and making recommendations to the City Council. The recommendations would include the appropriate business structure for the individual assistance agreements on a case-by-case basis and would be presented at a public hearing.

The City Attorney would be tasked with developing a formal "Assistance Agreement" for the prospective program applicants that outlines the terms, general provisions, obligations, guarantees, default remedies, and other associated performance requirements. Staff also would propose a periodic review of the program in order to determine its effectiveness.

FISCAL DATA:


The proposed program is anticipated to result in additional operational revenues for municipal services.

RECOMMENDED BY:



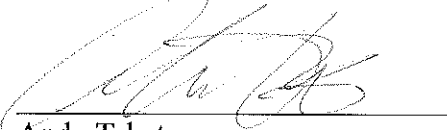
Bill R. Manis
Economic Development Director

REVIEWED BY:



June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Andy Takata
City Manager

Attachment:

1. Ordinance 1453

ORDINANCE NO. 1453

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING ADDING CHAPTER 3.28 OF THE BANNING MUNICIPAL CODE ADOPTING A COMPREHENSIVE SET OF ECONOMIC DEVELOPMENT INCENTIVES AND PROGRAMS TO PROMOTE THE DEVELOPMENT OF BANNING IN THE FACE OF REGIONAL AND NATIONAL ECONOMIC MALAISE, TO CREATE JOBS FROM NEW AND EXPANDING BUSINESSES AND TO PRESERVE THE SOUND FISCAL BASIS OF THE CITY IN LIGHT OF THE ELIMINATION OF REDEVELOPMENT IN CALIFORNIA.

WHEREAS, the City was incorporated on February 6, 1913, as a general law city and encompasses an area of approximately 23.10 square miles; and

WHEREAS, the Banning Redevelopment Agency (RDA) and first project area, called the "Downtown Project" were created in June 12, 1978 and consisted of 1,658 acres. In June 1986 the second project area, called the "Midway Project" was created and consisted of 105 acres. When the Downtown Project Area and Midway Project Area merged the RDA added 1,519.67 acres of "Added Territory" bringing the total land coverage of the RDA to 3,282.67 acres or a full two-thirds of the entire City of Banning. The RDA was formed to address adverse issues impacting the community including (i) the decline of its downtown core following the development of the Interstate Highway System (I-10); (ii) a lack of basic infrastructure, including inadequate and aging water, sewer and street improvements; (iii) unsafe/unhealthy buildings; (iv) lack of parking downtown; (v) incompatible land uses; (vi) depreciated and stagnant property values; (vii) high commercial vacancy rates; (viii) lack of commercial facilities; (ix) other development constraints including geologic such as earthquake faulting and substandard lots with fractional interests preventing site assembly; (x) negative general demographic data including: low family income levels, lack of adequate housing options for residents and the local workforce, high unemployment rates, and an unskilled labor force; and (xi) competition from other communities who were able to offer significant redevelopment incentives thereby attracting the significant commercial retailers interested in the Pass area; and

WHEREAS, ABx126 dissolved all redevelopment agencies statewide on February 1, 2012. This action by the State did not magically waive the need for community revitalization, brownfield redevelopment, environmental remediation, infrastructure improvements, job creation and providing revenues for basic municipal services in Banning. The challenge the City now faces is what programs and policies should be in place to continue to move Banning forward and to implement the worthwhile goals of the former Redevelopment Plan and the City's General Plan; and

WHEREAS, Banning is an economically disadvantaged community, both within Riverside County generally and compared to State-wide averages. Banning residents have a lower median income level than the average State and National median income levels and a higher percentage of Banning residents are living below the recognized poverty level than the

overall State averages. The vast majority of businesses in Banning employ workers at minimum wage salaries. The per capita income level in Banning is currently \$20,451 or 32% below the State average at \$29,999. The median household income in Banning is \$40,416 or 58% below the State average at \$64,052; and

WHEREAS, there is currently a 16% vacancy rate in the City's downtown core in addition to having some properties that are unattractive and/or obsolete; sales tax leakage has occurred in the community due to the lack a retail shopping options and other sales tax generating venues. It is estimated that only 45% of residents make the majority of the purchases within Banning; only 34.5% of Banning residents work within Banning; there are only some 50 industrial parcels in Banning generating only \$26,000 in property taxes; Banning has some 1,600 vacant parcels which in aggregate only produced \$113,000 in general fund revenues to the City; and

WHEREAS, the City has significant problems with dilapidated, substandard, unattractive, and obsolete structures with some 400 estimated structures needing repair. The City's Code Enforcement Division handled a significant number of cases that in the last year included 321 new cases, 405 closed cases, and 458 open requests/complaints for a caseload of 1,184. Currently the City has 442 homes in foreclosure; and

WHEREAS, in July 2005 the City created a public Utility Authority and has significant utility and waters rights. The utility operates under increasingly complex regulations to relocate its energy production resources. In addition, the City produces water from five different groundwater basins, and has water rights in the Banning Canyon flume that was established in 1991 and formerly operated by Southern California Edison. The production of adequate water and energy, at economic prices is vital to the future growth of the City. The City needs to be able to offer incentives for business retention /attraction and development. An example of an existing Electric Utility incentive is if new businesses using at least 110KW can qualify for a 20% rate reduction if they stay in Banning for five years, and existing businesses adding 100kw can get a 25% rate reduction; and

WHEREAS, the RDA no longer owns the approximately 40 parcels of property it previously owned due to the dissolution of redevelopment in California. There are numerous properties in Banning that suffer from substandard conditions, including parcels in multiple ownerships, but could not be part of RDA's property acquisition program in prior years due to financial constraints. Any future economic development program will need to contend with a variety of substandard lot subdivision, with multiple ownerships, where ownership interests have been lost over time and where it is virtually impossible to locate the current owners of the interests. It is difficult to see how this could be accomplished without eminent domain authority; and

WHEREAS, the only program in the 1970's that seemed to offer hope to cities like Banning relied on the formation of a redevelopment agency. The State had authorized RDAs in the 1950's to collect the growth in property taxes (known as "tax increment") from within a project area, to be devoted to the elimination of blight and revitalization of the project area. The City adopted a comprehensive update to its General Plan in 1978, at the same time as the

formation of the RDA. Along with the Redevelopment Plan, the General Plan and Zoning Ordinance have guided the revitalization of the community over the last four decades; and

WHEREAS, the RDA issued over \$97,310,000 million in debt over its thirty-four years in existence. In the early years, bond proceeds were directed to major infrastructure projects. For example, from 1980 to 1990 RDA invested approximately \$5,000,000 on the widening and construction of Ramsey Avenue, the former state highway and major downtown artery. The project consisted of the construction of sewers, storm drains and street improvements. The RDA also funded and developed the following major projects:

- Pre-Design and design in concert with Cal Trans on the Sunset Grade Separation;
- Provision assistance with off-site infrastructure and land write downs where applicable;
- Completion of Downtown design guidelines;
- Completion of the Paseo San Gorgonio Master Plan;
- Downtown upgrades and enhancements including the Banning Police Station development, the Banning Justice Center development, 1-10 & 8th Street enhancement project, commercial façade program, Civic Center lot/streetscape enhancements, and acquisition, site assembly, and redevelopment planning for the San Gorgonio Inn site and related downtown properties; and
- The projects outlined above represent over \$20,000,000 million in investment by the RDA.

WHEREAS, although national unemployment rates are improving slowly, California and the subregions job recovery is still a major problem. The March 2012 unemployment rate in California was 11.0%, while the national unemployment rate was 8.1%, and the unemployment rate in Riverside County was 12.8%. The current unemployment rate in Banning is 14.6%, which is 6.5% above the national rate, 3.6% above the state rate, and 1.8% above the county rate. This data translates to over 4,000 persons unemployed in the City of Banning based on March 2012 figures. Banning is consistently below the county, state, and national levels in most demographic categories. Job retention and creation programs should be a major goal of any local economic development program and certainly an emphasis for communities that have challenging demographics like Banning; and

WHEREAS, since its inception in 1978, the RDA was responsible for creating over 2,000 jobs. This includes major projects directly assisted by the RDA since 1978 and does not include secondary jobs, and multiplier effects such as construction jobs created by RDA or jobs that have grown from the new business activities in Banning created by RDA. Some of the major employers within the RDA boundaries included the Deutsch Company (750 employees – since closed), the City of Banning (175 employees), Green Thumb Produce (150 employees), Pacific Window Company (125 employees – since closed), Riverside County Department of Social Services (250 employees), Riverside County Child Protective Services (250 employees), Diamond Hills Automotive (100 employees), and the Banning Unified School District (500 employees). Most recently, and before the dissolution of the RDA, Banning was able to initiate the Banning Justice Center Project and the Village at Paseo San Gorgonio Project. These two projects, both in the former RDA territory, will add another 250 to 300 jobs to the community. The construction jobs created by RDA since 1978 have also been significant. For example, the

recently completed Police Station generated over 200 construction jobs, the Banning Justice Center Project, the Village at Paseo San Gorgonio Project, the Family Dollar Project, Dollar General Project, and the Starbucks Project have generated over 1,000 construction related jobs. This does not include the street improvements component of these projects which has generated an estimated 500 jobs; and

WHEREAS, without redevelopment, and with the loss of the properties and programs the RDA had invested in, and in the current economic circumstances of the Great Recession which has seen the City's revenues fall by a third, the economic health and general welfare of Banning and its residents will deteriorate. Therefore, the City desires to implement an additional economic development incentive program to encourage private investment and job creation for local residents. The program will establish temporary incentives for businesses considering relocating or expanding in Banning on a case by case basis. The types of businesses that qualify will include significant sales tax producers, significant electrical users, large employers, large property tax generators, and large transit occupancy tax generators. The level of incentive will be predicated on the size of the investment or improvement being made and the related benefits to the City. Staff will make recommendation to the City Council on the recipients of the program and the proposed incentive associated with the individual request. The City Council will ultimately consider the request.

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

SECTION 1: CODE AMENDED. The Banning Municipal Code is hereby amended by adding Chapter 3.28 entitled "Economic Development" to Title III, said Chapter to read in its entirety as follows:

Section 3.28.010 Purpose. A. Constraints to Development. The City of Banning has found that its redevelopment program has been essential to revitalizing Banning which was for historically the center of economic activity in the San Gorgonio Pass area. Banning has had to overcome many obstacles including: (i) having its downtown areas bypassed by the Interstate Highway System; (ii) aged and undeveloped infrastructure inadequate to service redeveloping and growth areas; (iii) economic competition with other cities which used economic incentives to attract revenue generating businesses and development; (iv) high commercial vacancies and a lack of commercial facilities to create a vibrant downtown; (v) dilapidated, unattractive, obsolete, and deteriorated buildings and stagnant property values; and (vi) community demographics with low income levels, high unemployment and lack of adequate housing. These factors continue to discourage development in the community.

B. Accomplishments of Redevelopment Program. Since the formation of the Redevelopment Agency, the RDA has spent over \$3.2M in developing a downtown façade improvement program on some 23 properties; has spent over \$20M in building various public buildings and improvements; has redeveloped historic downtown properties such as the Oddfellows Building, the Fox Theater, the Hendon Building, the Nickles Building, the Willens Building, and the Coplin House at a cost of approximately \$3.5M; has brought the \$68M Justice Center to downtown which will bring six courtrooms, some 300 jobs, some 500 to 1,000 people in daily court business, and will serve as a center of

activity in downtown, which project is also leading to the \$23M Village at Paseo San Geronio Project; has created over 2,000 jobs in businesses developed on RDA projects; has brought or retained sales tax generators to the community, who collectively pay over \$1M in annual sales taxes and restored hope in the future of Banning.

C. Remaining Property Needs Continued Redevelopment. If most of the property in Banning which needed redevelopment had been redeveloped, or if the remaining blighted property did not face the same constraints as the property the RDA has redeveloped over the last 34 years, then the elimination of the redevelopment agency by the State of California by ABx126 would not be contrary to the general welfare of the citizens of Banning. But in many cases, some of the most constrained parcels in the City are still the ones most in need of redevelopment assistance. The Legislature in acting quickly in a statewide manner could not appreciate the impact of ABx126 in a small community impacted by blight such as Banning.

D. Need for Local Economic Development Program. In the face of the State's decision to eliminate redevelopment, the City of Banning must design and implement a local program within the authority of its powers under the State law to accomplish the purposes previously served by the City's redevelopment program. It is therefore the purpose of this Chapter to implement a program within the authority of the City under the powers granted to the City by law.

Section 3.28.020 Assistance Available. To accomplish the purposes provided herein, the City of Banning and its associated and subordinated entities shall have the power to carry out policies, plans and programs, to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community. These programs may be carried out singly or in combination in a manner to promote the objectives of this Chapter, and may include the following general types of measures:

A. Public-Private Partnerships. Agreements with private persons or entities where by the sharing of public resources by the public agency, the reduction of regulatory burdens, asset monetization, fee producing infrastructure, alternative procurement, concession agreements, leasing arrangements, securitization of obligations, or other measures, the development entity and investors can earn a commercially reasonable return on investment and will accordingly proceed with the project;

B. Emerging Statutory Opportunities. Special legislative programs exist, and are likely to be enhanced as a result of the elimination of redevelopment, the State's most important and best funded economic development strategy. Under this Chapter, such programs should be exploited to the fullest extent of the law. Such programs may include Design Build Contracts; Tax Credits; Infrastructure Finance Districts; Environmental Sustainability Programs; Development Zones; and similar legislation. Any legal structure existing currently, or enacted hereafter which permits the City legally to carry out these purposes is permitted hereunder;

C. Public Financing. All public financing mechanisms which offer the opportunity of lower financing costs, if permitted by law, may be utilized including lease-revenue bonds, revenue bonds relating to the EB-5 Program, industrial development bonds, private activity bonds, certificates of participation, letter of credit enhancement and similar measures;

D. Special Districts. The financing of both the development of infrastructure and services through community service districts, landscape and lighting districts, assessment districts, school facility improvement bonds, and similar special district financing mechanisms permitted by law;

E. Public Property. The use of ground leases or sale of publicly owned land, including at less than fair market value as provided herein, contractual development agreements in accordance with law, lease-lease back financing, design-build contracts, and the use of eminent domain to acquire property for the foregoing purposes;

F. Tax Rebate Agreements. The use of tax rebate or similar agreements permitted by law including for sales taxes, transient occupancy taxes, utility taxes or other taxes shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources permitted by law;

G. Regulatory Relief. The modification or suspension of zoning and other land use restrictions affecting the feasibility of development, density bonuses, expedited processing of entitlements, the establishment of clear and consistent regulatory regimes, creating procedures to quickly resolve disputes, clear definition of scope of environmental review and use of scoping processes;

H. Other Agencies. Use of financial assistance provided by other local public agencies and by State and Federal programs to assist projects, consistent with the requirements of such programs; and

I. Other Programs. In addition to the foregoing, the City may utilize any other program and provide any other form of direct or indirect assistance as the same may currently or in the future exist which would further permit the accomplishment of the purposes provided herein, to the full extent permitted by the law. The enumeration of certain programs herein does not preclude the use of any other program which might accomplish the purposes of this Chapter.

Section 3.28.030 Economic Development Assistance Programs. The City may plan and carry out an Economic Development Assistance Program for the improvement, rehabilitation, and economic development of property through public-private partnerships, or utilizing any other method provided in Section 3.28.020. Any Economic Development Assistance Program must identify, explain and analyze (i) the project to be assisted, (ii) the location of the project, (iii) impacts on surrounding property; (iv) the cost of the project, (v) the project financing, (vi) the assistance requested, (vii) how the assistance will be used, (viii) the benefits to the community or City from the project, including jobs, financial return to the City, community improvements or amenities or other benefits, (ix) the development

schedule, (x) performance criteria and assurances, and (xi) the public purpose to be accomplished by the Project.

Section 3.28.040 Powers Exercised. To carry out the Economic Development Assistance Program and promote the projects developed under this Chapter, the City may exercise any power or authority permitted by its Charter or under State law, for the public purposes provided hereunder, and may do the following:

A. Receipt of Financial Assistance. The City may seek or accept financial or any other assistance from public or private sources, including from the state or federal government, for the City's activities, powers, and duties hereunder.

B. Acquisition of Property. The City may purchase, lease, obtain option upon, acquire by gift, grant, bequest, devise, or otherwise, any real or personal property, any interest in property, and any improvements on it, including repurchase of developed property previously owned by the City.

C. Eminent Domain. The City may acquire real property by eminent domain, and may acquire every estate, interest, privilege, easement, franchise and rights in land, including encumbrances by way of mortgage or indebtedness, or any interest arising from covenants and conditions. Any such proceeding shall be undertaken only in accordance with the Eminent Domain law (Code of Civil Procedure §1230.010 et seq.). No property currently zoned and used for residential purposes may be acquired by eminent domain for the purposes provided in this Chapter.

D. Management of Property. The City may rent, maintain, manage, operate, repair and clear real property and may insure or provide for the insurance of any operations of the City against risks or hazards.

E. Conditions Covenants & Restrictions. The City may provide for the retention of controls and the establishment of any restrictions or covenants running with the land for such periods of time and under such conditions as shall be necessary to effectuate the purposes hereof.

F. Non-Discrimination. The City shall include in all deeds, leases or contracts for sale, lease, sublease or transfer of land, non-discrimination clauses.

G. Issuance of Bonds. The City may issue bonds or other financial instruments permitted by law and expend the proceeds from the sale to carry out the purposes hereof. The bonds and obligations issued by the City also may be purchased, invested in, or used for security.

H. Site Development. The City may clear or move buildings, structures or improvements from real property; may grade any site; and may develop as a building site any property owned by it. It may cause or make provisions with other agencies for the installation of streets, utilities, parks and other public improvements.

I. Property Disposition. The City may sell, lease, exchange, subdivide, transfer, assign, pledge, encumber or otherwise dispose of any real or personal property or any interest in property acquired by it.

J. Remediation. The City may investigate and evaluate the condition of the property, prepare remediation plans and obtain approval thereof from regulatory agencies, and undertake remediation in accordance with such plans.

K. Relocation. The City may provide (i) relocation assistance to persons displaced by governmental action, and (ii) aid and assistance to property owners in connection with rehabilitation loans and grants.

L. Cooperation. The City shall cooperate with other public agencies in the formulating and administration of its Economic Development Assistance Programs. The planning commissions and the legislative bodies of the City and the cooperating public agencies may hold joint hearings and meetings regarding the projects assisted hereunder.

Any powers exercised hereunder to carry out the purposes of this Chapter must be carried out in accordance with State and Federal law. Nothing herein shall permit the waiver of any applicable legal procedure or process.

Section 3.28.050 **Conditions to Qualify for Assistance.** An Economic Development Assistance Program may only be approved for projects which, due to the nature of the project or scale of the project, the project will provide significant long-term benefits to the public generally. Accordingly, any person seeking approval of an Economic Development Assistance Program must meet one or more of the following conditions:

A. Alleviation of Blighting Conditions. The development of the Project will alleviate a persistent condition of blight which has previously discouraged the development of the property, such as demolition and removal of dilapidated substandard buildings and structures, geotechnical or other conditions of topography or soils which inhibit development of the property, or the removal or remediation of hazardous substances or environmental contamination of soils, where the cost of such blighting conditions (not including the building construction costs) will exceed the land value of the property.

B. Need for Area-Wide Infrastructure. The development of the Project will require the construction of major infrastructure requiring capacity which significantly exceed the needs of the Project, and where the cost of the infrastructure, in aggregate, may make the Project economically unfeasible.

C. Production of Jobs. The development of the Project will result in (i) the establishment of a new business or businesses on the property producing in excess of 100 long-term jobs, or (ii) cause the expansion of an existing business adding at least 100 new long-term jobs, or (iii) preserve an existing business which will retain at least 100 long-term jobs (all excluding multipliers).

D. Fiscal Impact on City. The development of the project will create new on-going revenues to the City, considering all revenue sources, of at least \$100,000 annually, or preserve existing revenues of at least \$100,000 annually due to the threat of relocation outside of the City.

E. Special Amenities. The development of the Project will produce unique community amenities either due to the construction of needed public facilities, or due to the fact that the Project itself provides special private facilities available to the public which do not otherwise exist in the community and which would be significant to the community character and quality of life of those who work or live in the community.

In addition to the above conditions, the development of the Project must not have a substantially adverse impact on traffic, or on surrounding properties or on the community generally. The Project must meet one or more of the above conditions and the City Council must find that the Project taken as a whole is uniquely beneficial to the community.

Section 3.28.060 Information to be Provided by Applicants. Applicant will prepare such initial studies, reports, and analysis as shall be necessary to permit the City to determine the feasibility of the development. During the application period, the applicant shall submit to the City the following:

A. Principals. Full disclosure of the applicant's principals, partners, joint venturers, negotiators, consultants, professional employees, or other associates of the applicant who are participants or principals of the development, and all other relevant information concerning the above.

B. Financial Capability. Statement of financial condition in sufficient detail to demonstrate the applicant's financial capabilities, those of its principals, partners, joint ventures, and those of its prospective developers to satisfy the commitments necessitated by the development, including all information necessary to demonstrate the availability of construction and permanent financing. To the extent the applicant wants such financial statements to remain confidential, they shall be supplied to and maintained by the City in confidence to the extent permitted by law.

C. Title and Property Information. All title information concerning the property, all environmental information, including Phase I investigations (CEQA compliance), a description of existing structures and site conditions, anticipated demolition, grading and remediation costs.

D. Project Design and Costs. All preliminary information related to the design of the development to meet the City's reasonable requirements. This information shall be sufficient to allow the City to evaluate grading, site configuration, development constraints, traffic patterns, site circulation and parking, landscaping, architectural design and similar issues. All projected costs for design and construction of the Project shall be included.

E. Proforma. The Project proforma shall be included identifying the estimated amount of public money to fund the development and how it will be used and the anticipated economic return of development. The applicant/developer shall provide a detailed analysis of how the development of the Project shall satisfy the requirements of this Chapter and why any public subsidy to the Project provided hereunder is warranted and provides a public benefit. Any potential alternative methods of financing will be identified with the reasons why the City's assistance is necessary.

F. Tenants. All information necessary to show tenant(s) availability and interest, the nature of the proposed tenants, and the financial strength and resources of the tenant(s). To the extent the tenant wants such information to remain confidential; they shall be supplied to the City only if it is reasonably likely that confidentiality can be maintained under the Public Records Act.

The applicant will be required to reimburse the City for all cost associated with the review process of their respective application package. This includes any legal and/or financial review performed by outside consultants and the costs associated with the public hearing notification. The applicant must conform to existing codes, requirements, and regulations that are applicable to the project. This also includes meeting the City's business license and insurance requirements.

Section 3.28.070 Review. A. Investigation. During the Economic Development Assistance Program application period, the City shall investigate the applicant and request reasonable additional information and data from the applicant necessary for review and evaluation of the proposed development. Applicants are required to provide such additional information or data as reasonably requested in a timely manner. If confidential information is provided regarding the applicant's business practices, it shall remain confidential to the extent permissible by law. As part of the review process confidential information will be required to be shared with the City's legal counsel and any outside consultant reviewing the application package.

B. Discretionary Awards. The granting of Economic Development Assistance is purely discretionary with the City and no applicant shall have any entitlement or vested right thereto. Accordingly, it is the responsibility of the applicant to provide a high quality project meeting the objectives of this Chapter. To the highest degree possible, only information available to the public may be used to justify any decision hereunder.

Section 3.28.080 Public Hearing. A. Notice of Hearing. Before the City approves, by resolution, each Economic Development Assistance Program and the Project to be assisted, the City shall hold a public hearing. Notice of the time and place of the hearing shall be published in Banning Tribune, or a comparable newspaper of general circulation, at least once per week for at least two successive weeks, as specified in Section 6066 of the California Government Code, prior to the hearing. Mailed notice shall also be sent to all property owners as shown on the last equalized assessment roll within 300 ft of the subject property.

B. Report. The City shall make available, for public inspection and copying at a cost not to exceed the cost of duplication, a report no later than the time of publication of the first notice of the hearing mandated by this section. This report shall contain a summary of the following:

1. The Economic Development Assistance Program.
2. Description of the project including a site plan and of how the business operations on the property will be conducted.
3. The cost of the development to the applicant and the City, including but not limited to any land acquisition costs, clearance costs, relocation costs, the costs of any improvements, plus the expected interest on any loans or bonds to finance the project.
4. An explanation of why the Economic Development Assistance Program is needed by the applicant, with reference to all supporting facts and materials relied upon in making this explanation.
5. How the project will meet the conditions described in Section 3.28.050 and how the project will provide public benefit and promote the health, safety and general welfare of the community.

Section 3.28.090 Required Findings. The City Council may approve the Economic Development Assistance Program if it finds as follows:

A. The Project will meet the conditions of Section 3.32.05 by (i) alleviating persist conditions of blight; or (ii) provide significant area-wide infrastructure; or (iii) meet the minimum thresholds for job creation; or (iv) meet the minimum thresholds for positive fiscal impact on City; or (v) if no one of these conditions is fully met, but in combination, the overall objectives are met.

B. The Project will produce unique public or private facilities not otherwise existing in the community and which would be significant to the community character and quality of life.

C. The Project has received all other discretionary entitlements required under the Zoning Ordinance, including any environmental review required by the California Environmental Quality Act.

D. The Project will not have an adverse effect on surrounding properties or the permitted uses thereof.

E. The Economic Development Agreement contains provisions to assure the continued operation of the Project consistent with this Chapter and providing for the enforcement of the covenants contained therein by City.

Section 3.28.100 Contents of Assistance Agreement. If the Economic Development Assistance program is approved, an Economic Development Assistance Agreement shall be entered into which includes the elements contained in Section 3.28.040. The Agreement must describe specifically the Project and the exact assistance provided. It must identify how the project is anticipated to meet the criteria in Section 3.28.070. It must contain performance criteria and require that the Project will remain in operation for at least 15 years. It must also provide for periodic review of performance and provide remedies for violations of the covenants and conditions. The Agreement shall permit transfer subject to the City's reasonable approval and provide for the City approval of any tenant(s) necessary to achieve the purpose of the Project. The Agreement shall show the public purposes of the Project will be achieved. All obligations undertaken by the applicant shall be guaranteed with sufficient securities.

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

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

SECTION 5. EFFECTIVE DATE. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at the City Hall, the Civic Center building and the United States Post Office, Banning Branch.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, on this _____ day of June 2012.

Don R. Robinson, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk

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

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

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1453 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 12th day of June, 2012, and was duly adopted at a regular meeting of said City Council on the _____ day of June, 2012, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California